



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXVII
September 15, 2004

NUMBER 6
Pages 337 to 432

CONTENTS IN THIS ISSUE

Pages 346 to 429 include **ARC 3631B** to **ARC 3673B**

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Notice, Updating and correcting of cross references, amendments to chs 4 to 9, 25, 26, 40, 50 to 54, 59 to 61, 63, 64, 71, 100, 106, 107, 114, 116 **ARC 3659B** 346

ALL AGENCIES

Schedule for rule making 340
Publication procedures 341
Administrative rules on CD-ROM 341
Agency identification numbers 344

ATTORNEY GENERAL[61]

Filed, Involuntary unemployment insurance, 14.1 **ARC 3634B** 420

CITATION OF ADMINISTRATIVE RULES 339

CORRECTIONS DEPARTMENT[201]

Notice, Sex offender registry process, 38.2, 38.3 **ARC 3651B** 353
Notice, Probation services—auditing system; supervision fees, 42.1 **ARC 3652B** 354
Notice, Residential facilities—auditing system, 43.1(19), 43.1(20) **ARC 3653B** 355
Notice, Work release—auditing system, 44.1, 44.6(4), 44.9 **ARC 3654B** 355
Notice, Parole—auditing system, 45.1, 45.7 **ARC 3655B** 356
Notice, OWI programs—nontechnical updates, 47.1 to 47.4 **ARC 3656B** 357

CREDIT UNION DIVISION[189]

COMMERCE DEPARTMENT[181]“umbrella”

Notice, Investment and deposit activities for credit unions, ch 17 **ARC 3643B** 359

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice, Emergency shelter grants program, 24.2, 24.6, 24.10(6), 24.12(3)“a” **ARC 3631B** 367
Notice, Homeless shelter operation grants program, 29.1 to 29.11 **ARC 3632B** 367

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Notice Terminated, Definitions—PSD program and air quality programs, 20.2, 22.4(1), 22.5(1), 22.100, 22.120 **ARC 3669B** 368
Filed, Organic materials composting facilities, 105.5(1), 105.8(2), 105.10, 105.15 **ARC 3668B** 420
Filed, Landfarming of petroleum contaminated soil, ch 120, 121.1 to 121.7 **ARC 3661B** 420

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Notice, Board sale of goods and services, 1.7 **ARC 3645B** 369
Notice, Correction of cross references, 4.11(2), 4.27(5) **ARC 3646B** 370
Notice, Executive branch lobbyist registration statements, 8.7(2), 8.7(3) **ARC 3647B** 370
Notice, Retention and availability of filed forms, 8.20 **ARC 3644B** 371
Filed, Requesting board advisory opinions, 1.2 **ARC 3641B** 421
Filed, Civil penalties for late reports, 4.58 to 4.62; rescind ch 10 **ARC 3640B** 422
Filed, Executive branch ethics, ch 6 **ARC 3639B** .. 422
Filed, Personal financial disclosure statements, 7.1, 7.3, 7.4, 7.9 **ARC 3642B** 422

HOMELAND SECURITY DIVISION AND EMERGENCY MANAGEMENT DIVISION[605]

PUBLIC DEFENSE DEPARTMENT[601]“umbrella”

Filed, Enhanced 911 telephone systems, amendments to ch 10 **ARC 3660B** 423

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Notice, Service credit and purchases; refunds; interest; benefits; dividends; assignments; mergers, rescind 581—ch 21; amend 495—ch 4; adopt 495—chs 7 to 16, 20, 21 **ARC 3670B** 371

PREFACE

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

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

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

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

Subscriptions and Distribution	Telephone:	(515)281-3568
	Fax:	(515)281-8027
 KATHLEEN K. BATES, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Assistant Editor	Fax:	(515)281-8157 (515)281-4424

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

The Iowa Administrative Bulletin is sold as a separate publication and may be purchased by subscription or single copy. All subscriptions will expire on June 30 of each year. Subscriptions must be paid in advance and are prorated quarterly.

July 1, 2004, to June 30, 2005	\$320
October 1, 2004, to June 30, 2005	\$240
January 1, 2005, to June 30, 2005	\$160
April 1, 2005, to June 30, 2005	\$ 80

Single copies may be purchased for \$23.

Iowa Administrative Code

The Iowa Administrative Code and Supplements are sold in complete sets by subscription. Supplement (replacement pages) subscriptions must be for the complete year and will expire on June 30 of each year.

Prices for the Iowa Administrative Code and its Supplements are as follows:

Iowa Administrative Code – \$1,375

(Price includes complete set of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders may be purchased for \$20.)

Iowa Administrative Code Supplement – \$495

(Subscription expires June 30, 2005)

All checks should be made payable to the Treasurer, State of Iowa. Send all inquiries and subscription orders to:

Attn: Stephanie Cox
Legislative Services Agency
Capitol Building
Des Moines, IA 50319
Telephone: (515)281-3568

Schedule for Rule Making 2004

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04
Jan. 16	Feb. 4	Feb. 24	Mar. 10	Mar. 12	Mar. 31	May 5	Aug. 2
Jan. 30	Feb. 18	Mar. 9	Mar. 24	Mar. 26	Apr. 14	May 19	Aug. 16
Feb. 13	Mar. 3	Mar. 23	Apr. 7	Apr. 9	Apr. 28	June 2	Aug. 30
Feb. 27	Mar. 17	Apr. 6	Apr. 21	Apr. 23	May 12	June 16	Sept. 13
Mar. 12	Mar. 31	Apr. 20	May 5	May 7	May 26	June 30	Sept. 27
Mar. 26	Apr. 14	May 4	May 19	May 21	June 9	July 14	Oct. 11
Apr. 9	Apr. 28	May 18	June 2	June 4	June 23	July 28	Oct. 25
Apr. 23	May 12	June 1	June 16	June 18	July 7	Aug. 11	Nov. 8
May 7	May 26	June 15	June 30	July 2	July 21	Aug. 25	Nov. 22
May 21	June 9	June 29	July 14	July 16	Aug. 4	Sept. 8	Dec. 6
June 4	June 23	July 13	July 28	July 30	Aug. 18	Sept. 22	Dec. 20
June 18	July 7	July 27	Aug. 11	Aug. 13	Sept. 1	Oct. 6	Jan. 3 '05
July 2	July 21	Aug. 10	Aug. 25	Aug. 27	Sept. 15	Oct. 20	Jan. 17 '05
July 16	Aug. 4	Aug. 24	Sept. 8	Sept. 10	Sept. 29	Nov. 3	Jan. 31 '05
July 30	Aug. 18	Sept. 7	Sept. 22	Sept. 24	Oct. 13	Nov. 17	Feb. 14 '05
Aug. 13	Sept. 1	Sept. 21	Oct. 6	Oct. 8	Oct. 27	Dec. 1	Feb. 28 '05
Aug. 27	Sept. 15	Oct. 5	Oct. 20	Oct. 22	Nov. 10	Dec. 15	Mar. 14 '05
Sept. 10	Sept. 29	Oct. 19	Nov. 3	Nov. 5	Nov. 24	Dec. 29	Mar. 28 '05
Sept. 24	Oct. 13	Nov. 2	Nov. 17	***Nov. 17***	Dec. 8	Jan. 12 '05	Apr. 11 '05
Oct. 8	Oct. 27	Nov. 16	Dec. 1	Dec. 3	Dec. 22	Jan. 26 '05	Apr. 25 '05
Oct. 22	Nov. 10	Nov. 30	Dec. 15	***Dec. 15***	Jan. 5 '05	Feb. 9 '05	May 9 '05
Nov. 5	Nov. 24	Dec. 14	Dec. 29	Dec. 31	Jan. 19 '05	Feb. 23 '05	May 23 '05
Nov. 17	Dec. 8	Dec. 28	Jan. 12 '05	Jan. 14 '05	Feb. 2 '05	Mar. 9 '05	June 6 '05
Dec. 3	Dec. 22	Jan. 11 '05	Jan. 26 '05	Jan. 28 '05	Feb. 16 '05	Mar. 23 '05	June 20 '05
Dec. 15	Jan. 5 '05	Jan. 25 '05	Feb. 9 '05	Feb. 11 '05	Mar. 2 '05	Apr. 6 '05	July 4 '05
Dec. 31	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
8	Friday, September 24, 2004	October 13, 2004
9	Friday, October 8, 2004	October 27, 2004
10	Friday, October 22, 2004	November 10, 2004

PLEASE NOTE:

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

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

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

PUBLICATION PROCEDURES

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

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

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

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

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

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

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

IOWA ADMINISTRATIVE RULES and IOWA COURT RULES on CD-ROM

2003 WINTER EDITION

Containing: **Iowa Administrative Code** (updated through December 2003)
Iowa Administrative Bulletins (July 2003 through December 2003)
Iowa Court Rules (updated through December 2003)

For free brochures and order forms contact:

Legislative Services Agency
Attn: Ms. Stephanie Cox
State Capitol
Des Moines, Iowa 50319
Telephone: (515)281-3566 Fax: (515)281-8027
lsbinfo@staff.legis.state.ia.us

To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
CORRECTIONS DEPARTMENT[201]		
Sex offender registry information, 38.2, 38.3 IAB 9/15/04 ARC 3651B	Second Floor Conference Room 420 Watson Powell Jr. Way Des Moines, Iowa	October 5, 2004 11 a.m. to 1 p.m.
Probation services—case auditing system, 42.1(4) IAB 9/15/04 ARC 3652B	Second Floor Conference Room 420 Watson Powell Jr. Way Des Moines, Iowa	October 5, 2004 11 a.m. to 1 p.m.
Residential facilities—case auditing system, 43.1 IAB 9/15/04 ARC 3653B	Second Floor Conference Room 420 Watson Powell Jr. Way Des Moines, Iowa	October 5, 2004 11 a.m. to 1 p.m.
Work release—case auditing system, 44.1, 44.6(4), 44.9 IAB 9/15/04 ARC 3654B	Second Floor Conference Room 420 Watson Powell Jr. Way Des Moines, Iowa	October 5, 2004 11 a.m. to 1 p.m.
Parole—case auditing system, 45.1, 45.7 IAB 9/15/04 ARC 3655B	Second Floor Conference Room 420 Watson Powell Jr. Way Des Moines, Iowa	October 5, 2004 11 a.m. to 1 p.m.
OWI programs—change in terminology, 47.1 to 47.4 IAB 9/15/04 ARC 3656B	Second Floor Conference Room 420 Watson Powell Jr. Way Des Moines, Iowa	October 5, 2004 11 a.m. to 1 p.m.
CREDIT UNION DIVISION[189]		
Investment and deposit activities for credit unions, ch 17 IAB 9/15/04 ARC 3643B	Division Conference Room, Suite 370 200 E. Grand Ave. Des Moines, Iowa	October 11, 2004 10 a.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Emergency shelter grants program, 24.2, 24.6, 24.10(6), 24.12(3) IAB 9/15/04 ARC 3631B	Second Floor Northeast Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	October 5, 2004 1:30 p.m.
Homeless shelter operation grants program, 29.2, 29.6(5), 29.10, 29.11(3) IAB 9/15/04 ARC 3632B	Second Floor Northeast Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	October 5, 2004 2:30 p.m.
EDUCATION DEPARTMENT[281]		
Extended school program, ch 35 IAB 9/1/04 ARC 3612B	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 21, 2004 1 p.m.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Transfer of rules and implementation of 2004 Iowa Acts, House File 2262, amend 495—ch 4; adopt 495—chs 7 to 16, 20 and 21; rescind 581—ch 21 IAB 9/15/04 ARC 3670B	7401 Register Dr. Des Moines, Iowa	October 5, 2004 9 a.m.
--	---------------------------------------	---------------------------

NATURAL RESOURCE COMMISSION[571]

Camping restrictions, 51.11 IAB 9/1/04 ARC 3623B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 21, 2004 3:30 p.m.
Fishing regulations, 81.1, 81.2 IAB 9/1/04 ARC 3622B	Dickinson County Community Bldg. 1602 15th St. Spirit Lake, Iowa	September 21, 2004 7 p.m.
	Room 201, Dunlap Technology Bldg. University of Dubuque 2000 University Dr. Dubuque, Iowa	September 22, 2004 7 p.m.
	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 23, 2004 1:30 p.m.
Aquatic invasive species, ch 90 IAB 9/1/04 ARC 3627B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 22, 2004 1 p.m.
Wild turkey spring hunting, 98.4, 98.7, 98.15 IAB 9/1/04 ARC 3621B	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 21, 2004 3 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Board-approved chiropractic colleges, 42.1, 42.2 IAB 9/1/04 ARC 3616B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	September 22, 2004 9 to 10 a.m.
Accreditation of educational programs for psychologists, 240.3(2) IAB 9/1/04 ARC 3615B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	September 22, 2004 10 to 11 a.m.
Social workers—supervisor termination evaluations, 280.6(4) IAB 9/1/04 ARC 3618B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	September 22, 2004 1 to 2 p.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

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

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Agricultural Development Authority[25]
 Soil Conservation Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF INDUSTRY COUNCIL, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
 CITIZENS’ AIDE[141]
 CIVIL RIGHTS COMMISSION[161]
 COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Division[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Savings and Loan Division[197]
 Utilities Division[199]
 CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
 CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
 City Development Board[263]
 Grow Iowa Values Board[264]
 Iowa Finance Authority[265]
 EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
 EGG COUNCIL, IOWA[301]
 ELDER AFFAIRS DEPARTMENT[321]
 EMPOWERMENT BOARD, IOWA[349]
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
 EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 GENERAL SERVICES DEPARTMENT[401]
 HUMAN INVESTMENT COUNCIL[417]
 HUMAN RIGHTS DEPARTMENT[421]
 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services Division[429]
 Persons With Disabilities Division[431]
 Latino Affairs Division[433]
 Status of African-Americans, Division on the[434]
 Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]
INFORMATION TECHNOLOGY DEPARTMENT[471]
INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
VOLUNTEER SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Homeland Security and Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

ARC 3659B

ADMINISTRATIVE SERVICES
DEPARTMENT[11]

Notice of Intended Action

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

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

Pursuant to the authority of 2003 Iowa Code Supplement section 8A.104, the Department of Administrative Services hereby gives Notice of Intended Action to amend Chapters 4 to 9, 25, 26, 40, 50 to 54, 59 to 61, 63, 64, 71, 100, 106, 107, 114, and 116, Iowa Administrative Code.

These amendments are proposed to update and correct cross references as the final step in the Department's rule conversion process.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on October 5, 2004. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail Carol.Stratemeyer@iowa.gov.

These amendments are intended to implement 2003 Iowa Code Supplement section 8A.104.

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

The following amendments are proposed.

ITEM 1. Amend ~~11—Chapters 4, 9, 25, 26, 50 to 52, 60, 61, 63, 64, 71, 100, 107, 114 and 116~~ by replacing all parenthetical references to "80GA, ch145" and "80GA, HF534" with references to "8A."

ITEM 2. Amend subrule **4.13(2)**, paragraph "c," as follows:

c. Procurement proposals prior to completion of the evaluation process and the issuance of a notice of intent to award a contract by the appropriate procurement authority. (~~471 11—subrule 13.5(10) 105.19(3)~~, Iowa Administrative Code)

ITEM 3. Amend subrule **4.13(2)**, paragraph "1," as follows:

1. Confidential assignments of state vehicles by the state vehicle dispatcher. These records include letters/memos detailing driver assignments and plate numbers for selected vehicles pursuant to 2003 Iowa Acts, ~~chapter 145, section 52 Code Supplement section 8A.362~~, and Iowa Code section 321.19(1).

ITEM 4. Amend rule 11—4.14(8A,22), introductory paragraph, as follows:

11—4.14(8A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the department by personal identifier in record systems as defined in rule 4.1(80GA, ch145 8A,22). Unless

otherwise stated, the authority to maintain the record is provided by 2003 Iowa Acts, ~~chapter 145 Code Supplement chapter 8A.~~

ITEM 5. Amend subrule 4.14(4) as follows:

4.14(4) Comparison with data from outside the department. Personally identifiable information in systems of records maintained by the department is retrievable through the use of personal identifiers and may be compared with information from outside the department when specified by law. This comparison is allowed in situations including:

a. Determination of any offset of a debtor's income tax refund or rebate for child support recovery or foster care recovery (2003 Iowa Acts, ~~chapter 145, Code Supplement section 86 8A.504~~);

b. Calculation of any offset against an income tax refund or rebate for default on a guaranteed student loan (2003 Iowa Acts, ~~chapter 145, Code Supplement section 86 8A.504~~);

c. Offset from any tax refund or rebate for any liability owed a state agency (2003 Iowa Acts, ~~chapter 145, Code Supplement section 86 8A.504~~);

d. Offset for any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of district court as a criminal fine, civil penalty surcharge, or court costs (2003 Iowa Acts, ~~chapter 145, Code Supplement section 86 8A.504~~).

ITEM 6. Amend subparagraph **4.14(6)"a"(2)** as follows:

(2) These records are collected in accordance with 2003 Iowa Acts, *Code Supplement* chapter 145 8A, and Iowa Code chapters 19B, 20, 70A, 85, 85A, 85B, 91A, and 509A, and are confidential records under Iowa Code section 22.7(11) and other law because the information in the record is private and personal, the disclosure of which would likely result in an unwarranted invasion of the privacy of the subject of the record or the subject's family. It is unlikely that the personal and private information in these records can be separated from otherwise releasable information without identifying the subject or the subject's family.

ITEM 7. Amend subparagraph **4.14(6)"b"(2)** as follows:

(2) Records under the jurisdiction of the department are collected in accordance with 2003 Iowa Acts, *Code Supplement* chapter 145 8A, and Iowa Code chapters 19B, 20, 70A, 85, 85A, 85B, 91A, and 509A, and are confidential records in part under Iowa Code section 22.7 and other law.

ITEM 8. Amend subrule **4.14(6)**, paragraph "g," as follows:

g. Contracts. These are records pertaining to training, consultants, and other services. These records are collected in accordance with 2003 Iowa Acts, *Code Supplement* chapter 145, 8A and Iowa Code chapter 19B and are confidential records in part under Iowa Code section 22.7. These records contain names, social security numbers, and other identifying numbers, and are collected in the form of paper, microfilm, tape, and computer records. Computer records permit the comparison of personally identifiable information in one record system with that in another system.

ITEM 9. Amend rule 11—4.15(8A,22), introductory paragraph, as follows:

11—4.15(8A,22) Other groups of records. This rule describes groups of records maintained by the department other than record systems retrieved by individual identifiers as defined in rule 4.1(80GA, ch145 8A,22). The records listed may contain information about individuals. These records are routinely available to the public subject to costs. Unless otherwise designated, the authority for the department to maintain

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

the record is provided by 2003 Iowa Aets, *Code Supplement* chapter 145 8A. All records may be stored on paper, microfilm, tape or in automated data processing systems unless otherwise noted.

ITEM 10. Amend subrule 4.15(6) as follows:

4.15(6) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 4.5(80GA, ch 145 8A, 17A, 22) or subrule 4.13(2). These records, collected under the authority of 2003 Iowa Aets, *Code Supplement* chapter 145 8A, and Iowa Code chapters 19B, 20, 70A, 85, 85A, 85B, 91A, 97A, 97B, 97C, and 509A may contain confidential information about individuals.

ITEM 11. Amend **11—Chapter 4**, implementation clause, as follows:

These rules are intended to implement 2003 Iowa Aets, *Code Supplement* chapter 145, 8A and Iowa Code chapter 22.

ITEM 12. Amend **11—Chapter 5** and **11—Chapter 6**, implementation clauses, as follows:

These rules are intended to implement Iowa Code chapter 17A and 2003 Iowa Aets, *Code Supplement* House File 534 chapter 8A.

ITEM 13. Amend rule 11—7.1(8A) as follows:

11—7.1(8A, 17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the administrative services department, or by the division of administrative hearings in the department of inspections and appeals on behalf of the department. Excepted from this chapter are matters covered by rules *rule* 11—60.2(80GA, HF 534 8A), disciplinary actions; *rule* 11—61.1(80GA, ch 145 8A), grievances; *11—subrule* 61.2(6), appeal of disciplinary actions; *rule* 11—68.6(19B), discrimination complaints, including disability-related and sexual harassment complaints; matters covered by the grievance procedure in any collective bargaining agreement with state employees; matters within the exclusive jurisdiction of the industrial commissioner; and matters related to any of the department's vendors that administer group benefits if the vendor has an established complaint or appeal procedure. Further, the provisions of 11—Chapter 52, job classification, are exempt from subrules 7.5(4) to 7.5(7) and rules 7.6(8A, 17A) and 7.8(8A, 17A).

ITEM 14. Amend rule **11—7.2(8A)**, definition of "presiding officer," as follows:

"Presiding officer" means the administrative law judge (ALJ) assigned to the contested case or, in the case of an appeal pursuant to rule 11—52.5(80GA, ch 145 8A), the classification appeal committee appointed by the director.

ITEM 15. Amend subparagraph **8.9(1) "k" (4)** as follows:
(4) Items listed in 581—26.1(17A) 11—7.1(8A, 17A).

ITEM 16. Amend **11—Chapter 8**, implementation clause, as follows:

These rules are intended to implement Iowa Code chapter 17A and 2003 Iowa Aets, *House File 534 Code Supplement* chapter 8A.

ITEM 17. Amend rule **11—9.1(17A, 8A)**, definition of "department," as follows:

"Department" or "DAS" means the department of administrative services authorized by 2003 Iowa Aets, *Code Supplement* chapter 145 8A.

ITEM 18. Amend rule 11—9.12(17A, 8A) as follows:

11—9.12(17A, 8A) Rules from which the department shall not grant waivers. The department shall not grant waivers from the following rules:

1. Rules regarding the taxability of pension, tax-sheltered annuity, deferred compensation, or health and dependent care benefits under the Internal Revenue Code or the Iowa Code and rules adopted thereunder.

2. Rules governing separations, disciplinary actions and reductions in force under 581—Chapter 11 11—Chapter 60 and grievances and appeals under 581—Chapter 12 11—Chapter 61 (except as permitted by statute and applicable department rules).

ITEM 19. Amend **11—Chapter 9**, implementation clause, as follows:

These rules are intended to implement Iowa Code section 17A.9A and 2003 Iowa Aets, *Code Supplement* chapter 145 8A.

ITEM 20. Amend subrule 25.2(1) as follows:

25.2(1) The department is required to develop, in consultation with the information technology council as established in 2003 Iowa Aets, *Code Supplement* chapter 145, section 20 8A.204, and implement information technology and standards through a process as set forth in this chapter. It is the intent of the general assembly that information technology standards be established for the purpose of guiding the procurement of information technology by all participating agencies.

ITEM 21. Amend rule 11—25.3(8A) as follows:

11—25.3(8A) Application of standards to participating agencies. Operational standards established by the department, unless waived pursuant to rule 25.6(80GA, ch 145 8A), shall apply to all information technology participating agencies.

ITEM 22. Amend subrule 25.5(2) as follows:

25.5(2) Implementation of operational standards. The department shall implement information technology standards which are applicable to information technology operations by participating agencies, including but not limited to system design and systems integration and interoperability pursuant to 2003 Iowa Aets, *chapter 145, Code Supplement* section 18 8A.202.

ITEM 23. Amend **11—Chapter 25**, implementation clause, as follows:

These rules are intended to implement 2003 Iowa Aets, *Code Supplement* chapter 145 8A.

ITEM 24. Amend subrule 26.3(3) as follows:

26.3(3) Deposit and use of revenues. All revenues received as a result of any Web-based sponsorship or promotional activity shall be deposited in the Iowa Access revolving fund to be administered by the department. All funds received from each individual department or entity sponsorship activity shall be earmarked for that particular department and then shall be dedicated for that particular department's technology needs consistent with 2003 Iowa Aets, *chapter 145, Code Supplement* section 27 8A.224.

ITEM 25. Amend subrule 26.4(3) as follows:

26.4(3) Entities which do not fall under the authority of 2003 Iowa Aets, *Code Supplement* chapter 145 8A, may agree to partner with the department to participate in Web-based sponsorship activities. Moneys received as a result of these agreements shall be administered in the same manner as those administered under 26.3(3).

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

ITEM 26. Amend **11—Chapter 26**, implementation clause, as follows:

These rules are intended to implement 2003 Iowa Acts, *Code Supplement* chapter 145 8A.

ITEM 27. Amend rule **11—40.14(8A)**, first unnumbered paragraph, as follows:

A person liable for a liability payable to the judicial branch that has been deemed qualified for offset may contest the validity of the offset or the right of the offset by mailing written notification to the Department of Administrative Services, Legal Counsel, Hoover State Office Building, Level A-South, Des Moines, Iowa 50319. The department will provide the procedure and remedies for contesting the validity of the offset and right of offset pursuant to the applicable contested case rules set forth in ~~401—Chapter 6~~ *11—Chapter 7*.

ITEM 28. Amend rule **11—50.1(8A)** by rescinding the definition of “Act” and amending the following definitions:

“Merit system” means those positions or employees in the state personnel system determined by the director to be covered by the provisions of 2003 Iowa Acts, *Code Supplement* chapter 145 8A, as it pertains to qualifications, examinations, probation, and just cause discipline and discharge hearings.

“Permanent employee” means any executive branch employee (except board of regents employees) who has completed at least six months of continuous nontemporary employment. When used in conjunction with coverage by the merit system provisions referred to in 2003 Iowa Acts, ~~chapter 145, Code Supplement~~ section 59 8A.411, it further means those employees who have completed the period of probationary status provided for in 2003 Iowa Acts, ~~chapter 145, Code Supplement~~ section 61 8A.413.

“Permanent employment” means any period of full-time or part-time executive branch service (except board of regents employment) in a nontemporary position for which the person is eligible to accrue leave and participate in the health and dental insurance programs administered by the department pursuant to 11 IAC 64.1(80GA, ~~ch145~~ 8A) or 64.2(80GA, ~~ch145~~ 8A).

“Probationary employee” means any executive branch employee (except board of regents employees) who has completed less than six months of continuous nontemporary employment. When used in conjunction with coverage by the merit system provisions referred to in 2003 Iowa Acts, ~~chapter 145, Code Supplement~~ section 59 8A.411, it further means those employees who have not completed the period of probationary status provided for in 2003 Iowa Acts, ~~chapter 145, Code Supplement~~ section 61 8A.413.

ITEM 29. Amend **11—Chapter 50**, implementation clause, as follows:

This rule is intended to implement 2003 Iowa Acts, ~~chapter 145, Code Supplement~~ sections 57 to 75 8A.401 to 8A.439.

ITEM 30. Amend rule 11—51.2(8A) as follows:

11—51.2(8A) Merit system. The merit system shall include and apply to those positions in the state personnel system which have been determined by the director to be covered by the provisions of 2003 Iowa Acts, ~~chapter 145, Code Supplement~~ section 59 8A.411, as it pertains to qualifications, examinations, probation, and just cause discipline and discharge hearings, hereafter referred to as merit system provisions. Whenever the director determines that a position should be covered by or not covered by merit system provisions, the director shall notify the appointing authority in writing of the decision and the effective date.

51.2(1) Exclusion of division administrators and policy-making positions. The appointing authority of each agency shall submit to the director for approval the position number and title of each position referred to in 2003 Iowa Acts, ~~chapter 145, Code Supplement~~ section 60 8A.412, proposed for exclusion from coverage by the merit system provisions referred to in 2003 Iowa Acts, ~~chapter 145, Code Supplement~~ section 59(4) 8A.411(4). Subsequent changes in the number or duties of these positions shall be submitted to the director for exclusion approval.

51.2(2) Exclusion of confidential employees. Confidential employees excluded from coverage by merit system provisions shall be as provided for in 11—Chapter 50.

51.2(3) Other exclusions. For further information regarding exclusions from merit system coverage, refer to 2003 Iowa Acts, ~~chapter 145, Code Supplement~~ section 60 8A.412.

ITEM 31. Amend **11—Chapter 51**, implementation clause, as follows:

These rules are intended to implement 2003 Iowa Acts, ~~chapter 145, Code Supplement~~ section 61 8A.413, and Iowa Code chapters 19B and 70A.

ITEM 32. Amend subrule 52.6(3) as follows:

52.6(3) An employee in a position covered by merit system provisions shall be required to meet the qualifications for the new job classification when the reclassification is the result of successful completion of an established training period where progression to the next higher level in the job classification series is customary practice, for reasons other than those mentioned in subrule 52.6(2), or when the reclassification is the result of a voluntary or disciplinary demotion. “Completion of an established training period” shall be the period provided for on the class descriptions for the class. In addition, employees with probationary status must be eligible for certification in accordance with ~~581—Chapter 9~~ *11—Chapter 58*, Iowa Administrative Code.

ITEM 33. Amend rule **11—Chapter 52**, implementation clause, as follows:

These rules are intended to implement 2003 Iowa Acts, ~~chapter 145, Code Supplement~~ section 61 8A.413, and Iowa Code chapters 19B and 70A.

ITEM 34. Amend subrule 53.8(1) as follows:

53.8(1) Leadworker. An employee who is temporarily assigned lead work duties, as defined in rule 11—50.1(80GA, ~~ch145~~ 8A), may be given additional pay of up to 15 percent.

ITEM 35. Amend subrule 53.12(5) as follows:

53.12(5) Participants in the program shall receive, upon termination, a lump sum termination incentive as described in ~~581~~ *11* IAC 53.12(1).

ITEM 36. Amend rule 11—53.13(8A) as follows:

11—53.13(8A) Appeals. Appeal of the application of these rules must be filed as a grievance pursuant to 11—61.1(80GA, ~~ch145~~ 8A). The appeal procedures for grievance decisions as addressed in 11—61.2(80GA, ~~ch145~~ 8A) must be exhausted prior to a petition for judicial review.

ITEM 37. Amend subrule **54.2(6)**, first unnumbered paragraph, as follows:

Applicants disqualified or removed under this subrule shall be notified in writing by the director within five workdays following removal. Applicants may informally request that the director reconsider their disqualification or removal by submitting additional written evidence of their qualifications or reasons why they should not be removed in accor-

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

dance with rule 11—61.3(80GA, ch145 8A). Formal appeal of disqualification or removal shall be in accordance with 11—subrule 61.2(4).

ITEM 38. Amend rule 11—59.2(8A) as follows:

11—59.2(8A) Reassignment. An appointing authority may reassign an employee. Reassignments may be intra-agency or interagency. Interagency reassignments require the approval of both the sending and the receiving appointing authorities.

An employee who refuses a reassignment may be discharged in accordance with rule 11—60.2(80GA, ch145 8A), except as provided for in the second unnumbered paragraph of this rule.

If the reassignment of an employee would result in the loss of merit system coverage, an appointing authority may not reassign that employee without the employee's written consent regarding the change in merit system coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement.

ITEM 39. Amend subrule **60.2(3)**, first unnumbered paragraph, as follows:

No disciplinary demotion shall be made from one position covered by merit system provisions to another, or from a position not covered by merit system provisions to one that is, until the employee is approved by the director as being eligible for appointment. Disciplinary demotion of an employee with probationary status to a position covered by merit system provisions shall be in accordance with ~~581—subrule 9.2(2)~~ rule 11—58.2(8A).

ITEM 40. Amend subrule **60.3(3)** paragraph “a,” introductory paragraph, as follows:

a. Credit for length of service shall be given at the rate of one point for each month of employment, including employment credited to the employee during a probationary period. Any period of 15 calendar days of service in a month will be considered a full month. In computing length of service credit, the appointing authority shall include all continuous merit system covered nontemporary service in the executive branch. If a merit system covered nontemporary employee's employment is interrupted due to (1) a reduction in force, (2) qualification for long-term disability, or (3) a work-related injury, and the employee is subsequently reinstated to the same class in a different layoff unit or to a different class than that held at the time of separation in accordance with rule ~~581—8.5(19A)~~ 11—57.5(8A), and the reinstatement occurs within two years of the interruption of employment, prior service credit shall be restored. Such credit will be subject to a reduction for the period of separation from state service.

ITEM 41. Amend subrule **60.3(3)**, paragraph “b,” as follows:

b. Credit for the performance record shall be calculated using the results of documented performance evaluations completed in accordance with ~~581—subrule 13.2(2)~~ 11—subrule 62.2(2) as follows:

(1) A performance evaluation period rated overall as “less than competent” or “does not meet expectations” or for which the “overall sum of ratings” is less than 3.00 shall receive no credit.

(2) A performance evaluation period rated overall as “competent” or better, or “meets or exceeds expectations” or

for which the “overall sum of ratings” is 3.00 or greater shall receive one retention point for each month of such rated service.

All employees shall be evaluated for performance in accordance with ~~581—subrule 13.2(2)~~ 11—subrule 62.2(2). If the period covered on the evaluation exceeds 12 months, the rating shall apply only to the most recent 12 months of the period. If the period covered by the evaluation exceeds 12 months and the employee's overall rating mandates the receipt of no credit pursuant to 60.3(3)“b”(1), then that overall rating shall apply only to the first 12 months of the period and the remaining months shall be rated as competent. Time spent on approved military leave, workers' compensation leave, or educational leave with or without pay that is required by the appointing authority shall be counted as competent performance.

ITEM 42. Amend paragraph **60.3(5)“b,”** third unnumbered paragraph, as follows:

Pay upon bumping shall be in accordance with ~~581—subrule 4.6(11)~~ 11—subrule 53.6(11).

ITEM 43. Amend paragraph **60.3(6)“k”** as follows:

k. Pay upon recall shall be in accordance with rule ~~581—4.6(19A)~~ 11—53.6(8A).

ITEM 44. Amend subrule 60.3(7) as follows:

60.3(7) Reduction in force shall not be used to avoid or circumvent the provisions or intent of 2003 Iowa Acts, ~~chapter 145, Code Supplement~~ section 61 8A.413, or these rules governing reclassification, disciplinary demotion, or discharge. Actions alleged to be in noncompliance with this rule may be appealed in accordance with 11—Chapter 61.

ITEM 45. Amend **11—Chapter 60**, implementation clause, as follows:

These rules are intended to implement 2003 Iowa Acts, ~~chapter 145, Code Supplement~~ section 61 8A.413.

ITEM 46. Amend subrule 61.2(1) as follows:

61.2(1) Appeal of position classification decisions.

a. Appeal of a position classification decision shall be in accordance with rule 11—52.5(80GA, ch145 8A) and the contested case provisions of Iowa Code chapter 17A.

b. The appellant (including all appellants in the case of a group hearing), an employee who is the appellant's representative, and employees directed by the appointing authority to attend the classification appeal hearing by the appointing authority or the director shall be in paid status for the time spent at and traveling to and from the hearing during their regularly scheduled hours of work. In addition, only employees directed by management to attend the hearing shall, if eligible for overtime compensation, be in paid status for the time spent at and traveling to and from the hearing outside of their regularly scheduled hours of work.

c. The appointing authority shall not authorize mileage or the use of a state vehicle for employees to attend or participate in a classification appeal hearing, except for those employees who are directed to attend the hearing by the appointing authority or the director.

d. A permanent employee whose position has been reclassified downward and who alleges that the position classification process has been used to circumvent a reduction in force as provided for in rule 11—60.3(80GA, ch145 8A) may appeal in writing to the director. Right of appeal shall expire unless filed with the director within 14 calendar days following the date on the final position classification notice or, in the event of a classification appeal hearing, the classification appeal committee decision notice. If the director finds for

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

the appellant, the appointing authority shall either submit a reduction in force plan or reassign duties to the appellant sufficient to retain the appellant's prior position classification.

ITEM 47. Amend subrule 61.2(4) as follows:

61.2(4) Appeal of disqualification, restriction, or removal from eligible lists. An applicant who has been disqualified or whose name has been restricted or removed from an eligible list in accordance with rule ~~581—5.2(19A)~~ *11—54.2(8A)* or ~~581—6.5(19A)~~ *11—55.2(8A)*, or who has been restricted from certification in accordance with rule ~~581—7.7(19A)~~ *11—56.7(8A)* may file a written appeal to the employment appeal board in the department of inspections and appeals for a review of that action. The written appeal must be filed with the board within 30 calendar days following the notice of disqualification, removal from the eligible list, or restriction from certification. The burden of proof to establish eligibility shall rest with the appellant.

When an appeal is generated as the result of an action initiated by the department, the department shall be responsible for representation. When an appeal is generated as the result of an action initiated by an appointing authority through the department, the appointing authority shall pay the costs of the appeal assessed to the department and shall participate in representation as requested by the department.

If the applicant's name is restored to an eligible list, it shall not affect any certifications or appointments already made.

ITEM 48. Amend subrule 61.2(5) as follows:

61.2(5) Appeal of grievance decisions. An employee who has alleged a violation of 2003 Iowa Acts, ~~chapter 145, Code Supplement sections 8A.401 to 8A.458~~ or the rules adopted to implement 2003 Iowa Acts, ~~chapter 145 Code Supplement sections 8A.401 to 8A.458~~ may, within 30 calendar days after the date the director's response at the third step of the grievance procedure was issued or should have been issued, file an appeal with the public employment relations board. A nontemporary, noncontract employee covered by merit system provisions who is suspended, reduced in pay within the same pay grade, disciplinarily demoted, or discharged, except during the employee's period of probationary status may, if not satisfied with the decision of the director, request an appeal hearing before the public employment relations board within 30 calendar days after the date the director's decision was issued or should have been issued. However, when the grievance concerns allegations of discrimination within the meaning of Iowa Code chapter 216, the Iowa civil rights commission procedures shall be the exclusive remedy for appeal and shall, in such instances, constitute final agency action. In all other instances, decisions by the public employment relations board constitute final agency action.

ITEM 49. Amend subrule 61.2(6) as follows:

61.2(6) Appeal of disciplinary actions. Any nontemporary, noncontract employee covered by merit system provisions who is suspended, reduced in pay within the same pay grade, disciplinarily demoted, or discharged, except during the employee's period of probationary status, shall bypass steps one and two of the grievance procedure provided for in rule ~~11—61.1(80GA, ch145 8A)~~ and may file an appeal in writing to the director for a review of the action within 7 calendar days after the effective date of the action. The appeal shall be on the forms prescribed by the director. The director shall affirm, modify or reverse the action and shall give a written decision to the employee within 30 calendar days after the receipt of the appeal. The time may be extended by mutual agreement of the parties. If not satisfied with the de-

cision of the director, the employee may request an appeal hearing before the public employment relations board as provided in ~~11—subrule 61.2(5)~~.

ITEM 50. Amend subrule 61.2(8) as follows:

61.2(8) Remedies. All remedies provided in rule ~~11—61.2(80GA, ch145 8A)~~ must be exhausted pursuant to Iowa Code section 17A.19, subsection 1, prior to petition for judicial review.

ITEM 51. Amend ~~11—Chapter 61~~, implementation clause, as follows:

These rules are intended to implement 2003 Iowa Acts, ~~chapter 145, Code Supplement section 61 8A.413~~.

ITEM 52. Amend subrule 63.3(12) as follows:

63.3(12) If an absence because of illness, injury or other proper reason for using sick leave provided for in this rule extends beyond the employee's accrued sick leave, the appointing authority may require or permit additional time off to be charged to any other accrued leave except that employees shall, upon request, be paid accrued vacation and compensatory leave in a lump sum to prevent delay of long-term disability benefits. When all accrued sick leave has been used, the employee may be granted leave without pay or terminated except as provided in subrule 63.5(4). Leave without pay for temporary disabilities for medically related reasons shall be in accordance with rule ~~11—63.5(80GA, ch145 8A)~~, prior to termination.

ITEM 53. Amend subrule 63.4(3), introductory paragraph, as follows:

63.4(3) Use of sick leave shall be in accordance with rule ~~63.3(80GA, ch145 8A)~~. When FMLA leave is taken pursuant to paragraph "a," "b" or "c" of subrule 63.4(1), an employee must exhaust all paid vacation before unpaid leave is granted. However, sick leave may be used to the extent authorized by subrule 63.3(11). When an employee takes FMLA leave after the birth of a child and the employee has not received a medical release to return to work, the employee must exhaust all accrued sick leave and vacation before unpaid leave is granted. When the employee's medical provider releases the employee to return to work, the employee is no longer eligible to use paid sick leave; however, the employee may use leave as authorized by subrule 63.3(11) and accrued vacation.

ITEM 54. Amend subrule ~~63.4(8)~~, paragraph "a," as follows:

a. If a reduction in force occurs while the employee is on leave, the employee's right to a position shall be established in accordance with ~~581—Chapter 11—Chapter 60~~.

ITEM 55. Amend rule ~~11—63.6(8A)~~ as follows:

11—63.6(8A) Rights upon return from leave.

63.6(1) An employee who is on approved leave without pay, Olympic leave, educational leave or leave without pay for military service must notify the agency or institution from which on leave of the intent to exercise return from leave rights. Upon return from leave the employee shall have the right to return to a vacant position in the class held prior to the leave or to a class in the same pay grade for which the employee qualifies. If a vacant position is not available, the reduction in force provisions of ~~581—Chapter 11—Chapter 60~~ shall apply. The appointing authority must approve if an employee on leave without pay, Olympic leave, or educational leave requests to return to work sooner than the original approved leave expiration date. Employees on leave without

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

pay for more than 30 calendar days, except for military leave, or educational leave required by the appointing authority, shall have their pay increase eligibility date adjusted to a later date which reflects the period of leave without pay.

63.6(2) An employee who elects to separate from employment for purposes of induction into military service shall have the right to return to a vacant position in the class held prior to separation or to a class in the same pay grade for which the employee qualifies. If a vacant position is not available, the reduction in force provisions of ~~581—Chapter 11—Chapter 60~~ shall apply. Upon return, the employee's pay increase eligibility date and unused sick leave at the time of separation shall be restored.

ITEM 56. Amend rule 11—63.7(8A) as follows:

11—63.7(8A) Compensatory leave. Compensatory leave accrued in accordance with ~~581—subrule 4.11(5) 11—subrule 53.11(5)~~ shall be granted at the request of the employee whenever possible. However, the appointing authority need not grant a request for compensatory leave if granting the leave would cause an undue disruption.

ITEM 57. Amend subrule 63.9(6), introductory paragraph, as follows:

63.9(6) An employee with fewer than 91 days of unformed service must be reemployed promptly in a position that the employee would have attained if continuously employed, unless proved not qualified after reasonable efforts are made by the employer to qualify the employee. If not qualified for that position, the person will be reemployed in the position the person left. These requirements are the same for service of 91 days or more, with the additional option that a position of like seniority, status and pay may be offered. If unqualified after reasonable efforts by the employer to qualify the employee for such a position or the position that was left prior to service, the employee must be reemployed in any other position of lesser status and pay for which the employee is qualified, with full seniority. The position for which the employee is entitled is further governed by rule 11—63.6(80GA, ch145 8A).

ITEM 58. Amend rule 11—63.10(8A), introductory paragraph, as follows:

11—63.10(8A) Educational leave. Educational leave, with or without pay, may be granted at the discretion of the appointing authority for the purpose of assisting state employees to develop skills that will improve their ability to perform their present job responsibilities or to provide training and developmental opportunities for employees that will enable the agency to better meet staffing needs. Education financial assistance shall be in accordance with rule 11—64.10(80GA, ch145 8A).

ITEM 59. Amend **11—Chapter 63**, implementation clause, as follows:

These rules are intended to implement 2003 Iowa Acts, ~~chapter 145~~ *Code Supplement section 8A.413*.

ITEM 60. Amend subrule **64.6(1)**, definitions of “investment provider” and “plan,” as follows:

“Investment provider” means a company authorized under this rule to issue an account or administer the records of such an account or accounts under the deferred compensation plan authorized by Iowa Code section 509A.12 and 2003 Iowa Acts, ~~chapter 145~~, *Code Supplement section 58 8A.402*.

“Plan” means the state of Iowa employee contribution plan for deferred compensation as authorized by Internal Revenue Code Section 457, Iowa Code section 509A.12, and

2003 Iowa Acts, ~~chapter 145~~, *Code Supplement section 70 8A.434*.

ITEM 61. Amend subrule **64.10(2)**, paragraph “c,” as follows:

c. If attendance is outside the state of Iowa, travel must first be authorized by the executive council pursuant to 2003 Iowa Acts, ~~chapter 145~~, *Code Supplement section 94 8A.512*.

ITEM 62. Amend subrule 64.12(1) as follows:

64.12(1) Administration. The director is authorized by 2003 Iowa Acts, ~~chapter 145~~, *Code Supplement section 58, 8A.402* to administer a tax-sheltered annuity program for eligible employees.

ITEM 63. Amend subrule **64.12(2)**, definitions of “company,” “plan,” and “policy,” as follows:

“Company” means any life insurance company or mutual fund provider that issues a policy under the tax-sheltered annuity plan authorized under 2003 Iowa Acts, ~~chapter 145~~, *Code Supplement section 74 8A.438*.

“Plan” means the tax-sheltered annuity plan authorized in 2003 Iowa Acts, ~~chapter 145~~, *Code Supplement section 74 8A.438*.

“Policy” means any retirement annuity, variable annuity, family of mutual funds or combination thereof provided by IRC Section 403(b) and 2003 Iowa Acts, ~~chapter 145~~, *Code Supplement section 74 8A.438*.

ITEM 64. Amend subrule **64.12(9)**, paragraph “a,” as follows:

a. Availability. 2003 Iowa Acts, ~~chapter 145~~, *Code Supplement section 30, 8A.311* provides that the director may arrange for the purchase of group contracts for employees.

ITEM 65. Amend **11—Chapter 64**, implementation clause, as follows:

These rules are intended to implement 2003 Iowa Acts, ~~chapter 145~~, *Code Supplement sections 58, 69 to 74, and 79 8A.402, 8A.433 to 8A.438, and 8A.454*.

ITEM 66. Amend rule **11—71.2(8A)**, definition of “charitable agency,” as follows:

“Charitable agency” means an agency or federation of agencies that is eligible to receive contributions which may be deducted on the contributor's Iowa individual tax return in accordance with U.S. Internal Revenue Code Sections 501(a) and 501(c)3, and which otherwise meets the criteria provided for in rule 11—71.6(80GA, ch145 8A).

ITEM 67. Amend subrule **71.6(1)**, paragraph “a,” as follows:

a. Be a charitable agency as defined in rule 11—71.2(80GA, ch145 8A).

ITEM 68. Amend **11—Chapter 71**, implementation clause, as follows:

These rules are intended to implement 2003 Iowa Acts, ~~chapter 145~~, *Code Supplement section 68 8A.432*.

ITEM 69. Amend rule 11—100.1(8A), introductory paragraph and definition of “waiver,” as follows:

11—100.1(8A) Definitions. The definitions contained in 2003 Iowa Acts, ~~House File 534~~, *Code Supplement sections 4 8A.101 and 28 8A.301*, shall be applicable to such terms when used in this chapter. In addition, the following definitions apply:

“Waiver” means a waiver or variance as defined in ~~401—Chapter 20 11—Chapter 9~~, Iowa Administrative Code.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

ITEM 70. Amend subrule **100.2(1)**, first unnumbered paragraph, as follows:

Violation of this subrule is a simple misdemeanor, pursuant to 2003 Iowa Acts, ~~House File 534, Code Supplement section 37 8A.322~~, and may result in the denial of access to a state building, filing of criminal charges or expulsion from the grounds of the capitol complex, or any combination thereof, of any individual who knowingly violates the subrule. In addition, any weapon found in possession of a member of the public in violation of this subrule may be confiscated. Charges may be filed under any other criminal statute if appropriate. Officers employed by or under the supervision of the department of public safety shall have the authority to enforce this subrule. Peace officers employed by other agencies shall have the authority to enforce this subrule at the request of the commissioner of public safety or in response to a request for assistance from an officer employed by the department of public safety.

ITEM 71. Amend subrule **100.2(2)**, first unnumbered paragraph, as follows:

Violation of this subrule is a simple misdemeanor, pursuant to 2003 Iowa Acts, ~~House File 534, Code Supplement section 37 8A.322~~, and may result in the denial of access to a state building, filing of criminal charges or expulsion from the grounds of the capitol complex, or any combination thereof, of the individual who knowingly violates the subrule. Charges may be filed under any other criminal statute if appropriate. Officers employed by or under the supervision of the department of public safety shall have the authority to enforce this subrule. Peace officers employed by other agencies shall have the authority to enforce this subrule at the request of the commissioner of public safety or in response to a request for assistance from an officer employed by the department of public safety.

ITEM 72. Amend rule **11—100.4(8A)**, implementation clause, as follows:

This rule is intended to implement 2003 Iowa Acts, ~~House File 534, Code Supplement section 37 8A.322~~.

ITEM 73. Amend rule **11—100.5(8A)**, implementation clause, as follows:

This rule is intended to implement 2003 Iowa Acts, ~~House File 534, Code Supplement section 37 8A.322~~, and Iowa Code section 303.9 and chapter 216D.

ITEM 74. Amend subrule **100.6(6)**, first unnumbered paragraph, as follows:

To obtain office furniture and modular office components, an agency may purchase standard modular office components and other furniture items from a targeted small business (TSB) when the purchase will not exceed \$5,000, per 2003 Iowa Acts, ~~House File 534, Code Supplement section 30 8A.311~~, without further competition.

ITEM 75. Amend **11—Chapter 100**, implementation clause, as follows:

These rules are intended to implement 2003 Iowa Acts, ~~House File 534, Code Supplement sections 4, 36 and 37 8A.104, 8A.321 and 8A.322~~, and Iowa Code section 303.9 and chapters 142B and 216D.

ITEM 76. Amend rule 11—106.2(8A) as follows:

11—106.2(8A) Applicability. This chapter shall apply to all state agencies purchasing services unless otherwise provided by law.

106.2(1) When a state agency that is also a “participating agency” as defined by ~~471—subrule 13.2(3) rule 11—105.2(8A)~~ intends to procure “information technology services” as defined by ~~471—subrule 13.2(3) rule 11—105.2(8A)~~, the provisions of ~~471—13.3(14B) rule 11—105.10(8A)~~ shall also apply to procurement of the services.

106.2(2) When a state agency that is subject to the applicability requirements of rule 11—105.1(~~80GA, HF534 8A~~) intends to procure “services of general use” as defined by rule 11—105.2(~~80GA, HF534 8A~~), the provisions of 11—Chapter 105 shall apply to the procurement.

ITEM 77. Amend subrule 107.4(1), introductory paragraph, as follows:

107.4(1) Payment clause. The contract shall include a clause or clauses describing the amount or basis for paying consideration to the party based on the party’s performance under the service contract. The payment clause(s) should be designed to work in harmony with any monitoring clauses and any postcontract review procedures. All payment clauses shall be consistent with 2003 Iowa Acts, ~~House File 534, Code Supplement section 96 8A.514~~. The payment clause(s) should also be designed to work in harmony with the outputs, outcomes or any combination thereof desired by a department or establishment. The payment clause should be appropriate to the nature of the contract as determined by the department or establishment. Acceptable kinds of payment clauses include the following. However, these descriptions are not intended to be an exhaustive or prescriptive list; they are provided as examples.

ITEM 78. Amend rule 11—107.5(8,8A) as follows:

11—107.5(8,8A) Special terms and conditions. Rule 107.4(~~8, 80GA, HF534 8A~~) does not apply to service contracts containing special terms and conditions adopted by a department or establishment for use in its service contracts with the approval of the department of management, in cooperation with the office of the attorney general and the department of administrative services as provided for in 2003 Iowa Code *Supplement* section 8.47(2) as amended by 2003 Iowa Acts, ~~House File 534, section 124~~.

ITEM 79. Amend subrule 107.6(3) as follows:

107.6(3) These rules do not apply to service contracts entered into as the result of an emergency procurement in accordance with 11 IAC 106.8(~~80GA, HF534 8A~~), unless the emergency procurement results in the extension of an existing contract that contains performance criteria.

ITEM 80. Amend **11—Chapter 107**, implementation clause, as follows:

These rules are intended to implement 2003 Iowa Code *section Supplement sections* 8.47 and 2003 Iowa Acts, ~~House File 534, section 4- 8A.104~~.

ITEM 81. Amend rule 11—114.2(8A) as follows:

11—114.2(8A) Mission statement. The Terrace Hill commission exists in accordance with 2003 Iowa Acts, ~~chapter 145, Code Supplement section 41 8A.326~~ to preserve, maintain, renovate, landscape, and administer the Terrace Hill facility. The commission has authority to approve the ongoing expenditures for preservation, renovation, and landscaping of Terrace Hill and seeks necessary funds for these activities. Terrace Hill is maintained as the official residence for the governor of Iowa and serves as a facility for public and private functions.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

ITEM 82. Amend subrule 114.3(2) as follows:

114.3(2) Composition. The commission consists of nine members appointed by the governor in accordance with 2003 Iowa Acts, ~~chapter 145~~, *Code Supplement* section 41 8A.326.

ITEM 83. Amend subrule 114.7(3) as follows:

114.7(3) Fees. Fees may be charged and collected by the commission and shall be administered according to 2003 Iowa Acts, ~~chapter 145~~, *Code Supplement* section 41 8A.326. Fees may be charged for, but are not limited to, admission, special events, use of images, and technical services. All fees charged shall be approved by the commission and shall become effective upon 30 days' notice. This notice shall be a public posting in the facility. All fees shall be permanently posted.

ITEM 84. Amend **11—Chapter 114**, implementation clause, as follows:

These rules are intended to implement 2003 Iowa Acts, ~~chapter 145~~, *Code Supplement* section 41 8A.326.

ITEM 85. Amend **11—Chapter 116**, implementation clause, as follows:

These rules are intended to implement 2003 Iowa Acts, ~~chapter 145~~, *Code Supplement* section 41 8A.326.

ARC 3651B

CORRECTIONS DEPARTMENT[201]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 904.108, the Department of Corrections hereby gives Notice of Intended Action to amend Chapter 38, “Sex Offender Management and Treatment,” Iowa Administrative Code.

The purpose for these amendments is to ensure the administrative rules are consistent with recent statutory changes made to the Iowa sex offender registry process, 2004 Iowa Acts, Senate File 2298, Division XXV. For purposes of the Sex Offender Registry, state agencies will no longer assess the risk that any particular offender will reoffend. While Sex Offender Registry risk assessments may have provided potentially valuable information, tying the nature of public information to the outcome of such a risk assessment has denied the general public access to a comprehensive list of offenders, all of whom have publicly been convicted of offenses triggering the registration process and all of whom have been afforded the opportunity to challenge the determination that they were required to register. The Department of Corrections assists with the processing of offenders required to register information with the Department of Public Safety, pursuant to Iowa Code chapter 692A, commonly referred to as the Iowa sex offender registry.

Prior to May 17, 2004, legislation limited the Department of Public Safety to providing public notification via the Iowa sex offender Web site solely for offenders deemed to be “at risk” to the community. This risk determination was made through the use of a sex offender risk assessment process mutually agreed upon by the Department of Corrections, Department of Public Safety, and the Department of Human

Services. Under the new Act, all sex offenders, with one exception for an offender who at the time of the offense was under 20 years of age and who violated Iowa Code section 709.4, subsection 2, paragraph “c,” subparagraph (4), can be placed on the Iowa sex offender Web site, and therefore an assessment process is no longer required to be conducted. These amendments remove the reference in the administrative rules to the definitions, processes, appeals, and records maintenance related to the sex offender risk assessments. These amendments do not provide for waivers in specified situations because of the need for consistency with the existing law.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 5, 2004. Such written materials should be directed to the Legal and Policy Department, Iowa Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309; fax (515)281-7345. A public hearing will be held on October 5, 2004, from 11 a.m. to 1 p.m. in the Second Floor Conference Room of the Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any persons who will attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Corrections and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 692A as amended by 2004 Iowa Acts, Senate File 2298, Division XXV.

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

The following amendments are proposed.

ITEM 1. Amend rule 201—38.2(692A,903B) as follows:

201—38.2(692A,903B) Definitions.

“Aggravated offense” means a conviction for any of the following offenses:

1. ~~Sexual abuse in the first degree in violation of Iowa Code section 709.2.~~
2. ~~Sexual abuse in the second degree in violation of Iowa Code section 709.3.~~
3. ~~Sexual abuse in the third degree in violation of Iowa Code section 709.4, subsection 1.~~
4. ~~Lascivious acts with a child in violation of Iowa Code section 709.8, subsection 1.~~
5. ~~Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.~~
6. ~~Burglary in the first degree in violation of Iowa Code section 713.3, subsection 1, paragraph “d.”~~
7. ~~Kidnapping, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.~~
8. ~~Murder, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.~~
9. ~~Criminal transmission of human immunodeficiency virus in violation of Iowa Code section 709C.1, subsection 1, paragraph “a.”~~

“Criminal offense against a minor” means any of the following criminal offenses or conduct:

1. ~~Kidnapping of a minor, except for the kidnapping of a minor in the third degree committed by a parent.~~

CORRECTIONS DEPARTMENT[201](cont'd)

2. False imprisonment of a minor except if committed by a parent.

3. Any indictable offense involving sexual conduct directed towards a minor.

4. Solicitation of a minor to engage in an illegal sex act.

5. Use of a minor in a sexual performance.

6. Solicitation of a minor to practice prostitution.

7. Any indictable offense against a minor involving sexual contact with the minor.

8. An attempt to commit an offense enumerated in this rule.

9. Incest committed against a minor.

10. Dissemination and exhibition of obscene material to minors in violation of Iowa Code section 728.2.

11. Admitting minors to premises where obscene material is exhibited in violation of Iowa Code section 728.3.

12. Stalking in violation of Iowa Code section 708.11, subsection 3, paragraph "b," subparagraph (3), if the factfinder determines by clear and convincing evidence that the offense was sexually motivated.

13. Sexual exploitation of a minor in violation of Iowa Code section 728.12, subsection 2 or 3.

14. An indictable offense committed in another jurisdiction which would constitute an indictable offense under numbered paragraphs "1" through "13" of this definition.

"Hormonal intervention therapy" means a comprehensive treatment program inclusive of education, counseling, and pharmaceutical applications to control sexual deviant behavior.

"Offender" means a person who is required to register with the Iowa sex offender registry.

"Other relevant offense" means any of the following offenses:

1. Telephone dissemination of obscene materials in violation of Iowa Code section 728.15.

2. Rental or sale of hard-core pornography in violation of Iowa Code section 728.4.

3. Indecent exposure in violation of Iowa Code section 709.9.

4. A criminal offense committed in another jurisdiction which would constitute an indictable offense under numbered paragraphs "1" through "3" of this definition if committed in this state.

"Risk assessment" means a comprehensive assessment of an offender's potential risk to the community.

"Serious sex offense" means a criminal offense as defined in Iowa Code section 903B.1(4).

"Sexual exploitation" means sexual exploitation by a counselor or therapist under Iowa Code section 709.15.

"Sexually violent offense" means any of the following indictable offenses:

1. Sexual abuse as defined under Iowa Code section 709.1.

2. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.

3. Sexual misconduct with offenders in violation of Iowa Code section 709.16.

4. Any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, attempted murder, kidnapping, burglary, or manslaughter.

5. A criminal offense committed in another jurisdiction which would constitute an indictable offense under numbered paragraphs "1" through "4" of this definition if committed in this state.

"Sexual offense" means a criminal offense as defined in Iowa Code Supplement section 692A.1 as amended by 1998 Iowa Acts, Senate File 2292.

ITEM 2. Rescind rule 201—38.3(692A) and adopt in lieu thereof the following **new** rule:

201—38.3(692A) Sex offender registry information.

38.3(1) Public notification. Affirmative public notification procedures are published in department of public safety rules, 661—Chapter 8.

38.3(2) Records maintenance.

a. Original sex offender registration documents will be sent to the department of public safety sex offender registry program.

b. Copies of the sex offender registration documents shall be permanently maintained in the offender master file maintained by the responsible agency.

38.3(3) Additional rules. Department of public safety rules regarding the Iowa sex offender registry are published in Division III of 661—Chapter 8.

ARC 3652B

CORRECTIONS DEPARTMENT[201]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 904.108 and 905.7, the Department of Corrections hereby gives Notice of Intended Action to amend Chapter 42, "Probation Services," Iowa Administrative Code.

The proposed amendments update language on the auditing system used for judicial district departments of correctional services. Language regarding supervision fees was stricken in compliance with Iowa Code section 905.14(3).

Any interested person may make written suggestions or comments on these proposed amendments on or before October 5, 2004. Such written materials should be directed to the Legal and Policy Department, Iowa Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309; fax (515)281-7345.

A public hearing will be held on October 5, 2004, from 11 a.m. to 1 p.m. in the Second Floor Conference Room of the Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any persons who will attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Corrections and advise of specific needs.

These amendments are intended to implement Iowa Code chapters 905 and 907 and sections 908.11 and 910.5.

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

CORRECTIONS DEPARTMENT[201](cont'd)

The following amendments are proposed.

ITEM 1. Rescind subrule 42.1(4) and adopt the following **new** subrule:

42.1(4) The district department shall have written policies and procedures which ensure that a case auditing system is developed and utilized according to established auditing standards which shall include an LSI, CMC/Jesness and Case File Audit System. The district department shall use the statewide case management system to ensure that offender risk and criminogenic needs are identified and addressed in an effort to lower risk and reduce victimization. The system should be designed to focus the majority of resources on moderate- and high-risk offenders and shall include the following elements: on-going risk and need assessment, responsiveness, case planning, case plan follow-up and documentation, transfer of records, staff training, and quality assurance. Districts shall ensure that all case management staff, i.e., staff whose job duties include administering the LSI-R or using the LSI-R to develop case plans, become certified to administer and score the LSI-R.

ITEM 2. Amend subrule 42.1(16) as follows:

42.1(16) The district department shall have written policies and procedures governing the collection of supervision enrollment fees for persons who receive additional supervisions. ~~Fees shall be based on the offense class of the most serious offense for which the person is supervised. Fees shall not be based on an accumulation of additional supervisions.~~

This amendment is intended to implement Iowa Code section 907.3 and chapters 905, 908 and 910.

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

The following amendment is proposed.

Rescind subrules **43.1(19)** and **43.1(20)** and adopt the following **new** subrule:

43.1(19) The district department shall have written policies and procedures which ensure that a case auditing system is developed and utilized according to established auditing standards which shall include an LSI, CMC/Jesness and Case File Audit System. The district department shall use the statewide case management system to ensure that offender risk and criminogenic needs are identified and addressed in an effort to lower risk and reduce victimization. The system should be designed to focus the majority of resources on moderate- and high-risk offenders and shall include the following elements: on-going risk and need assessment, responsiveness, case planning, case plan follow-up and documentation, transfer of records, staff training, and quality assurance. Districts shall ensure that all case management staff, i.e., staff whose job duties include administering the LSI-R or using the LSI-R to develop case plans, become certified to administer and score the LSI-R.

ARC 3653B**CORRECTIONS DEPARTMENT[201]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 904.108 and 905.7, the Department of Corrections hereby gives Notice of Intended Action to amend Chapter 43, "Residential Facilities," Iowa Administrative Code.

The proposed amendment updates language on the auditing system used for judicial district departments of correctional services.

Any interested person may make written suggestions or comments on this proposed amendment on or before October 5, 2004. Such written materials should be directed to the Legal and Policy Department, Iowa Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309; fax (515)281-7345.

A public hearing will be held on October 5, 2004, from 11 a.m. to 1 p.m. in the Second Floor Conference Room of the Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment. Any persons who will attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Corrections and advise of specific needs.

ARC 3654B**CORRECTIONS DEPARTMENT[201]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 904.108 and 905.7, the Department of Corrections hereby gives Notice of Intended Action to amend Chapter 44, "Work Release," Iowa Administrative Code.

The proposed amendments update language on the auditing system used for judicial district departments of correctional services and make other nontechnical updates.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 5, 2004. Such written materials should be directed to the Legal and Policy Department, Iowa Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309; fax (515)281-7345.

A public hearing will be held on October 5, 2004, from 11 a.m. to 1 p.m. in the Second Floor Conference Room of the Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any persons who will attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Corrections and advise of specific needs.

CORRECTIONS DEPARTMENT[201](cont'd)

These amendments are intended to implement Iowa Code sections 904.901 to 904.909.

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

The following amendments are proposed.

ITEM 1. Amend subrule 44.1(4) as follows:

44.1(4) ~~Good and honor~~ *Earned* time. ~~Good and honor~~ *Earned* time shall be awarded in accordance with department of corrections policy.

ITEM 2. Rescind paragraph **44.1(5)“c”** and adopt the following **new** paragraph:

c. The district department shall have written policies and procedures which ensure that a case auditing system is developed and utilized according to established auditing standards which shall include an LSI, CMC/Jesness and Case File Audit System. The district department shall use the statewide case management system to ensure that offender risk and criminogenic needs are identified and addressed in an effort to lower risk and reduce victimization. The system should be designed to focus the majority of resources on moderate- and high-risk offenders and shall include the following elements: on-going risk and need assessment, responsivity, case planning, case plan follow-up and documentation, transfer of records, staff training, and quality assurance. Districts shall ensure that all case management staff, i.e., staff whose job duties include administering the LSI-R or using the LSI-R to develop case plans, become certified to administer and score the LSI-R.

ITEM 3. Amend subrule 44.6(4) as follows:

44.6(4) Out of place/escape. Residents who are out of place of assignment are considered in serious violation of work release rules and possibly guilty of a felony under Iowa Code section 719.4. Escapes shall be reported to designated authorities in accordance with department of corrections work release policy *and critical incident policy*.

ITEM 4. Amend rule 201—44.9(904,910), introductory paragraph, as follows:

201—44.9(904,910) ~~Home work release~~. Pursuant to Iowa Code section ~~247A.2~~ *904.901*, home work release provides the opportunity in exceptional circumstances for qualified ~~inmates~~ *offenders* of correctional institutions to return to their homes and care for dependent children under the age of 18.

ITEM 5. Amend paragraph **44.9(1)“e”** as follows:

e. ~~Good~~ *Earned* time. ~~Good~~ *Earned* time shall be awarded in accordance with department of corrections policy.

ITEM 6. Amend paragraph **44.9(4)“a”** as follows:

a. Preplacement violations. When disciplinary problems occur with ~~inmates~~ *offenders* who have been approved for home work release but not yet placed, designated staff shall determine whether or not the situation is serious enough to warrant further review by the board of parole. Designated staff herein shall mean authorized persons from the judicial district department of correctional services, the community services division or the sending institution.

ARC 3655B

CORRECTIONS DEPARTMENT[201]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 904.108 and 905.7, the Department of Corrections hereby gives Notice of Intended Action to amend Chapter 45, “Parole,” Iowa Administrative Code.

The proposed amendments update language on the auditing system used for judicial district departments of correctional services and make other nontechnical updates.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 5, 2004. Such written materials should be directed to the Legal and Policy Department, Iowa Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309; fax (515)281-7345.

A public hearing will be held on October 5, 2004, from 11 a.m. to 1 p.m. in the Second Floor Conference Room of the Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any persons who will attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Corrections and advise of specific needs.

These amendments are intended to implement Iowa Code sections 255.29, 905.14, 906.9 to 906.11, 906.15, 906.16, 908.1, 908.2, 908.8 and 910.5.

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

The following amendments are proposed.

ITEM 1. Amend subrules 45.1(2) and 45.1(3) as follows:
45.1(2) Effective date/parole agreement.

a. Parole is effective only upon the acceptance of the terms of parole as evidenced by the signing of the standard parole agreement form by the parolee before a district department employee. In the event that emergency procedures are effected to reduce the institutional population, institutional staff shall authorize a temporary agreement by having the ~~inmate~~ *offender* sign the standard form prior to leaving the institution. The temporary agreement shall be forwarded to the supervising parole agent who may revise the agreement in accordance with rule 45.2(906). The parole agreement shall be issued only upon the written order of the board of parole and shall not be issued prior to the establishment of an approved parole plan. The parolee may not be released on parole prior to the execution of the parole agreement. The parole agreement shall contain the conditions of parole pursuant to rule 45.2(906) and shall contain the parolee's reporting instructions.

a.—The district department shall have written policies and procedures which ensure that the Case Planning Model Proj-

CORRECTIONS DEPARTMENT[201](cont'd)

ect (CMC) is utilized on all eligible clients. Policies and procedures shall also exist to ensure that a formal system of case management is conducted for all non-CMC eligible cases.

b. The district department shall have written policies and procedures which ensure that a case auditing system is developed and utilized according to established auditing standards which shall include the CMC Audit System and a Case File Audit System.

b. *The district department shall have written policies and procedures which ensure that a case auditing system is developed and utilized according to established auditing standards which shall include an LSI, CMC/Jesness and Case File Audit System. The district department shall use the statewide case management system to ensure that offender risk and criminogenic needs are identified and addressed in an effort to lower risk and reduce victimization. The system should be designed to focus the majority of resources on moderate- and high-risk offenders and shall include the following elements: on-going risk and need assessment, responsiveness, case planning, case plan follow-up and documentation, transfer of records, staff training, and quality assurance. Districts shall ensure that all case management staff, i.e., staff whose job duties include administering the LSI-R or using the LSI-R to develop case plans, become certified to administer and score the LSI-R.*

45.1(3) ~~Good Earned~~ and honor time. *Good Earned* and honor time shall be awarded in accordance with department of corrections policy.

ITEM 2. Amend subrule 45.1(5) as follows:

45.1(5) Parole release funds. ~~Inmates~~ *Offenders* approved for parole will receive clothing or a clothing allowance, money and transportation in accordance with the provisions of Iowa Code section 906.9.

ITEM 3. Amend subrules 45.7(1) and 45.7(2) as follows:

45.7(1) The district department shall have written policies and procedures governing the preparation, submission, review, modification, collection, and retention of supervision enrollment fees, in accordance with ~~1997 Iowa Acts, House File 734, section 7~~ *Iowa Code section 905.14(3)*. Payments shall be made directly to the supervising judicial district department.

45.7(2) The district department shall have written policies and procedures governing the waiver of collection of supervision enrollment fees for persons determined to be unable to pay, in accordance with ~~1997 Iowa Acts, House File 734, section 7~~ *Iowa Code section 905.14(3)*.

ITEM 4. Amend subrule 45.7(4) as follows:

45.7(4) The district department shall have written policies and procedures governing the collection of supervision enrollment fees for persons who receive additional supervisions. ~~Fees shall be based on the offense class of the most serious offense for which the person is supervised. Fees shall not be based on an accumulation of additional supervisions.~~

ITEM 5. Amend the implementation sentence at the end of **201—Chapter 45** as follows:

These rules are intended to implement Iowa Code sections 255.29, 905.14, 906.9 to 906.11, 906.15, 906.16, 908.1, 908.2, 908.8 and 910.5 and 1997 Iowa Acts, House File 734, section 7.

ARC 3656B

CORRECTIONS DEPARTMENT[201]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 904.108 and 905.7, the Department of Corrections hereby gives Notice of Intended Action to amend Chapter 47, "OWI Programs," Iowa Administrative Code.

The proposed amendments provide for nontechnical updates.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 5, 2004. Such written materials should be directed to the Legal and Policy Department, Iowa Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309; fax (515)281-7345.

A public hearing will be held on October 5, 2004, from 11 a.m. to 1 p.m. in the Second Floor Conference Room of the Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any persons who will attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Corrections and advise of specific needs.

These amendments are intended to implement Iowa Code section 904.513.

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

The following amendments are proposed.

ITEM 1. Amend subrule 47.1(2) as follows:

47.1(2) The district department shall select appropriate facilities and treatment providers subject to the approval of the department of corrections, for the risk management and programming of ~~inmates~~ *offenders* defined in this chapter.

ITEM 2. Amend subrule 47.1(7) as follows:

47.1(7) The district director is responsible for all programs and ~~inmates~~ *offenders* that are subject to these rules. Any change in the custody status of ~~inmates~~ *offenders* shall be approved by the department of corrections in consultation with a district department official.

ITEM 3. Amend rule 201—47.2(904), catchwords, as follows:

201—47.2(904) Movement of inmates offenders.

ITEM 4. Amend subrules 47.2(4) to 47.2(11) as follows:

47.2(4) When the offender is sentenced to the director of the department of corrections and ordered to the supervision of the judicial district and space is not available in a community program, or supervision concerns arise, the district director or designee may request temporary placement at the Iowa Medical and Classification Center for classification and

CORRECTIONS DEPARTMENT[201](cont'd)

assignment. Final approval is granted by the *regional* deputy director of the division of institutions or designee until space is available in the community program.

47.2(5) If medical conditions prohibit program participation and community resources, including University Hospitals, are not available to sufficiently meet offender needs, the *inmate offender* may be assigned with the approval of the deputy director of *offender services* the division of institutions or designee to the Iowa Medical and Classification Center at Oakdale for treatment until the *inmate's offender's* health status permits placement into a community-based correctional program.

47.2(6) The transfer of *inmates offenders* placed with the department of corrections to community facilities may be delayed by the department of corrections for security or medical reasons. *Inmates Offenders* with active detainees or *inmates offenders* refusing to participate in the program may be transferred to an institution.

47.2(7) *Inmates Offenders* placed with the department of corrections shall be transferred in custody to their assigned facility unless an exception is approved by the department of corrections.

47.2(8) The district department shall comply with established policies and develop procedures for the temporary confinement of *inmates offenders* who present a threat to the safety or security of the public, facility staff, or residents.

47.2(9) *Inmates Offenders* housed in community facilities may be transferred to the Iowa Medical and Classification Center on the recommendation of the district director or designee and with the approval of the *regional* deputy director of the division of institutions or designee for reclassification and assignment to an institution. Transfer recommendations may be made for security, disciplinary, treatment, medical, or legal reasons.

47.2(10) The district department shall maintain a current contingency plan to ensure the continuation of programs or custody of *inmates offenders* in the event of an emergency such as fire, tornado, chemical spill, or work stoppage.

47.2(11) *Inmates Offenders* who have been housed in a community facility for substance abuse treatment, subsequently granted parole or work release, and said parole or work release is revoked, may be returned to the OWI Continuum or returned to the classification center for reclassification and placement in an institution.

ITEM 5. Amend subrules 47.3(3) to 47.3(6) and 47.3(9) as follows:

47.3(3) The district department shall not enter into a sub-contract for custody or treatment of offenders without the written approval of the *regional* deputy director of the division of community services.

a. to d. No change.

47.3(4) The district department shall maintain a schedule of daily fees to be assessed to *inmates offenders*. The fee schedules shall be based on a minimum of \$10 per day; however, if in the opinion of the facility director or designee the *inmate offender* is unable to pay the full amount, a reduced fee will be set and the balance of the fee up to \$10 shall accumulate and be assessed at such time as the *inmate offender* is able to pay. If the *inmate offender* is directly paying the substance abuse treatment provider, the fee schedule shall be appropriately reduced but not be less than \$5 per day.

47.3(5) *Inmates Offenders* may not be denied services due to an inability to pay the daily fee.

47.3(6) The district department shall comply with established policies and develop procedures which require that all *inmates offenders* surrender their earnings to facility staff for

the purpose of financial management and savings. Those policies and procedures shall provide for the proper accounting and disbursement of all *inmate offender* funds including, but not limited to, deduction of a daily fee where appropriate.

47.3(9) If an *inmate offender* escapes or participates in an act of absconding from the facility to which the *inmate offender* is assigned, the *inmate offender* shall reimburse the department of corrections for the cost of transportation.

ITEM 6. Amend rule 201—47.4(904) as follows:

201—47.4(904) Program structure.

47.4(1) The district department shall provide 24-hour housing and supervision of *inmates offenders* either directly or through a contract with other agencies or individuals.

47.4(2) Each *inmate offender* shall sign a supervision agreement approved by the department of corrections. Failure to sign said agreement or abide by the requirements therein shall constitute reason to recommend returning the *inmate offender* to an institution.

47.4(3) The district department shall ensure that all *inmates offenders* are involved in an appropriate continuum of programming which has been approved by the department of corrections.

47.4(4) Reserved.

47.4(5) The district department shall ensure, to the extent possible, that all *inmates offenders* are employed a minimum of 30 hours per week.

47.4(6) The district department shall comply with established policies and procedures to allow *inmates offenders* to leave the facility for treatment, employment, and food service when those activities are not provided at the facility. In all other circumstances, *inmates offenders* may only leave the facility without supervision in accordance with department of corrections furlough procedures.

47.4(7) The district department, or subcontractor, shall utilize the department of corrections policies and procedures concerning *inmate offender* discipline.

47.4(8) The district department shall comply with established policies and develop procedures to ensure development and modification of a restitution plan of payment for each *inmate offender* entering the program. Said plan shall comply with Iowa Code chapter 910. Restitution payments shall be an integral part of each *inmate's offender's* financial management.

47.4(9) The district department shall comply with established policies and develop procedures to ensure that the *inmates offenders* who are identified as needing continuing care receive follow-up treatment according to their identified needs. All *inmates* An *offender* will receive correctional supervision following their release from the facility unless their *the offender's* sentence has legally expired.

47.4(10) The district department shall comply with established policies and develop procedures to ensure that all non-emergency medical treatment required by indigent *inmates offenders* is obtained at the University of Iowa Hospitals.

47.4(11) The district department shall comply with established policies and develop procedures to ensure that a written summary of the *inmate's offender's* progress in the program is completed on all *inmates offenders* who fail to satisfactorily complete the program and are placed at the Iowa Medical and Classification Center. Said report shall be forwarded to the Iowa Medical and Classification Center immediately following termination from the program.

47.4(12) The district department shall comply with established policies and develop procedures and criteria for recommending parole from the facility which shall include the

CORRECTIONS DEPARTMENT[201](cont'd)

completion of a department of corrections approved continuum of programming. The recommendation for parole shall specify the treatment hours completed and document that maximum benefits have been received. When physically able, the *inmate offender* must demonstrate a satisfactory work record for at least 90 days. This requirement may be reduced by the department of corrections when justification exists.

47.4(13) Each *inmate offender* shall be awarded good ~~earned~~ time and work bonus in accordance with department of corrections policies and procedures. The district director or designee may recommend the loss of *earned good* time pursuant to the same policy.

47.4(14) The district department shall comply with established policies and develop procedures which provide for visitation of *inmates offenders*. However, visiting privileges may be limited to the extent necessary for treatment, security, or management reasons.

47.4(15) Reserved.

47.4(16) The district department shall maintain and make available to the department of corrections requested data for the purpose of evaluating the facility and program.

47.4(17) The district department shall comply with established policies and develop procedures for escape when an *inmate offender* is absent from the facility without authorization or there is probable cause to believe the *inmate offender* is taking flight or involved in criminal activity.

ARC 3643B**CREDIT UNION DIVISION[189]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 533.1, the Credit Union Review Board hereby gives Notice of Intended Action to rescind Chapter 17, “Investment Powers,” and adopt new Chapter 17, “Investment and Deposit Activities for Credit Unions,” Iowa Administrative Code.

Chapter 17 describes commercial paper purchased for investment by a state credit union for its own account. This proposed amendment describes investment and deposit activities in which a credit union would be authorized to engage in if the credit union were federally chartered.

Any interested person may make written or electronic suggestions or comments on this proposed amendment on or before October 11, 2004. Such written material should be directed to James Forney, Credit Union Division, 200 East Grand, Suite 370, Des Moines, Iowa 50309; fax (515)281-7595; E-mail James.Forney@iacudiv.state.ia.us.

There will be a public hearing on the proposed amendment at 10 a.m. on October 11, 2004, in the Credit Union Division Conference Room, 200 East Grand, Suite 370, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. Persons with special needs should contact the Credit Union Division prior to the hearing if accommodations need to be made.

This amendment is intended to implement Iowa Code section 533.4(5).

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

The following amendment is proposed.

Rescind 189—Chapter 17 and adopt the following **new** chapter in lieu thereof:

CHAPTER 17

INVESTMENT AND DEPOSIT ACTIVITIES
FOR CREDIT UNIONS**189—17.1(533) Authority and purpose.**

17.1(1) These rules implement the authority of credit unions organized in accordance with Iowa Code chapter 533 to engage in investment and deposit activities which would be permitted if the credit union were federally chartered in accordance with Iowa Code sections 533.4(5)(j) and 533.4(25), and are promulgated under the authority of Iowa Code section 533.1.

17.1(2) These rules identify certain investments and deposit activities permissible under the Federal Credit Union Act, 12 U.S.C. Section 1757, and National Credit Union Administration (NCUA) rules and regulations, 12 CFR Part 703, and prescribe the rules governing those investments and deposit activities on the basis of safety and soundness concerns. Additionally, these rules identify and prohibit certain investments and deposit activities, which may or may not be permitted for federal credit unions and which are considered inconsistent with state law or unsafe or unsound investment for Iowa state-chartered credit unions. Finally, these rules address investment authority granted to Iowa state-chartered credit unions in Iowa Code chapter 533, which may or may not be permitted for federal credit unions.

17.1(3) Exceptions. These rules do not apply to:

- Investment in loans to members and other activities pursuant to Iowa Code sections 533.4(2), 533.4(3), 533.4(15) and 533.4(16);
- Investment in real estate-secured loans to members pursuant to Iowa Code section 533.16(4);
- Investment in credit union service organizations pursuant to Iowa Code section 533.4(5)(f);
- Investment in fixed assets pursuant to Iowa Code section 533.4(10).

189—17.2(533) Definitions. The definition of terms included in Iowa Code section 17A.2 and 189—1.1(533) applies to such terms used in this chapter unless otherwise provided in this rule. In addition, the following definitions apply as used in these rules:

“Adjusted trading” means selling an investment to a counterparty at a price above its current fair value and simultaneously purchasing or committing to purchase from the counterparty another investment at a price above its current fair value.

“Associated personnel” means a person engaged in the investment banking or securities business who is directly or indirectly controlled by a National Association of Securities Dealers (NASD) member, whether or not the person is registered or exempt from registration with NASD. “Associated personnel” includes every sole proprietor, partner, officer, director, or branch manager of any NASD member.

CREDIT UNION DIVISION[189](cont'd)

“Banker’s acceptance” means a time draft that is drawn on and accepted by a bank and that represents an irrevocable obligation of the bank.

“Bank note” means a direct, unconditional, and unsecured general obligation of a bank that ranks equally with all other senior unsecured indebtedness of the bank, except deposit liabilities and other obligations that are subject to any priorities or preferences.

“Borrowing repurchase transaction” means a transaction in which the credit union agrees to sell a security to a counterparty and to repurchase the same or an identical security from that counterparty at a specified future date and at a specified price.

“Call” means an option that gives the holder the right to buy a specified quantity of a security at a specified price during a fixed time period.

“Collateralized mortgage obligation” means a multiclass mortgage-related security.

“Collective investment fund” means a fund maintained by a national bank under Comptroller of the Currency regulations, 12 CFR Part 9.

“Commercial mortgage-related security” means a mortgage-related security, as defined in this rule, except that it is collateralized entirely by commercial real estate, such as a warehouse or office building, or a multifamily dwelling consisting of more than four units.

“Commercial paper” means a debt obligation of a United States-chartered corporation with a maturity date of 270 days or less, which may be interest-bearing or discount-purchased.

“Corporate bonds” means a debt obligation of a United States-chartered corporation with a maturity date greater than 270 days, which may be interest-bearing or discount-purchased.

“Counterparty” means the party on the other side of the transaction.

“Custodial agreement” means a contract in which one party agrees to hold securities in safekeeping for others.

“Delivery versus payment” means payment for an investment must occur simultaneously with its delivery.

“Deposit note” means an obligation of a bank that is similar to a certificate of deposit but is rated.

“Derivatives” means any derivative instrument, as defined under generally accepted accounting principles (GAAP).

“Embedded option” means a characteristic of an investment that gives the issuer or holder the right to alter the level and timing of the cash flows of the investment. Embedded options include call and put provisions and interest rate caps and floors. Since a prepayment option in a mortgage is a type of call provision, a mortgage-backed security composed of mortgages that may be prepaid is an example of an investment with an embedded option.

“Eurodollar deposit” means a U.S. dollar-denominated deposit in a foreign branch of a United States depository institution.

“European financial options contract” means an option that can be exercised only on its expiration date.

“Exchangeable collateralized mortgage obligation” means a class of a collateralized mortgage obligation (CMO) that, at the time of purchase, represents beneficial ownership interests in a combination of two or more underlying classes of the same CMO structure. The holder of an exchangeable CMO may pay a fee and take delivery of the underlying classes of the CMO.

“Fair value” means the amount at which an instrument could be exchanged in a current, arms-length transaction be-

tween willing parties, as opposed to a forced or liquidation sale.

“Financial options contract” means an agreement to make or take delivery of a standardized financial instrument upon demand by the holder of the contract as specified in the agreement.

“Immediate family member” means a spouse or other family member living in the same household.

“Industry-recognized information provider” means an organization that obtains compensation by providing information to investors and receives no compensation for the purchase or sale of investments.

“Investment” means any security, obligation, account, deposit, or other item authorized for purchase by a federal credit union under the Federal Credit Union Act, 12 U.S.C. Section 1757(7), 1757(8), or 1757(15), or NCUA rules and regulations, 12 CFR Part 703, other than loans to members and the exceptions specified in 189—subrule 17.1(3).

“Investment portfolio” means the amount invested by a credit union pursuant to Iowa Code sections 533.4(5), 533.4(25), 533.47 and 533.48, excluding any investment in nonearning assets such as real estate, premises and equipment, the capitalization deposit in the National Credit Union Share Insurance Fund (NCUSIF), and any other investment which does not generate a regular dividend or interest or receive or accrue added value.

“Investment repurchase transaction” means a transaction in which an investor agrees to purchase a security from a counterparty and to resell the same or an identical security to that counterparty at a specified future date and at a specified price.

“Maturity” means the date the last principal amount of a security is scheduled to come due and does not mean the call date or the weighted average life of a security.

“Mortgage-related security” means a security as defined in Section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)), e.g., a privately issued security backed by first lien mortgages secured by real estate upon which is located a dwelling, mixed residential and commercial structure, residential manufactured home, or commercial structure, that is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization.

“Mortgage servicing rights” means a contractual obligation to perform mortgage servicing and the right to receive compensation for performing those services. Mortgage servicing is the administration of a mortgage loan, including collecting monthly payments and fees, providing record-keeping and escrow functions, and, if necessary, curing defaults and foreclosing.

“Negotiable instrument” means an instrument that may be freely transferred from the purchaser to another person or entity by delivery, or endorsement and delivery, with full legal title becoming vested in the transferee.

“Net worth” means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles and as further defined in NCUA rules and regulations, 12 CFR Part 702.2(f).

“Official” means any member of a credit union’s board of directors, credit committee, auditing/supervisory committee, or investment-related committee.

“Ordinary care” means the degree of care that an ordinarily prudent and competent person engaged in the same line of business or endeavor should exercise under similar circumstances.

CREDIT UNION DIVISION[189](cont'd)

“Pair-off transaction” means an investment purchase transaction that is closed or sold on or before the settlement date. In a pair-off transaction, an investor commits to purchase an investment, but then pairs off the purchase with a sale of the same investment on or before the settlement date.

“Put” means an option that gives the holder the right to sell a specified quantity of a security at a specified price during a fixed time period.

“Registered investment company” means an investment company that is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a). Examples of registered investment companies are mutual funds and unit investment trusts.

“Regular way settlement” means delivery of a security from a seller to a buyer within the time frame that the securities industry has established for immediate delivery of that type of security. For example, regular way settlement of a Treasury security includes settlement on the trade date (cash), the business day following the trade date (regular way), and the second business day following the trade date (skip day).

“Residual interest” means the remainder cash flows from collateralized mortgage obligations/real estate mortgage investment conduits (CMOs/REMICs), or other mortgage-backed security transaction, after payments due bondholders and trust administrative expenses have been satisfied.

“Securities lending” means lending a security to a counterparty, either directly or through an agent, and accepting collateral in return.

“Security” means a share, participation, or other interest in property or in an enterprise of the issuer or an obligation of the issuer that:

1. Either is represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer;
2. Is of a type commonly dealt in on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
3. Either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

“Senior management employee” means a credit union’s chief executive officer (typically this individual holds the title of president or manager), an assistant chief executive officer, and the chief financial officer.

“Small business-related security” means a security as defined in Section 3(a)(53) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(53)), e.g., a security that is rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, and represents an interest in one or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution, insured credit union, insurance company, or similar institution which is supervised and examined by a federal or state authority, or a finance company or leasing company. This definition does not include Small Business Administration securities permissible under the Federal Credit Union Act, 12 U.S.C. Section 1757(7).

“Superintendent” means the superintendent of credit unions appointed by the governor to direct and regulate credit unions pursuant to Iowa Code chapter 533.

“Weighted average life” means the weighted average time to the return of a dollar of principal, calculated by multiply-

ing each portion of principal received by the time at which it is expected to be received (based on a reasonable and supportable estimate of that time) and then summing and dividing by the total amount of principal.

“When-issued trading of securities” means the buying and selling of securities in the period between the announcement of an offering and the issuance and payment date of the securities.

“Yankee dollar deposit” means a deposit in a United States branch of a foreign bank licensed to do business in the state in which it is located, or a deposit in a state-chartered, foreign-controlled bank.

“Zero coupon investment” means an investment that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon investment realizes the rate of return through the gradual appreciation of the investment, which is redeemed at face value on a specified maturity date.

189—17.3(533) Investment policies. A state-chartered credit union’s board of directors must establish written investment policies consistent with Iowa Code chapter 533, the Federal Credit Union Act, these rules, and other applicable laws and regulations and must review the policies at least annually. These policies may be part of a broader, asset-liability management policy. Written investment policies must address, at a minimum, the following:

17.3(1) The purposes and objectives of the credit union’s investment activities;

17.3(2) The characteristics of the investments the credit union may make, including the issuer, maturity, index, cap, floor, coupon rate, coupon formula, call provision, average life, and interest rate risk;

17.3(3) How the credit union will manage interest rate risk;

17.3(4) How the credit union will manage liquidity risk;

17.3(5) How the credit union will manage credit risk including specifically listing institutions, issuers, and counterparties that may be used, or criteria for the credit union’s selection, and limits on the amounts that may be invested with each;

17.3(6) How the credit union will manage concentration risk, which can result from dealing with a single issuer or related issuers, lack of geographic distribution, holding obligations with similar characteristics like maturities and indexes, holding bonds having the same trustee, and holding securitized loans having the same originator, packager, or guarantor;

17.3(7) Who has investment authority and the extent of that authority. Those with authority must be qualified by education or experience to assess the risk characteristics of investments and investment transactions. Only officials or employees of the credit union may be voting members of an investment-related committee;

17.3(8) The name of the broker-dealer(s) the credit union may use;

17.3(9) The name of the safekeeper(s) the credit union may use;

17.3(10) How the credit union will handle an investment that, after purchase, is outside of board policy or fails a requirement of these rules; and

17.3(11) How the credit union will conduct investment trading activities, if applicable, including addressing:

- a. Who has purchase and sale authority;
- b. Limits on trading account size;
- c. Allocation of cash flow to trading accounts;
- d. Stop loss or sale provisions;

CREDIT UNION DIVISION[189](cont'd)

- e. Dollar size limitations of specific types, quantity and maturity to be purchased;
- f. Limits on the length of time an investment may be inventoried in a trading account; and
- g. Internal controls, including segregation of duties.

189—17.4(533) Record keeping and documentation requirements.

17.4(1) All state-chartered credit unions must comply with generally accepted accounting principles (GAAP) applicable to reports or statements required to be filed with the superintendent. This contrasts with only federal credit unions with assets of \$10,000,000 or greater that must comply with GAAP in reports and statements filed with the NCUA.

17.4(2) A credit union must maintain documentation for each investment transaction for as long as it holds the investment and until the documentation has been audited in accordance with Iowa Code section 533.11 or NCUA rules and regulations, 12 CFR Part 701.12, or both, and examined by the superintendent or the NCUA, or both. The documentation should include, where applicable, bids and prices at purchase and sale and for periodic updates, relevant disclosure documents or a description of the security from an industry-recognized information provider, financial data, and tests and reports required by the credit union's investment policy and these rules.

17.4(3) A credit union must maintain documentation that its board of directors used to approve a broker-dealer or a safekeeper for as long as the broker-dealer or safekeeper is approved and until the documentation has been audited in accordance with Iowa Code section 533.11 or NCUA rules and regulations, 12 CFR Part 701.12, or both, and examined by the superintendent or the NCUA, or both.

17.4(4) A credit union must obtain an individual confirmation statement from each broker-dealer for each investment purchased or sold.

189—17.5(533) Discretionary control over investments and investment advisers.

17.5(1) Except as provided in 17.5(2), 17.5(3) and 17.5(4), a credit union must retain discretionary control over its purchase and sale of investments. A credit union has not delegated discretionary control to an investment adviser when the credit union reviews all recommendations from investment advisers and is required to authorize a recommended purchase or sale transaction before its execution.

17.5(2) A credit union may delegate discretionary control over the purchase and sale of investments to a person other than a credit union official or employee:

- a. Provided the person is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b); and

- b. Provided the amount of investment authority does not exceed the greater of 10 percent of the credit union's total assets or 100 percent of its net worth, in the aggregate, at the time of delegation; and

- c. Provided the amount of investment authority delegated is annually reviewed by the board of directors, within 30 days after the end of the credit union's fiscal year, so the amount of investment authority calculated under 17.5(2)"b" is determined by using the credit union's year end fiscal total assets and net worth amount; and

- d. Provided the amount of investment authority delegated is correspondingly reduced at such time as the total assets or net worth amount declines by 10 percent or more during a consecutive three-month period and the delegated in-

vestment authority exceeds the total assets or net worth cap established in this subrule.

17.5(3) At the annual reevaluation of delegated investment authority, the credit union must comply with the 10 percent of total assets or 100 percent of net worth cap. The credit union's board of directors must, no later than its next regularly scheduled monthly board meeting, be informed of the amount exceeding the total asset or net worth cap and must notify in writing the superintendent within five days after the board meeting of the exception to this rule. The credit union must develop a plan to comply with the cap within a reasonable period of time.

17.5(4) Before transacting business with an investment adviser, a credit union must analyze the investment adviser's background and information available from state or federal securities regulators, including any enforcement actions against the adviser, associated personnel, or the firm for which the adviser works.

17.5(5) A credit union may not compensate an investment adviser with discretionary control over the purchase and sale of investments on a per-transaction basis or based on capital gains, capital appreciation, net income, performance relative to an index, or any other incentive basis.

17.5(6) A credit union must obtain a report from its investment adviser at least monthly that details the investments under the adviser's control and the investments' performance.

189—17.6(533) Credit analysis. A credit union must conduct and document a credit analysis on an investment and the issuing entity before purchasing it, except for investments issued or fully guaranteed as to principal and interest by the U.S. government or its agencies, enterprises, or corporations or fully insured (including accumulated interest) by the National Credit Union Administration or the Federal Deposit Insurance Corporation. A credit union must update this analysis at least annually for as long as it holds the investment.

189—17.7(533) Notice of noncompliant investments. A credit union's board of directors must receive notice, no later than the next regularly scheduled monthly board meeting, of any investment that either is outside of board policy after purchase or has failed a requirement of these rules. The board of directors must document its action regarding the investment in the minutes of the board meeting, including a detailed explanation of any decision not to sell the investment. The credit union must notify the superintendent in writing of an investment that has failed a requirement of these rules within five days after the board meeting.

189—17.8(533) Broker-dealers.

17.8(1) A credit union may purchase and sell investments through a broker-dealer as long as the broker-dealer is registered as a broker-dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) or is a depository institution whose broker-dealer activities are regulated by a federal or state regulatory agency.

17.8(2) Before purchasing an investment through a broker-dealer, a credit union must analyze and annually update the following:

- a. The background of any sales representative with whom the credit union is doing business;

- b. Information available from state or federal securities regulators and securities industry self-regulatory organizations, such as the National Association of Securities Dealers and the North American Securities Administrators Associa-

CREDIT UNION DIVISION[189](cont'd)

tion, about any enforcement actions against the broker-dealer, its affiliates, or associated personnel; and

c. If the broker-dealer is acting as the credit union's counterparty, the ability of the broker-dealer and its subsidiaries or affiliates to fulfill commitments, as evidenced by capital strength, liquidity, and operating results. The credit union should consider current financial data, annual reports, reports of nationally recognized statistical rating organizations, relevant disclosure documents, and other sources of financial information.

17.8(3) The requirements of 17.8(1) do not apply when the credit union purchases a certificate of deposit or share certificate directly from a bank, credit union, or other depository institution.

189—17.9(533) Safekeeping of investments.

17.9(1) A credit union's purchased investments and repurchase collateral must be in the credit union's possession, recorded as owned by the credit union through the Federal Reserve Book Entry System, or held by a board of directors-approved safekeeper under a written custodial agreement that requires the safekeeper to exercise, at least, ordinary care.

17.9(2) Any safekeeper used by a credit union must be regulated and supervised by either the Securities and Exchange Commission, a federal or state depository institution regulatory agency, or a state trust company regulatory agency.

17.9(3) A credit union must obtain and reconcile monthly a statement of purchased investments and repurchase collateral held in safekeeping.

17.9(4) Annually, the credit union must analyze the ability of the safekeeper to fulfill the safekeeper's custodial responsibilities, as evidenced by capital strength, liquidity, and operating results. The credit union should consider current financial data, annual reports, reports of nationally recognized statistical rating organizations, relevant disclosure documents, and other sources of financial information.

189—17.10(533) Monitoring nonsecurity investments.

17.10(1) At least quarterly, a credit union must prepare a written report listing all of its shares and deposits in banks, credit unions, and other depository institutions, that have one or more of the following features:

- a. Embedded options;
- b. Remaining maturities greater than three years; or
- c. Coupon formulas that are related to more than one index or are inversely related to, or are multiples of, an index.

17.10(2) The requirement of 17.10(1) does not apply to shares and deposits that are securities.

17.10(3) If a credit union does not have an investment-related committee, then each member of its board of directors must receive a copy of the report described in 17.10(1). If a credit union has an investment-related committee, then each member of the committee must receive a copy of the report, and each board member must receive a summary of the information in the report.

189—17.11(533) Valuing securities.

17.11(1) Before purchasing or selling a security, a credit union must obtain either price quotations on the security from at least two broker-dealers or a price quotation on the security from an industry-recognized information provider. This requirement to obtain price quotations does not apply to new issues purchased at par or at original issue discount.

17.11(2) At least monthly, a credit union must determine the fair value of each security it holds. It may determine fair value by obtaining a price quotation on the security from an

industry-recognized information provider, a broker-dealer, or a safekeeper.

17.11(3) At least annually, the credit union's auditing/supervisory committee or its external auditor must independently assess the reliability of monthly price quotations received from a broker-dealer or safekeeper. The credit union's auditing/supervisory committee or external auditor must follow generally accepted auditing standards, which require either recomputation or reference to market quotations.

17.11(4) If a credit union is unable to obtain a price quotation required by this rule for a particular security, then it may obtain a quotation for a security with substantially similar characteristics.

189—17.12(533) Monitoring securities.

17.12(1) At least monthly, a credit union must prepare a written report setting forth, for each security held, the fair value and dollar change since the prior month end, with summary information for the entire portfolio.

17.12(2) At least quarterly, a credit union must prepare a written report setting forth the sum of the fair values of all fixed and variable rate securities held that have one or more of the following features:

- a. Embedded options;
- b. Remaining maturities greater than three years; or
- c. Coupon formulas that are related to more than one index or are inversely related to, or are multiples of, an index.

17.12(3) When the amount calculated in 17.12(2) is greater than a credit union's net worth, the report described in that subrule must provide a reasonable and supportable estimate of the potential impact, in percentage and dollar terms, of an immediate and sustained parallel shift in market interest rates of plus and minus 300 basis points on:

- a. The fair value of each security in the credit union's portfolio;
- b. The fair value of the credit union's portfolio as a whole; and
- c. The credit union's net worth.

17.12(4) If the credit union does not have an investment-related committee, then each member of its board of directors must receive a copy of the reports described in 17.12(1) through 17.12(3). If the credit union has an investment-related committee, then each member of the committee must receive copies of the reports, and each member of the board of directors must receive a summary of the information in the reports.

189—17.13(533) Permissible investment activities.

17.13(1) Regular way settlement and delivery versus payment basis. A credit union may only contract for the purchase or sale of a security as long as the delivery of the security is by regular way settlement and the transaction is accomplished on a delivery versus payment basis.

17.13(2) Federal funds. A credit union may sell federal funds to a national bank; or to a state bank, trust company or mutual savings bank operating in accordance with Iowa law or the laws of any state where it operates a credit union office; or in banks and institutions, the accounts of which are insured by the Federal Deposit Insurance Corporation; or to credit unions, the accounts of which are insured by the National Credit Union Administration; and as long as the interest or other consideration received from the financial institution is at the market rate for federal funds transactions.

17.13(3) Investment repurchase transaction. A credit union may enter into an investment repurchase transaction so long as:

CREDIT UNION DIVISION[189](cont'd)

a. Any securities the credit union receives are permissible investments for federal and Iowa credit unions; the credit union, or its agent, either takes physical possession or control of the repurchase securities or is recorded as owner of them through the Federal Reserve Book Entry Securities Transfer System; the credit union, or its agent, receives a daily assessment of the securities' market value, including accrued interest; and the credit union maintains adequate margins that reflect a risk assessment of the securities and the term of the transaction; and

b. The credit union has entered into signed contracts with all approved counterparties.

17.13(4) Borrowing repurchase transaction. A credit union may enter into a borrowing repurchase transaction so long as:

a. The transaction meets the requirements of 17.13(3);

b. Any cash the credit union receives, when aggregated with all other credit union borrowings, is subject to the borrowing limit in accordance with Iowa Code section 533.15 or to any lesser amount specified by policy of the board of directors, and any investments the credit union purchases with that cash are permissible for federal credit unions; and

c. The investments referenced in 17.13(4)"b" mature no later than the maturity of the borrowing repurchase transaction.

17.13(5) Securities lending transaction. A credit union may enter into a securities lending transaction so long as:

a. The credit union receives written confirmation of the loan;

b. Any collateral the credit union receives is a legal investment for federal credit unions; the credit union, or its agent, obtains a first priority security interest in the collateral by taking physical possession or control of the collateral, or is recorded as owner of the collateral through the Federal Reserve Book Entry Securities Transfer System; and the credit union, or its agent, receives a daily assessment of the market value of the collateral, including accrued interest; and maintains adequate margin that reflects a risk assessment of the collateral and the term of the loan;

c. Any cash the credit union receives, when aggregated with all other credit union borrowings, is subject to the borrowing limit in accordance with Iowa Code section 533.15 or to any lesser amount specified by policy of the board of directors, and any investments the credit union purchases with that cash are permissible for federal credit unions and mature no later than the maturity of the transaction; and

d. The credit union has executed a written loan and security agreement with the borrower.

17.13(6) Trading securities.

a. A credit union may trade securities, including engaging in when-issued trading and pair-off transactions, so long as the credit union can show that it has sufficient resources, knowledge, systems, and procedures to handle the risks.

b. A credit union must record any security it purchases or sells for trading purposes at fair value on the trade date. The trade date is the date the credit union commits, orally or in writing, to purchase or sell a security.

c. At least monthly, the credit union must give its board of directors or investment-related committee a written report listing all purchase and sale transactions of trading securities and the resulting gain or loss on an individual basis.

189—17.14(533) Permissible investments.

17.14(1) Variable rate investment. A credit union may invest in a variable rate investment, as long as the index is tied to domestic interest rates and not, for example, to foreign cur-

rencies, foreign interest rates, domestic or foreign commodity prices, equity prices, or inflation rates. For purposes of this subrule, the U.S. dollar-denominated London Interbank Offered Rate (LIBOR) is a domestic interest rate.

17.14(2) Corporate credit union shares or deposits. A credit union may purchase shares or deposits in a corporate credit union, except when the superintendent or the NCUA has notified it that the corporate credit union is not operating in compliance with NCUA rules and regulations, 12 CFR Part 704. A credit union's aggregate amount of paid-in capital and membership capital, as defined in NCUA rules and regulations, 12 CFR Part 704, in one corporate credit union is limited to 2 percent of its assets measured at the time of investment or adjustment. A credit union's aggregate amount of paid-in capital and membership capital in all corporate credit unions is limited to 4 percent of its assets measured at the time of investment or adjustment.

17.14(3) Registered investment company. A credit union may invest in a registered investment company or collective investment fund, as long as the prospectus of the company or fund restricts the investment portfolio to investments and investment transactions that are permissible for federal credit unions.

17.14(4) Collateralized mortgage obligation/real estate mortgage investment conduit. A credit union may invest in a fixed or variable rate collateralized mortgage obligation/real estate mortgage investment conduit.

17.14(5) Municipal security. A credit union may purchase and hold a municipal security, as defined in the Federal Credit Union Act, 12 U.S.C. Section 1757(7)(K), only if a nationally recognized statistical rating organization has rated it in one of the four highest rating categories.

17.14(6) Instruments issued by institutions described in the Federal Credit Union Act, 12 U.S.C. Section 1757(8). A credit union may invest in the following instruments issued by an institution described in Section 1757(8) of the Federal Credit Union Act:

- a. Yankee dollar deposits;
- b. Eurodollar deposits;
- c. Banker's acceptances;
- d. Deposit notes; and
- e. Bank notes with original weighted average maturities of less than five years.

17.14(7) European financial options contract. A credit union may purchase a European financial options contract or a series of European financial options contracts only to fund the payment of dividends on member share certificates or interest on member certificates of deposit when such dividend or interest rate is tied to an equity index provided:

a. The option and dividend/interest rate are based on a domestic equity index;

b. Proceeds from the options are used only to fund dividends/interest on the equity-linked certificates;

c. Dividends or interest, or both, on the certificates are derived solely from the change in the domestic equity index over a specified period;

d. The options' expiration dates are no later than the maturity date of the certificate;

e. The certificate may be redeemed prior to the maturity date only upon the member's death or termination of the corresponding option;

f. The total costs associated with the purchase of the option is known by the credit union prior to effecting the transaction;

CREDIT UNION DIVISION[189](cont'd)

g. The options are purchased at the same time the certificate is issued to the member;

h. The counterparty to the transaction is a domestic counterparty and has been approved by the credit union's board of directors;

i. The counterparty to the transaction:

(1) Has a long-term, senior, unsecured debt rating from a nationally recognized statistical rating organization of AA- (or equivalent) or better at the time of the transaction, and the contract between the counterparty and the credit union specifies that if the long-term, senior, unsecured debt rating declines below AA- (or equivalent) then the counterparty agrees to post collateral with an independent party in an amount fully securing the value of the option; or

(2) Posts collateral with an independent party in an amount fully securing the value of the option if the counterparty does not have a long-term, senior, unsecured debt rating from a nationally recognized statistical rating organization;

j. Any collateral posted by the counterparty is a permissible investment for federal credit unions and is valued daily by an independent third party along with the value of the option;

k. The aggregate amount of equity-linked member certificates does not exceed the credit union's net worth;

l. The terms of the certificate include a guarantee that there can be no loss of principal to the member regardless of changes in the value of the option unless the certificate is deemed prior to maturity; and

m. The credit union provides its board of directors with a monthly report detailing, at a minimum:

(1) The dollar amount of outstanding equity-linked certificates;

(2) The certificates' maturities; and

(3) The fair value of the options as determined by an independent third party.

17.14(8) Debt obligations of U.S.-chartered corporations. An Iowa state-chartered credit union may invest in unsecured notes and acceptances, commonly referred to as "commercial paper" and "corporate bonds," of U.S.-chartered corporations pursuant to Iowa Code section 533.4(5)(h) and (i) and this rule, only if:

a. The investment in a corporate bond debt obligation is rated in one of the two highest rating categories by a nationally recognized statistical rating organization and has a maturity of less than five years;

b. The investment in a commercial paper debt obligation is rated in one of the four highest rating categories by a nationally recognized statistical rating organization and has a maturity of less than one year;

c. An investment in a nonrated equivalent value issue of a commercial paper debt obligation shall otherwise adhere to the limitations of rated issues. In lieu of the required rating by a nationally recognized statistical rating organization, a credit union shall retain documentation supporting the method used in determining the equivalent rating and the current and previous two years of year-end financial statements which indicate acceptable operating performance of the issuing U.S. corporation;

d. Subsequent to the date of purchase but prior to the date of maturity, the rating is downgraded two or more categories by the same nationally recognized statistical rating organization used when the investment was purchased, and the investment exceeds the credit union's net worth by 5 percent or more, the credit union shall have no more than 30 days to di-

vest of the security unless the credit union seeks and receives a waiver from the superintendent as provided by rule;

e. The total investment by a credit union in debt obligations in a lone U.S. corporation and its subsidiaries shall not exceed 25 percent of the credit union's net worth;

f. The total aggregate investment by a credit union in debt obligations of U.S. corporations and their subsidiaries shall not exceed the lesser of 100 percent of the credit union's net worth or 20 percent of the credit union's investment portfolio;

g. An investment will be considered speculative and unauthorized if it contains any of the following characteristics, and the credit union shall be required to divest of the security in accordance with 17.14(8)"d" without an opportunity of waiver:

(1) It is issued by a business entity not recognized in the market place or by other than a U.S.-chartered corporation, or by both;

(2) It has a maturity that exceeds that established in this subrule; or

(3) It is issued to cover or underwrite foreign market operations, or for new-line products or services, or both, which exceed 25 percent of the investment offering;

h. If the net worth level of a credit union falls or remains below an amount which causes the limitations of this subrule to be exceeded for two consecutive quarters, and the amount of difference is 5 percent or more of the net worth, the credit union shall divest of a sufficient amount of debt obligations so the credit union no longer exceeds the limitations or seek a waiver from the superintendent as provided by rule;

i. A corporate credit union chartered in accordance with Iowa Code chapter 533 is exempt from the provisions and limitations of this subrule and, instead, shall have the powers, restrictions and obligations contained in NCUA rules and regulations, 12 CFR Part 704, for federally insured corporate credit unions.

189—17.15(533) Prohibited investment activities. A credit union may not engage in adjusted trading or short sales.

189—17.16(533) Prohibited investments.

17.16(1) Derivatives. A credit union may not purchase or sell financial derivatives, such as futures, options, interest rate swaps, or forward rate swaps. This prohibition does not apply to:

a. Any derivatives permitted under NCUA rules and regulations, 12 CFR 701.21(i) and 189—subrule 17.14(7);

b. Embedded options not required under GAAP to be accounted for separately from the host contract; and

c. Interest rate lock commitments or forward sales commitments made in connection with a loan originated by the credit union.

17.16(2) Zero coupon investments. A credit union may not purchase a zero coupon investment with a maturity date that is more than ten years from the settlement date.

17.16(3) Mortgage servicing rights. A credit union may not purchase mortgage servicing rights as an investment but may perform mortgage servicing functions as a financial service for a member as long as the mortgage loan is owned by a member.

17.16(4) Commercial mortgage-related security. A credit union may not purchase a commercial mortgage-related security that is not otherwise permitted by the Federal Credit Union Act, 12 U.S.C. Section 1757(7)(E).

17.16(5) Stripped mortgage-backed securities. A credit union may not invest in stripped mortgage-backed securities

CREDIT UNION DIVISION[189](cont'd)

(SMBS) or securities that represent interests in SMBS except as described in 17.16(5)“a” and “c.”

a. A credit union may invest in and hold exchangeable collateralized mortgage obligations (exchangeable CMOs) representing beneficial ownership interests in one or more interest-only classes of a CMO (IO CMOs) or principal-only classes of a CMO (PO CMOs), but only if:

(1) At the time of purchase, the ratio of the market price to the remaining principal balance is between .8 and 1.2, meaning that the discount or premium of the market price to par must be less than 20 points;

(2) The offering circular or other official information available at the time of purchase indicates that the notional principal on each underlying IO CMO declines at the same rate as the principal on one or more of the underlying non-IO CMOs, and the principal on each underlying PO CMO declines at the same rate as the principal, or notional principal, on one or more of the underlying non-PO CMOs; and

(3) The credit union staff has the expertise dealing with exchangeable CMOs to apply the conditions in 17.16(5)“a”(1) and 17.16(5)“a”(2).

b. A credit union that invests in an exchangeable CMO may exercise the exchange option only if all of the underlying CMOs are permissible investments for that credit union.

c. A credit union may accept an exchangeable CMO representing beneficial ownership interests in one or more IO CMOs or PO CMOs as an asset associated with an investment repurchase transaction or as collateral in a securities lending transaction. When the exchangeable CMO is associated with one of these two transactions, it need not conform to the conditions in 17.16(5)“a”(1) and 17.16(5)“a”(2).

17.16(6) Insurance company annuity product. A credit union may not purchase an insurance company annuity product as an investment of the credit union. However, a credit union, in its capacity as an employer, may establish retirement or defined employee benefit programs, which may include the purchase of an annuity for the specific purpose of funding an employee benefit plan, provided that:

a. The plan is usually entirely funded by the credit union and the underlying investments are owned by the credit union;

b. There is a direct connection between the purchase of the investment and the employee benefit obligation;

c. If an employee leaves the credit union before the specified time, fails to exercise an option or to vest in the plan, dies, or in some manner forfeits the right to the planned benefit, the credit union must take the steps necessary to dispose of any investment(s) not needed to meet an actual or potential obligation under the employee benefit plan; and

d. A credit union may, under certain circumstances, hold an otherwise impermissible investment purchased to fund an employee benefit plan after an employee retires or separates from the credit union. For example, when a qualified employee is allowed to exercise an investment option following separation, the investment may be held in order to satisfy this benefit plan provision. In most cases this is an acceptable practice provided the option period is reasonable. Upon the employee's exercise of the option or the expiration of the exercise period, the credit union must divest itself of any remaining impermissible investment(s).

17.16(7) Other prohibited investments. A credit union may not purchase residual interests in collateralized mortgage obligations, real estate mortgage investment conduits, or small business-related securities.

189—17.17(533) Conflicts of interest.

17.17(1) A credit union's officials and senior management employees, and their immediate family members, may not receive anything of value in connection with their investment transactions. This prohibition also applies to any other employee, such as an investment officer, if the employee is directly involved in investments, unless the credit union's board of directors determines that the employee's involvement does not present a conflict of interest. This prohibition does not include compensation for employees.

17.17(2) A credit union's officials and employees must conduct all transactions with business associates or family members that are not specifically prohibited by 17.17(1) at arm's length and in the credit union's best interest.

189—17.18 Reserved.

189—17.19(533) Investment pilot program.

17.19(1) Under an investment pilot program, the credit union division will permit a limited number of credit unions to engage in investment activities prohibited by this rule but otherwise permitted by the Federal Credit Union Act, 12 U.S.C. Section 1757.

17.19(2) Except as provided in 17.19(4), before a credit union may engage in an additional activity it must obtain written approval from the superintendent. To obtain approval, a credit union must submit its written request to the superintendent that addresses the following items:

a. Certification that the credit union is “well-capitalized” under NCUA rules and regulations, 12 CFR Part 702;

b. Board policies approving the activities and establishing limits on them;

c. A complete description of the activities, with specific examples of how they will benefit the credit union and how they will be conducted;

d. A demonstration of how the activities will affect the credit union's financial performance, risk profile, and asset-liability management strategies;

e. Examples of reports the credit union will generate to monitor the activities;

f. Projections of the associated costs of the activities, including personnel, computer, and audit;

g. Descriptions of the internal systems that will measure, monitor, and report the activities;

h. Qualifications of the staff and officials responsible for implementing and overseeing the activities; and

i. Internal control procedures that will be implemented, including audit requirements.

17.19(3) If the superintendent supports the credit union's request to engage in the additional activity as provided in 17.19(2), the superintendent will forward the request to the NCUA regional director for review and nonobjection. If the regional director determines that the additional activity would be approved for the credit union if it were federally chartered and does not object otherwise, the superintendent may approve the credit union's request.

17.19(4) Subsequent to the publication date of these rules, a credit union will not need to seek written approval of the superintendent to engage in an investment activity prohibited by the rules but permitted by the Federal Credit Union Act if the activity is part of a third-party investment program the NCUA approves for federal credit unions after the third party submits a request to the NCUA Director of the Office of Strategic Program Support and Planning that addresses the following items:

a. A complete description of the activities with specific examples of how a federal credit union will conduct and ac-

CREDIT UNION DIVISION[189](cont'd)

count for them, and how the activities will benefit a federal credit union;

b. A description of any risks to a federal credit union from participating in the program; and

c. Contracts that must be executed by the federal credit union.

189—17.20(533) Responsibility placed upon the credit union to show cause.

17.20(1) A state-chartered credit union that engages in an investment activity that it believes to be permissible for federal credit unions, whether or not addressed by these rules, must provide the superintendent, when requested, satisfactory documentation that the activity is not prohibited by the Iowa Code or by the NCUA, or both.

17.20(2) If a credit union engages in an investment activity, whether expressly permitted by these rules or an investment activity that the credit union believes, in good faith, is permitted, and which at the time of engagement is not or thought not to be prohibited by the Iowa Code or the NCUA, or both, but subsequently becomes or is found to have been prohibited, the credit union must develop a plan to become compliant within a reasonable period of time.

17.20(3) Although automatic authority is granted to Iowa credit unions by Iowa Code sections 533.4(5)(j) and 533.4(25) and these rules, such authority may be withheld or withdrawn by the superintendent for safety and soundness concerns or for blatant disregard for these rules, in whole or in part, by a credit union.

These rules are intended to implement Iowa Code section 533.4(5).

ARC 3631B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 24, “Emergency Shelter Grants Program,” Iowa Administrative Code.

The proposed amendments bring the state administrative rules into conformance with published federal guidance on the program and make technical and language changes.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on October 5, 2004. Interested persons may submit written or oral comments by contacting Roselyn McKie Wazny, Community Development Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4822.

A public hearing to receive comments about the proposed amendments will be held on October 5, 2004, at 1:30 p.m. at the above address in the second floor northeast conference room. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on October 4, 2004, to be placed on the hearing agenda.

These amendments are intended to implement Iowa Code section 15.108(1)“a.”

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

The following amendments are proposed.

ITEM 1. Amend rule **261—24.2(PL100-628)**, definition of “project,” as follows:

“Project” means ~~the activity to be undertaken by the applicant and paid for with the ESGP funds.~~ *an activity or activities undertaken by the applicant to be carried out at a specific facility or location. No more than one project shall be funded at any one facility or location.*

ITEM 2. Amend rule 261—24.6(PL100-628) as follows:

261—24.6(PL100-628) Application procedures. The Iowa department of economic development will request applications from eligible applicants as often as the state expects funding from the U.S. Department of Housing and Urban Development (HUD). Applicants will be given at least 30 days in which to reply to the state’s request. The Iowa department of economic development will make funding decisions in conjunction with the time frame established by HUD. The application must be submitted on forms prescribed by IDED and must, at a minimum, include the amount of funds requested, the need for the funds, documentation of other available funding sources, source of required local match, and estimated number of persons to be served by the applicant (daily average). No individual project may receive more than \$50,000 ~~in a grant application cycle annually.~~ Applicants may receive a maximum of \$125,000 in ESGP funds ~~per funding cycle annually.~~ A minimum grant level of \$10,000 is required per applicant. *No more than one project per applicant shall be funded at any one facility or location.*

ITEM 3. Amend subrule 24.10(6) as follows:

24.10(6) Data reporting system. Recipients shall participate in ~~a data reporting system~~ *the HUD-approved Homeless Management Information System (HMIS)* developed by IDED as required in the executed contract.

ITEM 4. Amend paragraph **24.12(3)“a”** as follows:

a. *Homeless Management Information Network—Service Point data reports.* All recipients of ESGP funds are required to submit monthly reports on clients served using the Service Point reporting process as prescribed by IDED.

ARC 3632B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 29,

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

“Homeless Shelter Operation Grants Program,” Iowa Administrative Code.

The proposed amendments coordinate the state administrative rules with published federal guidance on the companion federal program and make technical and language changes.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on October 5, 2004. Interested persons may submit written or oral comments by contacting Roselyn McKie Wazny, Community Development Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4822.

A public hearing to receive comments about the proposed amendments will be held on October 5, 2004, at 2:30 p.m. at the above address in the second floor northeast conference room. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on October 4, 2004, to be placed on the hearing agenda.

These amendments are intended to implement Iowa Code section 15.108(1)“a.”

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

The following amendments are proposed.

ITEM 1. Amend the parenthetical implementation for rules **261—29.1(78GA, ch1230)** to **261—29.11(78GA, ch1230)** as follows:

(78GA, ch1230 15)

ITEM 2. Amend rule **261—29.2(15)**, definition of “project,” as follows:

“Project” means the activity to be undertaken by the applicant and paid for with HSOG funds. *an activity or activities undertaken by the applicant to be carried out at a specific facility or location. No more than one project shall be funded at any one facility or location.*

ITEM 3. Amend rule 261—29.6(15) by adding a **new** subrule as follows:

29.6(5) No more than one project per applicant shall be funded at any one facility or location.

ITEM 4. Amend rule **261—29.10(15)**, numbered paragraph “5,” as follows:

5. Recipients shall participate in a data reporting system the HUD-approved Homeless Management Information System (HMIS) developed by IDEED as required in the executed contract.

ITEM 5. Amend paragraph **29.11(3)“a”** as follows:

a. Homeless Management Information Network—Service Point data reports. All recipients of HSOG funds are required to submit monthly reports on clients served using the Service Point reporting process as prescribed by IDEED.

ARC 3669B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Termination

Pursuant to the authority of Iowa Code section 17A.4, the Environmental Protection Commission hereby terminates the rule making initiated by the Notice of Intended Action published in the Iowa Administrative Bulletin on February 4, 2004, as **ARC 3155B**, proposing to amend Chapter 20, “Scope of Title, Definitions, Forms, Rules and Practice,” and Chapter 22, “Controlling Pollution,” Iowa Administrative Code. An Amended Notice of Intended Action to add an additional public hearing and extend the public comment period was published in the Iowa Administrative Bulletin on April 14, 2004, as **ARC 3280B**.

The Notice proposed to amend Chapters 20 and 22 to establish definitions to be used in the Prevention of Significant Deterioration (PSD) program and to consolidate and modify several definitions currently used in the air quality programs. These rules were intended to implement Iowa Code section 455B.133.

The following public hearings were held in accordance with Iowa Code section 17A.4:

April 1, 2004, at 1 p.m., Air Quality Bureau Offices located at 7900 Hickman Road, Urbandale, Iowa.

April 2, 2004, at 1 p.m., Davenport Public Library, 321 Main Street, Davenport, Iowa.

June 2, 2004, at 1 p.m., Rooms A and B of the Iowa Building, Kirkwood Community College, 6301 Kirkwood Boulevard SW, Cedar Rapids, Iowa.

Comments were submitted orally or in writing during the public hearings. Written comments were also received between February 4, 2004, and June 11, 2004.

The Department is terminating the rule making commenced in **ARC 3155B** based on the comments received. This rule making was the result of extensive discussions with various stakeholders that started in 1999 with a PSD Taskforce, followed by a PSD Advisory Group that held meetings beginning in 2002 and ending in 2003. Recommendations from these meetings resulted in the establishment of new definitions and the modification of several existing definitions that were intended to remove some of the uncertainty from the current PSD permit application review process. The cost of removing some of the uncertainty from the process was the loss of the flexibility that the Department and the regulated industries currently have to jointly address issues that are identified during the PSD permit review process on a case-by-case basis. This loss of flexibility and the perception among many commenters that the new and modified definitions would make the PSD application review process more stringent and prescriptive resulted in comments from the regulated industries that were all opposed to the rule making.

Some of the definitions that would be established or modified in the rule making were viewed by the Environmental Protection Agency (EPA) to be a relaxation from EPA applications of the definition in the past. Additionally, the EPA stated that it would not approve a state implementation plan revision request that included changes to the state’s approved New Source Review (NSR) program until the state adopts recent NSR reform rules that were promulgated by the EPA in December 2002. The possibility of conflicts between the definitions proposed in this rule making and those contained in the EPA’s reform rules that the state will be adopting was

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

also raised as a concern among several of the regulated industry commenters.

ARC 3645B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 1, “Iowa Ethics and Campaign Disclosure Board,” Iowa Administrative Code.

The proposed amendment clarifies the procedural requirement for a member of the Iowa Ethics and Campaign Disclosure Board to sell goods or services to a person subject to the regulatory authority of the Board.

The proposed amendment does not contain a waiver provision as the requirement is mandated by statute.

Any interested person may make written comments on the proposed amendment on or before October 5, 2004. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code Supplement section 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, section 5.

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

The following amendment is proposed.

Rescind rule 351—1.7(68B) and adopt the following **new** rule in lieu thereof:

351—1.7(68B) Board sales of goods and services. A board member shall not directly or indirectly sell any goods or services to any person that is subject to the regulatory authority of the board except as provided by Iowa Code Supplement section 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, section 5, and this rule. However, the sale of goods or services regarding Iowa Code Supplement chapter 68A or Iowa Code chapter 68B shall not be permitted in any case. This prohibition does not apply to sales that are part of the board member’s state duties.

1.7(1) Request for consent. A board member’s request for board consent to the sale of goods or services shall comply with all of the following:

a. The request shall be in writing and shall be filed with the board at least 20 calendar days in advance of the proposed sale of any goods or services.

b. The request shall include all of the following:

(1) The name of the person to which the goods or services are to be sold;

(2) The relationship of the person to the board;

(3) A description of the goods or services;

(4) The date or dates that the goods or services will be delivered; and

(5) A statement by the board member explaining how the proposed sale of the goods or services will not violate the provisions of Iowa Code Supplement section 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, section 5, or create a conflict of interest under Iowa Code section 68B.2A.

1.7(2) Board guidelines. In determining whether to grant consent, the board shall take the following guidelines into consideration:

a. The duties and functions performed by the board member seeking consent are not related to the regulatory authority of the agency over the person to which the goods or services will be sold.

b. The selling of the goods or services does not affect the board member’s duties or functions for the board.

c. The selling of the goods or services will not cause the board member to advocate on behalf of the person to the board.

d. The selling of the goods or services does not cause the board member to sell goods or services to the board on behalf of the person.

e. Selling of the goods or services will not result in a conflict of interest as provided in Iowa Code section 68B.2A.

f. The request complies with the procedural requirements of subrule 1.7(1).

A board member requesting consent shall not participate in the board vote on whether or not to grant consent.

1.7(3) Board decision. The board shall issue a written consent or denial within 14 calendar days following the date the request was filed. The deadline may be extended by agreement of both the board member and the board. If the request is denied, the board shall state the reasons for the denial.

1.7(4) Appeal of denial. Board denial of a request to sell goods or services constitutes final agency action for purposes of seeking judicial review.

1.7(5) Authorized sales.

a. A board member may sell goods or services to a person regulated by the board if those goods or services are routinely provided to the general public as part of that person’s regular business practice. However, upon request by the board, the board member shall make full factual disclosure regarding the sale to ensure compliance with this rule and Iowa Code Supplement section 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, section 5.

b. Individual application and approval are not required for a sale authorized by this subrule unless there are unique facts surrounding a particular sale that would cause the sale to affect the board member’s duties or functions on the board, that would give the buyer an advantage in dealing with the board, or would otherwise present a conflict of interest.

1.7(6) Consent not a defense. Consent granted by the board under this rule shall not constitute a defense to a complaint alleging a violation of any law or rule. It is the responsibility of the board member to ensure compliance with all applicable laws and rules.

1.7(7) Employee sales. The procedure for a board employee to request consent to sell goods or services to a person subject to the board’s regulatory authority is governed by rule 351—6.11(68B).

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

This rule is intended to implement Iowa Code Supplement section 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, section 5.

ARC 3647B

**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]**

ARC 3646B

**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]**

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code Supplement section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The proposed amendments reflect the renumbering of the Board's current rules on the imposition of civil penalties for late-filed campaign disclosure reports.

The proposed amendments do not contain a waiver provision, but the rules imposing civil penalties do contain a waiver provision.

Any interested person may make written comments on the proposed amendments on or before October 5, 2004. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

The amendments are intended to implement Iowa Code Supplement section 68B.32A(8).

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

The following amendments are proposed.

ITEM 1. Amend subrule 4.11(2) as follows:

4.11(2) Failure to notify board. A person that fails to notify the board at the time of filing a voluntary statement of organization that the \$750 financial filing threshold was not exceeded shall file a disclosure report on or before each appropriate due date until the person notifies the board that the \$750 threshold was not exceeded. The failure to file a disclosure report subjects the person to civil penalties pursuant to 351—Chapter 10 rule 351—4.59(68B).

ITEM 2. Amend subrule 4.27(5) as follows:

4.27(5) Failure to file. A person that fails to timely file an independent expenditure statement shall be subject to the imposition of civil penalties pursuant to 351—subrule 10.2(7) 351—subrule 4.59(7).

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code Supplement section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 8, "Executive Branch Lobbying," Iowa Administrative Code.

The proposed amendment reflects the current information that executive branch lobbyists disclose on their executive branch lobbyist registration statements. The proposed amendment also reflects the upcoming implementation of the Board's enhanced electronic filing system that will now allow executive branch lobbyists to file registrations via the Internet.

The proposed amendment does not contain a waiver provision as no new obligations are being imposed.

Any interested person may make written comments on the proposed amendment on or before October 5, 2004. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 68B.36(1).

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

The following amendment is proposed.

Rescind subrules 8.7(2) and 8.7(3) and adopt the following **new** subrules in lieu thereof:

8.7(2) Place of filing. Executive branch lobbyist registration statements shall be filed with the board at 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Registration statements may also be filed by fax at (515)281-3701 or electronically through the board's Web site at www.iowa.gov/ethics.

8.7(3) Information required. The following information shall be disclosed on the executive branch lobbyist registration statement:

a. The lobbyist's name and business address. The lobbyist's residential address and E-mail address are optional. The lobbyist shall indicate whether mail should be sent to the lobbyist's office or residence.

b. A general description of the issues or interests that the lobbyist might follow and a list of agencies or offices that may be lobbied.

c. Whether or not the lobbyist is a governmental official representing the official position of the lobbyist's department, agency, or governmental entity.

d. Each of the lobbyist's clients, including the name and address of the client, a contact person and job title, and the

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

contact person's telephone number. An E-mail address is optional.

e. The lobbyist's signature and date of filing. Registration statements filed electronically through the board's Web site are deemed signed and dated when filed.

ARC 3644B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code Supplement section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 8, "Executive Branch Lobbying," Iowa Administrative Code.

The proposed amendment clarifies the retention and availability of reports and statements filed with the Board by executive branch lobbyists and executive branch lobbyist clients.

The proposed amendment does not contain a waiver provision as no obligation is being imposed on the regulated community.

Any interested person may make written comments on the proposed amendment on or before October 5, 2004. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code Supplement section 68B.32A(4).

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

The following amendment is proposed.

Adopt the following **new** rule 351—8.20(68B):

351—8.20(68B) Retention and availability of filed forms.

8.20(1) Public record. All forms filed under this chapter are public records and shall be available in the board office for inspection and copying. A filed form shall be retained by the board for a period of at least five years from the date the form was filed.

8.20(2) Internet access. Forms filed under this chapter shall be accessible for viewing via the board's Web site at www.iowa.gov/ethics as follows:

a. A list of registered executive branch lobbyists and executive branch lobbyist clients for the current calendar year and the two previous calendar years.

b. An executive branch periodic lobbyist report for a period of at least three years from the report due date.

c. An executive branch lobbyist client report for a period of at least three years from the report due date.

d. A reception reporting form for a period of at least three years from the date the form was filed.

This rule is intended to implement Iowa Code Supplement section 68B.32A(4).

ARC 3670B

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code Supplement sections 97B.4 and 97B.15, the Iowa Employees' Retirement System (IPERS) hereby gives Notice of Intended Action to rescind 581—Chapter 21, "Iowa Public Employees' Retirement System"; to amend 495—Chapter 4, "Employers"; and to adopt 495—Chapter 7, "Service Credit and Vesting Status," Chapter 8, "Service Purchases," Chapter 9, "Refunds," Chapter 10, "Interest on Accumulated Contributions," Chapter 11, "Application for, Modification of, and Termination of Benefits," Chapter 12, "Calculation of Monthly Retirement Benefits," Chapter 13, "Disability for Regular and Special Service Members," Chapter 14, "Death Benefits and Beneficiaries," Chapter 15, "Dividends," Chapter 16, "Assignments," Chapter 20, "Recognition of Agents," and Chapter 21, "Mergers," Iowa Administrative Code.

The purpose of this proposed rule making is to complete the transfer of rules governing the Iowa Public Employees' Retirement System previously published at 581—Chapter 21 to agency number 495 of the Iowa Administrative Code. The transfer restructures prior rules to achieve a more logical order, combines scattered rules on the same subject matter, and deletes superseded and duplicative text. The proposed rule making also implements amendments enacted in 2004 Iowa Acts, House File 2262.

These amendments were prepared after consultation with the IPERS' legal, benefits, investments and operational units, and the members of the investment board and the benefits advisory committee.

There are no waiver provisions included in the proposed amendments.

Any person may make written suggestions or comments on the proposed amendments on or before October 5, 2004. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator at IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact the IPERS Administrative Rules Coordinator at (515)281-3081. Comments may also be submitted by fax to (515)281-0045, or by E-mail to info@ipers.org.

There will be a public hearing on October 5, 2004, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Persons who attend the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject matter of the amendments.

These amendments are intended to implement Iowa Code Supplement chapter 97B as amended by 2004 Iowa Acts, House File 2262.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

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

The following amendments are proposed.

ITEM 1. Rescind 581—Chapter 21.

ITEM 2. Amend rule 495—4.3(97B) by adding the following **new** subrules:

4.3(9) Erroneously reported wages for employees not covered under IPERS. Employers that erroneously report wages for employees who are not covered under IPERS may secure a warrant or credit, as elected by the employer, for the employer's contributions by filing an IPERS periodic wage reporting adjustments form available from IPERS. An employer that files a periodic wage reporting adjustments form requesting a warrant or credit shall receive a warrant or credit for both the employer and employee contributions made in error. The employer is responsible for returning the employee's share and for filing corrected federal and state wage reporting forms. Warrants will not be issued by IPERS if the amount due is less than \$1. In such cases, the credit will be transferred to the employer's credit memo. Under no circumstance shall the employer adjust these wages by underreporting wages on a future periodic wage reporting document. Wages shall never be reported as a negative amount. An employer that completes the employer portion of an employee's request for a refund on IPERS refund application form will not be permitted to file a periodic wage reporting adjustments form for that employee for the same period of time.

4.3(10) Contributions paid on wages in excess of the annual covered wage maximum. Effective for wages paid in calendar years beginning on or after January 1, 1995, IPERS shall issue to each affected employer a credit or a warrant, as requested by the employer, of both employer and employee contributions paid on wages in excess of the annual covered wage maximum for a calendar year. A report will be forwarded to each such employer detailing each employee for whom wages were reported in excess of the covered wage ceiling. Warrants will not be issued if the amount due is less than \$1. In such cases, the credit will be transferred to the employer's credit memo. The employer is responsible for returning the employee's share of excess contributions. When employees have simultaneous employment with two or more employers and as a result contributions are made on wages in excess of the annual covered wage maximum, warrants or credits for the excess employer and employee contributions shall be issued to each employer in proportion to the amount of contributions paid by the employer.

4.3(11) Termination within less than six months of the date of employment. If an employee hired for permanent employment terminates within six months of the date of employment, the employer may file IPERS' form for reporting adjustments to receive a warrant or a credit, as elected by the employer, for both the employer's and employee's portions of the contributions. It is the responsibility of the employer to return the employee's share. "Termination within less than six months of the date of employment" means employment is terminated prior to the day before the employee's six-month anniversary date. For example, an employee hired on February 10 whose last day is August 8 would be treated as having resigned within less than six months. An employee hired on February 10 whose last day is August 9 (the day before the six-month anniversary date, August 10) would be treated as having worked six months and would be eligible for a refund.

4.3(12) Reinstatement following an employment dispute. Employees who are reinstated following an employment dispute may restore membership service credit as described in 495—9.5(97B).

ITEM 3. Adopt the following **new** chapters:

CHAPTER 7

SERVICE CREDIT AND VESTING STATUS

495—7.1(97B) Service credit.

7.1(1) General.

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

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

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

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

7.1(2) Service credit for persons employed by institutions operating on a nine-month basis. An employee working in a position for a school district or other institution which operates on a nine-month basis shall be credited with a year of service for each year in which three quarters of coverage are recorded, if the employee returns to covered employment the next operating year. The foregoing sentence shall be implemented as follows: A member will receive credit for the third quarter when no wages are reported in that quarter if the member works the following three calendar quarters and had covered wages or was on an approved leave of absence in the immediately preceding second quarter. An individual employed on a fiscal- or calendar-year basis shall be credited with a year of service for each year in which four quarters of coverage are recorded.

7.1(3) Approved leave periods.

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

b. Reentry into public employment by an employee on military leave can be achieved if the individual accepts employment with a covered employer. Reemployment may begin anytime within 12 months of the individual's discharge

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

from military service or, if longer, within the period provided under USERRA. Upon reemployment the member shall receive credit for all service to which the member is entitled pursuant to USERRA.

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

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

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

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

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

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

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

gan before November 27, 1996, and took a refund before such date. The provisions of the subrule requiring employers to certify all leaves of absence using an affidavit furnished by IPERS shall apply to all requests for leave of absence credit filed after November 27, 1996, regardless of when the leave of absence was granted.

495—7.2(97B) Prior service.**7.2(1) General.**

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

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

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

a. Prior service credit shall be given for a period of vacation or leave of absence authorized by the employer not to exceed 12 months. If a period of vacation or leave of absence exceeds 12 months, prior service credit shall be given for the first 12 months only. However, if a period of vacation or leave of absence was granted for 12 months or less, and renewed for 12 months or less, all periods of vacation or leave of absence shall be included as prior service, even though all periods added together exceed 12 months.

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

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

7.2(3) Prior service credit for military service.

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

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

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

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

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

b. A teacher will receive credit for a full year in which three quarters of coverage are reported or three quarters of service are certified by the custodian of the records if the

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

teacher had a contract for the following school year. IPERS may require the submission of a copy of that contract.

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

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

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

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

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

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

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

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

7.2(8) Proof of prior service.

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

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

c. Proof of prior service shall:

- (1) Refer to covered employment in Iowa;
- (2) Be signed by the proper authority;
- (3) Refer to the member in question;
- (4) Show that the position held is one for which prior service credit can be given;

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

(6) Take into consideration information on the reverse side of the form; and

(7) Contain certification showing the highest gross wage earned in any 12 consecutive month period before July 4, 1953, and refer to a period ending before that date. IOASI records may be used for verification of wages if necessary, and this information is noted on the application for monthly retirement allowance.

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

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

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

495—7.3(97B) Vesting status.

7.3(1) General.

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

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

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

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

These rules are intended to implement 2004 Iowa Acts, House File 2262, sections 5, 9, and 22, and Iowa Code Supplement sections 97B.1A, 97B.1A(13), 97B.1A(20), 97B.1A(25), and 97B.43.

CHAPTER 8
SERVICE PURCHASES

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

8.1(1) Prior service buy-back.

a. Effective July 1, 1990, a member who was active, vested or retired on or after July 1, 1978, and who made contributions to IOASI between January 1, 1946, and June 30, 1953, and took a refund of those contributions, may buy back the amount of that refund plus interest in order to establish

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

quarters of service covered by the refund. Less than a full quarter of service will be considered equivalent to a full quarter of service. A teacher who has three quarters of service and a contract for the following year will be granted four quarters of service. IPERS may require the submission of a copy of the contract.

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

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

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

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

8.1(2) Service credit for other public employment.

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

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

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

A quarter of credit will be given for each quarter the employee received wages.

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

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

d. Members eligible to complete the buy-in may buy the entire period of service for a public employer or may buy credit in increments of one or more calendar quarters. The quarters need not be specifically identified to particular calendar quarters. A period of service is defined as follows: (1) if a member was continuously employed by an employer,

the entire time is one period of employment, regardless of whether a portion or all of the service was covered by one or more retirement systems; and (2) if a member is continuously employed by multiple employers within a single retirement system, the entire service credited by that retirement system is one period of employment. A member with service credit under another public employee retirement system who wishes to transfer only a portion of the service value of the member's public service in another public system to IPERS must provide a waiver of that service time to IPERS together with proof that the other public system has accepted this waiver and allowed partial withdrawal of service credit. Members are allowed to purchase time credited by the other public employer as a leave of absence in the same manner as other service credit. However, members wishing to receive free credit for military service performed while in the employ of a qualifying non-IPERS covered public employer must purchase the entire period of service encompassing the service time for that public employer or in the other retirement system, excluding the military time. Veterans' credit originally purchased in another retirement system may be purchased in the same manner as other service credit.

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

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

8.1(3) IPERS buy-back. Effective July 1, 1996, only vested or retired members may buy back previously refunded IPERS credit. For the period beginning July 1, 1996, and ending June 30, 1999, an eligible member is required to make membership contributions equal to the accumulated contributions received by the member for the period of service being purchased plus accumulated interest and interest dividends. Effective July 1, 1999, an eligible member must pay the actuarial cost of a buy-back, as certified by IPERS. In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that: (1) the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age; and (2) if gender-distinct mortality assumptions are used in the annual actuarial valuation, the system shall use blended mortality assumptions reasonably representative of the system's experience.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase. If IPERS changes the service purchase mortality assumptions, all outstanding service purchase quotes shall be binding for the remainder of the periods for which the cost quotes were issued. A cost quote for a service purchase shall expire six months after the date printed on the cost quote letter. After that time, a new cost quote must be obtained for any quarters not previously purchased.

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

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

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

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

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

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

8.1(5) Veterans' credit.

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

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

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

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

8.1(6) Legislative members.

a. Active members. Persons who are members of the Seventy-first General Assembly or a succeeding general assembly during any period beginning July 4, 1953, may, upon proof of such membership in the general assembly, make contributions to the system for all or a portion of the period

of such service in the general assembly. The contributions made by the member shall be determined in the same manner as provided in paragraph 8.1(2)"f."

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

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

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

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

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

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

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

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

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

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

c. Effective July 1, 1994, a person who is employed before that date with an area community college may file a one-time irrevocable election form with IPERS and the employer electing participation in an alternative plan. The election form must be postmarked by December 31, 1995. If a person is employed July 1, 1994, or later, the person may file a one-time election form with IPERS and the employer electing participation in the alternative plan. The election 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

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

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.

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

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

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

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

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

8.1(11) Federal Peace Corps program service credit under Iowa Code section 97B.80C. 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.80C. The contributions required under this subrule shall be in an amount equal to the actuarial cost of the service purchase as determined under paragraph 8.1(2)"f."

8.1(12) 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.80C, may purchase up to 20 quarters of service credit for such employment, subject to the requirements of Iowa Code section 97B.80C. Members with service credit for such em-

ployment 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 paragraph 8.1(2)"f."

8.1(13) 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. Counties shall be the covered employers responsible for contributing the employer share of such wage adjustment. Additional service credit for employment as a patient advocate may be purchased as follows:

(1) For purchases of membership service made prior to July 1, 2002, the cost for each quarter shall be the total of all employer and employee contributions on the covered wages that would have been reported to IPERS under Iowa Code chapter 97B for the applicable period of service, divided by the total quarters covered by such period of service. No interest shall be charged in determining said amounts.

(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 8.1(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.

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

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

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

8.3(2) If the member's total benefit at retirement fails the fully reduced IRC Section 415(b) dollar limit test, and the

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

member made one or more service purchases, IPERS shall perform the applicable IRC Section 415 tests, with adjustments for posttax service purchases and other posttax contributions, and pay excess amounts, if any, under a qualified benefits arrangement authorized under Iowa Code section 97B.49I.

8.3(3) IPERS shall not permit the purchase of nonqualified permissive service credit, 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 nonqualified service purchased cannot exceed 20.

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

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

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

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

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

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

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

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

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

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

If the member retired under Option 4 or 6, IPERS must be provided with either the date of death or the date of birth, as

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

If the member retired under Option 5, a service purchase cost quote shall also include information on how many months are remaining on the guaranteed 10-year payout.

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

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

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

8.5(2) Additional service purchase procedures.

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

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

c. Members covered under another retirement plan. Members who wish to buy service credit for all employment that is covered by another retirement plan qualified under IRC Section 401 (or would qualify if submitted to the IRS under IRC Section 401), IRC Section 403 or 457 and similar plans and retirement pay from the United States government for active duty in the armed forces (except retirement pay for nonregular service pursuant to 10 U.S.C. Sections 12731-12739) must waive their right to benefits based on the service credit that is being purchased under IPERS. If a waiver is not obtained, however, service purchases for such employment may still be made, but shall be limited to 20 quarters.

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

8.5(3) Additional service purchase limitations.

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

b. Service purchases characterized as nonqualified permissive service credit under IRC Section 415(n) shall not ex-

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

ceed, in the aggregate, 20 quarters. This limit is an aggregate limit that applies to all quarters categorized as nonqualified permissive service credit.

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

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

e. Purchases for service credit for employment outside the United States. Service credit for employment with a foreign employer is limited to purchases of service with a qualified Canadian governmental entity as permitted under Iowa Code Supplement section 97B.80C as amended by 2004 Iowa Acts, House File 2262, section 53, or with the federal Peace Corps program under Iowa Code section 97B.80C.

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

These rules are intended to implement 2004 Iowa Acts, House File 2262, sections 5, 22, 49 to 56 and 60, and Iowa Code Supplement sections 97B.1A, 97B.1A(13), 97B.1A(20), 97B.43, 97B.80 and 97B.80C.

CHAPTER 9 REFUNDS

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

9.1(1) Employee accumulated contributions. Upon receiving an eligible member's application for refund, IPERS

shall pay to the terminated member the amount of the employee accumulated contributions currently reported to, and processed by, IPERS as of the date of the refund. Upon reconciliation of the final employee contributions for that member, a supplemental refund of the employee accumulated contributions will be paid if funds remain in the member account.

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

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

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

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

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

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

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

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

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

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

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

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

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

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

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

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

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

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

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

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

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

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

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

9.4(5) Effective July 1, 2004, employers shall only be required to certify the last date the member is considered an employee, and not the date of the last paycheck from which IPERS contributions will be deducted. Further, effective July 1, 2004, an employee must sever all covered employment for 30 days after the date the employee was last considered an employee, and not for 30 days after the date of the last paycheck containing IPERS covered wages.

495—9.5(97B) Reinstatement following an employment dispute.

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

495—9.6(97B) Refund followed by commencement of disability benefits under Iowa Code section 97B.50(2).

If a vested member terminates covered employment, takes a refund, and is subsequently approved for disability under the federal Social Security Act or the federal Railroad Retirement Act, the member may reinstate membership service credit for the period covered by the refund by paying the actuarial cost as determined by IPERS' actuary. Repayments must be made by:

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

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

These rules are intended to implement 2004 Iowa Acts, House File 2262, section 47, and Iowa Code Supplement sections 97B.50 and 97B.53.

CHAPTER 10

INTEREST ON ACCUMULATED CONTRIBUTIONS

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

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

a. For calendar years prior to January 1, 1997, statutory interest is a credit to the accumulated contributions of active

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

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

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

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

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

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

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

These rules are intended to implement 2004 Iowa Acts, House File 2262, sections 42 to 45 and 47, and Iowa Code Supplement sections 97B.52, 97B.53 and 97B.70.

CHAPTER 11
APPLICATION FOR, MODIFICATION OF,
AND TERMINATION OF BENEFITS

495—11.1(97B) Application for benefits.

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

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

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

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

- a. United States census record;
- b. Military record or identification card;
- c. Naturalization record;
- d. A marriage license showing age of applicant in years, months and days on date of issuance;
- e. A life insurance policy;
- f. Records in a school's administrative office;
- g. An official form from the United States Immigration and Naturalization Service, such as the "green card," containing such information;
- h. Driver's license or Iowa nondriver identification card;
- i. Adoption papers;

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

j. A family Bible record. A photostatic copy will be accepted with certification by a notary that the record appears to be genuine; or

k. Any other document or record ten or more years old, or certification from the custodian of such records which verifies the day, month, and year of birth.

If the member, the member's representative, or the member's beneficiary is unable or unwilling to provide proof of birth, or in the case of death, proof of death, IPERS may rely on such resources as it has available, including but not limited to records from the Social Security Administration, Iowa division of records and statistics, IPERS' own internal records, or reports derived from other public records, and other departmental or governmental records to which IPERS may have access.

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

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

11.2(1) Normal retirement.

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

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

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

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

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

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

the member actually terminates all employment with employers covered under Iowa Code chapter 97B.

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

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

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

11.2(5) Mandatory distribution of small inactive accounts. As soon as practicable after July 1, 2004, IPERS shall distribute small inactive accounts to members and beneficiaries as authorized in 2004 Iowa Acts, House File 2262, section 28.

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

11.3(1) General. A member shall submit a written application to IPERS setting forth the retirement date, provided the member has attained at least age 55 by the retirement date and the retirement date is after the member's last day of service. A member's first month of entitlement shall be no earlier than the first day of the first month after the member's last day of service or, if later, the month provided for under subrule 11.3(2).

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

11.3(2) Additional FME provisions.

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

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

c. Effective January 1, 2001, employees of a school corporation who are permitted by the terms of their employment contracts to receive their annual salaries in monthly installments over periods ranging from 9 to 12 months may retire at the end of a school year and receive trailing wages through the end of the contract year if they have completely fulfilled their contract obligations at the time of retirement. For purposes of this paragraph, "school corporation" means body politic described in Iowa Code sections 260C.16 (community colleges), 273.2 (area education agencies) and 273.1 (K-12 public schools). For purposes of this paragraph, "trailing wages" means previously earned wage payments made to such employees of a school corporation after the first month

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

of entitlement. This exception does not apply to hourly employees, including those who make arrangements with their employers to hold back hourly wages for payment at a later date, to employees who are placed on sick or disability leave or leave of absence, or to employees who receive lump sum leave, vacation leave, early retirement incentive pay or any other lump sum payments in installments.

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

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

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

495—11.4(97B) Termination of monthly retirement allowance. Retirement benefits payable to a member shall terminate the day on which the member's death occurs. For a death occurring on or after July 1, 1998, a member's retirement benefit shall terminate after payment is made to the member for the entire month during which the member's death occurs. Death benefits shall begin with the month following the month in which the member's death occurs.

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

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

11.5(1) Bona fide retirement—general. To receive retirement benefits, a member under the age of 70 must officially leave employment with all IPERS covered employers, give up all rights as an employee, and complete a period of bona fide retirement. A period of bona fide retirement means four or more consecutive calendar months for which the member qualifies for monthly retirement benefit payments. The qualification period begins with the member's first month of entitlement for retirement benefits as approved by IPERS. A

member may not return to covered employment before filing a completed application for benefits. Notwithstanding the foregoing, the continuation of group insurance coverage at employee rates for the remainder of the school year for a school employee who retires following completion of services by that individual shall not cause that person to be in violation of IPERS' bona fide retirement requirements.

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

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

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

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

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

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

11.5(2) Bona fide retirement—licensed health care professionals. For retirees whose first month of entitlement is no earlier than July 2004 and no later than June 2006, a retiree who is reemployed as a "licensed health care professional" by a "public hospital" does not have a bona fide retirement until all employment with covered employers is terminated for at least one month. In order to receive retirement benefits, the member must file a completed application for benefits form before returning to any employment with a covered employer.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

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

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

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

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

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

refund shall not be made. Furthermore, if such elected official is reemployed in covered employment, the election to revoke IPERS coverage for the elective position shall remain in effect, and the public official shall not be eligible for new IPERS coverage for such elected position.

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

If a member takes a refund in violation of the bona fide refund requirements of Iowa Code section 97B.53(4), the member shall have 30 days from the date of written notice by IPERS to repay the refund in full without interest. Thereafter, in order to receive service credit for the period covered by the refund, the member shall be required to buy back the period of service at its full actuarial cost.

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

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

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

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

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

11.6(4) Rollover fees. 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 may assess a \$5 administrative fee for each additional rollover beyond the first one. The fee will be deducted from the gross amount of each distribution, less federal and state income tax.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

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

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

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

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

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

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

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

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

11.7(4) Overpayment made to a person who violates a bona fide severance period. If a recipient takes a refund and does not complete the required period of severance, the recipient shall receive a written notice of overpayment, including the reason for the overpayment, the amount of the overpayment, and the opportunity to repay the overpayment in full without interest. The recipient shall have 30 days after the date of notice to repay the full amount of the refund with-

out interest. If the repayment is not made within 30 days after the date of notice, the person shall receive no credit for the period of employment covered by the refund and shall be required to buy back the refund at its actuarial cost if the member later decides that the member wants service credit for any portion of the period of employment covered by the refund.

11.7(5) Interest charges.

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

b. Overpayments as the result of fraud. If the overpayment of benefits, other than an overpayment that results from a violation described in subrule 11.7(4), was the result of wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of 5 percent on the outstanding balance, beginning on the date of the overpayment(s).

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

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

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

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

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

These rules are intended to implement 2004 Iowa Acts, House File 2262, sections 13, 16, 23, 25, 26 to 48 and 62, and Iowa Code Supplement sections 97B.4, 97B.15, 97B.25, 97B.38, 97B.40, 97B.45, 97B.47, 97B.48, 97B.48A, 97B.49A to 97B.49I, 97B.50, 97B.51, 97B.52, 97B.52A, 97B.53, and 97B.53B.

CHAPTER 12

CALCULATION OF

MONTHLY RETIREMENT BENEFITS

495—12.1(97B) General.

12.1(1) Formula benefit versus money purchase benefit. If a member has four or more complete years of service credit in IPERS, a monthly payment allowance will be paid in accordance with the formulas set forth in Iowa Code sections 97B.49A through 97B.49I, the applicable paragraphs of this chapter and the option the member elects pursuant to Iowa

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

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

12.1(2) Reduction for early retirement.

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

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

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

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

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

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

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

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

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

12.1(5) Members employed before January 1, 1976, who qualified for prior service credit. Members employed before January 1, 1976, who qualified for prior service credit shall be eligible to receive a monthly formula benefit of eight-tenths of one percent multiplied by each year of prior service

multiplied by the monthly rate of the member's total remuneration during the 12 consecutive months of prior service for which the total remuneration was the highest, disregarding any monthly rate amount in excess of \$250, plus three-tenths of one percent of the monthly rate amount not in excess of \$250 for each year in which accrued liability for benefit payments created by the abolished system is funded.

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

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

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

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

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

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

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

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

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

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

(4) For each member retiring on or after July 1, 2003, 60 percent plus, if applicable, an additional .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.

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

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

12.1(7) Average covered wages.

a. "Three-year average covered wage" means a member's covered calendar year wages averaged for the highest three years of the member's service. However, if a member's final quarter of a year of employment does not occur at the end of a calendar year, IPERS may determine the wages for the third year by computing the final quarter or quarters of wages to complete the year. The computed year wages shall not exceed the maximum covered wage in effect for that calendar year. Furthermore, for members whose first month of entitlement is January of 1999 or later, the computed year shall not exceed the member's highest actual calendar year of covered wages by more than 3 percent.

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

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

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

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

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

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

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

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

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

495—12.2(97B) Initial benefit determination.

12.2(1) The initial monthly benefit for the retired member 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(24) and subrule 12.1(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.

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

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

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

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

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

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

a. The option adjustment factor is determined as follows:

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

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

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

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

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

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

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

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

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

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

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

12.3(5) IPERS shall compare the member's current benefit to the adjusted benefit determined as provided 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.

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

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

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

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

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

- (1) Members who have only regular service credit.
- (2) Members who have 22 years of special service credit.
- (3) Members who have 30 years of regular service.
- (4) Members with less than 16 total quarters of service.

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

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

b. Increases in the benefit formula under this rule shall be determined as provided under Iowa Code section

97B.49D. The percentage multiplier shall only be increased for total years of service over 30.

c. Years of service shall be utilized as follows:

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

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

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

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

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

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

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

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

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

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

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

495—12.5(97B) Money purchase benefits.

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

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

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

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

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

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

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

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

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

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

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

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

applies solely to special service members, and any reference to members in this rule shall only apply to special service members.

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

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

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

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

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

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

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

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

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

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

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

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

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

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

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

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

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

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

- b. Employers shall be required to complete IPERS wage reporting forms for reemployed individuals which shall reflect the prior year's wage payments on a month-to-month basis. These reports shall be used by IPERS to determine the

amount which must be recovered to offset overpayments in the prior calendar year due to reemployment wages.

- c. A member may elect in writing to have the member's monthly retirement allowance suspended in the month in which the member's remuneration exceeds the amount of remuneration permitted under this rule in lieu of receiving a reduced retirement allowance under paragraph "a" of this subrule. If the member's retirement allowance is not suspended timely, the overpayment will be recovered pursuant to paragraph "a" of this subrule. The member's retirement allowance shall remain suspended until the earlier of January of the following calendar year or the member's termination of covered employment. The member's election shall remain binding until revoked in writing.

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

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

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

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

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

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

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

- e. If a member previously elected IPERS Option 1, is eligible for an increase in the Option 1 monthly benefits, and elects to receive the increase in the member's monthly benefits, the member's Option 1 death benefit shall also be increased if the investment is at least \$1,000. The amount of the increase shall be at least the same percentage of the maximum death benefit permitted with respect to the reemployment as the percentage of the maximum death benefit elected at the member's original retirement. In determining the increase in Option 1 death benefits, IPERS shall round up to the nearest \$1,000. For example, if a member's investment for a

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

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.

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

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

j. A retired reemployed member who has attained the age of 70 may take an actuarial equivalent (AE) payment while still working. However, such a member must be out of covered employment for at least one full calendar month before taking an additional AE payment.

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

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

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

12.9(2) If a member, upon attaining the age of 70 or later, requests a retirement allowance without terminating employment and the member's monthly benefit amount under Op-

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

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

These rules are intended to implement 2004 Iowa Acts, House File 2262, sections 23, 25 to 29, and 31 to 38, and Iowa Code Supplement sections 97B.1A, 97B.1A(24), 97B.15, 97B.25, 97B.45, 97B.47 to 97B.48A, 97B.49A to 97B.49I and 97B.51.

CHAPTER 13

DISABILITY FOR REGULAR AND
SPECIAL SERVICE MEMBERS**495—13.1(97B) Disability for persons not retiring under Iowa Code section 97B.50A.**

13.1(1) The following standards apply to a retirement due to disability under the provisions of Iowa Code section 97B.50(2):

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 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.

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

13.1(2) If a member returns to covered employment after achieving a bona fide retirement, the benefits being provided to the member under Iowa Code section 97B.50(2) "a" or "b" shall be suspended or reduced as follows. If the member has not attained the age of 55 upon reemployment, benefit payments shall be suspended in their entirety until the member subsequently terminates employment, applies for, and is approved to receive benefits under the provisions of Iowa Code chapter 97B. If the member has attained the age of 55 or older upon reemployment, the member shall continue to receive

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

monthly benefits adjusted as follows. Monthly benefits shall be calculated under the same benefit option that was first selected, based on the member's age, years of service, and the applicable reductions for early retirement as of the month that the member returns to covered employment. The member's benefit shall also be subject to the applicable provisions of Iowa Code section 97B.48A pertaining to reemployed retired members.

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

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

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

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

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

13.2(3) Scheduling of appointments. Upon receipt and forwarding of the application and sufficient medical records to the medical board, the disability retirement benefits officer shall establish an appointment for the applicant to be seen by the medical board in Iowa City. The member shall be notified by telephone and in writing of the appointment, and shall be given general instructions about where to go for the examinations. The appointment for the examinations shall be no later than 60 days after the completed application, including sufficient medical records, is provided. All examinations must be scheduled and completed on the same date. The

member shall also be notified about the procedures to follow for reimbursement of travel expenses and lodging. Fees for physical examinations and medical records costs shall be paid directly by IPERS pursuant to its contractual arrangements with the medical providers required to implement Iowa Code section 97B.50A.

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

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

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

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

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

13.2(5) Member and employer comments. Upon receipt by the system, the medical board's determination regarding the existence or nonexistence of a permanent disability shall be distributed to the member and to the employer for review. The member and the employer may forward to the system written statements pertaining to the medical board's findings within ten days of transmittal. If relevant medical information not considered in materials previously forwarded to the medical board is contained within such written statements, the system shall submit such information to the medical board for review and comment.

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

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

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

a complete file has been returned to IPERS for the initial disability determination.

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The name, address, and social security number of the member or employee number of the employer;

b. A reference to the decision from which the appeal is being made;

c. The fact that an appeal from the decision is being made;

d. The grounds upon which the appeal is based;

e. Additional medical or other evidence to support the appeal; and

f. The request that a different decision be made by IPERS.

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

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

a. The informant's name, address, telephone number, and relationship to the disability recipient; and

b. A statement pertaining to the circumstances that prompted the notification, such as activities which the informant believes are inconsistent with the alleged disability.

c. Anonymous calls shall not constitute acceptable notification.

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

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

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

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

For purposes of calculating the income offsets required under Iowa Code section 97B.50A, IPERS shall convert any lump sum workers' compensation award, disability insur-

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

ance payments, or similar lump sum awards for the same illnesses or injuries to an actuarial equivalent, as determined by IPERS.

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

CHAPTER 14

DEATH BENEFITS AND BENEFICIARIES

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

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

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

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

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

495—14.3(97B) Designation of beneficiaries.

14.3(1) Designation of beneficiaries. To designate a beneficiary, the member must complete an IPERS designation of beneficiary form, which must be filed with IPERS. The designation of a beneficiary by a retiring member on the application for monthly benefits revokes all prior designation of beneficiary forms. IPERS may consider as valid a designation of beneficiary form filed with the member's employer

prior to the death of the member, even if that form was not forwarded to IPERS prior to the member's death. If a retired member is reemployed in covered employment, the most recently filed beneficiary form shall govern the payment of all death benefits for all periods of employment. Notwithstanding the foregoing sentence, a reemployed IPERS Option 4 retired member 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 retired member dies without filing a new beneficiary form, the death benefits accrued for the period of reemployment shall be paid to the member's contingent annuitant, unless the contingent annuitant has died or been divorced from the member. If the contingent annuitant has been divorced from the member, any portion of the 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.

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

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

495—14.5(97B) Commuted lump sums.

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

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

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

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

14.6(1) Where the estate is open, payment shall be made to the administrator or executor.

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

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

following documents shall be presented as supporting evidence:

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

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

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

495—14.7(97B) Waiver of beneficiary rights. A named beneficiary of a deceased member may waive current and future rights to payments to which the beneficiary would have been entitled. The waiver of the rights shall occur prior to the receipt of a payment from IPERS to the beneficiary. The waiver of rights shall be binding and will be executed on a form provided by IPERS. The waiver of rights may be general, in which case payment shall be divided equally among all remaining designated beneficiaries or, if there are none, to the member's estate. The waiver of rights may also expressly be made in favor of one or more of the member's designated beneficiaries or the member's estate. If the waiver of rights operates in favor of the member's estate and no estate is probated or claim made, or if the executor or administrator expressly waives payment to the estate, payment shall be paid to the member's surviving spouse unless there is no surviving spouse or the surviving spouse has waived the surviving spouse's rights. In that case, payment shall be made to the member's heirs excluding any person who waived the right to payment. Any waiver filed by an executor, administrator, or other fiduciary must be accompanied by a release acceptable to IPERS indemnifying IPERS from all liability to beneficiaries, heirs, or other claimants for any waiver executed by an executor, administrator, or other fiduciary.

495—14.8(97B) Beneficiaries under the age of 18. Payment may be made to a conservator if the beneficiary is under the age of 18 and the total dollar amount to be paid by IPERS to a single beneficiary is \$10,000 or more. Payment may be made to a custodian if the total dollar amount to be paid by IPERS to a single beneficiary is less than \$10,000.

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

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

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

spect to the retired or retired reemployed member's accumulated contributions account.

495—14.12(97B) Preretirement death benefits.

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

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

a. Definitions.

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

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

"Implementation date" means January 1, 2001.

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

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

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

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

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

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

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

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

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

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

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

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

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

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

(3) A beneficiary who is a surviving spouse must file a claim for a single life annuity within the period specified in subparagraph (1) or (2), as applicable, or by the date that the member would have attained the age of 70½, whichever period is longer.

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

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

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

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

(1) IPERS shall calculate a member's retirement benefit at earliest normal retirement age under IPERS Option 2, based on the member's covered wages and service credits at the date of death, and the retirement benefit formula in effect in the month following the date of death.

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

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

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

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

(2) A beneficiary's first month of entitlement is the month after the date of the member's death.

(3) Effective for claims filed after June 30, 2004, no retroactive payments of the single life annuity shall be made under this subrule.

(4) Effective for claims filed after June 30, 2004, the beneficiary whose single life annuity is less than \$600 per

year shall be able to receive only the lump sum payment under this rule.

i. Eligibility for favorable experience dividend (FED) payments. Any sole beneficiary who is eligible for and elects to receive a single life annuity under this subrule shall also qualify for the dividend payments authorized under rule 495—15.2(97B), subject to the requirements of that rule.

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

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

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

(3) Beneficiaries of members who had elected IPERS Option 4 or 6 may also elect to receive the accumulated employer and accumulated employee contributions described in subparagraph 14.12(2)"j"(2), in lieu of the increased monthly annuity amount. Notwithstanding subparagraph (2) above, if the member elected IPERS Option 5 at retirement, the lump sum amount payable under this paragraph shall be the greater of the applicable commuted lump sum or the accumulated employee and accumulated employer contributions.

k. Inactive members with less than 16 quarters of service credit. For deaths occurring after June 30, 2004, preretirement death benefits shall be provided solely under Iowa Code section 97B.52(1)"a," and shall only be payable in lump sum amounts for inactive members who have less than 16 quarters of service credit. For purposes of this paragraph, an inactive member is a member as defined under Iowa Code section 97B.1A(12).

495—14.13(97B) Payment procedures for heirs that cannot be located.

14.13(1) Order of priority. If a death benefit cannot be paid because heirs cannot be located, IPERS will pay a death benefit to the member's heirs according to the following procedure.

a. Children. If there is no surviving spouse, but at least one child survives, the death benefit shall be divided equally among the member's children. If there are living and deceased children, the shares that would have been payable to

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

deceased children shall be payable in equal shares to the surviving children of each such deceased child.

b. Grandchildren. If neither the spouse nor children survive, but at least one grandchild survives, the death benefit shall be divided equally among the member's grandchildren. If there are living and deceased grandchildren, the shares that would have been payable to any deceased grandchild shall be payable in equal shares to the surviving children of such deceased grandchild.

c. Parent(s). If there is no surviving spouse, child, or grandchild, but at least one parent survives, the death benefit shall be divided equally between the member's parents.

d. Siblings. If there is no surviving spouse, child, grandchild, or parent, but at least one sibling survives, the death benefit shall be divided equally among the member's siblings. If there are living and deceased siblings, the shares that would have been payable to any deceased sibling shall be payable in equal shares to the surviving children of such deceased siblings.

e. Nephew(s) and niece(s). If no one from the above-mentioned groups survives, but there is at least one surviving niece or nephew, the death benefit shall be divided equally among the member's surviving nieces and nephews.

f. Estate. If someone other than a member of one of the groups listed above claims the member's death benefit, an estate must be opened and the death benefit shall only be payable to the administrator of that estate.

14.13(2) Procedures for initial distribution for identified heirs. IPERS shall distribute the death benefit to the heirs making a claim for such benefit in descending order listed in 14.13(1)"a" to "f." A claimant shall be required to submit an affidavit suitable to IPERS that verifies the claimant's share or, to the best of the claimant's knowledge, that there are no other surviving persons from the claimant's group and that there are no living persons in any lower-numbered group that would have a higher priority claim to the death benefit. IPERS shall have no responsibility to determine or search out the member's heirs at law, nor shall IPERS incur any liability for relying on a claimant's affidavits in paying the death benefit hereunder.

14.13(3) Procedures for final distribution to heirs who have filed claims. If a claimant has identified other persons in the claimant's group who would be entitled to a share of the member's death benefit, but such persons have not filed a claim within five years after the member's death, or by the date required under IRC Section 401(a)(9) if earlier, the remainder of the member's death benefit shall be paid in pro-rata shares to the claimants who were previously paid a share of the death benefit. In order to comply with the applicable IRS limitations, the final payments under this subrule shall be made by December 31 of the fifth year that begins after the

15.1(4) Examples.

a. Dividend for the year of the member's death. The following assumptions are made. The member retired in 1989 and selected a joint and 50 percent to survivor annuity. The retired member received a monthly payment of \$1,000, and died in June 2002. The member received \$12,000 in monthly benefits for January through December 2001. The member received a dividend of \$500 in 2001, and the dividend rate is 3 percent for 2002.

2001 total monthly benefits	+	2001 dividend amount	×	2002 dividend rate	=	2002 dividend adjustment	+	2001 dividend amount	=	Dividend payable amount	×	CA%	=	CA 2002 dividend
\$12,000.00		\$500.00		3%		\$375.00		\$500.00		\$875.00		50%		\$437.50

b. Dividend for the year following the year of the member's death. The following assumptions are made. The member retired in 1989 and selected a joint and 50 percent to survivor annuity. The retired member received a monthly payment of

member's date of death, or by December 31 of the year that distribution is required under IRC Section 401(a)(9), if earlier. The sole recourse of any claimant who is a member of a group receiving payments hereunder or of any lower-numbered group that should have received all of such payments shall be against the claimants of the group that received death benefit payments.

These rules are intended to implement 2004 Iowa Acts, House File 2262, sections 42 to 45, and Iowa Code sections 97B.1A(8), 97B.1A(18), 97B.1A(19), 97B.34, 97B.34A, 97B.44 and 97B.52 and 2000 Iowa Acts, chapter 1077, section 75.

CHAPTER 15
DIVIDENDS

495—15.1(97B) Dividend payments for beneficiaries of members retiring prior to July 1, 1990, who chose joint and survivor annuity options.

15.1(1) General. The dividend payable to the beneficiary of a pre-July 1, 1990, retired member who selected a joint and survivor annuity option, except for the year of the member's death and the next year, is calculated in the same manner as for retired members.

For a member who lives into November of the year in which the member dies, the dividend will be payable to the member's account.

15.1(2) Dividend for the years in which member's death occurs. For a member who does not live into November of the year in which the member dies, the dividend payable for the year in which the member dies is calculated the same as it would have been calculated for the deceased retired member. The dividend amount that would have been payable to the deceased retired member is then multiplied by the survivor annuity percentage selected for the contingent annuitant (CA) in the member's retirement application.

15.1(3) Dividend for the year following the year of the retired member's death. For a member who does not live into November of the year in which the member dies, the dividend payable in the year following the year of the member's death is calculated as follows. The sum of the survivor's monthly benefit payments received for the year in which the member's death occurs is divided by the number of survivor benefit payments for that year, and that amount is multiplied by 12. That amount plus the member's survivor's prior dividend is then multiplied by the dividend rate for the year following the year of the member's death, which equals the dividend adjustment for the year following the year of the member's death. This dividend adjustment plus the prior year's dividend produces the dividend amount for the year following the year of the member's death.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

\$1,000, and died in June 2002. The survivor received \$500 each month for July through December of 2002 for a total of \$3,000. The survivor received a dividend of \$437.50 in 2002, and the dividend rate is 3 percent for 2003.

2002 total monthly benefits CA	Total of payments for CA 2002	Twelve months for 2002	2002 dividend amount	2003 dividend rate	2003 dividend adjustment	2002 dividend amount	Dividend payable to CA for 2003
\$3,000.00	÷ 6 months	× 12 months	+ \$437.50	× 3%	= \$193.13	+ \$437.50	= \$630.63

495—15.2(97B) Favorable experience dividend (FED) under Iowa Code section 97B.49F(2). For members retiring on and after July 1, 1990, dividends are payable as follows.

15.2(1) Allocation of favorable experience. The system shall 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.”

15.2(2) Determination of applicable percentage. The system shall have sole discretion to determine the applicable percentages that will be used in calculating favorable experience dividends payable under this rule, if any, subject to the actuary's certification that the resulting favorable experience dividends meet the requirements of Iowa Code section 97B.49F(2) and this rule.

a. The system's annual applicable percentage target for calculating dividends under Iowa Code section 97B.49F(2) shall be equal to the applicable percentage used in calculating dividends payable to retired members under Iowa Code section 97B.49F(1). Notwithstanding the foregoing, the system may set a greater or lesser applicable percentage for calculating dividends under this rule depending on the funding adequacy of the reserve account. In no event shall the applicable percentage exceed 3 percent.

b. In determining the annual applicable percentage, the system shall consider, but not be limited to, the value of the reserve account, distributions made from the reserve account in previous years, and the likelihood of future credits to and distributions from the reserve account. The system shall make its annual applicable percentage decisions using at least a rolling five-year period.

c. If for any year the system cannot afford an applicable percentage equal to that payable to retired members under Iowa Code section 97B.49F(1), the system may use application percentages in succeeding years that are higher than those used in calculating dividends for retired members under Iowa Code section 97B.49F(1) (but not in excess of 3 percent).

d. An applicable percentage in excess of the applicable percentage declared under Iowa Code section 97B.49F(1) made for catch-up purposes shall not reduce the funding of the reserve account below the amount the system's actuary determines is necessary to pay the maximum favorable experience dividend for each of the next five years, based on reasonable actuarial assumptions.

15.2(3) Calculation of FED for individual members and beneficiaries. A member must be retired for one full year to qualify for a favorable experience dividend. In determining whether a member has been retired one full year, the system shall count the member's first month of entitlement as the first month of the one-year period. The month in which the favorable experience dividend is payable shall be included in determining whether a member meets the eligibility requirements.

An eligible member's favorable experience dividend shall be calculated by multiplying the retirement allowance payable to the retired member, beneficiary, or contingent annuitant for the previous December, or such other month as determined by the system, by 12, and then multiplying that amount by the number of complete years the member has been retired or would have been retired if living on the date the dividend is payable, and by the applicable percentage set by the system. The number of complete years the member has been retired shall be determined by rounding down to the nearest whole year.

For otherwise eligible retired reemployed members who chose to suspend their monthly allowance under 495—paragraph 12.8(2)“c,” the suspension shall have no effect on the calculation of FED.

15.2(4) FED for eligible members and beneficiaries who die before the January distribution date. If a member or beneficiary receiving monthly payments would have been eligible for a FED distribution in the following January but dies prior to the January distribution date, IPERS will pay a FED to the member's or beneficiary's account for the calendar year in which the death occurred. The FED shall be calculated using the monthly payments received in the calendar year the death occurred. A lump sum death benefit shall not constitute a monthly payment for purposes of determining FED eligibility or in making FED calculations.

The FED percentage applied to the monthly payments received in the calendar year of death shall be the most recently declared FED percentage in effect at the time of the FED payment to the member or beneficiary. This subrule shall not be construed to permit a FED distribution to a member where the total monthly benefits received by the member, counting the month of death, is less than 12, even if a period of 12 months has elapsed between the first payment of monthly benefits to the member and the January distribution date.

Notwithstanding the foregoing, if IPERS determines in January of a given year that, based on reasonable actuarial assumptions, there is a reasonable likelihood that a FED will not be declared for the next following January, IPERS may defer paying FED distributions under this subrule until the determination is made. If IPERS subsequently determines that no FED will be declared for a given year, no FED will be payable to a person whose death occurs during the applicable calendar year.

Effective July 1, 2000, a retired member or beneficiary eligible for a FED payment must, in addition to all other applicable requirements, be living on January 1 in order to receive a FED payment otherwise payable in that January.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

15.2(5) Limit on transfers of favorable experience. 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.

These rules are intended to implement Iowa Code Supplement sections 97B.49F and 97B.70.

CHAPTER 16
ASSIGNMENTS

495—16.1(97B) Garnishments and income withholding orders.

16.1(1) For the limited purposes of this rule, the term "member" includes IPERS members, beneficiaries, contingent annuitants and any other third-party payees to whom IPERS is paying a monthly benefit or a lump sum distribution.

16.1(2) A member's right to any payment from IPERS is not transferable or assignable and is not subject to execution, levy, attachment, garnishment, or other legal process, including bankruptcy or insolvency law, except for the purpose of enforcing child, spousal, or medical support.

16.1(3) Only members receiving payment from IPERS, including monthly benefits and lump sum distributions, may be subject to garnishment, attachment, or execution against funds that are payable. Such garnishment, attachment, or execution is not valid and enforceable for members who have not applied for and been approved to receive funds from IPERS.

16.1(4) Upon receipt of an income withholding order issued by the Iowa department of human services or a court, IPERS shall send a copy of the withholding order to the member. If a garnishment has been issued by a court, the party pursuing the garnishment shall send a notice pursuant to Iowa law to the member against whom the garnishment is issued.

16.1(5) IPERS shall continue to withhold a portion of the member's monthly benefit as specified in the initial withholding order until instructed by the court or the Iowa department of human services issuing the order to amend or cease payment. IPERS shall continue to withhold a portion of the member's monthly benefit as specified in the garnishment until the garnishment expires or is released.

16.1(6) Funds withheld or garnished are taxable to the member. IPERS may assess a fee of \$2 per payment in accordance with Iowa Code section 252D.18A(2). The fee will be deducted from the gross amount, less federal and state income tax, before a distribution is divided.

16.1(7) A garnishment, attachment or execution may not be levied upon funds which are already the subject of a levy, including a levy placed upon funds by the United States Internal Revenue Service, unless the requirements of IRC Section 6334(a)(8) are met. Multiple garnishments, attachments and executions are allowed as long as the amount levied upon does not exceed the limitations prescribed in 15 U.S.C. Section 1673(b).

16.1(8) IPERS may release information relating to entitlement to funds to a court or to the Iowa department of human services prior to receipt of a valid garnishment, attachment, execution, or income withholding order when presented with a written request stating the information requested and reasons for the request. This request must be signed by a magistrate, judge, or child support recovery unit director or the director's designee, including an attorney representing the Iowa department of human services. In addition, IPERS

may release information to the Iowa department of human services through automated matches.

495—16.2(97B) Qualified domestic relations orders. This rule shall apply only to marital property orders. All support orders shall continue to be administered under rule 495—16.1(97B).

16.2(1) Definitions.

"Alternate payee" means a spouse or former spouse of a member who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by IPERS with respect to such member. "Alternate payee" also refers to persons who are entitled pursuant to a qualified domestic relations order to receive benefits after the death of the original alternate payee.

"Benefits" means, for purposes of this rule and depending on the context, a refund, monthly allowance (including monthly allowance paid as an actuarial equivalent (AE)), or death benefit payable with respect to a member covered under IPERS. "Benefits" does not include dividends payable under Iowa Code section 97B.49 or other cost-of-living increases unless specifically provided for in a qualified domestic relations order.

"Domestic relations order" means any judgment, decree, or order which relates to the provision of marital property rights to a spouse or former spouse of a member and is made pursuant to the domestic relations laws of a state.

"Member" means, for purposes of this rule, IPERS members, beneficiaries, and contingent annuitants.

"Qualified domestic relations order" means a domestic relations order which assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a member under IPERS and meets the requirements of this rule.

"Trigger event" means a distribution or series of distributions of benefits made with respect to a member.

16.2(2) Requirements.

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

(1) Clearly specifies the member's name and last-known mailing address 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;

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

(6) Is clearly signed by the judge and filed with the clerk of court. IPERS will consider an order duly signed if it carries an original signature, a stamp bearing the judge's signature, or is conformed in accordance with local court rules.

b. Prohibited provisions. A domestic relations order is not a qualified domestic relations order if such order:

(1) Requires IPERS to provide any type or form of benefit or any option not otherwise provided under Iowa Code chapter 97B;

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

(2) Requires IPERS to provide increased benefits determined on the basis of actuarial value;

(3) Requires the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined by IPERS to be a qualified domestic relations order;

(4) Requires any action by IPERS that is contrary to its governing statutes or plan provisions;

(5) Awards any future benefit increases that are provided by the legislature, except as provided in subparagraph 16.2(2)“c”(2); or

(6) Requires the payment of benefits to an alternate payee prior to a trigger event.

c. Permitted provisions. A qualified domestic relations order may also:

(1) If a trigger event has not occurred as of the date the order is received by IPERS, name an alternate payee as a designated beneficiary or contingent annuitant, require the payment of benefits under a particular benefit option, or both;

(2) Specify that the alternate payee shall be entitled to a fixed dollar amount or percentage of dividend payments, or cost-of-living increase or any other postretirement benefit increase to the member (all known as dividend payments), as follows:

1. If the court order awards a fixed dollar amount of benefits to the alternate payee, the dollar amount of dividend payments to be added or method for determining said dollar amount shall be stated in the court order or an award of a share of dividend payments shall be given no effect; and

2. If the court order awards a specified percentage of benefits to the alternate payee, IPERS shall add dividends to the alternate payee's share of the retirement allowance as necessary to keep the alternate payee's share of payments at the percentage specified in the court order;

(3) Bar a vested member from requesting a refund of the member's accumulated contributions without the alternate payee's written consent; 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 IPERS does not receive confirmation of the successor's name, social security number, and last-known mailing address in a cover letter or in a copy of the court's confidential information form.

16.2(3) Administrative provisions.

a. Payment to an alternate payee shall be made in a like manner and at the same time that payment is made to the member. Payment to the alternate payee shall be in a lump sum if benefits are paid in a lump sum distribution or as monthly payments if a retirement option is in effect. A member shall not be able to receive an actuarial equivalent (AE) under Iowa Code section 97B.48(1) unless the total benefit payable with respect to that member meets the applicable requirements. All divisions of benefits shall be based on the gross amount of monthly or lump sum benefits payable. Federal and state income taxes shall be deducted from the member's and alternate payee's respective shares and reported under their respective federal tax identification numbers. Unrecovered basis shall be allocated on a pro rata basis to the member and alternate payee.

b. 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 CEO, or CEO's designee, shall have exclusive authority to determine whether a domestic relations order is a qualified domestic relations order. A final determination by the CEO, or CEO's designee, may be appealed in the same manner as any other final agency determination under Iowa Code chapter 97B.

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 approved by IPERS and the member applies for a refund or monthly allowance, or dies, no distributions shall be made until the respective rights of the parties under the domestic relations order are determined by IPERS. If IPERS has placed a hold on the member's account following written or verbal notification from the member, member's spouse, or legal representative of either party of a pending dissolution of marriage, and no further contacts are received from either party or their representatives within the one-year period preceding the trigger event, IPERS shall release the hold and make the applicable payment.

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 their mailing addresses. IPERS shall contact the alternate payee in writing at the last-known mailing address on file with IPERS, notifying the alternate payee that an application for a distribution has been received with respect to the member and providing the alternate payee with an application to be completed and returned by the alternate payee. The written notice shall provide that if the alternate payee does not return said application to IPERS within 60 days after such written materials are mailed by IPERS, the amounts otherwise payable to the alternate payee shall be paid to the member or the member's beneficiary(ies) until a valid application is received, and IPERS shall have no liability to the alternate payee with respect to such amounts. IPERS has no duty or responsibility to search for alternate payees. If distributions have already begun at the time that an order is determined by IPERS to be a qualified domestic relations order, the qualified domestic relations order shall be deemed to be the alternate payee's application to begin receiving payments under the QDRO.

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.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

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.

l. If an order that is determined to be a qualified domestic relations order divides a member's account using a service factor formula, IPERS shall limit the number of quarters used in the denominator of the service fraction to the number of quarters actually used in the calculation of IPERS benefits.

m. The parties or their attorneys in a dissolution action involving an IPERS member shall decide between themselves which attorney will submit a proposed domestic relations order to IPERS for review. IPERS shall not review a proposed order that has not been approved as to form by both parties or their counsel. A rejection under this paragraph shall not preclude IPERS from placing a hold on a member's account until the qualified status of a proposed order is resolved.

These rules are intended to implement Iowa Code sections 97B.4, 97B.15, 97B.25, 97B.38 and 97B.39.

CHAPTER 20 RECOGNITION OF AGENTS

495—20.1(97B) Recognition of agents.

20.1(1) Recognition of agents in general. When a claimant desires to be represented by an agent before the system, the claimant shall designate in writing the name of a representative and the nature of the business the representative is authorized to transact. Such designation on the part of the claimant shall constitute for IPERS sufficient proof of the acceptability of the individual to serve as the claimant's agent. An attorney in good standing may be so designated by the claimant.

20.1(2) Payment to incompetents. When it appears that the interest of a claimant or retired member would be served, IPERS may recognize an agent to represent the individual in the transaction of the affairs with IPERS. Recognition may be obtained through the filing with IPERS of a copy of the guardianship, trusteeship, power of attorney, conservatorship, or social security representative payee documents by the individual so designated. Such persons have all the rights and obligations of the member. Notwithstanding the foregoing, none of the foregoing representatives shall have the right to name the representative as the member's beneficiary unless approved to do so by a court having jurisdiction of the matter, or unless expressly authorized to do so in a power of attorney executed by the member.

495—20.2(97B) Agreements by agents. An individual serving in the capacity of an agent establishes an agreement with IPERS to transact all business with IPERS in such a manner that the interests of the retired member or claimant are best served. Payments made to the agent on behalf of the individual will be used for the direct benefit of the retired member or claimant. Failure to adhere to the agreement will cause discontinuance of the agency relationship and may serve as the basis for legal action by IPERS or the member.

These rules are intended to implement Iowa Code sections 97B.34 and 97B.37.

CHAPTER 21 MERGERS

495—21.1(97B) Procedures for merger of qualified pension plans with IPERS.

21.1(1) Effective January 1, 2003, IPERS will begin accepting qualified pension plans for merger into the IPERS

pension plan. This merger process shall provide for the transfer of all active and inactive members, retired members, and beneficiaries of retired members of the merging plan into IPERS, except as otherwise agreed to by IPERS and the merging plan.

21.1(2) The merging plan shall transfer assets to IPERS in an amount equal to the actuarial accrued liability created for IPERS as the result of the transfer of pension obligations owed to active, inactive and retired members of the merging plan. Said actuarial accrued liability shall be determined using the merging plan's membership data, the IPERS benefit structure, and the current IPERS actuarial valuation assumptions as of the date of the transfer.

21.1(3) All years of service under the merging plan shall be recognized by IPERS for purposes of determining eligibility and vested status and calculating IPERS benefits.

21.1(4) All wage records for current active members shall be summarized on the quarterly basis used by IPERS to determine a member's IPERS benefits. IPERS will not independently verify wage records, but will monitor those records to ensure that IRC Section 401(a)(17) limits are not exceeded.

21.1(5) The merging plan's actuary may determine that the accrued benefit of an active or inactive member of the merging plan exceeds the member's accrued IPERS benefits based on the merging plan's membership data and the IPERS benefit structure. The compensation of such individuals for any difference between the monthly benefit they accrued in the merging plan and the benefit they will have under IPERS shall be at the merging plan's sole discretion, and IPERS shall have no liability.

21.1(6) The same methods of conversion and cash out will be used for terminated vested members with a current plan account in the merging plan and for members, if any, who previously elected to freeze their accounts in the former plan to begin participation in IPERS.

21.1(7) The merging plan's retired members shall receive annuity payments from IPERS in the same forms and amounts as provided in the merging plan, provided those forms of payment are available under IPERS. If any retired member from the merging plan is also receiving a benefit from IPERS and the forms of benefits under the two plans differ, the retired member must agree to have the benefit payable from the merging plan converted and paid in the same form as the benefit under IPERS. Dividends for retired members transferred to IPERS shall be determined based on the first month of entitlement under the merging plan.

21.1(8) The monthly benefit payable to transferred members (excluding retired members) by IPERS may be greater or less than the monthly benefit they would have received under the merging plan. IPERS shall not be responsible for any difference in the two benefit amounts. It shall be the sole responsibility of the merging plan to ensure the protection of the accrued benefits of the merging plan's members and beneficiaries.

21.1(9) IPERS may agree to accept in-kind transfers of assets in satisfaction of the liabilities created by the merger, but may, in IPERS' sole discretion, decline all in-kind asset transfers and demand cash to fund the merger.

495—21.2(97B) Mandatory merger criteria.

21.2(1) General. Mergers shall meet the following criteria:

a. There shall be no actuarial gain or loss to IPERS (defined as a change in the unfunded accrued actuarial liability) as a result of a merger with another pension plan.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

b. The merging plan shall defend and hold IPERS harmless from any claims by transferred members with respect to employee contribution accounts, cut-back claims, tax issues, and any other cause of action arising hereunder that does not result from IPERS' negligence or misconduct. This indemnification shall also extend to any contractual claims by the merging plan's vendors, pending or threatened lawsuits or regulatory actions against the merging plan, and appeals by members, retired members and beneficiaries of the merging plan.

c. Prior to the merger date, the merging plan authority and IPERS shall formally agree on all material terms and conditions of the merger in writing.

d. The merging plan authority shall adopt by resolution a proposal to merge the pension plan with and into the IPERS pension plan, with IPERS as the surviving plan, which shall incorporate by reference the details of the merger expressed in the merger agreement between the merging plan and IPERS. The merging plan authority shall secure all other approvals necessary to the merger, and shall certify to IPERS that all necessary authorizations have been received.

e. All assets required to fund the transfer of liabilities created under the merger shall be transferred to IPERS within 120 days after the proposed effective date, plus an additional amount representing a 7.5 percent interest rate (or the current rate assumed by IPERS' actuary in valuing assets and liabilities) commencing on the proposed effective date.

f. After the merger, the merging plan authority, as a covered employer, shall determine employee classifications and deduct and forward member and employer contributions in the same amount as required for all IPERS covered employment.

g. The merging plan authority shall transfer to IPERS in a mutually agreed upon method all employment records for active, inactive, and retired members and beneficiaries, including all tax reporting records. In addition to employment and tax reporting records, transferred electronic files shall include the same enrollment information as required for IPERS covered employers' new employees. Similar demographic information shall be provided to IPERS for spouses and beneficiaries.

h. The merging plan shall, prior to merger, in its sole discretion, make such amendments to its plan documents that it deems to be necessary or appropriate to accomplish the merger, provided that no such amendments shall vary the terms of the agreement to merge without the express written consent of IPERS.

i. IPERS shall, prior to merger, in its sole discretion, make such amendments to its plan documents that it deems to be necessary or appropriate to accomplish the merger, provided that no such amendments shall vary the terms of the agreement to merge without the express written consent of the merging plan.

j. The transferred records of the merging plan shall be treated as confidential records by IPERS as described in Iowa Code section 97B.17.

k. The merging plan authority and its legal and actuarial advisors shall determine the excess accruals, if any, owed to any member of the merging plan transferred to IPERS; shall provide such members with the appropriate election forms and related information; and shall take all steps necessary to complete the payment of compensation to such individuals in satisfaction of the obligation to protect accrued benefits under the merging plan as described above.

l. Excluding matters relating to the distribution of excess accruals, if any, the merging plan authority, its legal

counsel, and IPERS and its legal counsel shall jointly develop all required communications regarding the plan merger. IPERS shall have sole responsibility for providing benefits estimates to the merging plan members, in anticipation of the merger. Following the effective date of the merger, all member services shall be handled by IPERS.

m. Following the merger, transferred active, inactive, and retired members and beneficiaries shall be entitled to benefits, including monthly allowances, refunds, actuarial equivalent (AE), death benefits and dividends as other IPERS members having the same demographic, wage and service records.

n. The members of the merging plan who currently have binding assignments against their benefits shall continue to have those assignments administered by IPERS as described in 495—Chapter 16 or as otherwise required by law.

o. The members of the merging plan currently receiving disability retirement benefits must agree to have their disability retirement benefits administered by IPERS as described under 495—Chapter 13, or those members shall not be transferred.

p. The merging plan and IPERS shall jointly agree whether the merger will be submitted to the IRS for approval.

21.2(2) Reserved.

These rules are intended to implement Iowa Code section 97B.42C.

ARC 3648B

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455G.4(3) and 455G.9, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to amend Chapter 11, “Claims,” Iowa Administrative Code.

Chapter 11 as amended will provide rules and procedures for the reimbursement of claims for the permanent closure of previously upgraded UST sites pursuant to Iowa Code Supplement section 455G.9(1) as amended by 2004 Iowa Acts, House File 2401, section 3. The amendment allows that an otherwise eligible claimant to the UST Fund may be reimbursed for the costs to permanently close the claimant's UST site even if the tanks have been upgraded to comply with Department of Natural Resources operational regulations if the tanks being removed were in place on the date the claimant's eligible claim was filed.

Public comments concerning the proposed amendment will be accepted until 4:30 p.m. on October 5, 2004. Interested persons may submit written or oral comments by contacting the Administrator of the UST Fund at 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266; E-mail Scott_Scheidel@aon.com; telephone (515)225-9263; facsimile (515)225-9361.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 3649B**. The content of that submission is incorporated by reference.

These rules do not mandate additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services.

These rules are intended to implement Iowa Code Supplement section 455G.9 as amended by 2004 Iowa Acts, House File 2401.

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

ARC 3673B**REVENUE DEPARTMENT[701]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 452A.59, 453A.25(2), and 453A.49, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Chapter 68, "Motor Fuel and Undyed Special Fuel," Chapter 81, "Administration," and Chapter 82, "Cigarette Tax," Iowa Administrative Code.

Item 1 amends subrule 10.1(1) to reflect the change in the Department's name from "Revenue and Finance" to "Revenue."

Items 2 to 6 amend rules 701—10.5(421) and 701—10.76(453A) to 701—10.79(453A) to reflect the change in the statute of limitations from two to three years, to increase the penalty for the violation of being in possession of more than 2,000 unstamped cigarettes, and to clean up outdated language.

Item 7 amends subrule 68.8(8) to clarify that a refund of tax paid is allowable on fuel used in motor vehicles, whether registered or not registered, and used in the extraction and processing of natural deposits.

Item 8 amends rule 701—81.1(453A) by providing a definition for "counterfeit cigarettes."

Item 9 amends an implementation clause for rule 701—81.1(453A).

Item 10 amends rule 701—81.3(453A) to increase the statute of limitations from two to three years for the Department to examine taxpayer records.

Item 11 amends rule 701—81.4(453A) to lengthen the time taxpayers are required to maintain records from two to three years.

Item 12 amends an implementation clause for rule 701—81.4(453A).

Item 13 amends subrule 82.6(5) to expand the time banks are required to maintain records of cigarette stamp transactions from two to three years.

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

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

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 18, 2004, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 15, 2004. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

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

Requests for a public hearing must be received by October 5, 2004.

These amendments are intended to implement Iowa Code sections 421.27 and 452A.17(8) and Iowa Code chapter 453A as amended by 2004 Iowa Acts, Senate File 2296.

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

The following amendments are proposed.

ITEM 1. Amend subrule 10.1(1) to read as follows:

10.1(1) "Department" means the Iowa department of revenue and finance.

ITEM 2. Rescind and reserve rule **701—10.5(421)**.

ITEM 3. Amend rule 701—10.76(453A) to read as follows:

701—10.76(453A) Penalties.

10.76(1) Cigarettes. The following is a list of offenses which subject the violator to a penalty:

1. The failure of a permit holder to maintain proper records;
2. The sale of taxable cigarettes without a permit;
3. The filing of a late, false or incomplete report with the intent to evade tax by a cigarette distributor, distributing agent or wholesaler;
4. Acting as a distributing agent without a valid permit; and
5. A violation of any provision of Iowa Code chapter 453A or these rules.

Penalties for these offenses are as follows:

- A \$200 penalty for the first violation.

REVENUE DEPARTMENT[701](cont'd)

- A \$500 penalty for a second violation within two *three* years of the first violation.
- A \$1,000 penalty for a third or subsequent violation within two *three* years of the first violation.

Penalties for possession of unstamped cigarettes are as follows:

- A \$200 penalty for the first violation if a person is in possession of more than 40 but not more than 400 unstamped cigarettes.

- A \$500 penalty for the first violation if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes.

- A \$1,000 penalty for the first violation if a person is in possession of more than 2,000 unstamped cigarettes *for violations occurring prior to July 1, 2004. A \$25 per pack penalty for the first violation if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.*

- For a second violation within two *three* years of the first violation, the penalty is \$400 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; \$1,000 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and \$2,000 if a person is in possession of more than 2,000 unstamped cigarettes *for violations occurring prior to July 1, 2004. A \$35 per pack penalty applies if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.*

- For a third or subsequent violation within two *three* years of the first violation, the penalty is \$600 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; \$1,500 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and \$3,000 if a person is in possession of more than 2,000 unstamped cigarettes *for violations occurring prior to July 1, 2004. A \$45 per pack penalty applies if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.*

a. ~~Rescinded IAB 1/23/91.~~

b. ~~For tax due on or after January 1, 1985. See rule 701—10.6 (421) for penalties related to failure to timely file a return, failure to timely pay the tax due, audit deficiency, and willful failure to file a return with the intent to evade the tax. If, upon audit, it is determined that any person has failed to pay at least 90 percent of the tax imposed by Iowa Code chapter 453A, division I, which failure was not the result of a violation enumerated above, a penalty of 5 percent of the tax deficiency shall be imposed. This penalty is not subject to waiver for reasonable cause.~~

c. ~~For tax due on or after January 1, 1987. If, upon audit, it is determined that any person has failed to pay at least 90 percent of the tax imposed by Iowa Code chapter 453A, division I, which failure was not the result of a violation enumerated above, a penalty of 7.5 percent of the tax deficiency is imposed. This penalty is not subject to waiver.~~

~~See rule 701—10.5(421) for statutory exceptions to penalty for taxes due and payable on or after January 1, 1987. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods beginning on or after January 1, 1991.~~

10.76(2) Tobacco.

a. ~~Rescinded IAB 1/23/91.~~

b. ~~For tax due on or after January 1, 1985, but before January 1, 1987.~~

~~(1) Deficient return—payment. If a return is filed and it is determined to be deficient as to reporting tax due or remitting the tax due, the department shall issue a proposed assessment~~

~~or billing including a proposed penalty. If the taxpayer pays the proposed assessment or appeals the decision, as per rule 701—81.11(453A) within 20 days, the penalty shall not accrue. A final assessment is issued at the termination of the appeals process or if the taxpayer does not appeal and does not pay the proposed assessment within 20 days. The penalty attaches and becomes effective upon issuance of the final assessment. The penalty upon final assessment is 5 percent of the unpaid tax if less than 90 percent of the tax has been paid by the due date. If the deficiency was the result of a false or fraudulent return made with the intent to evade the tax, the penalty shall be 50 percent of the tax required to be shown due.~~

~~(2) Failure to file a return. If any person fails to file a tax return required by Iowa Code chapter 453A, division II, or these rules, the director shall make written demand upon said person to file the return. If the return is not filed within 20 days, the director shall assess the tax due based upon an estimated return and included therein shall be a penalty of 50 percent of the unpaid tax. If the return is filed within the 20-day period, the penalty does not accrue.~~

~~The penalty imposed under subrule 10.76(2), paragraph “b,” is not subject to waiver for reasonable cause.~~

c. ~~For tax due on or after January 1, 1987. If it is determined that any person has failed to pay at least 90 percent of the tax imposed by Iowa Code chapter 453A, division II, which failure was not the result of an intent to evade the tax, a penalty of 7.5 percent of the tax deficiency is imposed. This penalty is not subject to waiver.~~

~~See rule 701—10.6(421) for penalties related to failure to timely file a return, failure to timely pay the tax due, audit deficiency, and willful failure to file a return with the intent to evade the tax.~~

~~See rule 701—10.5(421) for statutory exceptions to penalty for tax due and payable on or after January 1, 1987. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods beginning on or after January 1, 1991.~~

~~This rule is intended to implement Iowa Code sections 453A.28, 453A.31 and 453A.46 as amended by 1999 2004 Iowa Acts, chapter 151 Senate File 2296.~~

ITEM 4. Amend rule 701—10.77(453A) to read as follows:

701—10.77(453A) Interest.

~~**10.77(1)** For tax due on or after January 1, 1985, but before January 1, 1991.~~

~~a 1. Cigarettes. There shall be assessed interest at the rate established by rule 701—10.2(421) from the due date of the tax to the date of payment counting each fraction of a month as an entire month. For the purpose of computing the due date of any unpaid tax, a FIFO inventory method shall be used for cigarettes and stamps. See subrule 10.41(4) rule 701—10.6(421) for examples of penalty and interest.~~

~~b 2. Tobacco. The interest rate on delinquent tobacco tax is the rate established by rule 701—10.2(421) counting each fraction of a month as an entire month. If an assessment for taxes due is not allocated to any given month, the interest shall accrue from the date of assessment. See subrule 10.41(4) rule 701—10.6(421) for examples of penalty and interest.~~

~~**10.77(2) Reserved.**~~

~~This rule is intended to implement Iowa Code sections 453A.28 and 453A.46.~~

ITEM 5. Rescind and reserve rule **701—10.78(453A)**.

REVENUE DEPARTMENT[701](cont'd)

ITEM 6. Amend rule 701—10.79(453A) to read as follows:

701—10.79(453A) Request for waiver of penalty statutory exception to penalty. This rule is only applicable to tax due on or before December 31, 1984, and to penalty imposed by Iowa Code section 453A.31 for tax due on or after January 1, 1985. Any taxpayer who believes there is a good reason to object to any penalty imposed by the department for failure to timely file returns or pay the tax may submit a request for waiver *exception* seeking that the penalty be waived. If it can be shown to the director's satisfaction that the failure was due to reasonable cause, the penalty will be adjusted accordingly. The request must be in the form of an *letter* or affidavit and must contain all facts alleged by the taxpayer and a reason for why the taxpayer qualifies for the exceptions. See rule 701—10.8(421), as reasonable cause for the taxpayer's failure to file the return, or pay the tax as required by law. The following are examples of situations that may be accepted by the director as being reasonable causes:

1. Showing that the delay in filing was caused by the death or serious illness of the taxpayer or the person charged by the taxpayer to prepare and timely file the report on the taxpayer's behalf.

2. Showing that the delay in filing was caused by destruction by fire or other casualty of the taxpayer's records.

3. Showing that the delay in filing was due to erroneous information given to the taxpayer by an authorized employee of the department.

4. Showing that the delay in filing was caused by a prolonged unavoidable absence of the taxpayer responsible for the filing.

5. Showing that the report or remittance was filed on time, but filed erroneously with another state agency or the Internal Revenue Service.

6. If the taxpayer has had no late filed reports or late payments in the past 36 months, the department will allow one late return to be filed without penalty. However, this does not apply to a penalty established by audit.

7. If the return is filed on time, but the face of the return contained a mathematical error and if the taxpayer has had no late filed reports including mathematical errors in the past 36 months. However, this does not apply to a penalty established by audit.

8. Showing that the delinquency existed even though the taxpayer exercised ordinary business care and prudence to ensure that the filing of the return or remittance of the tax would occur timely.

9. Where the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time. Failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that ordinary business care and prudence were exercised in providing for payment of the liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if the taxpayer paid on the due date. What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, *Armstrong's Inc. v. Iowa Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

Penalty which results from a check given in payment of tax not being honored because of insufficient funds in the account upon which the check is drawn shall not be waived.

This rule is intended to implement Iowa Code sections 453A.31 and 453A.46.

ITEM 7. Amend subrule 68.8(8) as follows:

68.8(8) Fuel placed in motor vehicles, *whether registered or not registered*, not operated on public highways, and used in the extraction and processing of natural deposits.

ITEM 8. Amend rule 701—81.1(453A) by adding the following **new** definition:

"Counterfeit cigarettes" means cigarettes, packages of cigarettes, cartons of cigarettes or other containers of cigarettes with a label, trademark, service mark, trade name, device, design, or word adopted or used by a cigarette manufacturer to identify its product that is false or used without authority of the cigarette manufacturer.

ITEM 9. Amend rule 701—81.1(453A), implementation clause, as follows:

This rule is intended to implement Iowa Code chapter 453A as amended by 1999 2004 Iowa Acts, chapter 151 *Senate File 2296*.

ITEM 10. Amend rule 701—81.3(453A) as follows:

701—81.3(453A) Examination of records. Within two ~~two~~ *three* years after a return or report is filed or within two ~~two~~ *three* years after the report or return became due, whichever is later, the department shall examine it, determine the amount of cigarette or tobacco tax due, and give notice of assessment to the taxpayer. If no return or report has been filed, the department may determine the amount of tax due and give notice thereof. The period of examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent report or return made with the intent to evade tax, or in the case of a failure to file a report or return, or if a person purchases or is in possession of unstamped cigarettes. The two ~~two~~ *three*-year period of limitation may be extended by a taxpayer by signing a waiver agreement form provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies and must provide that a claim for refund may be filed at any time during the period of extension.

Whenever books and records are examined by an employee designated by the director, whether to verify a return, report, or claim for refund or in making an audit, an assessment will be issued for any amount of tax due or a refund made for any amount of tax overpaid.

This rule is intended to implement Iowa Code sections 453A.15, 453A.28, and 453A.46 as amended by 1999 2004 Iowa Acts, chapter 151 *Senate File 2296*.

ITEM 11. Amend rule 701—81.4(453A), introductory paragraph, as follows:

701—81.4(453A) Records. Every taxpayer subject to the provisions of Iowa Code chapter 453A shall keep, preserve, and make available to the department records for a period of two ~~two~~ *three* years. The following is a list of records subject to the provisions of this rule. For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

ITEM 12. Amend rule 701—81.4(453A), implementation clause, as follows:

This rule is intended to implement Iowa Code sections 453A.15 and 453A.45 as amended by 1999 2004 Iowa Acts, chapter 151 *Senate File 2296*, and Iowa Code sections 453A.18, 453A.19, 453A.24, and 453A.49.

ITEM 13. Amend subrule 82.6(5), unnumbered paragraph, as follows:

REVENUE DEPARTMENT[701](cont'd)

Each bank must retain all records of inventory, stamp receipts, and stamp sales for a period of ~~two~~ *three* years.

ARC 3671B

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 40, "Determination of Net Income," Chapter 42, "Adjustments to Computed Tax," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Chapter 53, "Determination of Net Income," Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues," and Chapter 59, "Determination of Net Income," Iowa Administrative Code.

These amendments are proposed as a result of 2004 Iowa Acts, House Files 2208, 2484 and 2553; 2004 Iowa Acts, Senate File 2298, section 250; and 2003 Iowa Acts, Senate File 453.

Item 1 amends subrule 40.53(4) to provide that deductions for contributions made by individual income taxpayers to the endowment fund of the Iowa educational savings plan trust must be for contributions made before April 15, 2004, since the endowment fund was eliminated as of April 15, 2004.

Item 2 amends rule 701—40.58(422) to reflect a Code Editor's change to "state military service."

Item 3 amends rule 701—42.12(422) to provide for a franchise tax credit for individual income tax for members of a financial institution organized as a limited liability company that is taxed as a partnership for federal income tax purposes.

Item 4 amends subrule 42.15(3) and the implementation clause for rule 701—42.15(422) to clarify what costs may be considered in computing the property rehabilitation tax credit for individual income taxpayers.

Item 5 amends subrule 52.18(3) and the implementation clause for rule 701—52.18(422) to clarify what costs may be considered in computing the property rehabilitation tax credit for corporation income taxpayers. This amendment is similar to the amendment in Item 4.

Item 6 amends rule 701—53.21(422) to provide that deductions for contributions made by corporation income taxpayers to the endowment fund of the Iowa educational savings plan trust must be for contributions made before April 15, 2004, since the endowment fund was eliminated as of April 15, 2004. This amendment is similar to the amendment in Item 1.

Item 7 amends rule 701—58.7(422) to clarify that the allocation of franchise tax revenues to cities and counties applies only for fiscal years prior to July 1, 2004.

Item 8 amends rule 701—59.21(422) to clarify that a financial institution organized as a limited liability company that is taxed as a partnership for federal income tax purposes must compute its Iowa franchise tax as if the financial institution was subject to federal corporation income tax.

Item 9 amends rule 701—59.22(422) to provide that deductions for contributions made by franchise taxpayers to the

endowment fund of the Iowa educational savings plan trust must be for contributions made before April 15, 2004, since the endowment fund was eliminated as of April 15, 2004. This amendment is similar to the amendments in Items 1 and 6.

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

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

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 18, 2004, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 15, 2004. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

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

Requests for a public hearing must be received by October 5, 2004.

These amendments are intended to implement the repeal of Iowa Code section 422.65 by 2003 Iowa Acts, Senate File 453; Iowa Code section 422.7 as amended by 2004 Iowa Acts, House File 2208; Iowa Code section 12D.4 as amended by 2004 Iowa Acts, House File 2553; Iowa Code section 404A.2 as amended by 2004 Iowa Acts, Senate File 2298, section 250; and Iowa Code section 422.11 as amended by 2004 Iowa Acts, House File 2484.

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

The following amendments are proposed.

ITEM 1. Amend subrule 40.53(4) as follows:

40.53(4) Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust. To the extent that the contribution was not deductible for federal income tax purposes, an individual can deduct on the Iowa individual income tax return a gift, grant, or donation to the endowment fund of the Iowa educational savings plan trust. *The contribution must be made on or after July 1, 1998, but before April 15, 2004. Effective April 15, 2004, the deduction for contributions made to the endowment fund is repealed.*

ITEM 2. Amend rule 701—40.58(422) as follows:

REVENUE DEPARTMENT[701](cont'd)

701—40.58(422) Exclusion of distributions from retirement plans by national guard members and members of military reserve forces of the United States. For tax years beginning on or after January 1, 2002, members of the Iowa national guard or members of military reserve forces of the United States who are ordered to active state *military* service or federal service or duty are not subject to Iowa income tax on the amount of distributions received during the tax year from qualified retirement plans of the members to the extent the distributions were taxable for federal income tax purposes. In addition, the members are not subject to state penalties on the distributions even though the members may have been subject to federal penalties on the distributions for early withdrawal of benefits. Because the distributions described above are not taxable for Iowa income tax purposes, a national guard member or armed forces reserve member who receives a distribution from a qualified retirement plan may request that the payer of the distribution not withhold Iowa income tax from the distribution.

This rule is intended to implement Iowa Code section 422.7 as amended by 2002 2004 Iowa Acts, House File 2622 2208.

ITEM 3. Amend rule 701—42.12(422) as follows:

701—42.12(422) Franchise tax credit. For tax years beginning on or after January 1, 1997, a shareholder in a financial institution as defined in Section 581 of the Internal Revenue Code, which has elected to have its income taxed directly to the shareholders, may take a tax credit equal to the shareholder's pro-rata share of the Iowa franchise tax paid by the financial institution.

For tax years beginning on or after July 1, 2004, a member of a financial institution organized as a limited liability company that is taxed as a partnership for federal income tax purposes, which has elected to have its income taxed directly to its members, may take a tax credit equal to the member's pro-rata share of the Iowa franchise tax paid by the financial institution.

The credit must be computed by recomputing the amount of tax computed under Iowa Code section 422.5 by reducing the shareholder's or member's taxable income by the shareholder's or member's pro-rata share of the items of income and expenses of the financial institution and subtracting the credits allowed in Iowa Code section 422.12. The recomputed tax must be subtracted from the amount of tax computed under Iowa Code section 422.5 reduced by the credits allowed in Iowa Code section 422.12.

The resulting amount, not to exceed the shareholder's or member's pro-rata share of the franchise tax paid by the financial institution, is the amount of tax credit allowed the shareholder or member.

This rule is intended to implement Iowa Code section 422.11 created as amended by 1997 2004 Iowa Acts, Senate House File 553 2484.

ITEM 4. Amend subrule **42.15(3)**, first unnumbered paragraph, and the implementation clause for rule **701—42.15(422)** as follows:

In the case of commercial property, rehabilitation costs must equal at least 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation. In the case of residential property or barns, the rehabilitation costs must equal at least \$25,000 or 25 percent of the fair market value, excluding the value of the land, prior to the rehabilitation, whichever amount is less. In computing the tax credit for eligible property that is classified as residential or as commercial with multifamily residential units, the reha-

bilitation costs are not to exceed \$100,000 per residential unit. In computing the tax credit, the only costs which may be included are the rehabilitation costs incurred between the period ending on the project completion date and beginning on the later of either the date of issuance of approval of the project or date two years prior to the project completion date, *provided that any qualified rehabilitation costs incurred prior to the date of approval of the project must be qualified rehabilitation expenditures under the federal rehabilitation credit in Section 47 of the Internal Revenue Code.*

This rule is intended to implement Iowa Code chapter 404A as amended by 2003 2004 Iowa Acts, Senate File 441 2298, section 250, and First Extraordinary Session, House File 683, and Iowa Code section 422.11D.

ITEM 5. Amend subrule **52.18(3)**, first unnumbered paragraph, and the implementation clause for rule **701—52.18(422)** as follows:

In the case of commercial property, rehabilitation costs must equal at least 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation. In the case of residential property or barns, the rehabilitation costs must equal at least \$25,000 or 25 percent of the fair market value, excluding the value of the land, prior to the rehabilitation, whichever amount is less. In computing the tax credit for eligible property that is classified as residential or as commercial with multifamily residential units, the rehabilitation costs are not to exceed \$100,000 per residential unit. In computing the tax credit, the only costs which may be included are the rehabilitation costs incurred between the period ending on the project completion date and beginning on the later of either the date of issuance of approval of the project or date two years prior to the project completion date, *provided that any qualified rehabilitation costs incurred prior to the date of approval of the project must be qualified rehabilitation expenditures under the federal rehabilitation credit in Section 47 of the Internal Revenue Code.*

This rule is intended to implement Iowa Code chapter 404A as amended by 2003 2004 Iowa Acts, Senate File 441 2298, section 250, and First Extraordinary Session, House File 683, and Iowa Code section 422.33.

ITEM 6. Amend rule 701—53.21(422) as follows:

701—53.21(422) Deduction of gifts, grants, or donations for contributions made to the endowment fund of the Iowa educational savings plan trust. For tax years ending on or after July 1, 1998, to the extent that the contribution was not deductible for federal income tax purposes, any gift, grant, or donation to the endowment fund of the Iowa educational savings plan trust made on or after that date has not been deducted in computing federal taxable income, the amount may be deducted for Iowa income tax purposes. *The contribution must be made on or after July 1, 1998, but before April 15, 2004. Effective April 15, 2004, the deduction for contributions made to the endowment fund is repealed.*

ITEM 7. Amend rule 701—58.7(422), introductory paragraph, as follows:

701—58.7(422) Allocation of franchise tax revenues. ~~Each~~ For fiscal years prior to July 1, 2004, each quarterly distribution shall be made up of the tax shown due on the franchise tax returns received during that quarter, net of all refunds of franchise tax established during that quarter. In determining the portion of franchise tax revenues to be distributed to cities and counties for fiscal years prior to July 1, 2004, each financial institution, as defined by Iowa Code section 422.61, is required to submit the appropriate allocation

REVENUE DEPARTMENT[701](cont'd)

data with the filing of its Iowa franchise tax return. Each financial institution shall accumulate or maintain data to properly determine the business activity ratios as prescribed in subrules 58.7(1) and 58.7(2). The allocation shall be made on the basis of business activity for each office location. The word "office" shall mean a branch office, a drive-in bank depository or any other establishment whereby the business pertaining to the financial institution is carried on.

ITEM 8. Amend rule 701—59.21(422) as follows:

701—59.21(422) S corporation and limited liability company financial institutions. For tax years beginning on or after January 1, 1997, a financial institution as defined in Section 581 of the Internal Revenue Code which has in effect an election under Subchapter S of the Internal Revenue Code must compute an amount of income as if the financial institution were subject to federal corporation income tax. *For tax years beginning on or after July 1, 2004, a financial institution organized as a limited liability company under Iowa Code chapter 524 that is taxed as a partnership for federal income tax purposes must compute an amount of income as if the financial institution were subject to federal corporation income tax.* The income is to be computed in the same manner as a financial institution that is subject to or liable for federal income tax under the Internal Revenue Code in effect for the applicable tax would compute its federal taxable income.

This rule is intended to implement Iowa Code section 422.61 as amended by 1997 Iowa Acts, Senate File 553 2004 Iowa Acts, House File 2484.

ITEM 9. Amend rule 701—59.22(422), introductory paragraph, as follows:

701—59.22(422) Deduction of gifts, grants, or donations for contributions made to the endowment fund of the Iowa educational savings plan trust. ~~For tax years ending on or after July 1, 1998, to the extent that for the contribution was not deductible for federal income tax purposes, any gift, grant, or donation to the endowment fund of the Iowa educational savings plan trust made on or after that date has not been deducted in computing federal taxable income, the amount may be deducted for Iowa franchise tax purposes. The contribution must be made on or after July 1, 1998, but before April 15, 2004. Effective April 15, 2004, the deduction for contributions made to the endowment fund is repealed.~~

ARC 3635B

SECRETARY OF STATE[721]

Notice of Intended Action

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

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

Pursuant to the authority of 2004 Iowa Acts, Senate File 2298, section 311, Iowa Code section 47.1 and the Help America Vote Act (HAVA), Public Law 107-252, the Secretary of State hereby gives Notice of Intended Action to adopt new Chapter 27, "Help America Vote Act Grants," Iowa Administrative Code.

This chapter contains grant procedures for distributing HAVA funds to Iowa counties.

Any interested person may make written suggestions or comments on this proposed chapter on or before October 5, 2004. Such written materials should be directed to Steven Mandernach, Deputy Secretary of State for Business Services, Secretary of State's Office, First Floor, Lucas State Office Building, Des Moines, Iowa 50319; fax (515)281-4682; or E-mail smandernach@sos.state.ia.us. Persons who wish to convey their views orally should contact Steven Mandernach at (515)242-5071 or at the Secretary of State's Office on the first floor of the Lucas State Office Building.

This chapter was also Adopted and Filed Emergency and is published herein as **ARC 3636B**. The content of that submission is incorporated by reference.

The proposed chapter is not subject to waiver.

This amendment is intended to implement 2004 Iowa Acts, Senate File 2298, Iowa Code section 47.1 and the Help America Vote Act, Public Law 107-252.

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

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for September is 6.50%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

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

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

New official state interest rates, effective September 10, 2004, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

NOTICE—PUBLIC FUNDS INTEREST RATES(cont'd)

TIME DEPOSITS

7-31 days	Minimum 0.65%
32-89 days	Minimum 0.75%
90-179 days	Minimum 0.85%
180-364 days	Minimum 1.05%
One year to 397 days	Minimum 1.30%
More than 397 days	Minimum 2.35%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 3667B

UTILITIES DIVISION[199]

Notice of Termination

Pursuant to Iowa Code section 17A.4(1)“b,” the Utilities Board (Board) gives notice that on August 16, 2004, the Board issued an order in Docket No. RMU-03-17, In re: Electric Energy Adjustment Clause, “Order Terminating Rule Making Proceeding.” The Board commenced the rule making on April 6, 2004, to consider amendments proposed to 199 IAC 20.9(476), the energy adjustment clause (EAC) rule, by the Consumer Advocate Division of the Department of Justice (Consumer Advocate). Currently, only identified energy costs are permitted to be recovered through the EAC. Consumer Advocate proposed that the rules be revised to require that all demand charges explicitly identified in current and future purchase power contracts, less the demand charges included in base rates, be recovered through the EAC. Any demand charges would then be removed from base rates in an electric utility’s next rate case. Consumer Advocate stated this approach would allow a utility with an EAC the opportunity to recover all of its reasonably incurred purchased power costs while at the same time preventing overrecovery of such costs.

Notice of Intended Action for the proposed amendments was published in IAB Vol. XXVI, No. 16 (2/4/04) p. 1354 as **ARC 3135B**. Written comments were filed by Consumer Advocate, Interstate Power and Light Company, MidAmerican Energy Company, the Large Energy Group, Ag Processing Inc., and the Iowa Consumers Coalition. An oral presentation was held on March 3, 2004. Additional participants at the oral presentation included the Iowa Association of Electric Cooperatives and Dexter Company.

In reviewing both the written and oral comments, it is clear there is no consensus on Consumer Advocate’s proposed amendments. While many were supportive of the concept, some industrial customers feared the changes would adversely affect interruptible customers and customers with a high load factor. Others argued for total elimination of the EAC and for addressing specific issues related to recovery of capacity charges in utility-specific rate proceedings.

It is apparent that there is no simple resolution to the issue. The changes proposed by Consumer Advocate, while addressing some of the concerns with the EAC, would have caused unanticipated negative consequences for some large customer classes. The Board notes that the participants in the rule making met informally subsequent to the oral presentation to discuss alternatives, but were unable to reach a con-

sensus. The Board will not adopt the changes proposed at this time and will terminate the rule making. However, the Board will continue to explore the issues raised by Consumer Advocate’s proposals in rate proceedings and other appropriate dockets.

ARC 3658B

WORKERS’ COMPENSATION DIVISION[876]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 86.8, the Workers’ Compensation Commissioner hereby gives Notice of Intended Action to amend Chapter 4, “Contested Cases,” Iowa Administrative Code.

These amendments modify the existing rules regarding contested case proceedings.

The Division has determined that these amendments will not necessitate additional annual expenditures exceeding \$100,000 or combined expenditures exceeding \$500,000 within five years by all affected persons, including the agency within the meaning of Iowa Code Supplement section 17A.4(3). Therefore, no fiscal impact statement accompanies this rule making.

The Division has determined that these amendments will have no impact on small business within the meaning of Iowa Code section 17A.4A.

The Division has determined that these amendments will not necessitate additional annual expenditures exceeding \$100,000, or \$500,000 within five years, by political subdivisions or agencies which contract with political subdivisions within the meaning of Iowa Code section 25B.6. Therefore, no fiscal impact statement accompanies this rule making.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 5, 2004, to the Workers’ Compensation Commissioner, Division of Workers’ Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319.

These amendments do not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers’ Compensation Division rules.

These amendments are intended to implement Iowa Code sections 17A.15, 17A.16 and 86.24.

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

The following amendments are proposed.

ITEM 1. Amend rule 876—4.25(17A,86) as follows:

876—4.25(17A,86) Appeal when rehearing requested.

An appeal to or review on motion of the workers’ compensation commissioner must be filed within 20 days after the application for rehearing of a proposed decision by a deputy workers’ compensation commissioner under 4.24(17A,86)

WORKERS' COMPENSATION DIVISION[876](cont'd)

has been denied or deemed denied or a decision on rehearing has been issued. If the application for rehearing is granted, the appeal shall be filed within 20 days of the decision on rehearing. If no application for rehearing under 4.24(17A,86) is filed, appeal shall be as provided in 4.27(17A,86). If a notice of appeal and an application for rehearing are filed, the deputy retains jurisdiction to act on the application for rehearing and the notice of appeal is stayed and deemed to have been filed on the day after the application for rehearing is denied or deemed denied or the decision on rehearing is issued.

This rule is intended to implement Iowa Code sections 17A.15, 17A16 and 86.24.

ITEM 2. Amend rule 876—4.27(17A,86) as follows:

876—4.27(17A,86) Appeal. Except as provided in 4.2(86) and 4.25(17A,86), an appeal to the commissioner from a decision, order or ruling of a deputy commissioner in contested case proceedings shall be commenced within 20 days of the filing of the decision, order or ruling by filing a notice of appeal with the workers' compensation commissioner. *If two or more contested cases were consolidated for hearing, a notice of appeal in one of the cases is an appeal of all the cases.* The date the notice of appeal is filed shall be the date the notice of appeal is received by the agency. *Miller v. Civil Constructors, 373 N.W.2d 115 (Iowa 1985).* The notice shall be served on the opposing parties as provided in 4.13(86). An appeal under this section shall be heard in Polk County or in any location designated by the workers' compensation commissioner.

~~No appeal shall be separately taken under this or 4.25(17A,86) from an~~ *interlocutory decision, order or ruling of a deputy workers' compensation commissioner can be appealed only as hereinafter provided.* A decision, order or ruling is interlocutory if, *when issued,* it does not dispose of all issues in the contested case, ~~unless that are ripe for adjudication.~~ *If the sole issue remaining for determination is claimant's entitlement to additional compensation for unreasonable denial or delay of payment pursuant to Iowa Code section 86.13, the decision is not interlocutory. An adjudication that awards ongoing payments of weekly compensation under Iowa Code section 85.33 or 85.34(1) is not interlocutory. The workers' compensation commissioner may, upon application from any party or on the commissioner's own motion, and upon such terms as the commissioner orders, grant an appeal from an interlocutory decision, order or ruling if the commissioner finds that the ruling affects substantial rights, that the ruling will materially affect the final decision and that determination of the correctness of the ruling will better serve the interests of justice.*

A cross-appeal may be taken under this or 4.25(17A,86) in the same manner as an appeal within the 20 days for the taking of an appeal or within 10 days after filing of the appeal, whichever is later.

This rule is intended to implement Iowa Code sections 17A.15 and 86.24.

ITEM 3. Amend rule 876—4.28(17A,86) as follows:

876—4.28(17A,86) Scope of Briefing requirements on appeal. The commissioner shall decide an appeal upon the record submitted to the deputy workers' compensation commissioner unless the commissioner is satisfied that there exists additional material evidence, newly discovered, which could

not with reasonable diligence be discovered and produced at the hearing. *A party must file a request for the taking of additional evidence must be filed with the workers' compensation commissioner within 20 days of after the filing notice of the appeal was filed.* Any briefs required or allowed by this rule shall be filed promptly following service.

4.28(1) to 4.28(3) No change.

4.28(4) Form of briefs. Respective briefs and exceptions on appeal shall include the following:

a. Statement of the case.

b. Statement of the issues on appeal.

c. An argument corresponding to the separately stated issues and contentions of appellant with respect to the issues presented and reasons for them, with specific reference to the page or pages of the transcript which are material to the issues on appeal.

d. A short conclusion stating the precise relief sought.

The appellee shall ~~may~~ submit a brief on appeal replying to the issues presented by the appellant, unless a cross-appeal is made in which case the brief of appellee shall contain the issues and argument involved in the cross-appeal as well as the response to the brief of appellant. ~~The appeal shall be decided on the issues presented by the appellant and appellee, including those matters raised by way of cross-appeal except as provided in 4.29(86,17A).~~

~~The failure of the appellant or appellee to conform to this rule may result in sanctions as provided in 4.36(86).~~

4.28(5) Length of briefs. See rule 4.45(17A,86).

4.28(6) Extensions. *One extension of up to 30 days will be granted if a motion to extend the time is served on or before the date service of the brief is required by this rule. A subsequent extension requires a motion showing good cause. The commissioner may grant a party the right to serve and file a brief after the time to do so has expired if the appeal or cross-appeal has not been dismissed or decided, the party moves for relief within 60 days from the date service of the brief was due, and the motion shows that the failure to timely serve the brief was due to a good cause that could not have been avoided through the exercise of reasonable diligence.*

4.28(7) Issues considered on appeal. *The appeal will consider the issues presented for review by the appellant and cross-appellant in their briefs and any issues necessarily incident to or dependent upon the issues that are expressly raised, except as provided in 4.29(86,17A). An issue will not be considered on appeal if the issue could have been, but was not, presented to the deputy, including an issue concerning whether the deputy considered or misconstrued evidence or made a scrivener's error. An issue raised on appeal is decided de novo and the scope of the issue is viewed broadly. Once an issue is raised, the opposing party may urge a result on appeal that is more favorable to the opposing party than the ruling from which the appeal was taken, and the result on appeal may be less favorable to the appealing party than the ruling from which the appeal was taken. If the ruling from which the appeal was taken made a choice between alternative findings of fact, conclusions of law, theories of recovery or defenses and the alternative selected in the ruling is challenged as an issue on appeal, de novo review includes reconsideration of all alternatives that were available to the deputy.*

WORKERS' COMPENSATION DIVISION[876](cont'd)

4.28(8) Sanctions. *If an appellant's brief or cross-appellant's brief is not served and filed within the time required by this rule, including any extension, the party defending against the appeal or cross-appeal may move for dismissal. If an appellant's brief or cross-appellant's brief is not served within 30 days after the time required by these rules, including any extension, the workers' compensation commissioner will notify the party in default that upon 15 days*

from service of the notification the appeal or cross-appeal will be dismissed for want of prosecution unless the default is remedied within that period. If the default is not remedied, the appeal or cross-appeal will be dismissed. If an appellee's brief or cross-appellee's brief is not served and filed, the appeal will be decided without reference to that brief.

This rule is intended to implement Iowa Code section 86.24.

ARC 3649B**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 455G.4(3) and 455G.9, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby amends Chapter 11, "Claims," Iowa Administrative Code.

Pursuant to Iowa Code section 17.4(2), the Board finds that notice and public participation are impractical because this amendment is adopted pursuant to statutory authority effective April 20, 2004, when the Governor signed into law 2004 Iowa Acts, House File 2401, which provides authority to reimburse for the permanent closure of previously upgraded underground storage tanks. Benefits provided are retroactive to April 20, 2004, and expire December 31, 2005, necessitating expedient action.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Board finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective immediately after filing with the Administrative Rules Coordinator. This amendment is pursuant to statutory authority effective April 20, 2004, when the Governor signed into law 2004 Iowa Acts, House File 2401. This amendment confers a benefit upon the public by providing for a monetary reimbursement benefit to assist with the permanent closure of underground storage tanks.

Chapter 11 as amended will provide rules and procedures for the reimbursement of claims for the permanent closure of previously upgraded UST sites pursuant to Iowa Code Supplement section 455G.9(1) as amended by 2004 Iowa Acts, House File 2401, section 3. The amendment allows that an otherwise eligible claimant to the UST Fund may be reimbursed for the costs to permanently close the claimant's UST site even if the tanks have been upgraded to comply with Department of Natural Resources operational regulations if the tanks being removed were in place on the date the claimant's eligible claim was filed.

This amendment is also published herein under Notice of Intended Action as **ARC 3648B**. Public comments under that Notice concerning the proposed amendment will be accepted until 4:30 p.m. on October 5, 2004. Interested persons may submit written or oral comments by contacting the Administrator to the UST Fund at 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266; E-mail Scott.Scheidel@aon.com; telephone (515)225-9263; facsimile (515)225-9361.

These rules do not mandate additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services.

These rules are intended to implement Iowa Code Supplement section 455G.9 as amended by 2004 Iowa Acts, House File 2401.

This amendment became effective August 26, 2004.

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

The following amendment is adopted.

Adopt the following **new** subrule:

11.3(11) Permanent closure of an underground storage tank system. Costs for the permanent closure of underground storage tank systems are eligible for reimbursement from the board if all of the following requirements are met:

a. The underground storage tank system to be permanently closed was already in place on the date an eligible claim was submitted to the board;

b. The claim must have been eligible for benefits pursuant to Iowa Code section 455G.9(1)"a" at the time submitted and must have remained eligible for benefits without disqualification, including eligible innocent landowner claims, claims for sites receiving a no further action certificate from the department, and claims for sites the department has designated as no action required;

c. The claimant seeking reimbursement under this subrule must certify by affidavit that the claimant is the owner or operator of the underground storage tank system, that the legal owner of the tank system has abandoned the tanks, or that there is no known owner of the tank system;

d. The permanent closure activities occurred on or after April 20, 2004, and no later than December 31, 2005.

Claims made under this subrule are subject to Iowa Code chapter 455G copayment requirements and cost recovery enforcement.

[Filed Emergency 8/26/04, effective 8/26/04]

[Published 9/15/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/04.

ARC 3638B**PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistant Examiners hereby amends Chapter 327, "Practice of Physician Assistants," Iowa Administrative Code.

The Board adopted these amendments during a telephone conference call on August 19, 2004. The amendments implement negotiated language of the Board and interested parties regarding the practice of physician assistants.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary because amendments are the result of an agreement between interested parties.

The Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment should be waived and this amendment should be made effective upon filing with the Administrative Rules Coordinator on August 25, 2004, as it confers a benefit upon the physician assistant community and the general public for these amendments to go into effect on the same date that amendments published in the May 12, 2004, Iowa Administrative Bulletin as **ARC 3345B** became effective.

These amendments became effective August 25, 2004.

These amendments are intended to implement Iowa Code chapter 148C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend subrule **327.1(1)**, introductory paragraph and paragraphs "e" and "g," as follows:

327.1(1) The medical services to be provided by the physician assistant are those delegated by a supervising physician. The ultimate role of the physician assistant cannot be rigidly defined because of the variations in practice requirements due to geographic, economic, and sociologic factors. The high degree of responsibility a physician assistant may assume requires that, at the conclusion of the formal education, the physician assistant possess the knowledge, skills and abilities necessary to provide those services appropriate to the practice setting. The physician assistant's services may be utilized in any clinical settings including, but not limited to, the office, the ambulatory clinic, the hospital, the patient's home, extended care facilities and nursing homes. Diagnostic and therapeutic medical tasks for which the supervising physician has sufficient training or experience may be delegated to the physician assistant after a supervising physician determines the physician assistant's proficiency and competence. The medical services to be provided by the physician assistant include, but are not limited to, the following:

e. Performance of office surgical procedures including, but not limited to, skin biopsy, mole or wart removal, toenail removal, removal of a foreign body, arthrocentesis, incision and drainage of abscesses.

g. ~~Obstetrical care as delegated by the supervising physician after the physician determines the physician assistant's proficiency and competence to provide these services. Prenatal and postnatal care and assisting a physician in obstetrical care.~~

ITEM 2. Rescind and reserve rule **645—327.3(148C)**.

[Filed Emergency 8/25/04, effective 8/25/04]

[Published 9/15/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/04.

ARC 3662B

SECRETARY OF STATE[721]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 47.1 and Iowa Code section 53.17 as amended by 2004 Iowa Acts, Senate File 2269, section 33, the Secretary of State hereby amends Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

The amendments implement changes to procedures for receiving and counting absentee ballots and provide a training curriculum for absentee ballot couriers as required by Iowa Code section 53.17 as amended by 2004 Iowa Acts Senate File 2269, section 33. The amendments also provide county commissioners of elections with direction on handling absentee ballots returned by anonymous or unauthorized persons.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 21, 2004, as **ARC 3538B**.

Numerous written comments were received during the comment period. Additional oral comments and consulta-

tions occurred with several interested parties. There was no request for a public hearing. The rules have been revised in response to comments.

New subrule 21.361(8) and new rule 21.376(53) have been revised to provide that a ballot delivered by an unauthorized person shall be counted unless the voter reports that the voter requested an absentee ballot but did not receive it, requested and received an absentee ballot but did not vote or return it, or did not request an absentee ballot, or reports other unusual circumstances.

In rule 21.370(53), the requirement that a video of the training program be used, if one is available, has been omitted. Subrule 21.370(1) has been revised to delete the requirement that the commissioner may designate only a member of the commissioner's staff who has experience in election administration to conduct training for absentee ballot couriers.

Subrule 21.373(1) has been revised to add the requirement that trainers register couriers in each county where the courier may collect absentee ballots from voters or other couriers and deliver the ballots to the commissioner.

Subrule 21.373(2), paragraph "a," has been revised to omit the phrase "if the commissioner has questions about the absentee ballots collected by the courier" from the courier registration language. Paragraphs "c" and "d" have been combined and the following language has been deleted regarding contact information for the political party, candidate or committee for which the courier is serving as an agent: "including mobile or other telephone number, E-mail address or any other information that will help the commissioner reach a person in the organization if there are questions about the absentee ballots collected by the courier."

Subrule 21.373(3) has been revised to omit the restriction against registering couriers more than 70 days before an election. Subrule 21.374(4), paragraph "c," has been revised by adding the requirement that courier registrations sent to the commissioner by E-mail be followed by a faxed or mailed copy.

Rule 21.374(53) has been revised to clarify that the commissioner has a duty to train all couriers not trained by the political parties. Subrule 21.374(1) has been revised to add the requirement that the commissioner shall make reasonable efforts to accommodate all requests for training. Subrule 21.374(2) has been revised to include on the list of registered couriers those who are registered to deliver absentee ballots to the commissioner. New subrule 21.374(3) has been added to require that the commissioner register with other counties any couriers who the commissioner trained and who request such registration.

The introductory paragraph for the curriculum (rule 21.375(53)) has been revised for clarity. The list of criminal acts in paragraph "8" has been condensed by removing those that do not apply directly to voting. Under Courier Responsibilities:

Paragraph "1" has been revised by removing the requirement that each courier contact the county auditor in each county where the courier will be collecting ballots to get the name of a contact person to help with courier questions and to get a copy of the absentee voting instructions.

In paragraph "2," the supplies list for couriers has been revised to remove the requirement that couriers carry photo identification and the suggestion that they carry pens and pencils.

Paragraph "3," regarding ballot security, has been revised to omit the requirements that couriers carry waterproof ballot containers on rainy days and that couriers not trust their absentee ballot boxes to anyone else. The accounting process

SECRETARY OF STATE[721](cont'd)

prescribed for the end of each day has been amended to include accounting for all ballots when the ballots are transferred to another courier.

In paragraph "4," the heading "If you lose any ballot" has been changed to "Lost Ballots." This paragraph has also been revised to omit the requirement that couriers who have lost absentee ballots contact the county sheriff if they discover the loss on a weekend. The admonition "Don't wait. Don't lie about it. Don't hide it." has also been omitted.

In paragraph "9," a description of "spoiled ballot" has been added for clarity. In paragraph "11," the requirement that a voter in a primary election indicate political party affiliation on the affidavit has been added. This was inadvertently omitted in the Notice.

In paragraph "17," additional information has been added to help the courier understand the procedure if a voter needs to mail an absentee ballot.

In paragraph "18," parents and stepparents have been added to the list of persons who may mail a voter's absentee ballot. This was inadvertently omitted in the Notice.

Paragraph "20," regarding delivery schedule, has been revised to remove the chart showing the calculation of 72 hours and the calendar days that auditors' offices may not be open. This has been replaced with a notation that, if the 72 hours after a ballot has been collected from a voter expires on a day when the auditor's office is closed, the courier shall deliver the ballot on the next day when the office is open. This change relies upon Iowa Code section 47.4, which extends election filing deadlines in this manner.

Rule 21.376(53) has been revised to permit the auditor to compare the cover sheet with the ballots delivered by the courier after the courier has left. The revised language requires that the ballots from each courier be kept in a secure location separate from other absentee ballots until the comparison is made and also provides procedures if the list and the ballot envelopes do not match.

Rules 21.377(53) and 21.378(53) were not adopted.

The Secretary finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments should become effective upon filing with the Administrative Rules Coordinator on August 27, 2004, as the amendments confer a benefit to the public.

These amendments are intended to implement Iowa Code section 53.17 as amended by 2004 Iowa Acts, Senate File 2269, section 33.

These amendments became effective on August 27, 2004. The following amendments are adopted.

ITEM 1. Amend rule 721—21.361(53) by adding the following **new** subrule:

21.361(8) An absentee ballot that was delivered to the commissioner's office by someone other than the voter or an absentee ballot courier shall be rejected if the voter responds to the notice sent pursuant to subrule 21.376(3) and reports:

- a. The voter requested an absentee ballot but did not receive it.
- b. The voter requested and received an absentee ballot but did not vote it or return it.
- c. The voter did not request or vote an absentee ballot.
- d. Other unusual circumstances that cause the absentee and special voters precinct board to conclude that the voter did not cast the ballot.

ITEM 2. Amend 721—Chapter 21 by adding the following **new** rules 21.370(53) to 21.376(53):

721—21.370(53) Training for absentee ballot couriers. All absentee ballot couriers shall be trained using the curriculum prescribed in rule 21.375(53). It is the responsibility of any person who wishes to serve as an absentee ballot courier to obtain training from an authorized trainer. If a video class is used, the trainer shall be present while the courier trainee views the video and shall be available to answer questions. Each courier shall also receive a paper copy of rule 21.375(53).

21.370(1) For all elections, the county commissioner of elections or the commissioner's designee shall provide training.

21.370(2) For partisan elections only, training may be provided by:

- a. State or county central committees of the political parties defined by Iowa Code section 43.2.
- b. Members of the paid staff of a state or county central committee.
- c. County and state political parties.
- d. Members of the paid staff of a county or state political party.

721—21.371(53) Certificate. The trainer shall provide each person who completes the training with a certificate in substantially the following form:

Official
State of Iowa
Secretary of State
Absentee Ballot Courier

_____ has successfully completed the training course prescribed by the Iowa State Commissioner of Elections and is now authorized under Iowa law to collect absentee ballots from voters for delivery to the County Commissioner of Elections in counties in which the courier is registered. Each County Commissioner keeps a list of Absentee Ballot Couriers who are registered to serve in the county.

This certificate was awarded on _____, 20___. It expires one year from this date.

Signed: _____

Trainer

Name of Organization: _____

721—21.372(53) Frequency of training. An absentee ballot courier who has completed the training course may serve as a courier for any election held for a period of one year from the date of the completion of the training without receiving additional training. A separate registration must be submitted for each election pursuant to rule 21.373(53). The trainer shall register the courier for each election for which the courier wishes to serve during the following 12 months.

721—21.373(53) Registration of absentee ballot couriers.
21.373(1) Filing location. The trainer shall register each courier with the commissioner of every county in which the courier may collect or deliver absentee ballots from voters or other couriers and deliver absentee ballots to the commissioner.

21.373(2) Content. The registration may include more than one courier on a list and shall include:

- a. The courier's name and address and the best means for contacting the courier, which shall include the courier's mobile or other telephone number, E-mail address, or any other

SECRETARY OF STATE[721](cont'd)

information that will help the commissioner reach the courier.

b. The name and telephone number or E-mail address of the courier's trainer.

c. The name of the political party, candidate or committee, if any, for which the courier is serving as an actual or implied agent and the best method for contacting the entity.

21.373(3) Timely registration. Trainers shall register couriers with the county commissioner before each election for which the courier will serve. Trainers may register couriers no later than the day before the election. No absentee ballot couriers shall be registered on any election day for an election being conducted that day.

21.373(4) Method for filing. The trainer shall file the registration information with the commissioner before the courier begins collecting ballots. The registration may be personally delivered, E-mailed, sent by facsimile transmission or mailed. If the training is completed when the commissioner's office is closed and it is not possible for the trainer to register the courier, the trainer may use any of the following methods to register newly trained couriers after the completion of the training course:

a. Send the registration by facsimile transmission to the commissioner within 24 hours.

b. Mail the registration to the commissioner if the envelope containing the registration information is postmarked on the next business day.

c. E-mail the registration to the commissioner within 24 hours and follow the E-mail with a fax or mailing as set forth above.

721—21.374(53) County commissioner's duties. The county commissioner shall be responsible for the registration of absentee ballot couriers and for the training of those couriers not trained by the political parties pursuant to subrule 21.370(2).

21.374(1) Applicants for courier training not trained pursuant to subrule 21.370(2) shall contact the commissioner to schedule a time for training. The commissioner shall make reasonable efforts to accommodate all requests for training.

21.374(2) The commissioner shall maintain a list of all absentee ballot couriers who are registered in the county to collect ballots in the county for each election.

21.374(3) If a person who has completed the absentee ballot courier training course requests the commissioner to register the person as an absentee ballot courier with the county commissioner of one or more other counties, the commissioner shall comply with the request.

721—21.375(53) Absentee ballot courier training. The training materials provided to absentee ballot couriers shall be in substantially the following form and shall include all of the following information:

Absentee Ballot Courier Training

As an absentee ballot courier, you will be visiting voters in their homes and handling voted ballots. This is an important service to the voters. Any mistakes that you make have serious consequences. Your errors can take away someone else's chance to vote. If you break the law and you are convicted, you can be fined, be sent to prison and lose your right to vote.

There are many legal restrictions that apply to absentee voting. Pay careful attention to these:

1. No candidates or elected officials may serve as absentee ballot couriers.

a. Candidates whose names are on the ballot for an election may not serve as couriers for that election.

b. No elected official may serve as a courier, including anyone holding an office that is filled by the voters at any level of government.

It is a felony for a candidate or an elected official to serve as an absentee ballot courier.

2. Only a trained and registered absentee ballot courier or the person who voted an absentee ballot may deliver a voted absentee ballot to the county auditor's office. The only exceptions to this restriction apply to voters who are in hospitals and nursing homes. It is an aggravated misdemeanor for anyone other than the absentee ballot courier or person who voted the ballot to deliver the absentee ballot to the auditor's office.

3. It is also an aggravated misdemeanor to lie about an unauthorized person returning an absentee ballot.

4. It is a felony to violate the requirements of the absentee ballot courier law. This law requires anyone acting on behalf of a political party, candidate or committee organized under the campaign finance law to be trained and registered before the person can collect absentee ballots.

5. The courier must provide each voter with a receipt for the voter's ballot and must properly document the ballots in the courier's care.

6. Vote fraud and intimidating and bribing voters are also felonies under Iowa law.

7. DO NOT:

a. Destroy, deliver, or handle an absentee ballot with the intent of interfering with the voter's right to vote.

b. Produce, procure, submit, or accept an absentee ballot that is known by the person to be materially false, fictitious, forged, or fraudulent.

c. Make a false or untrue statement in an application for an absentee ballot or make or sign a false certification or affidavit in connection with an absentee ballot.

d. Otherwise deprive, defraud, or attempt to deprive or defraud the citizens of Iowa of a fair and impartially conducted election process.

e. Intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, a person to vote or to exercise a right under the election laws of Iowa.

f. Pay, offer to pay, or cause to be paid money or any other thing of value to a person to influence the person's vote.

g. Pay, offer to pay, or cause to be paid money or any other thing of value to an election official conditioned on some act done or omitted to be done contrary to the person's official duty in relation to an election.

h. Conspire with or act as an accessory to another person to commit an act in violation of laws prohibiting vote fraud, duress and bribery.

Courier Responsibilities

1. County information. You need to have the following information:

a. The address of the auditor's office where ballots should be delivered.

b. Hours that the auditor's office is open.

c. Holidays during which the office will be closed.

2. Supplies. Be prepared. Take along what you need for your own personal needs, as well as the following materials:

a. Certificate showing that you are a trained absentee ballot courier. You may want to have along some additional form of identification.

b. Cover sheet to list the ballots you have collected.

SECRETARY OF STATE[721](cont'd)

- c. Receipt forms.
- 3. Ballot security.
 - a. Keep all of the ballots you collect in a ballot box or bag that you can close securely. Don't use the ballot box or bag for anything else.
 - b. Keep the ballot box in your personal possession. Don't leave it unattended.
 - c. Store the cover sheet separately from the ballots.
 - d. At the end of the day and when turning over the ballots to another courier, check the ballots against the cover sheet to be sure that:
 - (1) All ballots in the box are included on the cover sheet.
 - (2) All ballots listed on the cover sheet are in the box.
 - 4. Lost ballots. If you lose any ballot, call the county auditor as soon as you discover the loss. Take your cover sheet to the auditor's office. The auditor may be able to replace the lost ballots.
 - 5. Introduction. Introduce yourself and explain that you are an absentee ballot courier and have come to pick up absentee ballots to be delivered to the county auditor. Be prepared to show your training certificate if anyone asks for it.
 - 6. Secret ballot. The voter is required by law to mark the ballot in secret, unless the voter cannot mark the ballot because of a disability.
 - 7. Voters who ask for help. A voter who has a disability may ask anyone for help to mark the ballot. **Do not help mark a ballot unless the voter asks for your help.** Please note that federal law prohibits the following people from helping a voter:
 - a. The voter's employer or an agent of the voter's employer.
 - b. An officer or agent of the voter's union.
 - 8. **If you help someone vote:**
 - a. Do not tell the voter how to vote.
 - b. Mark the ballot according to the voter's instructions.
 - c. If the voter is not sure who to vote for, don't decide for the voter.
 - d. Do not tell anyone else how the person voted.
 - 9. Spoiled ballots. If the voter tells you that the voter has made a mistake in marking the ballot, or that the ballot is spoiled or damaged in some way, you can return the ballot to the auditor's office for the voter. This must be done immediately. The auditor will mail a replacement ballot to the voter. Have the voter:
 - a. Put the ballot and Affidavit Envelope in the Return Carrier Envelope.
 - b. Write "Spoiled Ballot" on the Return Carrier Envelope.
 If a spoiled ballot is returned to the auditor's office and a replacement absentee ballot is not voted or the voter does not receive the replacement ballot, the voter may vote at the polls on election day.
 - 10. Secrecy folder or envelope. The voter should put the ballot into the secrecy folder, if one was provided. The secrecy folder does not have to be sealed. Its purpose is to conceal the marks on the ballot when the ballot is removed from the Affidavit Envelope. Put the secrecy envelope in the Affidavit Envelope.
 - 11. Affidavit Envelope. The Affidavit Envelope must be filled out or the ballot cannot be counted. The affidavit must include:
 - a. The address where the voter lives.
 - b. The voter's signature.
 - c. Date the voter signed the affidavit.
 - d. For primary elections only, the voter's political party affiliation.

If the voter cannot sign the affidavit because of a disability, and if the voter asks for your help, you may sign the voter's name in the voter's presence and with the voter's permission. Add your name and the title "Registered Absentee Ballot Courier" to the envelope.

12. Sealing the Affidavit Envelope. If the Affidavit Envelope is open, or has been opened and resealed, the ballot will not be counted. **MAKE SURE THE AFFIDAVIT ENVELOPE IS SEALED PRIOR TO ACCEPTING THE BALLOT.**

13. Return Carrier Envelope. The Affidavit Envelope must be sealed inside the Return Carrier Envelope.

14. Receipt for ballot. You must provide each voter with a receipt for the voter's ballot, and must properly document the ballots in your care. Use only the receipt form prescribed by the Secretary of State.

15. Cover sheet. Record each ballot on the cover sheet. Use only the cover sheet form prescribed by the Secretary of State.

16. Deliver the ballot to the county that issued it. The appropriate courier must personally deliver the ballots (see paragraph "19" below). Do not use a drop box. The Return Carrier Envelope will have the auditor's county and mailing address on it. Do not deliver ballots to the wrong county.

17. Out-of-county ballots. If you visit a voter who has a ballot that needs to be delivered to another county, and you are not a registered courier for that county or you cannot deliver the ballot on time, advise the voter to mail the ballot to the appropriate county. No postage is necessary. Please note that the ballot envelope must be postmarked before election day.

18. Do not mail any absentee ballots! Unless you are an immediate family member, you may not mail the ballot for another voter.

Immediate family member includes only **the voter's**:

- a. Husband or wife;
- b. Daughter, stepdaughter, son or stepson, if that family member is 18 years of age or older;
- c. Granddaughter or grandson, if that family member is 18 years of age or older;
- d. Parent or stepparent;
- e. Grandfather or grandmother;
- f. Sister or brother, if that family member is 18 years of age or older.

19. Transferring ballots to another absentee ballot courier for a political party, candidate or committee. The law allows you to transfer the ballots you collected to another courier if a delivery courier has been designated by the political party, candidate or committee for whom you are acting. Ballots may not be transferred more than once. When you transfer the ballots:

- a. Compare the ballots in your possession with the ballots on your cover sheet.
- b. Get a receipt. You are personally responsible for the ballots you collected. Your name is on the receipts you gave to the voters.

20. Delivery schedule. Deliver ballots to the appropriate county auditor within 72 hours (three days) after you retrieve them from the voters. If you received the ballots from another courier, the 72-hour limit applies from the time the ballot was collected from the voter, not from the other courier. If the 72-hour limit ends on a day when the auditor's office is closed, you must deliver the ballots on the next day that the auditor's office is open.

SECRETARY OF STATE[721](cont'd)

It is your responsibility to know what hours the auditor's office will be open. Ask the auditor's office staff for a list of holidays for which the office will be closed.

All county auditor's offices are open on the two Saturdays before primary and general elections.

For primary and general elections, the polls close at 9 p.m. All absentee ballots must be delivered by that time. Ballots delivered after 9 p.m. cannot be counted.

For all other elections, the polls close at 8 p.m. All absentee ballots must be delivered by that time. Ballots delivered after 8 p.m. cannot be counted.

21. Check-in process. Auditor's office staff may compare your cover sheet with the ballots to verify that all items on the cover sheet are included and that all ballots in the group are on the cover sheet. The auditor will give you a file-stamped copy of your cover sheet. Keep this. You are personally responsible for the ballots you collected and may be asked for proof that you delivered the ballots to the appropriate county auditor's office.

721—21.376(53) Receiving absentee ballots. The county commissioner shall carefully document the return of absentee ballots.

21.376(1) From couriers. When a courier delivers the ballots, the commissioner shall mark the cover sheet with the date and time that they were received and the name of the person receiving the ballots. The commissioner shall make a copy of the cover sheet and give it to the courier. The commissioner shall keep the original cover sheet for the county's records. The commissioner shall compare the cover sheet with the ballots being returned either while the courier is present or later the same day.

If the commissioner does not compare the cover sheet and the ballots returned by the courier at the time of delivery, the cover sheet and ballots shall be kept together in a secure place until the comparison is done. The ballots shall not be intermingled with any other absentee ballots until they have been compared to the courier's cover sheet.

If the courier returned ballots that were not listed on the cover sheet, the commissioner shall note the discrepancy on the cover sheet and attach an explanation of the discrepancy to the ballot envelope.

If there are ballots listed on the cover, but not returned, the commissioner shall contact the courier at once by the best means available and determine the location of the ballot. If the courier cannot locate the ballot, the ballot shall be considered a lost ballot under Iowa Code section 53.21.

21.376(2) Absentee ballots delivered by unauthorized person. If someone other than the voter or a registered absentee ballot courier delivers one or more absentee ballots to the commissioner's office, the commissioner or the commissioner's staff members shall record the name of the person who delivered the ballots and send the notice provided for in 21.376(3).

21.376(3) Notice to voter. The commissioner shall send a notice in substantially the following form:

Iowa law limits the persons who may return and the methods for returning absentee ballots. From information available to our office, it appears that an unauthorized person may have delivered your ballot. Your ballot will be counted unless you return this form or reply before _____ [date and time the Absentee and Special Voter's Precinct Board will convene] with the following information:

I requested an absentee ballot, but did not receive it.

I requested and received an absentee ballot, but I did not vote it or return it.

I did not request or vote an absentee ballot.

Other unusual circumstance _____

Signed: _____ Date: _____

These rules are intended to implement Iowa Code chapter 53, as amended by 2004 Iowa Acts, Senate File 2269.

[Filed Emergency After Notice 8/27/04, effective 8/27/04]
[Published 9/15/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/04.

ARC 3636B

SECRETARY OF STATE[721]

Adopted and Filed Emergency

Pursuant to the authority of 2004 Iowa Acts, Senate File 2298, section 311, Iowa Code section 47.1 and the Help America Vote Act (HAVA), Public Law 107-252, the Secretary of State hereby adopts new Chapter 27, "Help America Vote Act Grants," Iowa Administrative Code.

This chapter contains grant procedures for distributing HAVA funds to Iowa counties.

In compliance with Iowa Code section 17A.4(2), the Secretary finds that notice and public participation are impracticable because grants and projects need to be completed before the November 2, 2004, general election.

The Secretary finds, in compliance with Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the chapter should be waived and this chapter should be made effective upon filing, as it confers a benefit by allowing funds to be more expeditiously transferred to counties.

The Secretary adopted this amendment on August 20, 2004.

This amendment became effective on August 20, 2004.

This amendment is also published herein under Notice of Intended Action as **ARC 3635B** to allow public comment. This emergency filing permits the Secretary to distribute funds to counties more expeditiously.

This amendment is intended to implement 2004 Iowa Acts, Senate File 2298, Iowa Code section 47.1 and the Help America Vote Act, Public Law 107-252.

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

The following **new** chapter is adopted.

CHAPTER 27

HELP AMERICA VOTE ACT GRANTS

721—27.1(47,80GA,SF2298) Purpose. The Help America Vote Act (Pub. Law 107-252, Sec. 261-265) and 2004 Iowa Acts, Senate File 2298, provide funds to replace lever voting equipment, upgrade voting equipment, provide training to election officials, provide additional information to voters and improve election accessibility for individuals with disabilities. The purpose of these rules is to establish a grant program for providing funds to the counties of Iowa for the above purposes.

SECRETARY OF STATE[721](cont'd)

721—27.2(47,80GA,SF2298) Definitions.

“Act” means Public Law 107-252, the Help America Vote Act of 2002.

“Secretary” means the secretary of state created pursuant to Article 4, section 22, of the Constitution of the State of Iowa.

721—27.3(47,80GA,SF2298) Eligibility and requirements.

27.3(1) Any Iowa county is eligible to receive funds.

27.3(2) For each grant program, the secretary will develop the requirements and criteria for awards and publish the information on the secretary’s Web site www.sos.state.ia.us. In addition, the secretary will also notify each county of grant programs.

721—27.4(47,80GA,SF2298) Application process. The secretary shall establish the application and review deadlines for each grant program. Notice of the deadlines and application forms shall be sent to each county and shall also be available on the secretary’s Web site. Applications shall be submitted to HAVA Grants, Secretary of State’s Office, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

721—27.5(47,80GA,SF2298) Application contents. Applications shall be submitted on forms developed and made available by the secretary. Contents of the application shall include:

1. Description of the proposed project.
2. Budget to complete the project.
3. Local funds or effort on the project.
4. Other information as requested by the secretary.

721—27.6(47,80GA,SF2298) Application review. The secretary shall review the applications and make awards based on the criteria as announced and published on the secretary’s Web site.

721—27.7(47,80GA,SF2298) Award process. The secretary will award grants to counties. Upon award to a county, the secretary shall send a grant agreement to the county. The county auditor, the chair of the county board of supervisors, or other designated county representative shall sign the agreement and return it to the secretary. The grant award agreement will outline procedures for payment of grant funds. The grant recipient county must submit all documentation as required by the secretary.

721—27.8(47,80GA,SF2298) Reports. Annually and at the completion of each project, each grant recipient shall make a report to the secretary. The report shall include the expenditures made on the project and shall also include an assessment of the impact of the project.

721—27.9(47,80GA,SF2298) Access to records. Representatives of the secretary, the state auditor, and appropriate federal authorities shall have access to all books, accounts, and documents belonging to or in use by the grant recipient and pertaining to the receipt of assistance through this program.

These rules are intended to implement 2004 Iowa Acts, Senate File 2298, Iowa Code section 47.1 and the Help America Vote Act, Public Law 107-252.

[Filed Emergency 8/20/04, effective 8/20/04]

[Published 9/15/04]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/04.

ARC 3666B

UTILITIES DIVISION[199]

Adopted and Filed Emergency

Pursuant to Iowa Code sections 17A.4, 17A.5, 476.1, 476.2, and 476.20 (2003), the Utilities Board (Board) hereby amends 199 IAC 39.1(476), 199 IAC 39.3(3), and 199 IAC 39.3(4). The Board issued an order in Docket No. RMU-04-7, In re: Modification of Lifeline and Link-Up Rules in 199 IAC Chapter 39, on August 27, 2004, adopting these amendments expanding the eligibility criteria for the Lifeline and Link-Up programs to ensure that all eligible Iowans can qualify for the support of the Lifeline and Link-Up programs.

The Lifeline and Link-Up programs are two of several universal service support mechanisms. The Lifeline program provides low-income consumers with discounts of up to \$10 off the monthly cost of telephone service for a single telephone line in a consumer’s principal residence. The Link-Up program provides low-income consumers with discounts of up to \$30 off of the initial cost of installing telephone service (47 CFR § 54.401(a)). Pursuant to the rules of the Federal Communications Commission (FCC), low-income consumers have been able to establish their eligibility for Lifeline and Link-Up support by participating in certain federal assistance programs, such as Medicaid or Federal Public Housing Assistance Section 8.

On April 29, 2004, the FCC issued its “Report and Order and Further Notice of Proposed Rulemaking” in WC Docket No. 03-109. In that order, the FCC adopted rules adding three new eligibility criteria for the Lifeline and Link-Up programs.

Pursuant to FCC rules, the Board administers parts of the Lifeline and Link-Up programs in Iowa. The Board has adopted its own rules at 199 IAC Chapter 39 to facilitate this process. Those rules include a listing of the eligibility criteria specified by the FCC. Therefore, in order to give effect to the FCC’s three new eligibility requirements, the Board must amend its rules.

The Board is adopting these amendments without notice and public participation pursuant to the provisions of Iowa Code section 17A.4(2). The Board finds that notice and public participation would be contrary to the public interest, because these amendments will confer a benefit on the public by expanding eligibility for federal assistance. The time required for notice and public participation would unreasonably delay this benefit. Moreover, the adopted amendments merely implement recent changes in the FCC’s regulations; those changes along with many other changes were already the subject of notice and public comment at the federal level.

The Board finds that, pursuant to Iowa Code section 17A.5(2)“b”(2), the normal effective date of the amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on August 27, 2004. The Board finds that this effective date is appropriate because these amendments confer a benefit on a segment of the population, as described above.

These amendments are intended to implement Iowa Code section 476.102 and the Telecommunications Act of 1996, 47 U.S.C. § 214 and 254.

These amendments became effective August 27, 2004.

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

UTILITIES DIVISION[199](cont'd)

The following amendments are adopted.

ITEM 1. Amend rule **199—39.1(476)** by adopting the following **new** definition in alphabetical order:

“Federal Poverty Guidelines” means the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

ITEM 2. Amend subrule 39.3(3) as follows:

39.3(3) Qualified applicants. To be eligible for Lifeline or Link-up assistance, an applicant must *either have income that is at or below 135 percent of the Federal Poverty Guidelines or participate in one of the following programs:*

- a. Medicaid (e.g., Title XIX/Medical, state supplemental assistance);
- b. Food stamps;
- c. Supplemental Security Income;
- d. Federal Public Housing Assistance *Section 8*; ~~and~~
- e. Low-income Home Energy Assistance Program; ;
- f. *Temporary Assistance to Needy Families*;
- g. *National School Lunch Program's free lunch program*.

ITEM 3. Amend subrule 39.3(4) as follows:

39.3(4) Application. The application shall be upon a form as set forth below. The form shall be supplied to the applicant by the eligible carrier.

LINK-UP AND LIFELINE RATE ASSISTANCE APPLICATION

Name _____

Address _____

Soc. Sec. _____

City _____ State _____ Zip _____

Phone Number where you may be reached or receive messages (____)_____

Please answer the following questions (indicate by check mark):

1. By filling out this application I (the applicant) request:

- Low-income telephone connection assistance (Link-up) and/or
- Low-income telephone Lifeline assistance.

2. Have you received Link-up assistance at the above address in the past?

- Yes
- No

If the answer is “yes,” you are not eligible for Link-up assistance.

3. Are you participating in any of the following programs?

- Medicaid (e.g., Title XIX/Medical, State Supplemental Assistance)
- Food Stamps
- Supplemental Security Income
- Federal Public Housing Assistance *Section 8*
- Low-Income Home Energy Assistance
- Temporary Assistance to Needy Families program*
- National School Lunch Program's free lunch program*

4. *Is your income at or below 135 percent of the Federal Poverty Guidelines?*

- Yes
- No

I understand completion of this application does not constitute immediate acceptance into this ~~program~~ *these programs*. I agree to notify the telecommunications carrier if I cease to participate in any of the public assistance programs I checked above *or if my income becomes greater than 135 percent of the Federal Poverty Guidelines*.

I certify under penalty of perjury the above information is true. I have read the information on this application and understand I must meet the above qualifications to receive assistance from these programs.

SIGNATURE _____ DATE _____

[Filed Emergency 8/27/04, effective 8/27/04]

[Published 9/15/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/04.

ARC 3634B**ATTORNEY GENERAL[61]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 537.6117, the Attorney General hereby amends Chapter 14, "Insurance in Consumer Credit Transactions," Iowa Administrative Code.

This rule permits the assessment of premiums for involuntary unemployment insurance as additional charges in consumer credit transactions under the conditions specified in the rule. The amendments are made to conform the rules to statutory amendments reflected in Iowa Code section 537.2501(2)"b"(3)(b), which provides that rates for certain consumer credit insurance, including involuntary unemployment insurance, are deemed to be reasonable under the section if they reasonably may be expected to produce a ratio of 50 percent by dividing claims incurred by premiums earned. The amendments delete the references to 65 percent in the rule and insert references to 50 percent in lieu thereof. The amendments also change the rule from being unseverable to being severable to ensure that the invalidity of a provision of the rule does not result in the invalidity of the entire rule.

Notice of Intended Action was published in the June 9, 2004, Iowa Administrative Bulletin as **ARC 3395B**. No public comment was received on these amendments. The adopted amendments are identical to those published under Notice of Intended Action.

The Attorney General adopted these amendments on August 16, 2004.

These amendments will become effective on October 20, 2004.

These amendments are intended to implement Iowa Code sections 537.6117 and 537.2501(2)"b"(3)(b).

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [14.1, 14.1(13), 14.1(14), 14.1(16)] is being omitted. These amendments are identical to those published under Notice as **ARC 3395B**, IAB 6/9/04.

[Filed 8/19/04, effective 10/20/04]
[Published 9/15/04]

[For replacement pages for IAC, see IAC Supplement 9/15/04.]

ARC 3668B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.304 and 455D.9, the Environmental Protection Commission hereby amends Chapter 105, "Organic Materials Composting Facilities," Iowa Administrative Code.

The amendments are minor clarifications regarding composting of yard waste, food residuals or agricultural waste, as well as the management of storm water. The variance reference is also corrected to cite 561—Chapter 10.

Notice of Intended Action was published in the June 9, 2004, Iowa Administrative Bulletin as **ARC 3408B**. A pub-

lic hearing was held on July 14, 2004. No comments were received, and no changes were made to the amendments.

These amendments are intended to implement Iowa Code sections 455B.304 and 455D.9.

These amendments shall become effective October 20, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [105.5(1), 105.8(2)"f," 105.10, 105.15] is being omitted. These amendments are identical to those published under Notice as **ARC 3408B**, IAB 6/9/04.

[Filed 8/27/04, effective 10/20/04]
[Published 9/15/04]

[For replacement pages for IAC, see IAC Supplement 9/15/04.]

ARC 3661B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.304(1), 455B.304(14), 455B.304(16), and 455B.383, the Environmental Protection Commission hereby rescinds Chapter 120, "Scope of Title—Definitions—Forms—Rules of Practice," and adopts new Chapter 120, "Landfarming of Petroleum Contaminated Soil," and amends Chapter 121, "Land Application of Wastes," Iowa Administrative Code.

The adopted amendments include a restructuring of Chapter 120 and Chapter 121 such that Chapter 120 will pertain solely to landfarming petroleum contaminated soil (PCS), and Chapter 121 will apply solely to the land application of wastes other than PCS. The separation of these two distinct activities into dedicated chapters will aid the regulated community in identifying applicable requirements. Existing rules 567—120.1(455B,17A) through 567—120.3(455B) are moved to Chapter 121 and renumbered as 567—121.1(455B,17A) through 567—121.3(455B). The substantive regulatory changes of this rule making, however, pertain to the landfarming of PCS.

This rule making creates two types of landfarm permits: single-use landfarm applicator permits and multiuse landfarm permits. A single-use landfarm applicator permit is similar to a license, which allows the applicator to apply PCS to several different plots of land on a one-time or infrequent basis. A multiuse landfarm permit is issued for a permanent facility on which PCS is applied to the same land on a frequent basis. This rule making also requires due diligence regarding the testing, siting, operation, and reporting of landfarm activities.

The Energy and Waste Management Bureau wrote Chapter 120 in collaboration with multiple intra-Department bureaus and sections that are involved in aspects of landfarming to ensure regulatory consistency. This collaboration included the Underground Storage Tank (UST) Section, the Emergency Response Section, and the Field Offices. Furthermore, an advisory committee consisting of the Environmental Professionals of Iowa, the Petroleum Marketers and Convenience Stores of Iowa, a UST Fund member, two landfarming companies, and the Iowa and Nebraska Petroleum Council were consulted.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Notice of Intended Action was published in the June 9, 2004, Iowa Administrative Bulletin as **ARC 3397B**. A public hearing was held on July 21, 2004. No comments were received at the hearing. Two changes were made to the proposed rules. These changes will benefit stakeholders.

The first change is a clarification of 120.2(1) and resulted from a stakeholder's question regarding the scope of the chapter and quarry operations. The stakeholder called to ask if incidental drips of hydraulic fluid scooped up with the large bucket of quarry earth-moving equipment would trigger the applicability threshold for Chapter 120. The stakeholder did not want to submit a formal comment, and an answer was provided during the telephone call, but permitting staff decided that a minor clarification was needed to subrule 120.2(1). This change should assist stakeholders' understanding of the scope of the chapter. Subrule 120.2(1) now reads as follows:

"120.2(1) These rules apply to the landfarming of soils contaminated with biodegradable petroleum products including, but not limited to, gasoline, diesel fuel, kerosene, jet fuel, motor oil, hydraulic fluid, or some combination thereof. All PCS landfarming activities in which 3 or more cubic yards of PCS are excavated shall comply with this chapter. Uncontaminated soil that is excavated during the removal of the PCS shall not be counted toward the 3-cubic-yard applicability threshold."

The second change is to the length of notification time required prior to landfarming. This change is a result of a Kaizen event held by the Leaking Underground Storage Tank (LUST) Section regarding moving contaminated sites into the corrective action phase. The new LUST corrective action plan process that resulted from this Kaizen event is streamlined and works on a much shorter time frame. Thus the 30-day notification time for landfarming may not be possible, and changes were made to paragraphs "a" to "c" of subrule 120.11(1) allowing for shorter notification periods. These changes will benefit stakeholders by allowing LUST site cleanups to proceed without undue notification delays. Paragraphs "a" to "c" now read as follows:

"a. Storage notification. Multiuse and single-use landfarms shall submit the following information to the department and department field office with jurisdiction over the landfarm before receipt of the PCS for storage; however, at least 30 days' notification is encouraged. PCS storage information from an emergency cleanup supervised by the department pursuant to subrule 120.6(1), however, shall be reported within 7 days of the emergency cleanup.

"(1) The date the PCS is expected to be delivered for storage at the landfarm.

"(2) Where the PCS will be stored at the landfarm.

"(3) The spill number, UST registration number, and LUST number, as applicable.

"b. Land application notification. Multiuse and single-use landfarms shall submit the following information to the department and department field office with jurisdiction over the landfarm before land application; however, at least 30 days' notification is encouraged. PCS information from an emergency cleanup supervised by the department pursuant to subrule 120.6(1), however, shall be reported within 7 days of the emergency cleanup.

"(1) The date the PCS is expected to be land applied.

"(2) Single-use landfarms shall submit an address, topographic map, soil map with key, and a map of the 100-year flood plain illustrating and labeling where the PCS is to be applied. Multiuse landfarms shall report the landfarm plot(s) to which the PCS is to be applied.

"(3) Application rate calculations pursuant to subrule 120.9(6).

"(4) The spill number, UST registration number, and LUST number, as applicable.

"c. PCS analysis and characterization. Information on the analysis and characterization of the PCS pursuant to rule 567—120.6(455B) shall be submitted to the department before receipt of the PCS for storage or land application; however, at least 30 days' notification is encouraged. PCS analysis and characterization information from an emergency cleanup supervised by the department pursuant to subrule 120.6(1), however, shall be reported within 60 days of the emergency cleanup."

These rules are intended to implement Iowa Code sections 455B.301A, 455B.304 and 455B.383.

These amendments shall become effective October 20, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Ch 120, 121.1 to 121.7] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3397B**, IAB 6/9/04.

[Filed 8/27/04, effective 10/20/04]

[Published 9/15/04]

[For replacement pages for IAC, see IAC Supplement 9/15/04.]

ARC 3641B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 1, "Iowa Ethics and Campaign Disclosure Board," Iowa Administrative Code.

The amendment clarifies the procedural requirements for a person requesting an advisory opinion from the Board.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on July 21, 2004, as **ARC 3500B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on August 25, 2004.

This amendment is intended to implement Iowa Code Supplement section 68B.32A(11) as amended by 2004 Iowa Acts, Senate File 2179, section 10.

This amendment will become effective October 20, 2004.

The following amendment is adopted.

Rescind rule 351—1.2(68B) and adopt the following **new** rule in lieu thereof:

351—1.2(68B) Requirements for requesting board advisory opinions.

1.2(1) Who may request opinion. Any person subject to the board's jurisdiction may request a board advisory opinion, including a local official or local employee seeking an opinion on the application of the ethics laws in Iowa Code chapter 68B. An authorized agent may seek an opinion on

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

behalf of any person. The board will not issue an opinion to an unauthorized third party. The board may on its own motion issue opinions without receiving a formal request.

1.2(2) Form of request. The request for an opinion shall be in writing and shall describe the specific transaction, conduct, or activity that the requesting person plans to undertake or is presently undertaking. Requests shall be sent to the board as provided in subrule 1.3(1).

1.2(3) Jurisdiction. The board will issue opinions pertaining only to Iowa Code Supplement chapter 68A, Iowa Code chapter 68B, or rules adopted thereunder.

This rule is intended to implement Iowa Code Supplement section 68B.32A(11) as amended by 2004 Iowa Acts, Senate File 2179, section 10.

[Filed 8/26/04, effective 10/20/04]

[Published 9/15/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/04.

ARC 3640B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," and rescinds Chapter 10, "Civil Penalties for Late Campaign Reports," Iowa Administrative Code.

The amendments move the rules on the assessment of civil penalties for late-filed campaign reports from Chapter 10 to Chapter 4. The amendments also reflect current Board procedures concerning the assessment and waivers of civil penalties for late-filed campaign reports.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on July 21, 2004, as **ARC 3502B**. No oral or written comments on the amendments were received. These amendments are identical to those published under Notice.

The Board adopted these amendments on August 25, 2004.

These amendments are intended to implement Iowa Code Supplement sections 68A.503 and 68B.32A(8).

These amendments will become effective October 20, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [adopt 4.58 to 4.62; rescind Ch 10] is being omitted. These amendments are identical to those published under Notice as **ARC 3502B**, IAB 7/21/04.

[Filed 8/26/04, effective 10/20/04]

[Published 9/15/04]

[For replacement pages for IAC, see IAC Supplement 9/15/04.]

ARC 3639B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby adopts Chapter 6, "Executive Branch Ethics," Iowa Administrative Code.

The Board is required by Iowa Code section 68B.32(1) and Iowa Code Supplement section 68B.32A(12) to draft rules setting the standards for governing the ethical conduct of persons in the executive branch of state government. The amendment adopts a new chapter in the Board's rules that begins the process of setting those standards.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 21, 2004, as **ARC 3503B**. The following change was made from the Notice:

The word "authority" was added to the definition of "agency of state government" in rule 351—6.2(68B) to clarify that authorities of the executive branch are subject to the rules in this chapter just the same as they are subject to the ethics laws in Iowa Code chapter 68B. The definition now reads as follows:

"'Agency of state government' or 'state agency' means any authority, board, bureau, commission, community college, department, division, office of a statewide elected official, or regents university."

The Board adopted this chapter on August 25, 2004.

These rules are intended to implement Iowa Code Supplement chapter 68B.

These rules will become effective October 20, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 6] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 3503B**, IAB 7/21/04.

[Filed 8/26/04, effective 10/20/04]

[Published 9/15/04]

[For replacement pages for IAC, see IAC Supplement 9/15/04.]

ARC 3642B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 7, "Personal Financial Disclosure," Iowa Administrative Code.

The amendments clarify the deposit, retention, and availability of personal financial disclosure statements filed by executive branch officials, employees, and candidates for statewide office. The amendments also clarify when a personal financial disclosure statement is considered timely filed.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on July 21, 2004, as **ARC 3501B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on August 25, 2004.

These amendments are intended to implement Iowa Code Supplement section 68B.35 as amended by 2004 Iowa Acts, Senate File 2179, section 11, and Iowa Code section 68B.35A as amended by 2004 Iowa Acts, Senate File 2179, section 12.

These amendments will become effective on October 20, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [7.1(4), 7.1(6), 7.3, 7.4, 7.9] is being omitted. These amendments are identical to those published under Notice as **ARC 3501B**, IAB 7/21/04.

[Filed 8/26/04, effective 10/20/04]
[Published 9/15/04]

[For replacement pages for IAC, see IAC Supplement 9/15/04.]

ARC 3660B

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Division amends Chapter 10, "Enhanced 911 Telephone Systems," Iowa Administrative Code.

The amendments are intended to implement 2004 Iowa Acts, Senate File 2298, which was signed by the Governor on May 17, 2004.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 21, 2004, as **ARC 3519B**. A public hearing was held on August 11, 2004. Written public comment was received on these amendments. The two written comments dealt with the collection of wireless E911 surcharge for customers of prepaid service. As a result of the comments, the amendment to 10.8(5) was revised to further clarify the collection of a wireless E911 surcharge from wireless prepaid customers. Subrule 10.8(5) now reads as follows:

"**10.8(5)** The wireless service provider shall list the surcharge as a separate line item on the customer's billing indicating that the surcharge is for E911 emergency telephone service. In the case of prepaid wireless service, this surcharge shall be collected under one of two methods:

"a. The wireless service provider shall collect, on a monthly basis, the surcharge from each active prepaid customer whose account balance is equal to or greater than the surcharge; or

"b. The wireless service provider shall divide the total earned prepaid wireless telephone revenue received by the wireless service provider within the calendar month and di-

vide by 50 dollars, and multiply the quotient by the surcharge.

"The surcharge shall be remitted based upon the address associated with the point of purchase, the customer billing address, or the location associated with the mobile telephone number for each active prepaid wireless telephone that has a sufficient positive balance as of the last days of the information, if that information is available. If the wireless service provider receives a partial payment of a monthly bill, the payment shall first be applied to the amount owed the wireless carrier with the remainder being applied to the surcharge. The wireless carrier shall bill and collect for a full month's surcharge in cases of a partial month's service. The wireless carrier is entitled to retain 1 percent of any wireless surcharge collected as a fee for collecting the surcharge as part of the subscriber's periodic billing. The wireless E911 surcharge is not subject to sales or use tax."

These amendments are intended to implement Iowa Code chapter 34A as amended by 2004 Iowa Acts, Senate File 2298.

These amendments shall become effective October 20, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 10] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 3519B**, IAB 7/21/04.

[Filed 8/27/04, effective 10/20/04]
[Published 9/15/04]

[For replacement pages for IAC, see IAC Supplement 9/15/04.]

ARC 3650B

LAW ENFORCEMENT ACADEMY[501]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement sections 80B.11 and 80B.11D, the Iowa Law Enforcement Academy with approval of the Iowa Law Enforcement Academy Council hereby amends Chapter 1, "Organization and Administration," and Chapter 2, "Minimum Standards for Iowa Law Enforcement Officers," Iowa Administrative Code.

Iowa Code Supplement section 80B.11D(2) provides that the Iowa Law Enforcement Academy is a law enforcement agency for the purposes of conducting background investigations on sponsored but not yet hired individuals. This rule change clarifies the requirement that certified peace officers in an active sworn status who are working at the Iowa Law Enforcement Academy (ILEA) will conduct the background investigations required by Iowa Code Supplement section 80B.11D. The rule change clarifies that Iowa certified peace officers currently working at ILEA in an active sworn status are required to meet mandatory in-service training requirements outlined in 501—Chapter 8.

Any person employed by the ILEA as a certified peace officer in an active sworn status after the effective date of these amendments shall be required to meet all requirements in 501—Chapters 1 to 3, 6 to 8, 12 and 16.

LAW ENFORCEMENT ACADEMY[501](cont'd)

The proposed amendments were presented at the February 5, 2004, Iowa Law Enforcement Academy Council meeting. The Council approved that a Notice of Intended Action be filed in order to place the proposed rules before the public for discussion.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 9, 2004, as **ARC 3393B**.

There was a public hearing on June 30, 2004, at 10 a.m. in the conference room at the Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa. No persons attended the public hearing and no written comments were received. Meetings were also held at Carroll, Storm Lake, Iowa City, Davenport, Washington, Burlington, Decorah, and Dubuque. One person at the Storm Lake meeting questioned the need for the amendments. All other comments were positive with no suggested change.

The information from the public hearings was presented to the Iowa Law Enforcement Academy Council at the August 5, 2004, regular meeting. The Council approved the amendments. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code Supplement sections 80B.3(3), 80B.11 and 80B.11D.

These amendments will become effective October 20, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [1.1, 2.3] is being omitted. These amendments are identical to those published under Notice as **ARC 3393B**, IAB 6/9/04.

[Filed 8/26/04, effective 10/20/04]
[Published 9/15/04]

[For replacement pages for IAC, see IAC Supplement 9/15/04.]

ARC 3637B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.53, the Professional Licensure Division hereby rescinds Chapter 16, "Impaired Practitioner Review Committee," Iowa Administrative Code, and adopts a new Chapter 16 with the same title.

The amendment establishes a single impaired practitioner review committee for the 18 professional licensure boards in the Department of Public Health.

The Division met with each of the 18 professional boards to discuss the rules and any issues that the boards might have with the rules prior to publication of the Notice.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 3, 2004, as **ARC 3194B**. A public hearing was held on March 23, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. The following changes were made to the Noticed rules in response to comments received from the public and the assistant attorney general:

- In regard to subrule 16.3(3), a comment was received stating that psychiatrists are licensed as medical doctors and

are certified as psychologists, so the descriptive "licensed" was removed and replaced with appropriate language.

- The definition of ARNP was expanded in subrule 16.3(5), paragraph "c."

- The wording of subrule 16.3(7) was changed to read as follows:

"16.3(7) The board chairperson or other licensed designee of the board under which the licensee is regulated, who will join the committee when a licensee of that board is being reviewed."

- Wording was added to subrule 16.5(2) to provide for committee discretion on ordering an evaluation.

- In subrule 16.5(3), the wording "or have engaged in any actions defined by the board as grounds for discipline" was omitted.

- Subrule 16.5(4) was changed to read as follows:

"16.5(4) At the time of the self-report or referral, the licensee must not already be under any Iowa board order related to an impairment."

- Subrule 16.11(1) was changed and reads as follows:

"16.11(1) The impaired practitioner review committee may communicate information about a licensee in the program to licensing authorities and impaired practitioner programs of any jurisdiction of the United States or foreign nations in which the participant is currently licensed to practice or in which the participant may seek licensure."

This amendment was adopted by the Iowa Board of Athletic Training Examiners on June 15, 2004; Iowa Board of Barber Examiners on July 27, 2004; Iowa Board of Behavioral Science Examiners on June 11, 2004; Iowa Board of Chiropractic Examiners on July 14, 2004; Iowa Board of Cosmetology Examiners on May 5, 2004; Iowa Board of Dietetic Examiners on June 4, 2004; Iowa Board of Examiners for the Licensing and Regulation of Hearing Aid Dispensers on August 2, 2004; Iowa Board of Examiners for Massage Therapy on June 1, 2004; Iowa Board of Examiners for Nursing Home Administrators on July 15, 2004; Iowa Board of Mortuary Science Examiners on June 10, 2004; Iowa Board of Physical and Occupational Therapy Examiners on July 8, 2004; Iowa Board of Optometry Examiners on May 21, 2004; Iowa Board of Physician Assistant Examiners on July 21, 2004; Iowa Board of Podiatry Examiners on July 9, 2004; Iowa Board of Psychology Examiners on May 7, 2004; Iowa Board of Respiratory Care Examiners on June 16, 2004; Iowa Board of Social Work Examiners on May 10, 2004; and Iowa Board of Speech Pathology and Audiology Examiners on August 13, 2004.

This amendment will become effective October 20, 2004.

This amendment is intended to implement Iowa Code chapter 272C.

The following amendment is adopted.

Rescind 645—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16**IMPAIRED PRACTITIONER REVIEW COMMITTEE**

Pursuant to the authority of Iowa Code section 272C.3(1)"k," the department of public health establishes the impaired practitioner review committee.

645—16.1(272C) Definitions.

"Board" means a health professional licensing board established pursuant to Iowa Code chapter 147, 154A, or 155.

"Contract" means the written document executed by a practitioner and the impaired practitioner review committee

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

which establishes the terms for participation in the impaired practitioner program.

“Impairment” means an inability to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychological or physical disorder or disability. For the purposes of the program, “impairment” does not include gambling addiction, sexual addiction, sexual compulsivity, paraphilia or other sexual disorders.

“IPRC” or “committee” means the impaired practitioner review committee.

“Practitioner” or “licensee” means a person licensed under Iowa Code chapter 147, 154A, or 155.

“Self-report” means written or oral notification provided by the licensee to the board or impaired practitioner review committee that the licensee has been, is, or may be impaired prior to the board’s receiving a complaint or report from a third party alleging the same. Information relative to impairment or a potential impairment which is provided on a license application or a renewal form may be considered a self-report.

645—16.2(272C) Purpose. The impaired practitioner review committee evaluates, assists, and monitors the recovery or rehabilitation of practitioners in the impaired practitioner program and makes reports to the board in the event of non-compliance. The impaired practitioner program is both an advocate for licensee health and a means to protect the health and safety of the public.

645—16.3(272C) Composition of the committee. The committee is composed of, but not limited to, members with the following qualifications:

16.3(1) A licensed practitioner who has expertise in the area of substance abuse and addiction treatment.

16.3(2) A licensed practitioner who has expertise in the diagnosis and treatment of psychological disorders and disabilities.

16.3(3) A specialty board-certified psychiatrist who holds a current, active Iowa license as defined in 653—9.1(147, 148, 150, 150A).

16.3(4) A licensee who has remained free of addiction for a period of no less than two years since successfully completing a board-approved recovery program; board-ordered probation for drug or alcohol dependency, addiction or abuse; or an impaired practitioner review committee contract.

16.3(5) A physician, a physician assistant or an advanced registered nurse practitioner (ARNP) whose specialty area is family practice or who has expertise in neurological disorders.

a. If the member is a physician, the physician shall be a person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy as defined in 653—1.1(17A, 147).

b. If the member is a physician assistant, the physician assistant shall be a person licensed as a physician assistant as defined in 645—326.1(148C).

c. If the member is an ARNP, the ARNP shall be licensed as a registered nurse as defined in Iowa Code chapter 152 or 152E and registered to practice as an ARNP in Iowa as defined in 655—7.2(152).

16.3(6) An at-large public member.

16.3(7) The board chairperson or other licensed designee of the board under which the licensee is regulated, who will join the committee when a licensee of that board is being reviewed.

16.3(8) The board administrator assigned to the impaired practitioner review committee for professional licensure.

645—16.4(272C) Organization of the committee.

16.4(1) The division shall appoint the committee members designated in subrules 16.3(1) to 16.3(6).

16.4(2) Each board shall appoint a committee member designated in subrule 16.3(7).

16.4(3) The IPRC shall elect a chairperson and vice chairperson from committee members specified in subrules 16.3(1) to 16.3(5) at the first meeting of each calendar year. The officers shall serve one-year terms, which will commence following the election.

16.4(4) Committee members, except the board administrator, shall be appointed for a three-year term, and may serve for a maximum of three terms. Each term shall expire on December 31 of the third year of the term. Initial terms of committee members shall be for a period of not less than one year nor more than three years as designated by the division to provide continuity to the committee.

645—16.5(272) Eligibility. To be eligible for participation in the impaired practitioner program, a licensee must meet all the following criteria:

16.5(1) The licensee must self-report an impairment or suspected impairment directly to the IPRC or be referred to the committee by the board.

16.5(2) The licensee must undergo an evaluation at an impaired practitioner committee-approved provider if requested to do so by the committee.

16.5(3) The licensee must not have engaged in the unlawful diversion or distribution of controlled or illegal substances to a third party or for personal financial gain.

16.5(4) At the time of the self-report or referral, the licensee must not already be under any Iowa board order related to an impairment.

16.5(5) The licensee shall not have caused harm or injury to a client.

16.5(6) The licensee shall provide truthful information and fully cooperate with the board or committee.

16.5(7) The licensee must consent to the conditions proposed by the committee in the contract.

645—16.6(272C) Meetings.

16.6(1) The committee shall meet as necessary in order to review licensee compliance, develop contracts for new referrals, and determine eligibility for continued monitoring.

16.6(2) The committee may hold a closed session if the committee votes to do so in a public roll-call vote with an affirmative vote of at least two-thirds of the total committee or a unanimous vote of those present. The board will recognize the appropriate statute allowing for a closed session when voting to go into closed session. The impaired practitioner review committee shall keep minutes of all discussion, persons present, and action occurring at a closed session and shall tape-record the proceedings. The records shall be stored securely in the board office and shall not be made available for public inspection.

645—16.7(272C) Terms of participation. A licensee shall agree to comply with the terms for participation in the impaired practitioner program established in a contract. The impaired practitioner review committee shall file a confidential report on board-referred cases with the board upon the licensee’s successful completion of the program.

645—16.8(272C) Noncompliance. A licensee’s failure to comply with the provisions of the contract may require the committee to make referral of the matter to the licensee’s

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

board for possible disciplinary action. The impaired practitioner review committee may provide to the board the licensee's impaired practitioner program file in the event the participant does not comply with the terms of the contract.

645—16.9(272C) Practice restrictions. As a term of the contract, the committee may impose restrictions on the licensee's practice until such time as the committee receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill. As a condition of participation in the program, a licensee is required to agree to restricted practice in accordance with the terms specified in the contract. In the event that the licensee refuses to agree to or comply with the restrictions established in the contract, the committee shall refer the licensee to the board for appropriate action.

645—16.10(272C) Limitations. The committee shall establish the terms and monitor a licensee's compliance with the program specified in the contract. The committee is not responsible for participants who fail to comply with the terms of or successfully complete the impaired practitioner program. Participation in the program under the auspices of the committee shall not relieve the licensee's board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of the licensee's profession by a participant shall be referred to the board for appropriate action.

645—16.11(272C) Confidentiality. The committee is subject to the provisions governing confidentiality established in Iowa Code section 272C.6. Accordingly, information in the possession of the board or the committee about licensees in the program shall not be disclosed to the public. Participation in the impaired practitioner program under the auspices of the committee is not a matter of public record. Information about applicants or licensees in the program shall not be disclosed except as provided in this rule.

16.11(1) The impaired practitioner review committee may communicate information about a licensee in the program to licensing authorities and impaired practitioner programs of any jurisdiction of the United States or foreign nations in which the participant is currently licensed to practice or in which the participant may seek licensure.

16.11(2) The impaired practitioner review committee may communicate information about a licensee in the program to any person assisting in the participant's treatment, recovery, rehabilitation, monitoring, or maintenance.

16.11(3) The impaired practitioner review committee may communicate information about a licensee in the program to the licensee's board in the event the participant does not comply with the terms of the contract as specified in rule 16.8(272C) or 16.9(272C).

16.11(4) The impaired practitioner review committee shall maintain a participant's complete IPRC file for the ten-year period after a participant's contract has expired or is terminated. After that period, only the contract shall be retained.

These rules are intended to implement Iowa Code chapter 272C.

[Filed 8/25/04, effective 10/20/04]

[Published 9/15/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/04.

ARC 3633B

REAL ESTATE COMMISSION[193E]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 543B.9, 543B.18, and 543B.46, the Real Estate Commission hereby amends Chapter 13, "Trust Accounts and Closings," Iowa Administrative Code.

The amendments to subrules 13.1(3), 13.1(7), and 13.1(11) were recommended by the Assistant Attorney General assigned to the Real Estate Commission and are intended to clarify that written agreement of all parties and agreement of the broker are required before the broker can deposit trust funds into a real estate trust account bearing interest to a party other than the Iowa Department of Economic Development.

Notice of Intended Action was published April 14, 2004, in the Iowa Administrative Bulletin as **ARC 3277B**. A public hearing on the proposed amendments was held May 4, 2004, at 10 a.m. One person attended the meeting and indicated support for the amendments. No written comments were received.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 543B.9, 543B.18, and 543B.46.

These amendments shall become effective October 20, 2004.

The following amendments are adopted.

ITEM 1. Amend subrule 13.1(3) as follows:

13.1(3) With *disclosure to and the written agreement* of all parties, a trust account may bear interest to be disbursed to (1) the buyer or seller involved in a real estate purchase, sale or exchange transaction, or (2) the property owner, if the property management or rental contract contains this specific provision, or (3) as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2), or (4) a third party if requested by the parties to the contract and agreed to by the broker. *Disbursements of interest on trust funds are subject to all provisions of law that require a broker to safeguard and account for the handling of funds of others.*

ITEM 2. Amend subrule 13.1(7) as follows:

13.1(7) Funds, *including interest on trust funds*, shall only be disbursed from the trust account as provided in *Iowa Code section 543B.46(1)* and by the terms and conditions of the contract or escrow agreement. No funds shall be disbursed from the trust account prior to the closing, or other than as provided by the terms of the escrow agreement, without the informed written consent of all the parties. In the event of a dispute over the return or forfeiture of an earnest money deposit or the disbursement of an escrow deposit held by a broker, the broker shall continue to hold the deposit in the trust account until one of the following conditions is met:

a. The broker is in receipt of a written release from all parties to the transaction consenting to the disposition of the deposit or escrow funds; or

b. The broker is in receipt of a final judgment of the court directing the disposition of the deposit or escrow funds; or

c. There is a final decision of a binding alternative dispute resolution process, or mediation directing the disposition of the deposit or escrow funds; or

d. A civil court action is filed by one or more of the parties to determine the disposition of the deposit or escrow

REAL ESTATE COMMISSION[193E](cont'd)

funds, at which time the broker may seek court authorization to pay the deposit or escrow funds into court.

ITEM 3. Amend subrule 13.1(11) as follows:

13.1(11) A trust account may bear interest to be disbursed to the buyers or sellers or to a third party if requested by the parties to the contract and agreed to by the broker with the written approval of all parties to the contract or to the owner if the trust account is for a property management account and the management contract so specifies, or as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2). The account shall be a separate account from the account(s) which is to accrue interest to the state. The broker shall not benefit from interest received on funds of others in the broker's possession. Interest shall be disbursed to the owner or owners of the funds at the time of settlement of the transaction or as agreed to in the management contract and shall be properly accounted for on closing statements. *A broker shall not disburse interest on trust funds except as provided in 13.1(3) and 13.1(7).* Service charges for the account are a business expense of the broker and shall not be deducted from the proceeds.

[Filed 8/16/04, effective 10/20/04]

[Published 9/15/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/04.

ARC 3672B**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to Chapter 43, "Assessments and Refunds," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVII; No. 2, p. 110, on July 21, 2004, as **ARC 3527B**.

Item 1 amends subrule 43.4(1) to update what obligations must be satisfied before donations to the Iowa fish and game protection fund are allowed and to remove obsolete provisions of this subrule.

Item 2 amends subrule 43.4(2) to update what obligations must be satisfied before donations to the Iowa election campaign fund are allowed and to remove obsolete provisions of this subrule.

Item 3 rescinds subrule 43.4(3), which is an obsolete subrule regarding the United States Olympic fund checkoff.

Item 4 amends subrule 43.4(4) by renumbering it as subrule 43.4(3) and to provide that the domestic abuse services checkoff does not apply for tax years beginning on or after January 1, 2000.

Item 5 renumbers subrule 43.4(5) as subrule 43.4(4) and strikes a reference to the United States Olympic fund checkoff.

Item 6 amends subrule 43.4(6) by renumbering it as subrule 43.4(5) and to allow a limitation of four checkoffs on the Iowa individual income tax return for tax years beginning on or after January 1, 2004.

Item 7 amends subrule 43.4(7) by renumbering it as subrule 43.4(6) and to provide that the Department shall transfer the amount designated as contributions directly into the keep Iowa beautiful fund.

Item 8 adopts new subrule 43.4(7) and updates the implementation clause for rule 43.4(56,422,456A) to provide for a new income tax checkoff for donations to the volunteer firefighter preparedness fund.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective October 20, 2004, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code Supplement sections 422.12A as amended by 2004 Iowa Acts, Senate Files 2112 and 2298, and 422.12E as amended by 2004 Iowa Acts, Senate File 2298; and 2004 Iowa Acts, Senate File 2298, section 438.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [43.4] is being omitted. These amendments are identical to those published under Notice as **ARC 3527B**, IAB 7/21/04.

[Filed 8/27/04, effective 10/20/04]

[Published 9/15/04]

[For replacement pages for IAC, see IAC Supplement 9/15/04.]

ARC 3665B**SECRETARY OF STATE[721]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 47.1 and section 49.98 as amended by 2004 Iowa Acts, Senate File 2269, section 21, the Secretary of State hereby adopts new Chapter 26, "Counting Votes," Iowa Administrative Code.

These rules provide a definition of what constitutes a vote for all voting systems in use in Iowa as mandated by Iowa Code section 49.98 as amended by 2004 Iowa Acts, Senate File 2269, section 21, and provide clarification of procedures for recounts.

Notice of Intended Action was published in the July 21, 2004, Iowa Administrative Bulletin as **ARC 3537B**. The adopted rules have been revised from those published under Notice. Subrule 26.12(1) has been amended to correct a procedure for handling ballots lacking the initials of the precinct official. The procedure in the Notice was contrary to Iowa Code section 49.101. Subrule 26.12(1) now reads as follows:

"26.12(1) Central count. If the tabulating device sorts out ballots that are coded for a precinct other than the precinct being tabulated, the resolution board appointed pursuant to Iowa Code section 52.36 shall duplicate on the correct ballot for the precinct all offices and questions that are common to all voters in both precincts. An office or question that is included on the correct ballot for the precinct where the ballot was cast, or is not included on every ballot for that precinct, shall not be duplicated. The officials shall note on the original ballot which offices have not been duplicated."

The Secretary of State adopted these rules on August 27, 2004.

These rules will become effective on October 20, 2004.

These rules are intended to implement Iowa Code section 49.98 as amended by 2004 Iowa Acts, Senate File 2269, section 21.

SECRETARY OF STATE[721](cont'd)

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 26] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 3537B**, IAB 7/21/04.

[Filed 8/27/04, effective 10/20/04]
[Published 9/15/04]

[For replacement pages for IAC, see IAC Supplement 9/15/04.]

ARC 3664B

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of 2004 Iowa Acts, House File 2559, section 7, and Iowa Code section 261B.3(4), the Secretary of State adopts Chapter 31, "Registration of Postsecondary Schools," Iowa Administrative Code.

As required by 2004 Iowa Acts, House File 2559, this chapter contains fees based upon the costs of administering the law. The registration and renewal fee for postsecondary registrations is set at \$4,000 per application.

Notice of Intended Action was published on July 21, 2004, as **ARC 3524B**. The Secretary has received no comments on this chapter. In addition, this chapter was simultaneously Adopted and Filed Emergency as **ARC 3523B**. The chapter is identical to the one published under Notice of Intended Action and Adopted and Filed Emergency.

The Secretary of State adopted this chapter on August 25, 2004.

This rule is intended to implement 2004 Iowa Acts, House File 2559, section 7.

This rule shall become effective on October 20, 2004, at which time the Adopted and Filed Emergency rule is hereby rescinded.

The following **new** chapter is adopted.

CHAPTER 31

REGISTRATION OF POSTSECONDARY SCHOOLS

721—31.1(80GA,HF2559) Postsecondary registration fees. The secretary of state shall collect a nonrefundable registration fee of \$4,000 with each application to register a postsecondary institution for four years. The secretary of state shall collect a nonrefundable \$1,000 fee when a registered school seeks a substantive change in program offerings, location, or accreditation.

This rule is intended to implement 2004 Iowa Acts, House File 2559, section 7.

[Filed 8/27/04, effective 10/20/04]
[Published 9/15/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/04.

ARC 3663B

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of 2004 Iowa Acts, Senate File 2274, sections 5 and 13, the Secretary of State hereby amends Chapter 40, "Corporations," Iowa Administrative Code.

This rule contains the fee schedule for the recently adopted revised nonprofit corporation Act. The fees remain unchanged from the Iowa nonprofit corporation Act, Iowa Code chapter 504A.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 21, 2004, as **ARC 3525B**. The Secretary has received no comments on the rule. In addition, this rule was simultaneously Adopted and Filed Emergency as **ARC 3526B**. This rule is identical to the one published under Notice of Intended Action and Adopted and Filed Emergency.

The Secretary of State adopted this new rule on August 25, 2004.

This rule is intended to implement 2004 Iowa Acts, Senate File 2274, section 5.

This rule shall become effective on October 20, 2004, at which time the Adopted and Filed Emergency rule is hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this rule [40.7] is being omitted. This rule is identical to the one published under Notice as **ARC 3525B** and Adopted and Filed Emergency as **ARC 3526B**, IAB 7/21/04.

[Filed 8/27/04, effective 10/20/04]
[Published 9/15/04]

[For replacement pages for IAC, see IAC Supplement 9/15/04.]

ARC 3657B

WORKERS' COMPENSATION DIVISION[876]

Adopted and Filed

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby amends Chapter 4, "Contested Cases," Iowa Administrative Code.

These amendments modify the existing rules regarding discovery in, scheduling of and admissibility of evidence in workers' compensation contested cases. Item 1 specifies when a record or report is admissible into evidence in a contested case. Item 2 specifies that discovery in workers' compensation proceedings is governed by the rules of civil procedure. Item 3 provides for prehearing procedures and deadlines. Item 4 deletes subrule 4.20(2) to conform with Item 3. Item 5 specifies that continuances are governed by the appropriate rules of civil procedure. Item 6 provides that the word "trial" in the rules of civil procedure shall be deemed a reference to a contested case hearing. Item 7 modifies sanctions for failure to follow the Division of Workers' Compensation rules or orders.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 21, 2004, as **ARC 3512B**; and

WORKERS' COMPENSATION DIVISION[876](cont'd)

these amendments were simultaneously Adopted and Filed Emergency as **ARC 3513B**.

Written comments were solicited until August 10, 2004. Changes to paragraph 4.19(3)"d" have been made in response to public comment in order to make the rule more workable and understandable. Revised paragraph 4.19(3)"d" reads as follows:

"d. At least 30 days before hearing, counsel of record and pro se litigants shall serve a witness and exhibit list on all opposing counsel and pro se litigants and exchange all intended exhibits that were not previously required to be served. The witness list shall name all persons, except the claimant, who will be called to testify at the hearing or who will be deposed prior to the hearing in lieu of testifying at the hearing. The exhibit list must specifically identify each exhibit in a way that permits the opposing party to recognize the exhibit. The description for a document should include the document's date, number of pages and author or source. Exhibits that were specifically identified when served pursuant to rule 4.17(17A,85,86) or in a discovery response may be collectively identified by describing the service such as 'exhibits described in the notices served pursuant to rule 4.17(17A,85,86) on May 7, June 11 and July 9, 2004.' Blanket references such as 'all medical records,' 'personnel file' or 'records produced during discovery' do not specifically identify an ex-

hibit. A party may serve a copy of the actual intended exhibits in lieu of an exhibit list. Evidentiary depositions pursuant to Iowa Code section 86.18(2) may be taken at any time before the hearing in lieu of the witness testifying at the hearing."

These amendments will become effective October 20, 2004, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code sections 17A.1, 17A.12, 17A.13, 17A.14, 86.8, 86.17 and 86.18.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [4.17 to 4.20, 4.23, 4.35, 4.36] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 3512B** and Adopted and Filed Emergency as **ARC 3513B**, IAB 7/21/04.

[Filed 8/27/04, effective 10/20/04]

[Published 9/15/04]

[For replacement pages for IAC, see IAC Supplement 9/15/04.]

IOWA ADMINISTRATIVE BULLETIN
Customer Service Center
Department of Administrative Services
Hoover State Office Building, Level A
Des Moines, Iowa 50319

PRSRT STD
U.S. Postage
PAID
Des Moines, Iowa
Permit No. 1195
