



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

The Iowa Administrative Bulletin is published biweekly 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"]; and agricultural credit corporation maximum loan rates [535.12].

**PLEASE NOTE:** Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

### CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

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

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

## Schedule for Rule Making 2016

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
11	Wednesday, November 2, 2016	November 23, 2016
12	Wednesday, November 16, 2016	December 7, 2016
13	Wednesday, November 30, 2016	December 21, 2016

**PLEASE NOTE:**

Rules will not be accepted after **12 o'clock noon** on the filing deadline 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\*\*\***

The Administrative Rules Review Committee will hold its regular, statutory meeting on Monday, November 14, 2016, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

#### **ADMINISTRATIVE SERVICES DEPARTMENT[11]**

Claims—forms, approval, 41.1(1) Notice **ARC 2790C** ..... 10/26/16  
 Out-of-state travel by state employees, 64.10(2) Notice **ARC 2789C** ..... 10/26/16

#### **AGING, DEPARTMENT ON[17]**

Reduction of area agencies on aging, rescind ch 29 Notice **ARC 2769C** ..... 10/12/16

#### **AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Elimination of residency requirement for owners of Iowa-registered quarter horse stallions,  
 62.32(3) Notice **ARC 2785C** ..... 10/26/16

#### **ALCOHOLIC BEVERAGES DIVISION[185]**

COMMERCE DEPARTMENT[181]"umbrella"

Filling and selling of beer in a container other than the original container by class "C" beer  
 permit holders, 4.6(5) Filed **ARC 2777C** ..... 10/12/16

#### **BANKING DIVISION[187]**

COMMERCE DEPARTMENT[181]"umbrella"

Appraisal management companies, ch 25 Notice **ARC 2773C** ..... 10/12/16

#### **CHIEF INFORMATION OFFICER, OFFICE OF THE[129]**

Broadband infrastructure—targeted service areas, project certification, chs 20, 21 Filed **ARC 2782C** ..... 10/26/16

#### **COLLEGE STUDENT AID COMMISSION[283]**

EDUCATION DEPARTMENT[281]"umbrella"

Application deadline for Iowa tuition grant program; barber and cosmetology arts and  
 sciences tuition grant program, 12.2(2), 17.2 Filed **ARC 2752C** ..... 10/12/16  
 Iowa national guard educational assistance program—credit award equivalence, 20.1(6)  
Filed **ARC 2753C** ..... 10/12/16

#### **ECONOMIC DEVELOPMENT AUTHORITY[261]**

Main street Iowa program, amendments to ch 39 Filed **ARC 2748C** ..... 10/12/16  
 Historic preservation and cultural and entertainment district tax credits, ch 49 Notice **ARC 2774C** ..... 10/12/16

#### **EDUCATION DEPARTMENT[281]**

Iowa learning online (ILO) coursework—waivers, 15.11 Notice **ARC 2760C** ..... 10/12/16  
 Open enrollment, 17.3, 17.8(2), 17.10(1), 17.12 Filed **ARC 2746C** ..... 10/12/16  
 Extracurricular interscholastic competition—open enrollment, 36.15(4), 36.16 Filed **ARC 2747C** ..... 10/12/16  
 Individual career and academic plan, ch 49 Filed **ARC 2749C** ..... 10/12/16  
 Iowa vocational rehabilitation services, amendments to ch 56 Notice **ARC 2763C** ..... 10/12/16  
 State standards for progression in reading, amendments to ch 62 Notice **ARC 2762C** ..... 10/12/16  
 Standards for practitioner and administrator preparation programs, 79.13(4), 79.15  
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#### **ENVIRONMENTAL PROTECTION COMMISSION[567]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Water quality—criteria for copper, 61.3 Notice **ARC 2757C** ..... 10/12/16  
 Flood plains—construction criteria for bridges, embankments, culverts; permit requirements;  
 waivers and variances; technical updates, amendments to chs 70 to 72 Filed **ARC 2764C** ..... 10/12/16  
 Solid waste management and disposal, amendments to chs 100, 101, 111 Filed **ARC 2756C** ..... 10/12/16

#### **HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]**

Enhanced 911 telephone systems, 10.2, 10.9(3)  
Notice **ARC 2740C**, also Filed **Emergency** **ARC 2741C** ..... 10/12/16

#### **HUMAN SERVICES DEPARTMENT[441]**

Supplemental nutrition assistance program (SNAP)—time frame for referral of delinquent  
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 Intermediate care facilities for persons with an intellectual disability—fee assessments, 36.1  
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HAWK-I—covered services, poverty limit adjustments, 86.8(7), 86.14(1), 86.20(3) <u>Notice</u> <b>ARC 2784C</b> .....	10/26/16
Children in foster care settings—supervision, provider liability, medical authorizations and releases, inspections and codes, transition services, amendments to chs 105, 113, 114, 202 <u>Filed</u> <b>ARC 2743C</b> .....	10/12/16
Purchase of service; foster care contracting; foster care rates and payments, rescind chs 150, 152; adopt ch 152; amend chs 156, 172, 202 <u>Notice</u> <b>ARC 2771C</b> .....	10/12/16
Abuse of children—trafficking, 175.21, 175.22(2), 175.24 <u>Filed</u> <b>ARC 2742C</b> .....	10/12/16

**INSURANCE DIVISION[191]**

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Regulation of securities offerings and those who engage in the securities business—business continuity and succession plan, amendments to ch 50 <u>Notice</u> <b>ARC 2787C</b> .....	10/26/16
Annual privacy notice to customers—when required, 90.4(4) <u>Notice</u> <b>ARC 2788C</b> .....	10/26/16

**IOWA PUBLIC INFORMATION BOARD[497]**

Complaints; injunction request procedure, 2.1(1), ch 10 <u>Notice</u> <b>ARC 2759C</b> .....	10/12/16
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**LOTTERY AUTHORITY, IOWA[531]**

“Scratchless” instant tickets, amendments to chs 12, 18 to 20 <u>Filed</u> <b>ARC 2781C</b> .....	10/26/16
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**PROFESSIONAL LICENSING AND REGULATION BUREAU[193]**

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Organization and operation; vendor appeals; waivers; contested cases; license denial, suspension or revocation; rule making; declaratory orders; public records, amendments to chs 1, 3, 5, 7 to 10, 13 <u>Filed</u> <b>ARC 2754C</b> .....	10/12/16
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**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Massage therapists—licensure, continuing education, amendments to chs 131, 133 <u>Filed</u> <b>ARC 2778C</b> .....	10/26/16
Sign language interpreters and transliterators—licensure, continuing education, 361.1 to 361.4, 362.2 <u>Filed</u> <b>ARC 2744C</b> .....	10/12/16

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Board-certified behavior analyst and board-certified assistant behavior analyst (BCBA/BCaBA) grants program, ch 107 <u>Filed</u> <b>ARC 2765C</b> .....	10/12/16
Anatomical gift public awareness and transplantation fund, ch 122 <u>Filed</u> <b>ARC 2766C</b> .....	10/12/16
Scope of practice for Iowa EMS providers, critical care paramedic curriculum—adoption by reference, 131.3(3), 131.5(1), 132.2(4) <u>Filed</u> <b>ARC 2767C</b> .....	10/12/16

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Geothermal tax credits, 42.47 <u>Notice</u> <b>ARC 2776C</b> .....	10/12/16
Property tax exemption for broadband infrastructure, 80.31 <u>Filed</u> <b>ARC 2786C</b> .....	10/26/16

**STATE PUBLIC DEFENDER[493]**

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Submission and payment of attorney claims—online system, 12.2(1) <u>Filed</u> <b>ARC 2783C</b> .....	10/26/16
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**TRANSPORTATION DEPARTMENT[761]**

Department organization; update of division name, amendments to chs 1, 10 to 12, 112, 115 <u>Notice</u> <b>ARC 2779C</b> .....	10/26/16
Surface transportation block grant program, ch 162 <u>Notice</u> <b>ARC 2750C</b> , also <u>Filed Emergency</u> <b>ARC 2745C</b> .....	10/12/16
Motorized bicycle maximum speed; update of cross references and office name, 400.58(1), 410.1(3), 410.2 <u>Notice</u> <b>ARC 2780C</b> .....	10/26/16
Authorized emergency vehicle certificate of designation; update of department office name, 424.1(1), 430.1(1), 451.1, 451.2(1), 451.3 <u>Filed</u> <b>ARC 2755C</b> .....	10/12/16
Highway-railroad grade crossing surface repair fund, amendments to ch 821 <u>Notice</u> <b>ARC 2751C</b> .....	10/12/16

**TREASURER OF STATE[781]**

Iowa educational savings plan trust, 16.2 to 16.5, 16.7, 16.9 to 16.11 <u>Notice</u> <b>ARC 2791C</b> .....	10/26/16
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## ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

Senator Mark Chelgren  
819 Hutchinson  
Ottumwa, Iowa 52501

Senator Mark Costello  
37265 Rains Avenue  
Imogene, Iowa 51645

Senator Thomas Courtney  
2609 Clearview  
Burlington, Iowa 52601

Senator Wally Horn  
101 Stoney Point Road, SW  
Cedar Rapids, Iowa 52404

Senator Pam Jochum  
2368 Jackson Street  
Dubuque, Iowa 52001

Jack Ewing  
**Legal Counsel**  
Capitol  
Des Moines, Iowa 50319  
Telephone (515)281-6048  
Fax (515)281-8451

Representative Lisa Heddens  
2401 Westwind Drive  
Ames, Iowa 50010

Representative Megan Jones  
4470 Highway 71  
Sioux Rapids, Iowa 50585

Representative Rick Olson  
3012 East 31st Court  
Des Moines, Iowa 50317

Representative Dawn Pettengill  
P.O. Box A  
Mt. Auburn, Iowa 52313

Representative Guy Vander Linden  
1610 Carbonado Road  
Oskaloosa, Iowa 52577

Colin Smith  
**Administrative Rules Coordinator**  
Governor's Ex Officio Representative  
Capitol, Room 18  
Des Moines, Iowa 50319  
Telephone (515)281-5211

**ADMINISTRATIVE SERVICES DEPARTMENT[11]**

Claims—forms, approval, 41.1(1) IAB 10/26/16 <b>ARC 2790C</b>	Conference Room 6, A Level Hoover State Office Bldg. Des Moines, Iowa	November 15, 2016 11 a.m. to 12 noon
Out-of-state travel by state employees, 64.10(2) IAB 10/26/16 <b>ARC 2789C</b>	Conference Room 6, A Level Hoover State Office Bldg. Des Moines, Iowa	November 15, 2016 10 to 11 a.m.

**BANKING DIVISION[187]**

Appraisal management companies, ch 25 IAB 10/12/16 <b>ARC 2773C</b>	Conference Room, Suite 300 200 East Grand Ave. Des Moines, Iowa	November 1, 2016 9 a.m.
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**EDUCATION DEPARTMENT[281]**

Iowa learning online (ILO) coursework—waivers, 15.11 IAB 10/12/16 <b>ARC 2760C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	November 1, 2016 10 to 11 a.m.
Iowa vocational rehabilitation services, amendments to ch 56 IAB 10/12/16 <b>ARC 2763C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	November 1, 2016 11 a.m. to 12 noon
State standards for progression in reading, amendments to ch 62 IAB 10/12/16 <b>ARC 2762C</b>	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	November 1, 2016 2 to 3 p.m.
Standards for practitioner and administrator preparation programs, 79.13(4), 79.15 IAB 10/12/16 <b>ARC 2761C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	November 1, 2016 9 to 10 a.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Water quality—criteria for copper, 61.3 IAB 10/12/16 <b>ARC 2757C</b>	Nicola-Stoufer Room Washington Public Library 115 W. Washington St. Washington, Iowa	November 1, 2016 4 to 6 p.m.
	Meeting Room B Urbandale Public Library 3520 86th St. Urbandale, Iowa	November 2, 2016 4 to 6 p.m.
	Council Chambers City Hall 620 Erie St. Storm Lake, Iowa	November 3, 2016 4 to 6 p.m.

**HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]**

Enhanced 911 telephone systems, 10.2, 10.9(3) IAB 10/12/16 <b>ARC 2740C</b> (See also <b>ARC 2741C</b> )	Cyclones Conference Room, Suite 500 7900 Hickman Rd. Windsor Heights, Iowa	November 1, 2016 11 a.m.
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**INSURANCE DIVISION[191]**

Regulation of securities offerings and those who engage in the securities business—business continuity and succession plan, amendments to ch 50 IAB 10/26/16 <b>ARC 2787C</b>	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	November 15, 2016 10 a.m.
Annual privacy notice to customers—when required, 90.4(4) IAB 10/26/16 <b>ARC 2788C</b>	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	November 16, 2016 10 a.m.

**TRANSPORTATION DEPARTMENT[761]**

Department organization; update of division name, amendments to chs 1, 10 to 12, 112, 115 IAB 10/26/16 <b>ARC 2779C</b>	South Conference Room, First Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	November 17, 2016 10 a.m. (If requested)
Surface transportation block grant program, ch 162 IAB 10/12/16 <b>ARC 2750C</b> (See also <b>ARC 2745C</b> )	South Conference Room, First Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	November 3, 2016 10 a.m. (If requested)
Motorized bicycle maximum speed; update of cross references and office name, 400.58(1), 410.1(3), 410.2 IAB 10/26/16 <b>ARC 2780C</b>	Motor Vehicle Division Offices 6310 SE Convenience Blvd. Ankeny, Iowa	November 17, 2016 1 p.m. (If requested)
Highway-railroad grade crossing surface repair fund, amendments to ch 821 IAB 10/12/16 <b>ARC 2751C</b>	South Conference Room, First Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	November 3, 2016 1 p.m. (If requested)

**TREASURER OF STATE[781]**

Iowa educational savings plan trust, 16.2 to 16.5, 16.7, 16.9 to 16.11 IAB 10/26/16 <b>ARC 2791C</b>	Room 116 State Capitol Des Moines, Iowa	November 15, 2016 10 a.m.
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The following list will be updated as changes occur.

“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 are included alphabetically in SMALL CAPITALS at the left-hand margin.

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## ARC 2790C

## 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 Iowa Code section 8A.104(5), the Department of Administrative Services hereby gives Notice of Intended Action to amend Chapter 41, “Auditing Claims,” Iowa Administrative Code.

The Department of Administrative Services/State Accounting Enterprise (DAS/SAE) seeks a wording and procedure update in rule 11—41.1(8A) concerning wording on the Authorized Signature Form and the Pre-auditor’s Authorized Signature Form. The proposed amendment to subrule 41.1(1) includes replacing the word “signatures” with “signators” and removing provisions regarding a rubber-stamped signature and the need to sign or initial the rubber stamp by the employee authorized to use it. The proposed amendment also replaces the words “social security number” with “vendor/customer code” to reflect best practices in protecting employees’, vendors’ and customers’ confidential information.

In February 2016, a DAS/SAE Form Transition Lean Event was held to identify efficiencies for two forms, the Authorized Signature Form and the Pre-auditor’s Authorized Signature Form. As a result, a new transmission process for all three branches of Iowa state government was developed for the two forms, beginning with the approval process, through the transmission stage, to the final stage of Department approval (or disapproval).

Interested persons may make written comments on the proposed amendment until 4:30 p.m. on November 15, 2016. Comments should be directed to Tami Wiencek, Department of Administrative Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-6140 or by e-mail to [tami.wiencek@iowa.gov](mailto:tami.wiencek@iowa.gov).

A public hearing will be held on November 15, 2016, from 11 a.m. to 12 noon in Conference Room 6, A Level, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling (515)725-2017.

While the proposed amendment will result in operational efficiency, the fiscal impact is both indeterminable and believed minimal.

The Department does not intend to grant waivers under the provisions of these rules, other than as may be allowed under the Department’s general rules concerning waivers.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code sections 8A.514 and 17A.4.

The following amendment is proposed.

Amend subrule 41.1(1) as follows:

**41.1(1) *Submission of claims and approval.*** All claims shall be typewritten, or written in ink, and be itemized and certified by the claimant.

EXCEPTION: The claimant’s certification is not needed when the original invoice is attached to the claim. The original invoice shall indicate in detail the items of service, expense, thing furnished, or contract upon which payment is sought.

Approval of the claim shall be certified thereon by the head of the state agency, or the deputy, or the chair of the board or commission or its executive officer, or by a person delegated by the head of the state agency to fulfill this responsibility. A list of authorized ~~signatures~~ signators shall be provided to the

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

department of administrative services, state accounting enterprise. ~~If a rubber stamp signature is used, the claim shall be signed or initialed by the employee authorized to use the rubber stamp.~~

All travel claims submitted shall be the actual expense incurred (not exceeding maximum limitations) by the claimant, and shall not include expenses paid for other individuals, or for the purchase of miscellaneous items which are not needed in the performance of official duties while traveling. All travel vouchers shall contain the ~~social security number~~ vendor/customer code of the employee or other individual identification (with prior written approval by the department of administrative services, state accounting enterprise).

All claims shall show in the space provided the Iowa Code reference for the appropriation or fund from which the claim is payable.

When an original invoice is submitted by a vendor, rather than the claimant signing the voucher, the vendor shall provide the state agency with an original invoice that the vendor would use in the normal conduct of its business. A state agency shall not impose additional or different requirements on submission of invoices than those contained in these rules unless the department of administrative services, state accounting enterprise, exempts the agency from these invoice requirements upon a finding that compliance would result in poor accounting or management practices.

**ARC 2789C****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 Iowa Code section 8A.104(5), the Department of Administrative Services hereby gives Notice of Intended Action to amend Chapter 64, “Benefits,” Iowa Administrative Code.

This rule making discusses out-of-state travel procedures. The proposed amendment strikes the reference to 2003 Iowa Code Supplement section 8A.512 and inserts authorization by the proper authority. This proposed amendment aligns the Department’s administrative rules with the current Iowa Code provision. Out-of-state travel is now approved by the administrative head of the agency as outlined in Iowa Code section 8A.512A and subrule 41.4(2) and is no longer approved by the Executive Council. The statutory language for this out-of-state travel approval procedure changed in 2011.

Interested persons may make written comments on the proposed amendment until 4:30 p.m. on November 15, 2016. Comments should be directed to Tami Wienczek, Department of Administrative Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-6140 or by e-mail to [tami.wienczek@iowa.gov](mailto:tami.wienczek@iowa.gov).

A public hearing will be held on November 15, 2016, from 10 to 11 a.m. in Conference Room 6, A Level, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling (515)725-2017.

While this amendment will result in operational efficiency, the fiscal impact is indeterminable and believed minimal.

The Department does not intend to grant waivers under the provisions of these rules, other than as may be allowed under the Department’s general rules concerning waivers.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 8A.512A.

The following amendment is proposed.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

Amend subrule 64.10(2) as follows:

**64.10(2) *Workshop, seminar, or conference attendance.*** The appointing authority may approve education financial assistance for an employee attending a workshop, seminar, or conference conducted by a professional, educational, or governmental organization or institution when attendance by the employee would not require a reduction in job responsibilities.

*a.* Assistance for meeting continuing education requirements may be approved when the assistance is applied toward maintaining a professional registration, certification, or license and the workshop, seminar, or conference is related to the duties and responsibilities of the employee's position.

*b.* Payment of registration fees and other costs, such as lodging, meals, and travel, shall be in accordance with the policies and procedures of the department of administrative services.

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

**ARC 2785C****AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****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 99D.22(5), the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 62, “Registration of Iowa-Foaled Horses and Iowa-Whelped Dogs,” Iowa Administrative Code.

This proposed amendment eliminates a reference to an Iowa residency requirement for quarter horse stallion owners. This amendment was inadvertently omitted from **ARC 1582C** (IAB 8/20/14).

Any interested persons may make written suggestions or comments on the proposed amendment on or before November 15, 2016. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to [Margaret.Thomson@IowaAgriculture.gov](mailto:Margaret.Thomson@IowaAgriculture.gov).

The proposed amendment is subject to the Department's general waiver provision.

After analysis and review of this rule making, no adverse impact on jobs has been found.

This amendment is intended to implement 2014 Iowa Acts, Senate File 2185.

The following amendment is proposed.

Amend subrule 62.32(3) as follows:

**62.32(3)** If 51 percent of the new ownership ~~is a bona fide Iowa resident(s) and~~ wishes to qualify the stallion as an Iowa stallion, then the new owner(s) must submit an application for an Iowa Stallion Eligibility Certificate, along with a copy of the bill of sale and meet all other department requirements.

## ARC 2784C

## HUMAN SERVICES DEPARTMENT[441]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6 and 2016 Iowa Acts, House File 2460, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 86, “Healthy and Well Kids in Iowa (HAWK-I) Program,” Iowa Administrative Code.

These amendments add occupational therapy as a covered service under the HAWK-I Program. These amendments clarify additional covered services that are required under Iowa Code chapter 514I and also clarify federal poverty limits that were adjusted to be in compliance with the Affordable Care Act (ACA).

Any interested person may make written comments on the proposed amendments on or before November 15, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 514I as amended by 2016 Iowa Acts, House File 2460.

The following amendments are proposed.

ITEM 1. Amend subrule 86.8(7) as follows:

**86.8(7) Copayment.** There shall be a \$25 copayment for each emergency room visit if the child’s medical condition does not meet the definition of emergency medical condition.

EXCEPTION: A copayment shall not be imposed when family income is less than ~~150~~ 181 percent of the federal poverty level for a family of the same size or when the child is an eligible American Indian or Alaskan Native.

ITEM 2. Amend subrule 86.14(1) as follows:

**86.14(1) Required medical services.** The participating health plan shall cover at a minimum the following medically necessary services:

*a. to n.* No change.

*o.* Translation and interpreter services as specified pursuant to the federal Children’s Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3.

*p.* Chiropractic services.

*q.* Occupational therapy.

ITEM 3. Amend subrule 86.20(3) as follows:

**86.20(3) Premiums.** Premiums for participation in the supplemental dental-only plan are assessed as follows:

*a.* No premium is charged to families who meet the provisions of subparagraph 86.8(2)“a”(1) or to families whose countable income is less than ~~152~~ 167 percent of the federal poverty level for a family of the same size using the modified adjusted gross income methodology.

*b.* If the family’s countable income is equal to or exceeds ~~152~~ 167 percent of the federal poverty level but does not exceed 203 percent of the federal poverty level for a family of the same size, the premium is \$5 per child per month with a \$10 monthly maximum per family.

HUMAN SERVICES DEPARTMENT[441](cont'd)

c. to f. No change.

**ARC 2787C**

## **INSURANCE DIVISION[191]**

### **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 502.605, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 50, “Regulation of Securities Offerings and Those Who Engage in the Securities Business,” Iowa Administrative Code.

Iowa Code chapter 502, among other things, prescribes the terms and conditions under which issuers make securities offerings and under which broker-dealers and investment advisers operate. The proposed amendments to Chapter 50, through new rule 191—50.47(502), require every investment adviser registered in Iowa to create and implement written procedures to address business continuity and succession planning related to possible instances of disruptions or cessation of business activities. Proposed rule 191—50.47(502) is based on the North American Securities Administrators Association, Inc.’s “Model Rule on Business Continuity and Succession Planning” (Model Rule 203(a)-1A, Appendix A to the NASAA Guidance on Business Continuity and Succession Planning for State-Registered Investment Advisers). The amendments also include minor language corrections to other rules in Chapter 50.

The Division intends that these amendments will go into effect January 25, 2017, and that investment advisers must be in compliance with new rule 191—50.47(502) by July 1, 2017.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 15, 2016. Such written materials should be directed to Rosanne Mead, Iowa Securities and Regulated Industries Bureau, Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50319; fax (515)281-3059; e-mail [rosanne.mead@iid.iowa.gov](mailto:rosanne.mead@iid.iowa.gov).

Also, there will be a public hearing on November 15, 2016, at 10 a.m. at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, 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 amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

The Division’s general waiver provisions at 191—Chapter 4 apply to these rules.

These rules will impose no fiscal impact to the State.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 502.

The following amendments are proposed.

ITEM 1. Amend subrule 50.2(1), introductory paragraph, as follows:

**50.2(1)** The administrator may assess the broker-dealer or investment adviser for reasonable charges of travel, lodging, and other expenses incurred by Iowa insurance division staff or independent persons conducting an audit or inspection and directly attributable to an audit or inspection made pursuant to Iowa Code section 502.411(4). The assessment of costs of meals, lodging, transportation, and other actual and necessary travel expenses, if any, incurred by persons conducting an audit or inspection shall be determined in accordance with one of the following, as agreed by the administrator and the persons conducting an audit or inspection:



## INSURANCE DIVISION[191](cont'd)

ITEM 2. Amend subrule 50.3(3) as follows:

**50.3(3)** All no-action determinations shall be based upon the representations made by the requesting party in the letter and information filed, since any different facts or conditions might require a different conclusion. The no-action letter shall express the ~~division's~~ administrator's position on enforcement action only and shall not purport to express any legal conclusion on the questions presented. No determination shall take a position on whether or not any disclosure materials satisfactorily comply with the antifraud and civil liability sections of the Act.

ITEM 3. Adopt the following new rule 191—50.47(502):

**191—50.47(502) Business continuity and succession planning for investment advisers.**

**50.47(1)** On and after July 1, 2017, every investment adviser registered in Iowa shall establish, implement, and maintain a written business continuity and succession plan. The business continuity and succession plan shall be created and implemented in a manner consistent with the NASAA Guidance on Business Continuity and Succession Planning for State-Registered Investment Advisers, which is available on the Iowa insurance division's Web site, [www.iid.iowa.gov](http://www.iid.iowa.gov). In developing the procedures for the business continuity and succession plan, the investment adviser shall consider, among other things, the size of the firm, the types of services provided and the number of locations of the investment adviser. The business continuity and succession plan shall provide for, at a minimum, all of the following:

- a. The protection, backup, and recovery of books and records;
- b. Alternate means of communications with customers, key personnel, employees, vendors, service providers (including third-party custodians of securities) and regulators, that will allow the communication of certain events, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities;
- c. Office relocation in the event of temporary or permanent loss of a principal place of business;
- d. Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel; and
- e. Other means of minimizing service disruptions and client harm that could result from a sudden significant business interruption.

**50.47(2)** Every investment adviser registered in Iowa shall include a copy of the investment adviser's written business continuity and succession plan with the first registration renewal required by Iowa Code section 502.402 that the investment adviser files on and after July 1, 2017. The administrator shall review an investment adviser's written business continuity and succession plan to determine whether it is consistent with the NASAA Guidance on Business Continuity and Succession Planning for State-Registered Investment Advisers and whether it takes into account the considerations listed in subrule 50.47(1). The administrator may request the investment adviser to modify the filed business continuity and succession plan according to the administrator's suggestions. After the initial filing, the investment adviser shall submit to the administrator any substantive amendment to the business continuity and succession plan with the registration renewal following the amendment. The administrator may request from the investment adviser at any time information regarding the business continuity and succession plan, including but not limited to evidence that it has been implemented and maintained.

This rule is intended to implement Iowa Code chapter 502.

ITEM 4. Amend paragraph **50.52(2)“e”** as follows:

e. The filing of an application for hearing with the district court will stay the proceedings of the ~~division~~ administrator.

ITEM 5. Amend paragraph **50.53(2)“e”** as follows:

e. The filing of an application for hearing with the district court will stay the proceedings of the ~~division~~ administrator.

## INSURANCE DIVISION[191](cont'd)

ITEM 6. Amend paragraph **50.54(2)“e”** as follows:

*e.* The filing of an application for hearing with the district court will stay the proceedings of the ~~division~~ administrator.

ITEM 7. Amend rule 191—50.81(502) as follows:

**191—50.81(502) Notice filings for Rule 506 offerings.** ~~Beginning January 1, 2016, an~~ An issuer offering a security that is a covered security pursuant to Section ~~18(b)(4)(D)~~ 18(b)(4)(E) of the Securities Act of 1933 shall submit no later than 15 days after the first sale of such federal covered security in Iowa an electronic filing and fees through www.efdnasaa.org, under “filers and issuers.”

This rule is intended to implement Iowa Code section 502.302(3).

**ARC 2788C**

## INSURANCE DIVISION[191]

### 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 505.8, the Insurance Division (the Division) hereby gives Notice of Intended Action to amend Chapter 90, “Financial and Health Information Regulation,” Iowa Administrative Code.

The purpose of this proposed amendment is to clarify the effect on Iowa administrative law of certain changes made in 2015 to the federal Gramm-Leach-Bliley Act (GLBA) (Pub. L. No. 106-102, 113 Stat. 1338).

On December 4, 2015, the federal Fixing America’s Surface Transportation (FAST) Act (Pub. L. No. 114-94) was enacted into law and was effective immediately. The FAST Act included amendments to the GLBA to eliminate the GLBA requirement for financial institutions to provide annual privacy notices about the treatment of nonpublic personal information provided certain conditions are met. The amendments to the GLBA eliminated a duplicative and costly notification requirement. Financial institutions shall continue to provide initial privacy notices as required under the GLBA.

Proposed subrule 90.4(4) is intended to clarify that a licensee of the Division is not required to provide the annual privacy notice otherwise required under rule 191—90.4(505) if the licensee both (1) provides nonpublic personal information to nonaffiliated third parties except as in accordance with rules 191—90.12(505), 191—90.13(505) and 191—90.14(505), and (2) has not changed or amended the privacy policies and practices that the licensee disclosed to the consumer in the privacy notice that the licensee most recently delivered to the consumer in accordance with rule 191—90.3(505) or 191—90.4(505). If at any time a licensee fails to comply with (1) or (2), the licensee shall be required to provide the annual privacy notice. All licensees shall continue to provide initial privacy notices required under Chapter 90.

The Division intends that this amendment shall go into effect January 25, 2017.

Any interested person may make written suggestions or comments on this proposed amendment on or before November 16, 2016. Such written materials should be directed to Doug Ommen, Iowa Insurance Division, Market Regulation Bureau, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50319; fax (515)281-3059; e-mail [doug.ommen@iid.iowa.gov](mailto:doug.ommen@iid.iowa.gov).

Also, there will be a public hearing on November 16, 2016, at 10 a.m. at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, 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 amendment.

## INSURANCE DIVISION[191](cont'd)

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

The Insurance Division's general waiver provisions of 191—Chapter 4 apply to these rules.

These rules will impose no fiscal impact on the State.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code chapter 505.

The following amendment is proposed.

Rescind subrule 90.4(4) and adopt the following new subrule in lieu thereof:

**90.4(4)** A licensee is not required to provide an annual privacy notice if both of the following are true: the licensee has not changed the privacy policies and practices that the licensee disclosed to the consumer in the privacy notice that the licensee most recently delivered to the consumer in accordance with rule 191—90.3(505) or this rule; and the licensee does not disclose any nonpublic personal information about the consumer to any nonaffiliated third party except as authorized by rules 191—90.12(505), 191—90.13(505) and 191—90.14(505). If a licensee at any time fails to comply with the criteria of this subrule, the licensee shall immediately provide to the consumer the annual privacy notice required under this chapter.

## REVENUE DEPARTMENT

### Advisory Notice

Pursuant to the authority of Iowa Code sections 421.7 and 421.14, the Director of the Department of Revenue hereby gives Notice that the interest rate upon all unpaid taxes that are due as of January 1, 2017, will be 5 percent per annum (0.4% per month). This interest rate has been unchanged since 2010. This interest rate will accrue on taxes that are due and unpaid as of, or after, January 1, 2017. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2017. This interest rate of 5 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2017.

**ARC 2779C**

## TRANSPORTATION DEPARTMENT[761]

### Notice of Intended Action

**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 307.12 and 307A.2, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 1, "Organization of the Department of Transportation," Chapter 10, "Administrative Rules," Chapter 11, "Waiver of Rules," Chapter 12, "Declaratory Orders," Chapter 112, "Primary Road Access Control," and Chapter 115, "Utility Accommodation," Iowa Administrative Code.

The proposed amendments to Chapter 1, the Department's organizational chapter:

- Update the mission of the Department.
- Add the Department's Web site.
- Amend the rules to reflect current responsibilities pursuant to changes made to Iowa Code chapter 307 and section 307A.2 and current agency operation.
- Update the chapter's implementation sentence.

The proposed amendments also remove references to the Office of Policy and Legislative Services since this office no longer exists within the Department.

## TRANSPORTATION DEPARTMENT[761](cont'd)

These amendments do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Operations and Finance Division, 800 Lincoln Way, Ames, Iowa 50010; e-mail: [tracy.george@dot.iowa.gov](mailto:tracy.george@dot.iowa.gov).
5. Be received by the Department's rules administrator no later than November 15, 2016.

A meeting to hear requested oral presentations is scheduled for Thursday, November 17, 2016, at 10 a.m. in the Administration Building, First Floor South Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 17A.3 and 307A.2 and chapter 307.

The following amendments are proposed.

ITEM 1. Amend rule 761—1.2(17A) as follows:

**761—1.2(17A) Mission statement.** ~~The mission of the department is to promote a transportation system to satisfy user needs and maximize economic and social benefits for Iowa citizens, to encourage and support programs to provide commodity movement and mobility for all citizens, and to promote financing of the transportation system through user and nonuser sources in an equitable manner. The department is responsible for the planning, development, regulation and improvement of transportation in Iowa. The mission of the department is “getting you there safely, efficiently and conveniently.”~~

ITEM 2. Amend rule 761—1.3(17A) as follows:

**761—1.3(17A) Location and business hours.** ~~The department's main office of the department is located at 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1101. The department's business hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.~~

ITEM 3. Amend rule 761—1.4(17A) as follows:

**761—1.4(17A) Information and forms.** Information, applications and forms may be obtained from the department or from the division or office which is responsible for the area of concern. Specific instructions may also be given in administrative rules. The department's Web site at [www.iowadot.gov](http://www.iowadot.gov) provides additional information about departmental organizational units, services and forms.

ITEM 4. Amend rule 761—1.6(17A,307,307A) as follows:

**761—1.6(17A,307,307A) Commission.** ~~A seven-member transportation commission approves the departmental budget, develops a comprehensive transportation policy and plan for the state, identifies transportation needs, and develops programs to meet these needs. Other commission approves the five-year transportation improvement program, and is responsible for other statutory duties and responsibilities are broadly stated listed in Iowa Code chapters 307 and 307A section 307A.2. Inquiries and requests may be submitted to the commission at the address given in rule 761—1.3(17A).~~

## TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 5. Amend rule 761—1.7(17A,307) as follows:

**761—1.7(17A,307) Director of transportation.** The director of transportation is based in Ames and serves as the chief administrative officer of the department. The director is responsible for the management of the department and for statutory duties including but not limited to those listed in Iowa Code section 307.12. ~~The following units report to the director:~~

~~1.7(1) The deputy director.~~

~~1.7(2) The divisions described in rule 1.8(17A,307).~~

~~1.7(3) The bureau of policy and information, which identifies, analyzes and develops options for transportation policy issues, coordinates the department's legislative program, and communicates transportation programs and information to the department and the public.~~

~~1.7(4) The bureau of transportation safety, which investigates methods of improving highway safety and administers risk management programs for the department.~~

~~1.7(5) The bureau of management, which provides management support, program evaluation and development, and administration of employee safety and environmental safety concerns.~~

ITEM 6. Rescind rule 761—1.8(17A,307) and adopt the following new rule in lieu thereof:

**761—1.8(17A,307) Divisions.** The department shall operate under the following divisions, which report to the director:

**1.8(1) Highway division.**

a. The highway division's headquarters are located in Ames; the telephone number is (515)239-1124.

b. The highway division manages the preservation and operation of the transportation system to ensure safe travel and is responsible for maintenance and construction of the interstate and primary highway systems. The division is responsible for preliminary engineering, environmental clearances and permits; design and plan development for roadways, structures and other transportation mode improvements; acquisition of right-of-way; letting and awarding of contracts; contract administration and material compliance for highway projects; statewide maintenance and emergency operations; research and higher level technology (such as intelligent transportation systems); and local systems support and oversight.

c. Responsibilities for highway division operations are divided among six districts. Each district has maintenance garages, maintenance offices and construction offices, which are listed in local telephone directories. The six district offices are as follows:

(1) District 1, 1020 S. Fourth Street, Ames, Iowa 50010; telephone (515)239-1635.

(2) District 2, 428 43rd Street SW, Mason City, Iowa 50401; telephone (641)423-7584.

(3) District 3, 2800 Gordon Drive, P.O. Box 987, Sioux City, Iowa 51102-0987; telephone (712)276-1451.

(4) District 4, 2210 E. Seventh Street, Atlantic, Iowa 50022; telephone (712)243-3355.

(5) District 5, 307 W. Briggs Avenue, P.O. Box 587, Fairfield, Iowa 52556-0587; telephone (641)472-4171.

(6) District 6, 5455 Kirkwood Boulevard SW, Cedar Rapids, Iowa 52404; telephone (319)364-0235.

**1.8(2) Information technology division.**

a. The information technology division is based in Ames; the telephone number is (515)239-1284.

b. The information technology division provides internal support services, automation support, and facilities and equipment support. The division assists internal and external customers in applying technology to meet the business needs of the department; collects, processes, and disseminates information throughout the department; monitors the constantly changing business and information environment; maximizes current investments in technology; implements new technologies and new directions; and coordinates information sharing.

**1.8(3) Motor vehicle division.**

## TRANSPORTATION DEPARTMENT[761](cont'd)

*a.* The motor vehicle information center telephone number is 1-800-532-1121. The motor vehicle division's headquarters are located at 6310 SE Convenience Boulevard, Ankeny, Iowa; the telephone number is (515)244-8725. The mailing address is P.O. Box 9204, Des Moines, Iowa 50306-9204.

*b.* The motor vehicle division administers and enforces federal and state motor vehicle laws and regulations. The division issues driver's licenses and nonoperator's identification cards; suspends, revokes or disqualifies the driving privileges of drivers as required by state and federal law; lifts suspension or revocation of driving privileges when compliance is achieved; and administers the commercial driver, graduated driver, driver education, driver improvement, and motorcycle rider programs. The division administers the titling and registration of noncommercial motor vehicles and intrastate commercial motor vehicles; the production and issuance of license plates, including specialty and personalized license plates; and the issuance of parking permits for persons with disabilities. The division administers fuel tax and unified carrier registration for Iowa-based carriers that operate in interstate commerce and administers financial responsibility laws applicable to motor carriers. The division titles and registers vehicles which operate interstate and routes over-dimension vehicles on Iowa's primary and interstate highways. The division issues intrastate authority to for-hire carriers and trip permits for temporary travel in Iowa. The division enforces federal motor carrier safety standards and hazardous materials regulations and size, weight, authority, fuel, and registration laws. The division investigates title and odometer fraud, fraud in driver's license and vehicle title applications, and identity crimes and theft. The division performs salvage and vehicle theft examinations; regulates transportation network companies conducting business with the state; and regulates all dealer, manufacturer, wholesaler, recycler, and leasing licensing programs.

**1.8(4) *Operations and finance division.***

*a.* The operations and finance division is based in Ames; the telephone number is (515)239-1340.

*b.* The operations and finance division provides internal support services for the department. The division is responsible for facilities management, procurement and distribution activities, equipment and supplies management, federal and state legislative coordination, and human resource management. The division administers the internal and external civil rights program and disadvantaged business enterprise program. The division provides financial management including budget development, monitoring and presentation of the budget to the commission and conducts external and motor carrier audits.

**1.8(5) *Performance and technology division.***

*a.* The performance and technology division is based in Ames; the telephone number is (515)239-1124.

*b.* The performance and technology division provides services focused on analysis of department performance and management of transportation assets, facilitates the coordination and management of departmental research activities in collaboration with others, guides the process improvement and strategic planning initiatives, and provides media and marketing services including, but not limited to, media relations and development of marketing and communications plans.

**1.8(6) *Planning, programming and modal division.***

*a.* The planning, programming and modal division is based in Ames; the telephone number is (515)239-1664.

*b.* The planning, programming and modal division develops both long- and short-range transportation system plans, the Iowa statewide transportation improvement program, and the department's five-year transportation improvement program; administers economic development and modal funding programs; manages the traffic count program; and develops city, county and state transportation maps. The division serves as an aviation, transit and rail advocate and as liaison to the Federal Aviation Administration, Federal Transit Administration and Federal Railroad Administration. The division delivers programs and services to promote a safe and efficient multimodal transportation

## TRANSPORTATION DEPARTMENT[761](cont'd)

system, promotes transportation on Iowa's navigable rivers, and represents Iowa's navigation interests with other state and federal agencies.

ITEM 7. Amend **761—Chapter 1**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 17A.3 and ~~chapters 307 and 307A~~ 307A.2 and chapter 307.

ITEM 8. Strike "Office of Policy and Legislative Services" wherever it appears in subrules **10.1(2)**, **11.5(3)**, and **12.2(2)** and insert "Operations and Finance Division" in lieu thereof.

ITEM 9. Amend subrule 11.8(2) as follows:

**11.8(2)** The ~~office of policy and legislative services~~ operations and finance division shall, at a minimum, retain for five years records relating to waivers granted or denied under this chapter.

ITEM 10. Amend subrule 112.1(5) as follows:

**112.1(5) Waivers.** The director of transportation may, in response to a written petition, waive provisions of this chapter in accordance with 761—Chapter 11. The written petition must contain the information as required in 761—subrule 11.5(2) and shall be submitted to the ~~Office of Policy and Legislative Services~~ Rules Administrator, Operations and Finance Division, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 11. Amend subrule 115.1(5) as follows:

**115.1(5) Waivers.** The director of transportation may, in response to a written petition, waive provisions of this chapter in accordance with 761—Chapter 11. The written petition must contain the information as required in 761—subrule 11.5(2) and shall be submitted to the ~~Office of Policy and Legislative Services~~ Rules Administrator, Operations and Finance Division, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

**ARC 2780C**

## TRANSPORTATION DEPARTMENT[761]

### Notice of Intended Action

**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 307.12 and 307A.2, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 400, "Vehicle Registration and Certificate of Title," and Chapter 410, "Special Mobile Equipment," Iowa Administrative Code.

The proposed amendment to subrule 400.58(1) corrects the maximum speed of a motorized bicycle from 30 miles per hour to 39 miles per hour. The change conforms with the speed limit included in the definition of "motorized bicycle" in Iowa Code section 321.1(40)"b."

The proposed amendments to Chapter 410 correct the name of the Office of Vehicle and Motor Carrier Services and remove the word "Supplement" from citations to Iowa Code section 321E.12.

These amendments do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.

TRANSPORTATION DEPARTMENT[761](cont'd)

4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Operations and Finance Division, 800 Lincoln Way, Ames, Iowa 50010; e-mail: [tracy.george@dot.iowa.gov](mailto:tracy.george@dot.iowa.gov).

5. Be received by the Department’s rules administrator no later than November 15, 2016.

A meeting to hear requested oral presentations is scheduled for Thursday, November 17, 2016, at 1 p.m. at the Iowa Department of Transportation’s Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 321.1 and 321E.12.

The following amendments are proposed.

ITEM 1. Amend subrule 400.58(1) as follows:

**400.58(1) Maximum speed.** If the department has reasonable cause to believe that a particular vehicle or model is capable of speeds exceeding ~~30~~ 39 miles per hour, the department may conduct independent tests to determine the maximum speed of the vehicle or model. If the department determines that the maximum speed of the particular vehicle or model exceeds ~~30~~ 39 miles per hour, the vehicle or model shall not be registered as a motorized bicycle.

ITEM 2. Amend subrule 410.1(3) as follows:

**410.1(3)** Questions regarding special mobile equipment may be directed by mail to the Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; or by telephone at (515)237-3264.

ITEM 3. Amend rule 761—410.2(321E), introductory paragraph, as follows:

**761—410.2(321E) Special mobile equipment transported on a registered vehicle.** The movement of special mobile equipment or component parts of special mobile equipment transported on a vehicle registered for the gross weight of the vehicle without load, as provided in Iowa Code Supplement section 321E.12, is subject to the following:

ITEM 4. Amend rule **761—410.2(321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code Supplement section 321E.12.

### TREASURER OF STATE

#### 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 JoAnn Johnson, Superintendent of Banking Ronald L. Hansen, and Auditor of State Mary Mosiman have established today the following rates of interest for public obligations and special assessments. The usury rate for October is 3.50%.

#### 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 Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.



TREASURER OF STATE(cont'd)

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 October 11, 2016, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS		
7-31 days	.....	Minimum .05%
32-89 days	.....	Minimum .05%
90-179 days	.....	Minimum .05%
180-364 days	.....	Minimum .05%
One year to 397 days	.....	Minimum .05%
More than 397 days	.....	Minimum .30%

These are minimum rates only. All time deposits 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 2791C**

**TREASURER OF STATE[781]**

**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 12D.2, the Treasurer of State hereby gives Notice of Intended Action to amend Chapter 16, “Iowa Educational Savings Plan Trust,” Iowa Administrative Code.

Existing Chapter 16 is being amended to comply with federal law changes. The Treasurer of State is also taking this opportunity to review additional rules and subrules in this chapter to provide revisions, updates, and clarifications to existing Iowa educational savings plan trust rules administered by the Treasurer of State.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 15, 2016. Such written materials should be directed to Adam Phillips, Treasurer of State’s Office, State Capitol, 1007 E. Grand Avenue, Room 114, Des Moines, Iowa 50319; e-mail [adam.phillips@iowa.gov](mailto:adam.phillips@iowa.gov).

Also, there will be a public hearing on November 15, 2016, at 10 a.m. in the State Capitol, Room 116, 1007 E. Grand Avenue, 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 proposed amendments.

The rules in Chapter 16 will impose no fiscal impact on the State.

## TREASURER OF STATE[781](cont'd)

The general waiver provisions of the Treasurer of State in 781—Chapter 19 apply to these amendments.

After review and analysis of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 12D.

The following amendments are proposed.

ITEM 1. Amend rule 781—16.2(12D) as follows:

**781—16.2(12D) Definitions.** In addition to the terms defined in Iowa Code section 12D.1, the following terms apply to this chapter:

*“Academic period”* means one semester or one quarter or such other equivalent period as may be defined by the qualified institution of higher education.

*“Account”* means an account established and maintained under the Iowa educational savings plan trust for a beneficiary.

*“Account balance”* means the fair market value of an account.

*“College savings Iowa”* means the name and logo registered under Iowa law to represent the direct-sold Iowa 529 plan under the Iowa educational savings plan trust.

*“Contribution”* means an amount contributed to an account in accordance with the Internal Revenue Code, these rules and the application program description.

*“Eligible educational institution”* means any college, university, vocational school, or other postsecondary educational institution eligible to participate in a student aid program administered by the U.S. Department of Education.

*“Half-time”* means at least half-time if he or she is enrolled for at least half the full-time academic workload for the course of study the student is pursuing, as determined under the standards of the school where the student is enrolled.

*“Iowa 529 plan”* means college savings Iowa, the Iowa advisor 529 plan, and any other college savings plan established by the program administrator, collectively, under the Iowa educational savings plan trust.

*“Iowa advisor 529 plan”* means the name and logo registered to represent the advisor-sold Iowa 529 plan under the Iowa educational savings plan trust.

*“Participant”* means an individual, individual’s legal representative, trust, estate, or an organization described in Section 501(c)(3) of the Internal Revenue Code and exempt from taxation under Section 501(a) of the Internal Revenue Code that opens an account in a plan and that owns and controls the assets held in the account.

*“Participation agreement”* means the form that the participant submits to the program administrator to identify the participant, beneficiary, plan, and other information that may be requested by the program administrator.

*“Payments”* means the money paid by the participant to the trust under the participation agreement.

*“Plan”* means either (1) college savings Iowa, (2) Iowa advisor 529 plan, or (3) any other college savings plan established by the program administrator under the Iowa educational savings plan trust.

*“Program administrator”* means the treasurer of state.

*“Program description”* means the description of each plan provided to participants setting forth information with respect to the plan.

*“Qualified higher education costs expenses”* means tuition, fees, and the cost of books, supplies and equipment required for the enrollment or attendance of the beneficiary at a qualified institution of higher education the same as “qualified higher education expenses” as defined in Section 529(e)(3) of the Internal Revenue Code. Room and board shall be treated as qualified higher education costs for a beneficiary, subject to maximum annual dollar amounts determined by the program administrator, if room and board are incurred during an academic period in which the beneficiary is enrolled or accepted for enrollment in a degree, certificate or other program that leads to a recognized educational credential (such as a bachelor’s degree or an associate’s degree) awarded by a qualified institution of higher education. The beneficiary must be enrolled at least half-time for board expenses to be qualified.

TREASURER OF STATE[781](cont'd)

“*Qualified institution of higher education*” means an institution described in Section 481 of the federal Higher Education Act of 1965 that is eligible to participate in the United States Department of Education’s student aid programs. State universities in Iowa and other states qualify, as do community colleges and private accredited four-year and two-year colleges. Some vocational and technical schools qualify as well.

“*Successor participant*” means a successor to the ownership of an account designated as such in accordance with rule 781—16.9(12D) and the applicable program description.

ITEM 2. Amend rule 781—16.3(12D) as follows:

**781—16.3(12D) Participation agreement and program description.** The following material shall be used to administer the Iowa educational savings plan trust.

**16.3(1)** ~~“Participation agreement” means the form that the participant submits to the program administrator to identify the participant, beneficiary, plan, and other information that may be requested by the program administrator.~~ The participation agreement shall be signed and dated by the participant to verify that the participant agrees to the terms and conditions of the program. For online applications, participants must confirm that they have read the terms and conditions prior to submitting the application.

**16.3(2)** Each plan will have a program description setting forth the terms of the plan and describing the investments, and procedures and fees applicable to that plan. Each program description shall also set forth the privacy policy adopted by the program administrator for that plan. Persons interested in a plan should consult the plan description. A plan description may be changed at any time by the program administrator, and any such change may impact the rights of participants and beneficiaries under the plan.

ITEM 3. Amend subrules 16.4(1) and 16.4(2) as follows:

**16.4(1)** Appropriate forms must be completed ~~in~~ on paper, online or via telephone (whichever is applicable for the requested actions) to perform the actions listed below. Current forms are available online at [www.collegesavingsiowa.com](http://www.collegesavingsiowa.com) for college savings Iowa and at [www.iowaadvisor529.com](http://www.iowaadvisor529.com) for the Iowa advisor 529 plan. Actions which require the completion of an appropriate form include the following:

- ~~a. Terminate a participation agreement.~~
- ~~b. Transfer ownership rights of an Iowa 529 plan account to another person pursuant to Iowa Code section 12D.6(5).~~
- ~~c. Request the substitution of a beneficiary.~~
- ~~d. Exchange investments.~~
- ~~e. Establish, delete or change automatic investments.~~
- ~~f. Establish, delete or change banking information.~~
- ~~g. Request a qualified withdrawal.~~
- ~~h. Request an allocation update.~~
- ~~i. Request for payroll deduction.~~
- ~~j. Establish, delete or change electronic bank transfer information.~~
- ~~k. Establish, delete or change interested party information.~~
- ~~l. Establish, delete or change successor information.~~
- ~~m. Change E-mail address on file.~~
- ~~n. Change address on file.~~
- ~~o. Request a rollover to another 529 plan.~~
- ~~p. Establish, delete or change power of attorney on an account.~~
- ~~q. Change beneficiary information on an account.~~
- a. Open or close an account.
- b. Transfer ownership rights of an account to another person.
- c. Change a beneficiary.
- d. Exchange existing investments.

## TREASURER OF STATE[781](cont'd)

- e. Change the direction of future contributions.
- f. Establish, delete or change automatic investments.
- g. Make an additional purchase by check.
- h. Request a full or partial withdrawal.
- i. Add, change or delete payroll deduction.
- j. Establish or make an electronic bank transfer.
- k. Establish, delete or change interested party information.
- l. Establish, delete or change a successor participant.
- m. Change the participant's e-mail or mailing address or telephone number.
- n. Request a rollover to another 529 plan.
- o. Transfer funds from a qualified U.S. savings bond.
- p. Roll over assets directly or indirectly from another 529 plan.
- q. Establish, delete or change the power of attorney on an account.
- r. Authorize limited power of attorney for the account.
- s. Authorize or change a financial advisor who can obtain information regarding the account.
- t. Identify the current trustee of a trust.
- u. Identify officers of an organization.
- v. Update beneficiary information on the account.

**16.4(2)** The program administrator may from time to time provide additional forms for use by participants and beneficiaries in connection with actions involving ~~the Iowa 529 a~~ plan and will make those forms available online and in paper format and may authorize substitute forms for a plan or a process in lieu of existing forms, except when not permitted by Iowa Code chapter 12D.

ITEM 4. Amend rule 781—16.5(12D) as follows:

~~**781—16.5(12D) Participant eligibility Responsibilities.** Iowa Code section 12D.3 provides that the trust may enter into participation agreements with participants to effectuate the purposes, objectives and provisions of the trust. This rule establishes the eligibility criteria for a participant.~~

~~**16.5(1) Participant responsibilities.** Individual participants must meet the following requirements:~~

~~**16.5(1) a.** A participant must be at least 18 years old and a ~~resident of the~~ United States ~~citizen or~~ resident alien with a valid social security number or tax identification number.~~

~~**16.5(2) b.** A participant shall execute a participation agreement with the program administrator that specifies the plan selected by the participant and the terms and conditions under which the participant shall participate in the trust.~~

~~**16.5(3) c.** A participant shall, on signing a participation agreement, provide the program administrator with the participant's social security number or tax identification number.~~

~~**d.** Participants which are trusts must submit evidence that the individual trustee is so authorized and agrees to the terms of the participation agreement and must provide the information requested by the program administrator. Participants which are described in Section 501(c)(3) of the Internal Revenue Code must provide their tax identification number and any other information requested by the program administrator.~~

~~**16.5(2) Program administrator responsibilities.**~~

~~**a.** The program administrator reserves the right to:~~

~~(1) Freeze an account or suspend account services or do both when a plan has received reasonable notice of a dispute regarding the assets in an account, including notice of a dispute in account ownership or when the plan reasonably believes a fraudulent transaction may occur or has occurred;~~

~~(2) Freeze an account or suspend account services or do both upon the notification to the plan of the death of a participant until the plan receives required documentation in good order and reasonably believes that it is lawful to transfer the account ownership to the successor participant;~~

~~(3) Redeem an account, without the participant's permission, in cases of threatening conduct or suspicious, fraudulent, or illegal activity; and~~

~~(4) Reject a contribution for any reason, including contributions that the plan believes are not in the best interests of the plan, a portfolio, or the participants.~~

## TREASURER OF STATE[781](cont'd)

b. The risk of market loss, tax implications, penalties, and any other expenses, as a result of such an account freeze, account redemption, or contribution rejection, will be solely the participant's responsibility.

ITEM 5. Amend rule 781—16.7(12D) as follows:

**781—16.7(12D) Payments and payment schedules Contributions.** Contributions are deductible under Iowa income tax laws in accordance with regulations of the department of revenue. Iowa Code section 12D.3(1) states that participation Participation agreements may require participants to agree to invest a specific amount of money in ~~the trust~~ a plan for a specific period of time for the benefit of a specific beneficiary. This rule provides for implementation of this provision.

**16.7(1)** The program administrator will provide each participant a quarterly fourth quarter statement. In addition, the program administrator will provide each participant that had an account with either contributions or withdrawals in the first, second, or third quarter with a quarterly statement for that account. Participants are allowed to make contributions at any time during the calendar year provided that each contribution is made in accordance with the minimum contribution and other requirements set forth in the program description.

**16.7(2)** The program administrator shall actuarially determine an account balance limit applicable to the total of all accounts in the plans for the benefit of each beneficiary. No additional payments contributions may be made on behalf of a beneficiary if the total of the account balances of all accounts held for the beneficiary exceed the applicable account balance limit.

**16.7(3)** Beginning in 2000 and each year thereafter, the program administrator shall determine the maximum amount that a participant may contribute and deduct from Iowa income taxes pursuant to Iowa Code chapter 422 on behalf of a beneficiary for the calendar year by applying the applicable inflation adjustment. The adjusted annual maximum shall be communicated to participants in Iowa 529 the plans and to the public in any reasonable manner determined by the program administrator.

ITEM 6. Amend rule 781—16.9(12D) as follows:

**781—16.9(12D) Change of participant or account owner.** The participant is the initial owner of the account established under ~~an Iowa 529~~ a plan and, as such, has the exclusive right to cancel the participation agreement or change the designated beneficiary in accordance with these rules and the applicable program description.

**16.9(1)** A participant may transfer the participant's current ownership rights in an account to another eligible individual, an individual's legal representative, a trust, an estate, or an organization described in Section 501(c)(3) of the Internal Revenue Code and exempt from taxation under Section 501(a) of the Internal Revenue Code or to a ~~minor~~ beneficiary. To do so, the participant shall complete the appropriate form.

**16.9(2)** A participant may also designate on the participation agreement a successor, ~~who shall succeed to the ownership of the account in the event of the death of the participant.~~ A participant may change the designated successor by completing the appropriate form. The designated successor shall succeed to the ownership of the account in the event of the death of the participant. Upon the death of the participant, the successor participant must notify the plan by submitting a completed participant agreement form and a certified copy of the death certificate. The change in ownership of the account will become effective for the successor participant once this paperwork has been received and processed.

**16.9(3)** In the event a participant or other account owner dies and has not designated a successor to the account, the following criteria will be used.

a. The designated beneficiary, if 18 years of age or older at the time of the participant's death, shall become the owner of the Iowa 529 plan account as well as remaining remain the beneficiary upon filing the appropriate forms.

b. If the designated beneficiary is under the age of 18, account ownership will be transferred to the beneficiary's a surviving parent or other legal guardian of the beneficiary upon the filing of the appropriate forms.

TREASURER OF STATE[781](cont'd)

**16.9(4)** The participant may name a successor to the account even though the successor may already have established or may have plans to establish ~~an Iowa 529~~ a plan account.

ITEM 7. Amend rule 781—16.10(12D) as follows:

**781—16.10(12D) ~~Payment of benefits and qualified distributions~~ Qualified withdrawals.** This rule establishes the procedures for the payment of ~~benefits~~ qualified withdrawals.

**16.10(1)** The participant must initiate ~~distributions~~ a withdrawal for qualified or nonqualified expenses. The participant must file the appropriate form with the program administrator.

**16.10(2)** ~~Benefits~~ Qualified withdrawals will be paid in one of three ways once the request has been received by the program administrator:

- a. Directly to the institution of higher education for qualified expenses only.
- b. Directly to the participant for qualified ~~or nonqualified~~ expenses.
- c. Directly to the beneficiary for qualified expenses ~~only~~.

**16.10(3)** Each ~~distribution of benefits~~ qualified withdrawal will be comprised partly of contributions and partly of earnings, based upon the same proportion that contributions and earnings comprise the participant's account at the time of the ~~distribution~~ withdrawal.

**16.10(4)** Funds that are distributed to a participant pursuant to this rule shall be reported to the IRS on a 1099Q in the tax year in which such ~~distribution~~ withdrawal is made. The participant will receive the 1099Q for any ~~distributions~~ withdrawal made to the participant. The beneficiary will receive the 1099Q for any ~~distributions~~ withdrawal made to the beneficiary or institution of higher education. The individual receiving the 1099Q must determine whether the ~~distribution~~ withdrawal was qualified or nonqualified. ~~Nonqualified distributions may be subject to state and federal taxes and penalties.~~

**16.10(5)** A participant may transfer any remaining balance in one account to an existing or new account for another designated beneficiary by completing a new participation agreement with the program administrator.

ITEM 8. Amend rule 781—16.11(12D) as follows:

**781—16.11(12D) ~~Withdrawals~~ Nonqualified withdrawals and cancellation.** Iowa Code section 12D.5 provides that any participant may cancel a participation agreement at will. This rule establishes the criteria for nonqualified withdrawals from or the cancellation of a participation agreement.

**16.11(1)** A nonqualified withdrawal is one in which the funds are used for a purpose other than the payment of or reimbursement for qualified educational expenses. A participant may at any time ~~withdraw~~ make a nonqualified withdrawal of a portion of the amount in an account or cancel a participation agreement, without cause, by submitting to the program administrator the appropriate form. A nonqualified withdrawal will be paid only to the participant.

**16.11(2)** If the participation agreement is canceled, the participant is entitled to the amount in the account, subject to any applicable fees and expenses. The balance shall be mailed or otherwise sent to the participant after receipt by the program administrator of the appropriate form.

**16.11(3)** Funds that are distributed to a participant in a nonqualified withdrawal pursuant to this rule shall be reported to the IRS on a 1099Q in the tax year in which such ~~distribution~~ withdrawal is made. The participant will receive the 1099Q for any ~~distributions made to the participant~~ nonqualified withdrawals. ~~The beneficiary will receive the 1099Q for any distributions made to the beneficiary or institution of higher education. The individual receiving the 1099Q must determine whether the distribution was qualified or nonqualified.~~ Nonqualified distributions withdrawals may be subject to state and federal taxes and penalties.

**16.11(4)** Pursuant to Iowa Code section 642.2, funds held by the program administrator under the Iowa 529 plan are not subject to garnishment.

**ARC 2782C****CHIEF INFORMATION OFFICER, OFFICE OF THE[129]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 8B.1, 8B.10, and 427.1(40), the Office of the Chief Information Officer (OCIO) hereby adopts new Chapter 20, “Broadband Infrastructure—Targeted Service Areas,” and new Chapter 21, “Broadband Infrastructure—Project Certification,” Iowa Administrative Code.

The subject matter of Chapters 20 and 21 is related to the OCIO’s role in the broadband infrastructure property tax exemption. These chapters are intended to implement Iowa Code sections 8B.1, 8B.3, 8B.4(15), 8B.10, 17A.3, and 427.1(40). Iowa Code sections 8B.1 and 8B.10 require the OCIO to determine whether census blocks within the state of Iowa constitute “targeted service areas” as defined by Iowa Code section 8B.1 and to provide a process by which persons may challenge such determinations. Iowa Code section 427.1(40) allows for a property tax exemption for the installation of broadband infrastructure by communications service providers in targeted service areas, which installations meet certain requirements, including receipt of certification from the OCIO that: (1) the project is being performed or was completed in a targeted service area; and (2) the broadband infrastructure installed facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed (“25/3 broadband service”).

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2699C** on August 31, 2016. Public comments were allowed until 4:30 p.m. on September 20, 2016. A public hearing was held on September 20, 2016. The OCIO received public comments on this rule making. The OCIO made one substantive change related to the field testing provisions of these rules based on the public comments.

The Iowa Communications Alliance (ICA) made three comments related to the field testing provisions in proposed rule 129—21.8(8B,427). First, ICA commented that the OCIO should group the different types of field tests that it may conduct according to whether a broadband installation is a wireline installation versus a wireless installation. The OCIO’s rules proposed under Notice of Intended Action grouped the different types of field tests that the OCIO may conduct according to whether the broadband installation was a fixed installation (both wireline and fixed wireless) versus a mobile installation. The OCIO agrees that the grouping proposed by the ICA is the preferred grouping; the OCIO’s consolidation of proposed subrules 21.8(1) and 21.8(2) in rule 129—21.8(8B,427) should address ICA’s comment (and other comments).

Second, ICA commented that the OCIO should determine by rule that any broadband installation using fiber-optic technology is automatically deemed to facilitate 25/3 broadband service such that no field testing is required. Specifically, ICA noted that: (1) fiber-optic networks provide the fastest and most reliable service available and are typically not subject to speed degradation due to distance, weather conditions, or geographic/terrain factors; (2) fiber-optic networks are not subject to broadband speed degradation due to the number of consumers accessing the service at any one time; and (3) to conduct a speed test on a fiber-optic network, it would likely be necessary to physically unhook the fiber cable where it attaches to the consumer location (or the node) and attach a measuring device, and such interruption of service will likely be intrusive to the consumer. After careful consideration, the OCIO has declined to adopt ICA’s suggestion as the OCIO has determined that exempting fiber-optic installations from field testing would be inconsistent with the OCIO’s statutory obligations with regard to: (1) “collecting data and developing metrics or standards against which the data may be measured and evaluated regarding broadband infrastructure installation and deployment” (see Iowa Code section 8B.4(15)); and (2) directing the Iowa Department of Revenue or applicable county board of supervisors, as applicable, to “require the property owner receiving the exemption to substantiate that the owner continues to provide the service described in paragraph ‘b’ [Iowa Code section 427.1(40)“b”]” (see Iowa Code section 427.1(40)“f”(7)). Further, even assuming every fiber-optic installation per se satisfies the statutory speed requirements, the OCIO needs a mechanism to confirm that a claimed fiber-optic

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installation is in fact a fiber-optic installation, put another way, to prevent fraudulent property-tax exemption claims.

Finally, ICA commented that for fixed wireless and mobile wireless installations, the OCIO should only conduct field tests: (1) from a location near a home, business, school, or farm located in the applicable targeted service area or from any other location reasonably identified by the OCIO located in the applicable targeted service area because none of the other locations outlined by the noticed rules accurately measures whether a given wireless installation facilitates 25/3 broadband service within the applicable targeted service area; and (2) during peak demand times to ensure consumers consistently receive the required speeds, because broadband delivered wirelessly is usage-based—the more people using the service, the slower the speeds for each user.

With respect to the first half of ICA's third comment, the OCIO agrees that this is the preferred way to measure whether a given wireless installation facilitates 25/3 broadband service in the applicable targeted service area; the OCIO's consolidation of subrules 21.8(1) and 21.8(2) should address this comment. With respect to the second half of ICA's third comment, after careful consideration, the OCIO has declined to adopt ICA's suggestion as the OCIO has determined that ICA's suggestion would be ultra vires to the statute, which does not require or otherwise authorize the OCIO to specify that the required speeds be met with any particular frequency.

The OCIO adopted these rules on October 5, 2016.

An agencywide waiver provision has not yet been adopted by the OCIO, but will be adopted in a subsequent rule-making proceeding.

After analysis and review of this rule making, a positive impact on jobs may exist. These rules implement the underlying certification rules relating to a property tax exemption for the installation of new broadband infrastructure and further the goals of the Connect Every Acre initiative to provide broadband services to underserved areas in the state.

These amendments are intended to implement Iowa Code sections 8B.1, 8B.3, 8B.4(15), 8B.10, 17A.3, and 427.1(40).

These amendments will become effective November 30, 2016.

The following amendments are adopted.

ITEM 1. Reserve **129—Chapter 7 to Chapter 19.**

ITEM 2. Adopt the following **new** 129—Chapter 20 and 129—Chapter 21:

TITLE II  
BROADBAND

CHAPTER 20  
BROADBAND INFRASTRUCTURE—TARGETED SERVICE AREAS

**129—20.1(8B,427) Definitions.** For purposes of this chapter, the following definitions shall govern.

*“Broadband”* means a high-speed, high-capacity electronic transmission medium, including fixed wireless and mobile wireless mediums, that can carry data signals from independent network sources by establishing different bandwidth channels and that is commonly used to deliver Internet services to the public.

*“Broadband infrastructure”* means the physical infrastructure used for the transmission of data that provides broadband services. “Broadband infrastructure” does not include land, buildings, structures, improvements, or equipment not directly used in the transmission of data via broadband.

*“Census block”* means a U.S. Census Bureau census block located in this state, including any crop operation located within the census block.

*“Chief information officer”* or *“CIO”* means the state chief information officer or the state chief information officer's designee.

*“Communications service provider”* means a service provider that provides broadband service.



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“*Crop operation*” means a commercial enterprise where a crop is maintained on the property of the commercial enterprise.

“*Date of commencement*” means the date first occurring after July 1, 2015, and before July 1, 2020, in which broadband infrastructure used in a certified project becomes property taxed as real property as determined by Iowa Code section 427A.1.

“*Date of completion*” or “*completed*” means the date that a communications service provider offers or facilitates broadband service delivered at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in a targeted service area.

“*Installation of the broadband infrastructure*” means the labor, construction, building, and furnishing of new physical infrastructure used for the transmission of data that provides broadband services. “Installation of the broadband infrastructure” does not include the process of removing existing infrastructure, fixtures, or other real property in preparation of installation of the broadband infrastructure.

“*Is being performed*” includes but is not limited to the planning, preparation, design, architecture, labor, construction, building, and furnishing of new physical infrastructure used for the transmission of data that provides broadband services.

“*Office*” means the office of the chief information officer authorized by Iowa Code chapter 8B.

“*Targeted service area*” means a U.S. Census Bureau census block located in this state, including any crop operation located within the census block, within which no communications service provider offers or facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as of July 1, 2015.

**129—20.2(8B,427) Scope.** This chapter applies to the office’s determinations of whether a census block is a targeted service area and to persons who wish to challenge the office’s finding on whether a census block is a targeted service area.

**129—20.3(8B,427) Broadband availability maps and data sources.** To determine whether a communications service provider offers or facilitates broadband service in a particular census block at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as of July 1, 2015, the office utilized broadband availability maps and corresponding data sources made available by Connect Iowa, LLC, a subsidiary of Connected Nation, Inc. Such maps and data sources were widely accepted for accuracy and made available for public review and comment. By selecting these maps and data sources, the office has satisfied its obligation to reference broadband availability maps or data sources that are widely accepted for accuracy and available for public review and comment as required by Iowa Code section 8B.10(1).

**129—20.4(8B,427) Targeted service area determination.** The office will create a statewide map divided into census blocks. Based on the maps and data sources referenced in rule 129—20.3(8B,427), the statewide map will designate census blocks within which, as of July 1, 2015, no communications service provider offered or facilitated broadband service to the public at or above 25 megabits per second of download speed and 3 megabits per second of upload speed. This statewide map shall be available online at <http://ocio.iowa.gov/>. As of November 30, 2016, targeted service area designations as shown on the statewide map shall be considered the office’s final determination and finding of whether a particular census block constitutes a targeted service area, unless a person or party successfully challenges the office’s determination pursuant to the appeals and contested case process outlined in this chapter, in which case the office will update the statewide map to reflect the outcome of such challenge(s). For the sake of clarity, failure to challenge the office’s determination and finding of whether a particular census block constitutes a targeted service area by filing a notice of appeal within the 20-day period established by subrule 20.5(1) shall render the office’s determination and finding with respect to that particular census block final and no longer subject to challenge. A party’s failure to challenge the office’s determination and finding of whether a particular census block constitutes a

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targeted service area by filing a notice of appeal within the 20-day period established by subrule 20.5(1) shall be deemed a failure to exhaust administrative remedies.

**129—20.5(8B,427) Appeals.**

**20.5(1) Notice of appeal.** Within 20 days after the office makes its final determination of whether a particular census block constitutes a targeted service area pursuant to rule 129—20.4(8B,427), any person or party aggrieved or adversely affected by such determination may challenge the office's finding by filing a notice of appeal with the office.

*a.* The notice of appeal shall set forth:

(1) The name, address, telephone number, and e-mail address of the person or party;

(2) The particular census block designation the person or party is challenging by stating:

1. The census block number as provided on the statewide map referenced in rule 129—20.4(8B,427);

2. The county in which the census block is located as provided on the statewide map referenced in rule 129—20.4(8B,427);

(3) The manner in which the person or party is aggrieved or adversely affected by the office's determination; and

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

*b.* Accompanying the notice of appeal, the person or party shall provide the office with all evidence and information necessary to support the appeal.

**20.5(2) Filing.** Except to the extent that electronic filing is not feasible, a notice of appeal and all corresponding evidence and information shall be filed by electronic mail (e-mail) at [cio@iowa.gov](mailto:cio@iowa.gov). To the extent electronic filing is not feasible, the notice of appeal and all corresponding evidence and information shall be mailed to: Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. If the notice of appeal and corresponding evidence and information are filed by mail, such filing shall be accompanied by a written explanation of why electronic filing was not feasible.

**20.5(3) Notification of and input from affected persons or parties.** Within 10 calendar days of receipt of a notice of appeal, the office shall provide notification to any affected persons or parties by posting the notice of appeal at <http://ocio.iowa.gov/>. From the date of such posting, any affected persons or parties will have 20 calendar days to submit evidence and information in support of, or in opposition to, such appeal. Except to the extent not feasible, any such evidence and information shall be submitted by electronic mail (e-mail) to [cio@iowa.gov](mailto:cio@iowa.gov). To the extent electronic submission is not feasible, such evidence and information shall be mailed to: Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. If such evidence or information is submitted by mail, the evidence or information shall be accompanied by a written explanation of why electronic submission was not feasible.

**20.5(4) Internal review.** At the end of the time periods specified in subrules 20.5(1) and 20.5(3), the office shall consolidate all appeals involving the same census block and conduct an internal review of the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties pursuant to subrule 20.5(3), the maps and data sources originally utilized in rule 129—20.4(8B,427), and any other information deemed relevant by the office.

**20.5(5) Final agency decision.** Following the internal review set forth in subrule 20.5(4), the office will issue a final agency decision stating the reasons for the office's decision concerning the census block in question. In issuing the decision, the office shall consider the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties pursuant to subrule 20.5(3), the maps and data sources originally utilized in rule 129—20.4(8B,427), and any other information deemed relevant by the office. The final agency decision will be posted online at <http://ocio.iowa.gov/>. The final agency decision shall become final unless within 30 days of such posting an appellant or an affected person or party that submitted evidence

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in support of, or in opposition to, the appeal files a request for a contested case proceeding pursuant to rule 129—20.6(8B,427).

**20.5(6) *Time of filing.*** In determining the date on which an appeal or request for a contested case proceeding is filed with the office, the following shall apply: an appeal or request for a contested case proceeding delivered by mail shall be deemed to be filed on the postmark date; an appeal or any other document delivered by any other means shall be deemed to be filed on the date of receipt.

**20.5(7) *Public records.*** The office's release of public records is governed by 129—Chapter 2 and Iowa Code chapter 22. Persons are encouraged to familiarize themselves with 129—Chapter 2 and Iowa Code chapter 22 before submitting evidence or information to the office as part of the appeals and contested case process outlined in this chapter. The office will copy and produce public records upon request as required to comply with Iowa Code chapter 22 and will treat all evidence and information submitted by persons or parties as public, nonconfidential records unless a person or party requests that specific parts of the evidence or information submitted be treated as confidential at the time of the submission to the office.

*a.* A person or party requesting confidential treatment of evidence or information submitted must:

- (1) Fully complete and submit to the office Form 22 (available online at <http://ocio.iowa.gov/>);
- (2) Identify the request in the notice of appeal or, if evidence or information is submitted pursuant to subrule 20.5(3), identify the request in the transmittal e-mail or the written explanation of why electronic filing was not feasible;
- (3) Conspicuously mark the outside of any submission as containing confidential evidence or information;
- (4) Mark each page upon which confidential evidence or information appears; and
- (5) Submit a public copy from which claimed confidential evidence and information has been excised. Confidential evidence and information must be excised in such a way as to allow the public to determine the general nature of the evidence and information removed and to retain as much of the otherwise public evidence and information as possible.

*b.* Form 22 will not be considered fully complete unless, for each confidentiality request, the person or party:

- (1) Enumerates the specific grounds in Iowa Code chapter 22 or other applicable law that support treatment of the specific evidence or information as confidential;
- (2) Justifies why the specific evidence or information should be maintained in confidence;
- (3) Explains why disclosure of the specific evidence or information would not be in the best interest of the public; and
- (4) Sets forth the name, address, telephone number, and e-mail address of the individual authorized by the person or party submitting such evidence and information to respond to inquiries from the office concerning the confidential status of such evidence and information.

*c.* Failure to request that evidence or information be treated as confidential as specified herein shall relieve the office and state personnel from any responsibility for maintaining the information in confidence. Persons may not request confidential treatment with respect to a notice of appeal or other similar documents. Blanket requests to maintain all evidence and information submitted as confidential will be categorically rejected.

**129—20.6(8B,427) *Contested cases.*** A contested case initiated pursuant to this chapter shall be a contested case proceeding and shall be conducted in accordance with the provisions of the office's rules governing contested case proceedings (129—Chapter 6) unless the provisions of this rule provide otherwise. The definitions in rule 129—6.2(8B,17A) shall also apply to this rule.

**20.6(1) *Notice of hearing.*** Upon receipt of a request for a contested case proceeding, the office shall inform the department of inspections and appeals of the filing and of relevant information pertaining to the appeal in question. The department of inspections and appeals shall send a written notice of the date, time and location of the hearing to all affected persons or parties who initiated a contested case related to the census block forming the basis of the contested case, or appealed the office's determination of the census block forming the basis of the contested case pursuant to subrule 20.5(1), or submitted evidence

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or information to the office pursuant to subrule 20.5(3) directly related to the census block forming the basis of the contested case. The presiding officer shall hold a hearing on the matter within 60 days of the date the notice of appeal was received by the office.

**20.6(2) Consolidation.** In the event any contested cases concerning the same census block are initiated separately, such matters shall be consolidated.

**20.6(3) Discovery.** The parties shall serve any discovery requests upon other parties at least 30 days prior to the date set for the hearing. The parties must serve responses to discovery at least 15 days prior to the date set for the hearing.

**20.6(4) Witnesses and exhibits.** The parties shall contact each other regarding witnesses and exhibits at least 10 days prior to the date set for the hearing. In order to avoid duplication or the submission of extraneous materials, the parties must meet, either in person, by telephone, or by electronic means, prior to the hearing regarding the evidence to be presented.

**20.6(5) Telephone hearing.** If the hearing is conducted by telephone or other electronic means, the parties must deliver all exhibits to the office of the presiding officer at least 3 days prior to the time the hearing is conducted. Telephone hearings shall be strongly encouraged.

These rules are intended to implement Iowa Code sections 8B.1, 8B.10, 17A.3, and 427.1(40).

## CHAPTER 21 BROADBAND INFRASTRUCTURE—PROJECT CERTIFICATION

**129—21.1(8B,427) Definitions.** The definitions in rule 129—20.1(8B,427) shall apply to this chapter.

**129—21.2(8B,427) Scope.** This chapter applies to communications service providers who request certification pursuant to Iowa Code section 427.1(40) from the office that an installation of the broadband infrastructure is being performed or was completed in a targeted service area, and that the broadband infrastructure installed facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed.

**129—21.3(8B,427) Application for certification.** Applications for certification shall be completed and submitted online at <http://ocio.iowa.gov/>. In order to receive certification from the office, applications must be filled out in their entirety. Communications service providers making application to the office will be required to certify that all of the information contained in the application is accurate. If it is later determined that any of the information contained in the application is inaccurate, the office may revoke the certification, in whole or in part. An application for certification shall include without limitation the following information:

1. The communications service provider's legal and business name and address and the name, address, telephone number, and e-mail address of the person authorized by the communications service provider to respond to inquiries regarding the application for certification;
2. The census block number(s) as provided on the statewide map referenced in rule 129—20.4(8B,427) for the targeted service area(s) forming the basis of the application (i.e., the targeted service area in which the installation of the broadband infrastructure is being performed or was completed);
3. Attestation that the broadband infrastructure installed in the targeted service area(s) facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed; and
4. Any other information as requested in the application.

**129—21.4(8B,427) Time of filing.** Except as otherwise authorized by the office, an application for certification shall be deemed filed on the date of its online submission pursuant to rule 129—21.3(8B,427). Notwithstanding the foregoing, except as otherwise authorized by the office, an application for certification will not be deemed filed prior to the expiration of the initial 20-day appeal period specified in 129—subrule 20.5(1).

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**129—21.5(8B,427) Notice of decision and issuance of certificate.** The office shall notify the communications service provider by electronic means of its decision regarding an application for certification within 30 days of the filing of an application and, if appropriate, shall issue a certification by electronic means within that same time frame. If the decision is to deny the application or part of the application, such notice shall include a concise statement of the office's reasons for such denial, in whole or in part. A determination by the office to deny an application for certification, in whole or in part, may be appealed pursuant to 129—Chapter 6.

**129—21.6(8B,427) Contents of certification.** The certification shall state the communications service provider for which the certification is being issued, the census block number(s) (as provided on the map referenced in rule 129—21.4(8B,427)) of the targeted service area(s) for which the certification is being issued and county(s) in which such targeted service area(s) resides, that the office has determined the census block(s) in which the installation is being performed or was completed are targeted service area(s), that the broadband infrastructure installed facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed, and the date on which the certification is issued by the office. Such certification shall be signed by the CIO.

**129—21.7(8B,427) Targeted service areas subject to challenge.** To the extent an application for certification satisfies all other requirements of this chapter, if at the time such application is filed the office's determination of whether a particular census block forming the basis of such application, in whole or in part, is a targeted service area currently subject to challenge pursuant to the appeal and contested case procedures set forth in 129—Chapter 20, or the judicial review and appeal procedures outlined in Iowa Code sections 17A.19 and 17A.20, the office will issue a certification. Notwithstanding the foregoing, the aspect(s) of the office's certification concerning census blocks forming the basis of the application for certification that is currently subject to such challenge shall be purely contingent and valid only to the extent the office's original determination is ultimately upheld at the end of the entire appeals process once final, including judicial review and any subsequent appeal. For purely administrative purposes, if a portion of an application for certification is later deemed invalid by operation of this rule, the office may require the communications service provider to file a new application pursuant to rule 129—21.3(8B,427).

**129—21.8(8B,427) Certification of completion and field testing.** To the extent applicable, after an installation of broadband infrastructure certified by the office is fully installed in a targeted service area, the communications service provider for which a certification was issued must certify to the office that such installation facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed. The office may, in its discretion, conduct field tests for compliance with the requirements of Iowa Code section 427.1(40) "b" at any time after broadband service is available in a targeted service area. Such field tests may include but not be limited to speed tests from any location in a targeted service area in which the project was deployed or, in the case of wireline installations, the communications service provider's network operation center or central office. As applicable, noncompliance may be reported to the attorney general, the department of revenue, or applicable county board of supervisors.

These rules are intended to implement Iowa Code sections 8B.1, 8B.3, 8B.4(15), 17A.3, and 427.1(40).

[Filed 10/5/16, effective 11/30/16]

[Published 10/26/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/26/16.

**ARC 2781C****LOTTERY AUTHORITY, IOWA[531]****Adopted and Filed**

Pursuant to the authority granted in Iowa Code section 99G.9(3), the Board of Directors of the Iowa Lottery Authority hereby amends Chapter 12, “Licensing,” Chapter 18, “Scratch Ticket General Rules,” Chapter 19, “Pull-Tab General Rules,” and Chapter 20, “Computerized Games—General Rules,” Iowa Administrative Code.

Chapters 12 and 18 to 20 are each being modified to update and modernize the rules regarding the Iowa Lottery’s sale of traditional lottery products known as “instant tickets.”

Historically, the Iowa Lottery has utilized the terms “instant tickets” and “scratch tickets” synonymously, to refer to printed lottery tickets that contain play symbols concealed by a removable coating that the player must scratch to reveal. Indeed, the first game ever sold by the Iowa Lottery, a scratch ticket called “Scratch, Match & Win,” was introduced in 1985.

Scratch tickets remain popular with Iowa Lottery players, having accounted for 65 percent of total Iowa Lottery sales in fiscal year 2015. Certainly, scratch tickets will remain core Iowa Lottery offerings for years to come.

However, in light of the specialized paper stock and latex coating utilized to produce scratch tickets, scratch tickets are necessarily more expensive for the Iowa Lottery to produce than computerized lotto games such as the popular Powerball® or Mega Millions® games. Since 2004, 13 lotteries in the United States have introduced a different type of instant ticket. These instant tickets are printed using the same lotto terminals and secure paper that licensed retailers already use for printing plays in computerized lotto games such as Powerball® or Mega Millions®.

Those instant tickets use play symbols just like traditional scratch tickets. However, the symbols are not concealed by any latex coating. By using the secure paper already in place to print lotto tickets, these “scratchless” printed tickets are far less expensive to produce. And, they still provide the same play symbols and entertainment value that lottery players expect from traditional scratch tickets.

The Iowa Lottery and its Board have the authority under Iowa Code chapter 99G to introduce and administer lottery games, including these instant play games. However, the Iowa Lottery updates its administrative rules to reflect that printed instant tickets may not always contain a latex covering that must be removed by the player.

These modifications were identified through a regular review of the Iowa Lottery Authority’s administrative rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 3, 2016, as **ARC 2660C**. No public comment was received on this rule making. These amendments are identical to those published under Notice of Intended Action.

The Board does not intend to grant waivers under the provisions of these rules.

After analysis and review of this rule making, the Board finds that there is no adverse fiscal impact or impact on jobs from the adoption of these amendments.

These amendments were approved by the Board on September 27, 2016.

These amendments are intended to implement Iowa Code chapter 99G.

These amendments shall become effective on November 30, 2016.

The following amendments are adopted.

ITEM 1. Amend subrule 12.4(1) as follows:

**12.4(1)** The lottery has discretion to license a qualified applicant to sell any one of the following lottery products or any combination of the following products: ~~scratch~~ instant tickets; pull-tab tickets; and computerized game tickets, if available. The lottery may require an applicant to sell one or more lottery products as a condition of selling any other lottery product. A lottery license authorizes the licensee to sell only the type of lottery products specified on the license.

ITEM 2. Amend **531—Chapter 18**, title, as follows:

**SCRATCH INSTANT TICKET GENERAL RULES**

LOTTERY AUTHORITY, IOWA[531](cont'd)

ITEM 3. Amend rule 531—18.1(99G) as follows:

**531—18.1(99G) Authorization of scratch instant ticket games.** The lottery authority board authorizes the sale of ~~scratch~~ instant tickets that meet the criteria set forth in this chapter.

This rule is intended to implement Iowa Code Supplement section 99G.9(3).

ITEM 4. Amend rule 531—18.2(99G) as follows:

**531—18.2(99G) Definitions.**

“Instant ticket” means a scratch ticket or an instaplay ticket as defined in this chapter.

“Instaplay ticket” means an instant ticket printed on lotto terminal paper with play symbols that are not concealed by a removable covering.

“Play symbols” means the numbers or symbols appearing under the removable covering on the a scratch ticket or on the face of an instaplay ticket.

“Scratch ticket” as used in this chapter means an instant lottery ticket that is played by removing a rub-off covering on the ticket.

“Validation number” means the characters or numbers found on a ticket or ticket stub.

This rule is intended to implement Iowa Code Supplement sections 99G.3 and 99G.9(3).

ITEM 5. Amend rule 531—18.3(99G) as follows:

**531—18.3(99G) Scratch Instant ticket price.** The lottery shall specify the price of scratch tickets and instaplay tickets in the specific game rules for each game.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

ITEM 6. Amend subrule 18.5(2) as follows:

**18.5(2)** At the lottery’s discretion, a scratch ticket game or an instaplay game may include a special prize event. The number of prizes and the amount of each prize in the prize event shall be determined by the lottery. The dates and times, as well as the procedures for conducting any elimination drawings or prize events, shall be determined by the lottery in the specific game rules. Finalists for prize events shall be selected in the manner stated in the specific game rules.

ITEM 7. Amend rule 531—18.6(99G) as follows:

**531—18.6(99G) Annuity prizes.** If a prize offered in a scratch game or an instaplay game is an annuity, the prize shall consist of an initial prize payment followed by yearly installments as described in the specific game rules. If the current cash value of an annuity prize attributable to a single ticket or entry is less than \$100,000, the lottery may elect to pay the current cash value of the prize in one lump-sum payment.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

ITEM 8. Amend subrule 18.8(1) as follows:

**18.8(1) Claim period.** ~~Prizes~~ Scratch ticket prizes must be claimed within 90 days of the announced end of the scratch game. Instaplay ticket prizes must be claimed within 90 days of the date of sale of the instaplay ticket.

ITEM 9. Amend subrule 18.8(5) as follows:

**18.8(5) Variation by specific game rules.** The specific game rules may vary the terms of this rule in respect to the manner in which prizes are claimed or the claim period applicable to any scratch or instaplay game or special event.

ITEM 10. Amend rule 531—18.9(99G) as follows:

**531—18.9(99G) Ticket validation requirements.**

**18.9(1)** To be a valid scratch ticket, a ticket must meet all of the following validation requirements. A ticket must:

a. Have been issued ~~by the lottery~~ in an authorized manner as determined by the lottery.

## LOTTERY AUTHORITY, IOWA[531](cont'd)

- b.* Not be altered, unreadable, reconstructed or tampered with in any manner.
- c.* Not be counterfeit in whole or in part.
- d.* Not be stolen or appear on any list of omitted tickets on file with the lottery.
- e.* Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.
- f.* Have play symbols and captions as described in the specific game rules. All symbols, numbers and codes must be present in their entirety, legible, right side up, and not reversed in any manner.
- g.* Have the appropriate bar code, pack-ticket number, retailer verification code and security code.
- h.* Have a validation number that appears on the lottery's official list of validation numbers of winning tickets. A ticket with that validation number shall not have been previously paid.
- i.* Pass all additional validation requirements stated in the specific game rules and any confidential validation requirements established by the lottery.

**18.9(2)** To be a valid instaplay ticket, a ticket must meet all of the following validation requirements.

A ticket must:

- a.* Have been issued in an authorized manner as determined by the lottery.
- b.* Not be altered, unreadable, reconstructed or tampered with in any manner.
- c.* Not be counterfeit in whole or in part.
- d.* Not be stolen, canceled, or appear on any list of omitted or test tickets on file with the lottery.
- e.* Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.
- f.* Have play symbols and captions as described in the specific game rules. All symbols, numbers and codes must be present in their entirety, legible, right side up, and not reversed in any manner.
- g.* The information on the ticket or share must correspond precisely with the lottery's computer record.
- h.* The ticket or share serial number must appear in its entirety, and correspond, using a computer validation file, to the winning game play or plays printed on the ticket or share.
- i.* A ticket or share shall be void unless the ticket or share is printed on a paper stock roll that was validly issued to and used, at the time of the play, by the retailer from whom the ticket or share was purchased.
- j.* Pass all additional validation requirements stated in the specific game rules and any confidential validation requirements established by the lottery.

**18.9(2) 18.9(3)** Any ticket not passing all applicable validation requirements is invalid and is ineligible for any prize. The chief executive officer's determination that a ticket is invalid is final.

The chief executive officer, in the chief executive officer's sole discretion, may choose to pay an amount equal to the prize that would have been won on an invalid ticket if the lottery is able to determine the prize which would have been won by use of a symbol, number, color code, or other mechanism. The chief executive officer's decision as to whether to pay a player the sum equal to the prize on an invalid ticket is final.

If an invalid ticket is purchased by a player, the only responsibility or liability of the lottery shall be to replace the invalid ticket with an unplayed ticket from the same game or any other game or issue a refund of the sale price.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

ITEM 11. Amend rule 531—18.10(99G) as follows:

**531—18.10(99G) Official end of game.** The lottery shall announce the official end of each scratch game and each instaplay game. Retailers may continue to sell tickets for each game up to the cutoff date specified by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.



## LOTTERY AUTHORITY, IOWA[531](cont'd)

ITEM 12. Amend rule 531—18.11(99G) as follows:

**531—18.11(99G) Board approval of games.** The lottery shall provide board members with a written description of each specific scratch game and each specific instaplay game. The chairperson or a quorum of the board may call a special meeting to review the instant game selection. The board shall not contest the selection of a scratch game or an instaplay game more than five days after receiving written notice of the selection.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

ITEM 13. Amend rule 531—19.2(99G) as follows:

**531—19.2(99G) Definitions.** As used in this chapter the following definitions are applicable.

“*Low-tier prizes*” are prizes which are included in the guaranteed low-end prize structure of a pull-tab game.

“*Pull-tab tickets*” are instant lottery tickets that are played by opening tabs to reveal if a prize was won. “Pull-tab tickets” do not include “scratch tickets” that are played by removing a rub-off covering from the play area or instaplay tickets that are played using the play symbols printed on lotto terminal paper.

This rule is intended to implement Iowa Code Supplement sections 99G.3 and 99G.9(3).

ITEM 14. Amend rule **531—20.2(99G)**, definitions of “Predetermined pool drawing machine” and “Scratch (instant) ticket vending machine,” as follows:

“*Predetermined pool drawing machine*” means a computer or other device external to a lotto terminal, ~~scratch~~ instant ticket vending machine, on-line vending machine, or monitor vending machine that predetermines winning and losing tickets or shares, assigns them to preprogrammed and prepackaged sequential electronic pool files and subsequently utilizes the files in production and distribution of electronic game cards and paper game tickets or shares produced in manufactured packs or through lotto terminals or vending machines.

“~~Scratch (instant)~~ *Instant ticket vending machine*” or “*ITVM*” means a vending machine or self-service kiosk that dispenses ~~preprinted~~ printed paper lottery tickets, with or without a scratch-off area or electronic game cards with preprogrammed and prepackaged sequential electronic pool files that have been determined to be winning or losing tickets by a predetermined pool drawing machine prior to the dispensing of the tickets.

[Filed 9/29/16, effective 11/30/16]

[Published 10/26/16]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/26/16.

## OMBUDSMAN[141]

### Adopted and Filed

Pursuant to Iowa Code section 2C.9(6), the Ombudsman hereby rescinds Chapter 1, “Organization,” Chapter 2, “Procedures,” Chapter 3, “Information Practices,” and Chapter 4, “Rule Making,” and adopts new Chapters 1, 2, 3, and 4 with the same titles, and rescinds Chapter 5, “Petitions for Rule Making,” and Chapter 6, “Declaratory Rulings,” Iowa Administrative Code.

Pursuant to Iowa Code section 2C.9(6), the Ombudsman’s rules are exempt from Iowa Code chapter 17A, but are to be published in the Iowa Administrative Code. The Ombudsman submitted the new rules to the Service Committee of the Legislative Council on July 12, 2016, for review and comment. The Ombudsman submitted the adopted rules to the Administrative Rules Review Committee (ARRC) on October 11, 2016. These rules are published in the Iowa Administrative Bulletin in the interest of informing the public of the adoption.

The new rules seek to accomplish the following objectives:

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1. Reflect the change to the office's name from Citizens' Aide/Ombudsman to Office of Ombudsman, pursuant to an Iowa Code amendment effective July 1, 2013.

2. Revise the definition of "Agency" in Chapter 2 to include a person providing child welfare or juvenile justice services under a contract with an agency. This language reflects an Iowa Code amendment enacted in 2003.

3. Create a provision for whistleblower complaints in Chapter 2 to reflect the statutory authority provided to the Ombudsman in 2006 under Iowa Code section 2C.11A to receive and investigate complaints from state employees.

4. Replace "Hearings to examine witnesses" with "The taking of testimony" in Chapter 2 to accurately reflect the Ombudsman's practice of interviewing witnesses pursuant to an investigation.

5. Clarify the procedure in Chapter 2 that witnesses may receive a copy of their testimony provided to the Ombudsman only after the investigation is completed, and eliminate a witness's right to record the witness's own testimony before the Ombudsman. The changes protect the integrity of the Ombudsman's investigation by ensuring that witnesses do not share the recordings of their testimony with other witnesses called to testify before the Ombudsman.

6. Update Chapter 3, "Information Practices," to accurately reflect current forms and use of office records, and to identify those records available for public inspections and those records held confidential under Iowa Code chapters 2C and 22.

7. Rescind Chapter 5, "Petitions for Rule Making," and Chapter 6, "Declaratory Rulings." The Ombudsman is not required to maintain these provisions under Iowa Code chapter 17A. The chapters serve no useful function to the Ombudsman or the public.

The rules in Chapters 1 and 4 are intended to implement Iowa Code section 2C.9(6). The rules in Chapter 2 are intended to implement Iowa Code sections 2C.1, 2C.8 to 2C.22, and 70A.28. The rules in Chapter 3 are intended to implement Iowa Code section 22.11.

These rules shall become effective November 1, 2016.

The following amendments are adopted.

ITEM 1. Rescind 141—Chapter 1 and adopt the following new chapter in lieu thereof:

#### CHAPTER 1 ORGANIZATION

**141—1.1(2C) Authority and function.** The office of ombudsman was established by the general assembly in 1972 and is charged with the responsibility to investigate complaints from any persons regarding administrative actions of Iowa state or local governmental agencies and to render objective opinions or recommendations on the complaints, in the interests of resolving complaints and improving administrative processes and procedures. In addition to the powers and duties specified in Iowa Code chapter 2C, the office of ombudsman shall investigate complaints received pursuant to Iowa Code section 23A.4 and serve on the child support advisory committee pursuant to Iowa Code section 217.3A(3).

**141—1.2(2C) Location and access.** The office of ombudsman is located at the Ola Babcock Miller Building, 1112 E. Grand Avenue, Des Moines, Iowa 50319. The office Web site is [www.legis.iowa.gov/Ombudsman](http://www.legis.iowa.gov/Ombudsman). The office can be reached at the following numbers: telephone (515)281-3592, 1-888-426-6283 (1-888-IA-OMBUD), and TDD/TTY (515)242-5065, and fax (515)242-6007. The office can also be reached by electronic mail at [ombudsman@legis.iowa.gov](mailto:ombudsman@legis.iowa.gov). Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, except designated state holidays.

**141—1.3(2C) Composition and duties of staff.**

**1.3(1) Staff.** The office of ombudsman is composed of the following staff positions:

*a. Ombudsman.* The ombudsman is appointed by the legislative council pursuant to Iowa Code section 2C.3. The ombudsman shall meet the qualifications specified in Iowa Code section 2C.4 and serve for the term of office provided in Iowa Code section 2C.5. The ombudsman employs and supervises all staff in the positions and at the salaries authorized by the legislative council.

## OMBUDSMAN[141](cont'd)

*b. Deputy ombudsman.* The ombudsman shall designate one of the members of the staff as the deputy ombudsman. The deputy ombudsman shall act as the ombudsman when the ombudsman is absent from the state or becomes disabled, or when the position of ombudsman is vacant, until the vacancy is filled by the legislative council.

*c. Legal counsel.* The legal counsel shall provide legal advice, assistance, and representation to the ombudsman and members of the staff in matters pertaining to their authority and duties and shall perform other assigned duties.

*d. Assistant for corrections.* The assistant ombudsman for corrections is primarily responsible for investigating complaints relating to penal and correctional agencies, and performs other assigned duties.

*e. Assistants.* The assistant ombudsmen receive and investigate complaints and perform other assigned duties.

*f. Support staff.* The support staff performs secretarial, clerical, and other assigned duties.

**1.3(2) Delegation of authority or duties.** The ombudsman may delegate to any staff member any authority or duties of the ombudsman, except the duty of making formal recommendations to agencies or reports to the governor or the general assembly.

These rules are intended to implement Iowa Code sections 2C.3(2), 2C.6, 2C.9(6), 23A.4, and 217.3A(3).

ITEM 2. Rescind 141—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2  
PROCEDURES

**141—2.1(2C) Definitions.** As used in this chapter:

“*Administrative action*” means any action, decision, omission, policy, practice, procedure, or rule of an agency or any failure of an agency to act pursuant to law.

“*Agency*” means all governmental entities, departments, boards, commissions, councils or institutions, and any officer, employee or member thereof acting or purporting to act in the exercise of official duties. “Agency” includes any person providing child welfare or juvenile justice services under contract with an agency that is subject to investigation by the ombudsman. “Agency” does not include:

1. Any court or judge or appurtenant judicial staff;
2. The members, committees, or permanent or temporary staffs of the Iowa general assembly;
3. The governor of Iowa or the governor’s personal staff;
4. Any instrumentality formed pursuant to an interstate compact and answerable to more than one state; and
5. Any agency, official or employee of the federal government.

“*Employee*” means any employee of any agency.

“*Officer*” means any officer of any agency.

“*Person*” means an individual, aggregate of individuals, corporation, partnership, or unincorporated association.

“*Records*” or “*documents*” means any writings, drawings, graphs, charts, photographs, phonorecords, audio recordings, video recordings, and any other data or information stored or preserved in any medium.

**141—2.2(2C) Complaints.**

**2.2(1) Persons who may contact office.** Any person may contact the ombudsman concerning an administrative action by an agency. If a person contacts the ombudsman on behalf of another person whose specific right or interest is directly affected by an administrative action, the ombudsman may request that the affected person contact the ombudsman as the complainant or obtain the consent of the affected person before considering the complaint.

**2.2(2) Methods of contact.** The ombudsman may be contacted at the office of ombudsman or at the site of an agency or other location specified by the ombudsman. No appointment is needed for the initial

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office visit. Contact may be made by mail, e-mail, telephone, facsimile (fax), office visit, or any other method deemed acceptable by the ombudsman, except as provided in subrule 2.2(3). Contact may also be made indirectly by the receipt of a person's correspondence which is referred or forwarded to the office of the ombudsman.

**2.2(3) *Written complaints.*** The ombudsman may require complaints to be submitted in writing or on a form prescribed by the ombudsman.

**2.2(4) *Assistance by the ombudsman.*** If a person is incapable of submitting a written complaint or has difficulty communicating with the ombudsman because of a disability or language barrier, the ombudsman shall assist that person in completing the complaint or make accommodations to facilitate communication with that person.

**2.2(5) *Self-initiated complaints.*** An investigation into an agency's administrative action may be initiated on the ombudsman's own motion, if the ombudsman determines it is an appropriate subject for investigation.

**2.2(6) *Anonymous complaints.*** The ombudsman may accept a complaint from an anonymous person. However, if the ombudsman at any time determines the complainant's identity is needed to pursue an investigation of the complaint, the ombudsman may request that the complainant's identity be disclosed. If the identity of the complainant is not disclosed as requested, the ombudsman may decline to pursue investigation of the complaint.

**2.2(7) *Information requests.*** If a person who contacts the ombudsman requests information, the ombudsman may provide such information, if it relates to state and local government, or refer the person to another agency or to any other appropriate entity or source for the information.

**2.2(8) *No fee or charge.*** The ombudsman shall not assess any monetary or other charge against any person who contacts the office of ombudsman for assistance.

#### **141—2.3(2C) Institutional communications.**

**2.3(1) *Correspondence.*** Any correspondence from a person confined or residing in an institution or facility under the control of an agency shall be forwarded, unopened and without undue delay, to the office of ombudsman by the institution or facility. Any correspondence from the office of ombudsman to such a person shall be delivered, unopened and without undue delay, by the institution or facility to that person.

**2.3(2) *Telephonic communication.*** A telephonic communication between a person confined or residing in an institution or facility under an agency's control and any staff member of the office of ombudsman shall not be monitored by any officer or employee of that agency.

#### **141—2.4(2C,70A) Whistleblower reprisal complaints.**

**2.4(1) *State employees.*** Notwithstanding the limitations of subrule 2.6(1), the ombudsman may investigate a complaint filed by an employee of a state employment system who alleges that an adverse employment action has been taken against the employee as provided in Iowa Code section 70A.28(2). This provision does not apply to employees of those entities excluded from the definition of "agency" under Iowa Code section 2C.1(2). This provision applies only to employees who are non-merit employees and employees not covered by a collective bargaining agreement. Complaints must be made to the ombudsman within 30 calendar days following the effective date of the adverse employment action.

**2.4(2) *Investigation.*** If an investigation of the employee's complaint occurs, the ombudsman shall issue findings in an expeditious manner.

**2.4(3) *Investigative findings.*** If the employee files an appeal of the adverse employment action with the public employment relations board pursuant to Iowa Code section 70A.28(6), the written findings issued by the ombudsman may be introduced as evidence before the public employment relations board.

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**141—2.5(2C) Preliminary review and inquiry.**

**2.5(1) *Review of complaint.*** The ombudsman shall review and consider each complaint to determine if it is within the ombudsman's jurisdiction, if it is an appropriate subject for investigation, and if it warrants an investigation, under the criteria in rule 141—2.6(2C).

**2.5(2) *Preliminary inquiry.*** The ombudsman may make a preliminary inquiry to obtain information for the purpose of making the determination required in subrule 2.5(1). A preliminary inquiry may utilize any of the methods available for investigations under subrule 2.9(1). However, a preliminary inquiry shall not be considered an investigation.

**2.5(3) *Resolution without investigation.*** If, in the course of a preliminary inquiry on the complaint, an agency provides an explanation or response or takes an action which resolves the complaint, the ombudsman may decline to investigate the complaint. The ombudsman shall inform the complainant regarding the resolution of the complaint. However, the resolution of a complaint during a preliminary review and inquiry does not preclude the ombudsman from conducting an investigation into the complaint.

**141—2.6(2C) Criteria for investigation.**

**2.6(1) *Jurisdiction.*** The ombudsman has jurisdiction to investigate any administrative action of an agency; however, the ombudsman shall not investigate the complaint of an employee of an agency in regard to that employee's employment relationship with the agency, except as provided in rule 141—2.4(2C,70A).

**2.6(2) *Subjects for investigation.***

*a.* An appropriate subject for investigation includes any administrative action which the ombudsman has reason to believe might be:

- (1) Contrary to law or regulation;
- (2) Unreasonable, unfair, oppressive, or inconsistent with the general course of an agency's functioning, even though it is in accordance with the law;
- (3) Based on a mistake of law;
- (4) Arbitrary in ascertainties of fact;
- (5) Based on improper motivation or irrelevant consideration; or
- (6) Unaccompanied by an adequate statement of reasons.

*b.* The ombudsman may also inquire into an agency's policy, practice or procedure if the ombudsman has reason to believe improvements can be made to the policy, practice or procedure which lessen the risk that objectionable administrative actions will occur.

**2.6(3) *Reasons to decline investigation.*** The ombudsman may decline to investigate a complaint if the ombudsman finds substantiating facts that:

*a.* The complainant has available another remedy or channel of complaint which the complainant could reasonably be expected to use;

*b.* The complaint pertains to a matter outside the ombudsman's power;

*c.* The complainant has no substantive or procedural interest which is directly affected by the matter complained about;

*d.* The complaint is trivial, frivolous, or vexatious or not made in good faith;

*e.* Other complaints are more worthy of attention;

*f.* The resources of the ombudsman are insufficient for adequate investigation;

*g.* The complaint has been delayed too long to justify present examination of its merit;

*h.* The complainant does not provide or refuses to provide, without good reason, information in the complainant's possession or knowledge which is requested by the ombudsman;

*i.* A previous determination has been made by the ombudsman regarding the subject matter of the complaint; or

*j.* The complaint has been resolved due to a change in the complainant's circumstances or in the law, or due to an action taken by the agency during a preliminary review and inquiry on the complaint.

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**141—2.7(2C) Decision not to investigate.**

**2.7(1) Notice of decision.** If, after preliminary review and consideration of a complaint, the ombudsman decides not to investigate the complaint, the complainant shall be informed of the decision and the reasons for the decision. The ombudsman may also inform the agency involved of the decision, if such notice is deemed appropriate.

**2.7(2) Referral of nonjurisdictional complaint.** If the ombudsman does not have jurisdictional authority to investigate a complaint, the complainant may be referred to an agency or other appropriate entity or person for assistance.

**2.7(3) Effect of declining investigation.** A decision to decline investigation of a complaint under subrule 2.6(3) does not preclude the ombudsman from inquiring into the complaint or a related subject matter in the future.

**141—2.8(2C) Decision to investigate.**

**2.8(1) Notice of decision.** If, after preliminary review and inquiry and consideration, the ombudsman decides to investigate a complaint, the complainant and the agency involved in the complaint shall be notified of the decision.

**2.8(2) Notice to agency.** A notice of investigation to an agency shall be directed to an official or employee of the agency. Such notice may be given simultaneously or in conjunction with any investigative action that is initiated under rule 141—2.9(2C).

**141—2.9(2C) Investigations.**

**2.9(1) Methods.** The ombudsman may use any one or more of the following methods in conducting an investigation:

- a. Review applicable laws, rules, regulations, and policies;
- b. Request a statement from an agency providing reasons for taking an administrative action;
- c. Make informal verbal or written inquiries to an agency and other persons for assistance or information;
- d. Take testimony from any person as provided under rule 141—2.11(2C);
- e. Examine and copy records or documents of an agency;
- f. Enter and inspect without advance notice any premises within an agency's control;
- g. Attend administrative hearings or proceedings;
- h. Issue a subpoena to compel a person to provide sworn testimony or to produce relevant records or documents;
- i. Hold private hearings;
- j. Convene a public hearing as a forum to obtain public input or comment on a subject of general or broad public concern;
- k. Any other method determined appropriate by the ombudsman.

**2.9(2) Ex parte communications.** A communication or receipt of information by the ombudsman or any person in the course of an investigation shall not be considered an ex parte communication as described in Iowa Code section 17A.17.

**2.9(3) Status reports.** The ombudsman shall report the status of an investigation to the complainant upon request of the complainant or whenever it is deemed appropriate.

**141—2.10(2C) Subpoenas.**

**2.10(1) Issuance.** Pursuant to Iowa Code subsection 2C.9(5), the ombudsman has power to issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence relevant to a matter under inquiry.

**2.10(2) Notice.** The ombudsman shall give reasonable notice of the date, time, place, and purpose for the taking of testimony or the production of documentary or other evidence. Notice shall be served in accordance with the law applicable to the service of subpoenas in civil actions.

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**2.10(3) Fees.** A person required to give testimony or produce documentary or other evidence is entitled to payment of the same fees and travel allowances as are payable to a witness whose attendance has been required in a district court of this state.

**2.10(4) Enforcement.** If a person fails or refuses to obey a subpoena, the ombudsman may file a petition with the district court having jurisdiction for an order directing obedience to the subpoena under Iowa Code subsection 2C.9(5).

**141—2.11(2C) The taking of testimony.**

**2.11(1) Purpose.** The taking of testimony is an internal device used by the ombudsman to gather information and to assist in arriving at conclusions or recommendations regarding an agency's actions.

**2.11(2) Witnesses.** Any person may be called to give testimony relating to a matter before the ombudsman.

**2.11(3) Notice.** The ombudsman shall provide to the person whose testimony is sought reasonable notice of the date, time, and place for taking that person's testimony. If the ombudsman issues a subpoena compelling a person to give testimony, notice shall be provided in the subpoena.

**2.11(4) Location.** The ombudsman has discretion to take testimony from a person at the ombudsman's office or at another location deemed appropriate by the ombudsman, or by telephone or other electronic means.

**2.11(5) Rights of witnesses.** A person who gives testimony is accorded the same privileges and immunities as are extended to witnesses in the courts of this state. The witness is entitled to be accompanied and advised by counsel or other representative while being questioned, but only counsel may speak or raise objections to questions on behalf of the witness. Objections to questions shall be noted, but the witness shall answer all questions, except when a privilege or immunity accorded to the witness has been asserted.

**2.11(6) Conduct of testimony.** The ombudsman may administer oaths to persons giving testimony before the ombudsman. The ombudsman determines the order for the taking of testimony and may sequester witnesses or examine a witness privately. Questions will be posed by the ombudsman. At the conclusion of the ombudsman's examination of a witness, counsel for the witness may be permitted to question the witness, after which the ombudsman may inquire further into any matters raised during the examination. The scope of the questions shall be decided and may be limited by the ombudsman.

**2.11(7) Evidence.** Strict rules of evidence shall not apply. The probative nature of any evidentiary matter shall be determined by the ombudsman.

**2.11(8) Record.** The ombudsman may record the testimony by audio or video recording or by use of a certified court reporter. A copy of the witness's testimony record may be provided to the witness upon request at the conclusion of the investigation.

**141—2.12(2C) Disposition after investigation.**

**2.12(1) Complaint unsubstantiated.** If, after completing an investigation, the ombudsman determines the complaint is not substantiated based upon a preponderance of the evidence, the ombudsman shall inform the complainant and the agency involved of such determination.

**2.12(2) Complaint indeterminate.** If, after completing an investigation, the ombudsman is unable to conclusively determine based upon a preponderance of the evidence whether the complaint is substantiated or unsubstantiated, the ombudsman shall inform the complainant and the agency involved of such conclusion.

**2.12(3) Complaint substantiated.** If, after completing an investigation, the ombudsman determines the complaint is substantiated based upon a preponderance of the evidence, the ombudsman shall inform the complainant and the agency involved of the findings of fact and conclusions. If appropriate, the ombudsman shall also inform the agency of any recommendation that:

- a. The matter be further considered by the agency;
- b. The administrative action be modified or canceled;
- c. A rule on which an administrative action is based be altered;
- d. Reasons be given for an administrative action; or

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*e.* Any other action be taken by the agency.

**2.12(4) Agency response to recommendations.** If the ombudsman requests, the agency shall notify the ombudsman within 20 days in writing of any action taken or to be taken on the recommendations or the reasons for not complying with the recommendations.

**2.12(5) Legislative action.** If the ombudsman believes that a law resulted in administrative action which was unfair or otherwise objectionable, the ombudsman shall notify the general assembly of desirable statutory change. The ombudsman may give notification by submitting a legislative proposal or by presenting testimony or statements to the general assembly or one of its committees or members regarding the statutory change.

**2.12(6) Referral for disciplinary or criminal action.** The ombudsman shall refer a public official, employee or other person for disciplinary or criminal proceeding, if such referral is warranted under rule 141—2.15(2C).

#### **141—2.13(2C) Investigative reports.**

**2.13(1) Issuance of reports.** The ombudsman may prepare a report of the findings of fact, conclusions, and recommendations relevant to an investigation.

*a. Critical reports.* If the ombudsman determines as a result of an investigation that an administrative action of an agency, officer or employee warrants criticism, the ombudsman may issue a critical report containing the findings, conclusions and recommendations relevant to that investigation.

*b. Special reports.* A special report may be issued if the findings of fact, conclusions, or recommendations are not critical of an agency, or an officer or employee of an agency, but are of significant interest to the public.

**2.13(2) Publication of reports.** The ombudsman may publish and send a critical report or a special report to the governor, the general assembly or any of the committees of the general assembly. Any published report sent to the governor, the general assembly or any of its committees becomes public information and may be disseminated to the news media and to any interested members of the general public upon request.

**2.13(3) Prepublication procedure for critical reports.** Before publishing a critical report or announcing a conclusion or recommendation which criticizes an agency, officer or employee, the ombudsman shall consult with that agency, officer or employee.

*a. Transmission to agency.* The ombudsman shall transmit a copy of the critical report to the agency and each officer or employee who is a subject of the criticism and allow the agency, officer or employee a reasonable opportunity to reply to the report in writing.

*b. Reply to report.* The agency, officer or employee shall notify the ombudsman within 7 days from the date the critical report is received of any decision by that agency, officer or employee to make a reply. The agency, officer or employee shall be allowed 30 days from the date of receipt of the critical report to submit a written reply to the ombudsman. The ombudsman may for good cause extend the time allowed to submit the reply, if an extension is requested by the agency, officer or employee.

*c. Comment to reply.* The ombudsman may comment on any reply from an agency, officer or employee. The comments may include modifications by the ombudsman to any findings, conclusions, or recommendations in the critical report. The ombudsman shall transmit in writing any comments to the replying agency, officer or employee.

*d. Reply or comment attached to report.* Any unedited reply made by an agency, officer or employee and any written comments by the ombudsman shall be attached to every critical report which is published, sent, or disseminated by the ombudsman, unless inclusion of the reply is waived by the agency, officer or employee.

*e. Confidential information not published.* The ombudsman may not publish any confidential information which the ombudsman is not authorized to disclose or is prohibited from disclosing by law. The ombudsman may prepare, for the purpose of publication, an edited version of the critical report, from which confidential information has been deleted or excluded. The ombudsman shall transmit the edited version of the critical report to the agency, officer or employee and consult with that agency, officer or employee to ensure the report does not contain confidential information that may not be



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disclosed. Any reply or comment which is attached to this report and which contains confidential information that may not be disclosed shall likewise be edited to delete or exclude the confidential information.

**141—2.14(2C) Annual reports.**

**2.14(1) *When and to whom submitted.*** Pursuant to Iowa Code section 2C.18, the ombudsman shall by April 1 of each year submit an economically designed and reproduced annual report to the general assembly and to the governor concerning the activities and work performed during the preceding calendar year.

**2.14(2) *Inclusion of reply by agency or official.*** If the annual report summarizes or discusses the findings, conclusions or recommendations in a critical report and names the agency, official or employee involved, the annual report shall also include any unedited reply made by the agency, official or employee to the critical report, unless inclusion of the reply is waived by the agency or official.

**141—2.15(2C) Referral for disciplinary or criminal action.** If the ombudsman believes that a public official, employee, or other person has acted in a manner warranting a disciplinary or criminal proceeding, the ombudsman shall refer the matter to the appropriate authorities.

**141—2.16(2C) Privileges and immunities.**

**2.16(1) *Immunity of ombudsman.*** Except for removal from office as provided in Iowa Code chapter 66 or for employment-related claims, no civil action or other proceeding shall be commenced against the ombudsman or any member of the staff for any official act or omission performed pursuant to the provisions in Iowa Code chapter 2C, unless the act or omission is actuated by malice or is grossly negligent.

**2.16(2) *Testimonial privilege.*** The ombudsman or any member of the staff shall not be compelled to testify in any judicial or administrative proceeding with respect to any matter involving the exercise of the ombudsman's official duties, except as may be necessary to enforce the provisions of Iowa Code chapter 2C.

**141—2.17(2C) Penalties for obstruction.**

**2.17(1) *Penalties.*** As provided in Iowa Code section 2C.22, any person who willfully obstructs or hinders the lawful actions of the ombudsman or any member of the staff, or who willfully misleads or attempts to mislead the ombudsman or a member of the staff in the course of an inquiry or investigation, shall be guilty of a simple misdemeanor.

**2.17(2) *Prosecution.*** The ombudsman shall refer for prosecution a violation of Iowa Code section 2C.22 to the county attorney in the county where the violation occurred.

These rules are intended to implement Iowa Code sections 2C.1, 2C.8 to 2C.22, and 70A.28.

ITEM 3. Rescind 141—Chapter 3 and adopt the following new chapter in lieu thereof:

CHAPTER 3  
INFORMATION PRACTICES

**141—3.1(2C,22) Definitions.** As used in this chapter:

“*Agency*” means the office of ombudsman.

“*Confidential record*” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records of information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record.

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“*Custodian*” means the agency or a person lawfully delegated authority by the agency to act for the agency in implementing Iowa Code chapter 22.

“*Open record*” means a record other than a confidential record.

“*Personally identifiable information*” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“*Record*” means the whole or a part of a public record, as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

“*Record system*” means any group of records under the control of the agency from which a record may be retrieved by a personal identifier, such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

**141—3.2(2C,22) Statement of policy.** This chapter implements Iowa Code section 22.11 by establishing agency policies and procedures for the maintenance of records and access to records. The purpose of this chapter is to facilitate public access to open records and to guide agency determinations with respect to the handling of confidential records and the implementation of the Iowa fair information practices Act.

**141—3.3(2C,22) Requests for access to records.**

**3.3(1) Location.** A request for access to a record should be directed to the ombudsman at the Office of Ombudsman, Ola Babcock Miller Building, 1112 E. Grand Avenue, Des Moines, Iowa 50319. The agency may also be reached at the following numbers: telephone (515)281-3592, 1-888-426-6283 (1-888-IA-OMBUD), TDD/TTY (515)242-5065, and fax (515)242-6007.

**3.3(2) Office hours.** Access to records shall be available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, except designated state holidays.

**3.3(3) Request for access.** Requests for access to records may be made in writing, in person, by telephone, by e-mail, or by facsimile (fax). Requests shall identify by name and description the particular records sought in order to facilitate the location of the record. Requests by mail, telephone, e-mail, or facsimile (fax) shall also include the name, address, e-mail, and telephone or fax number of the person requesting the information. A person shall not be required to give a reason for the request.

**3.3(4) Response to requests.**

*a.* Access to an open record of the agency shall be provided promptly upon request. If the size or nature of the request makes prompt access impracticable, the custodian shall comply with the request as soon as practicable. Access to an open record may be delayed for one of the purposes authorized by Iowa Code subsection 22.8(4) or 22.10(4). The custodian shall notify the requester of the reason for a delay in access to an open record and an estimate of the length of that delay and, upon request, shall provide such notice in writing.

*b.* The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code subsections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 141—3.4(2C,22) and other applicable provisions of law.

**3.3(5) Security of record.** Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. A person may not search or remove any record from agency files without permission from the custodian. A person may not cause damage or disorganization to any agency records.

**3.3(6) Copying.** A reasonable number of copies of a record may be made in the agency’s office. If photocopy equipment is not available in the agency office, the custodian shall permit examination of the record in the office and shall arrange to have copies made as soon as practicable elsewhere.

**3.3(7) Fees.** To the extent permitted by law, the agency may charge fees in connection with the examination or copying and may waive payment of such fees when the imposition of fees is inequitable or when a waiver is in the public interest.

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*a. Copying and postage costs.* Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at costs as determined by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged.

*b. Supervisory fee.* An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the time required is in excess of one-half hour. The hourly fee charged shall not be in excess of the hourly wage of an agency employee who ordinarily would be appropriate and suitable to perform this supervisory function.

*c. Search fees.* If the request requires research or if the records cannot readily be retrieved by the agency, the requester will be advised of this fact. Reasonable search fees may be charged where appropriate. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

*d. Advance deposit.* When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require the requester to make an advance payment to cover all or a part of the estimated fee. When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

**141—3.4(2C,22) Access to confidential records.** Under Iowa Code section 22.7 or 2C.8 or other applicable provisions of law, the custodian may disclose certain confidential records to one or more members of the public, or may be authorized or required to release specified confidential records in certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 141—3.3(2C,22):

**3.4(1) Proof of identity.** A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

**3.4(2) Requests.** The custodian may require that a request to examine and copy a confidential record be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

**3.4(3) Notice to subject of record.** After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8 and may indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

**3.4(4) Request denied.** When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification which is signed by the custodian and which includes:

- a.* The name and title or position of the custodian responsible for the denial; and
- b.* A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to the requester.

**3.4(5) Request granted.** When the custodian grants a request for access to a confidential record, the custodian shall notify the requester and indicate any lawful restrictions imposed on the requester's examination and copying of the record.

**141—3.5(2C,22) Requests to treat record as confidential.** The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7 or 2C.8, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

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**3.5(1) *Persons who may make request.*** Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7 or 2C.8, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection or disclosure.

**3.5(2) *Request.*** A request that a record be treated as a confidential record and be withheld from public inspection shall be filed with the custodian in writing and shall set forth the factual and legal basis for the request. If possible, the request shall be accompanied by the original or a copy of the record, which identifies the parts of the record requested to be treated as confidential. A person filing such a request may be required to provide proof necessary to establish relevant facts.

**3.5(3) *Failure to request.*** Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record.

**3.5(4) *Timing of decision.*** A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection or disclosure is filed or when the custodian receives a request for access to the record by a member of the public.

**3.5(5) *Request granted or deferred.*** If the custodian grants the request or defers action on the request, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request shall be made available for public inspection or disclosure in lieu of the original record.

**3.5(6) *Request denied.*** If the custodian denies the request, the custodian shall notify the requester in writing of that decision and the reasons for that decision. Upon application by the requester, the custodian may, in good faith, reasonably delay allowing examination or disclosure of the record so that the requester may seek injunctive relief under Iowa Code section 22.8 or other applicable provision of law. The custodian shall notify the requester in writing of the time period allowed for the requester to seek injunctive relief.

**141—3.6(2C,22) Additions, dissents or objections to records.** Except as otherwise provided by law, a person may file a request with the custodian to review and, in addition, to have a written statement of additions, dissents, or objections entered into a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. The requester shall send such request or written statement to the custodian. The request or written statement must be dated and signed by the requester and have the current address and telephone number of the requester or requester's representative.

**141—3.7(2C,22) Notice to suppliers of information.** The agency shall notify persons completing agency forms of the use that will be made of personal information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be by rule, on the form used to collect the information, on a separate fact sheet or letter, in a brochure, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means. Notice is not required with discovery requests in litigation or administrative proceedings, subpoenas, or similar demands for information.

**141—3.8(2C,22) Release to subject.**

**3.8(1)** The subject of a confidential record may file a written request to review confidential records about the person who is the subject of a confidential record, as provided in rule 141—3.6(2C,22). All information in case files, including the identity of a person providing the information to the agency, may be withheld from the subject pursuant to Iowa Code section 2C.8. The agency need not release records that are the work product of an attorney or are otherwise privileged and need not release records that are otherwise authorized by law.

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**3.8(2)** When a record concerns multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

**141—3.9(2C,22) Consensual disclosure of confidential records.** To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity.

**3.9(1) Disclosure to legal counsel.** Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

**3.9(2) Complaints to public officials.** A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

**141—3.10(2C,22) Disclosure without consent of subject.**

**3.10(1) Open records.** Open records are routinely disclosed without the consent of the subject.

**3.10(2) Confidential records.** To the extent allowed by law, the agency may disclose confidential records without the consent of the subject of a confidential record. Following are instances where the agency may disclose confidential information without consent of the subject:

*a.* Disclosure to those officers, employees, or agents of the agency who need the information in the performance of their duties. The custodian of the record shall determine what constitutes legitimate need to use the confidential information.

*b.* Disclosure of information related to cases to complainants or other state or local governmental agencies, as appropriate to carry out the agency's statutory functions. The agency may disclose the identities of complainants or witnesses who appear before the agency, if disclosure will facilitate an inquiry or investigation by the agency or enable the agency to sufficiently present its investigative findings and conclusions.

*c.* Disclosure of any records, upon request, to the general assembly, any standing committee of the general assembly, or the governor, under Iowa Code section 2C.8, except that confidential information provided by other agencies shall not be disclosed.

*d.* Release of critical reports, special reports, or annual reports to the general assembly or any of its committees, the governor, the news media, or interested members of the public.

*e.* Disclosure of information to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

*f.* Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigations and possible criminal prosecution, civil court action, or regulatory order.

*g.* Disclosure of information to the appropriate authorities concerning the conduct of any public official or employee which warrants disciplinary proceedings.

*h.* Disclosure of information to a recipient who has given to the agency written assurance that the record will be used solely as a statistical research or reporting record, if the information is transferred in a form that does not identify the subject.

*i.* Disclosure of information to an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual, provided that notice of the disclosure is first transmitted to the last-known address of the subject.

*j.* Disclosure of information to the legislative services agency.

*k.* Disclosure of information in the course of an employee disciplinary proceeding.

*l.* Disclosure of information in response to a court order.

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*m.* Any disclosure of information specifically authorized by the statute under which the record was collected or maintained.

**141—3.11(2C,22) Availability of records.**

**3.11(1) *Open records.*** Agency records are open for public inspection and copying, unless otherwise provided by rule or law. This agency also has possession of records which may be open records but which are copies of records from other agencies, which have been filed in judicial or administrative proceedings, or which are available in the state law library. This agency may refer persons to the originating agency, the clerk of the appropriate court, or the law library for those records. This ensures that the requester receives a clean official copy of the record and protects the agency against unintended disclosure of confidential information.

**3.11(2) *Confidential records.*** Confidential records may be withheld from public inspection by the agency. The following confidential records are listed by category, according to the legal basis for withholding them from public inspection:

*a.* All records, including case files, related to the statutory functions of the agency, which are confidential under Iowa Code section 2C.8.

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

*c.* Those portions of agency staff manuals, instructions or other statements issued, which set forth criteria or guidelines used by agency staff in making investigations or in the selection or handling of cases which will be or are being litigated, when their disclosure would enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the agency. The agency also maintains some office or policy manuals provided by other agencies concerning the operations of those agencies. Some information in office manuals may be confidential under Iowa Code section 17A.2(11)(f), 17A.3(1)(d), or 2C.9(4) or other applicable law.

*d.* Records which constitute attorney work product or attorney-client communications or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4) and 622.11, Iowa R.C.P. 122(c), Fed. R.Civ.P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

*e.* Any other records made confidential by law.

**141—3.12(2C,22) Personally identifiable information.** This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in the record systems and the means by which that information is stored. Unless otherwise stated, the authority to collect the information is provided by Iowa Code chapter 2C and the statutes governing the subject matter of the record. The agency maintains record systems that include case files, litigation files, personnel files, and applicant files.

**3.12(1) *Case files.*** Case files contain information related to complaints and information requests, stored in either paper form or electronically in a case management system. These files contain names and locations of persons who contacted the agency, methods of contact, agency staff members who handled the case files, the dates the files were opened and closed, the subjects of the contacts, and the agencies involved. The files also include notes and memoranda of agency staff members and may include research materials, correspondence, and documents provided by complainants or agencies involved in the complaint. These files are confidential pursuant to Iowa Code section 2C.8.

**3.12(2) *Litigation files.*** The litigation files contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. These files include pleadings, briefs, depositions, discovery materials, docket sheets, general correspondence, attorney-client correspondence, documents, memoranda, investigative information, research materials, witness information, attorney's notes, information compiled under the direction of the attorney, and case management records. These files may be stored in paper or electronic form. These files contain materials which are confidential as

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attorney work product and attorney-client communications or which are confidential under Iowa Code section 2C.8 or other applicable law, or because of a court order.

**3.12(3) *Personnel files.*** The personnel files contain information about the employees in the agency. These files include payroll records, information required for tax withholding, biographical information, medical information relating to disability, information concerning employee benefits, performance evaluations and reviews, disciplinary information, and other information concerning employer-employee relationships. These records may be stored in paper or electronic form. Some information in these records is confidential under Iowa Code section 22.7.

**3.12(4) *Applicant files.*** The applicant files contain information about applicants for positions with the agency. These files include biographical information, correspondence, equal employment opportunity and affirmative action data, and other preemployment materials. These files may be stored in paper or electronic form. Some information in these files is confidential under Iowa Code section 22.7 or other applicable law.

**141—3.13(2C,22) Other groups of records.** This rule describes groups of records maintained by the agency other than record systems as defined in rule 141—3.12(2C,22). These records are not stored or retrieved by personal identifiers. These records are routinely available to the public; however, the agency's files of these records may contain some confidential information. Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapter 2C and the statutes governing the subject matter of the record.

**3.13(1) *Administrative records.*** The administrative records include documents concerning budget, administrative or personnel reports, purchasing, printing and supply requisitions, property inventory, time sheets, and office policies for employees.

**3.13(2) *Publications.*** Publications include a variety of books, periodicals, newsletters, government documents, and similar publications, which agency staff use as reference, research or resource materials. These materials are generally available for public examination but may be protected by copyright law.

**3.13(3) *Office publications.*** Office publications include a variety of documents issued by the agency, including pamphlets, news releases, critical reports, special reports, and annual reports. Critical reports and special reports are also maintained in some files within the case files record system. Critical reports, special reports, and annual reports may contain information about individuals.

**3.13(4) *Rule-making records.*** Rule-making records consist of official documents produced during promulgation of agency rules.

**3.13(5) *Office manuals.*** Agency staff may maintain office manuals which contain memoranda or statements of various policies and procedures related to performance of the agency's functions. The agency also maintains some office or policy manuals provided by other agencies concerning the operations of those agencies. Some information in office manuals may be confidential under Iowa Code sections 17A.2(11)(f) and 17A.3(1)(d) or other applicable law.

**3.13(6) *Legal counsel research files.*** The agency's legal counsel maintains research files on a variety of legal issues related to the functions of the agency or specific case files. These files include copies of cases or other published materials, briefs, notes, and legal memoranda or opinions to agency staff. Some files regarding issues in particular cases may contain information about individuals. Some records in these files are confidential as attorney work product or attorney-client communications, or are confidential under Iowa Code section 2C.8 or other applicable law.

**3.13(7) *Form files.*** Form files contain various blank forms used by agency staff in the performance of agency functions.

**141—3.14(2C,22) Data processing systems.** None of the data processing systems used by the agency compare personally identifiable information in one record system with personally identifiable information in another record system.

**141—3.15(2C,22) Applicability.** This chapter does not:

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**3.15(1)** Require the agency to index or retrieve records which contain information about an individual by that person's name or other personal identifier.

**3.15(2)** Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

**3.15(3)** Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the rules of another agency.

**3.15(4)** Make available records which have been compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code sections 2C.8, 2C.9(4), and 22.11.

ITEM 4. Rescind 141—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4  
RULE MAKING

**141—4.1(2C) Applicability.**

**4.1(1) Procedure exempt from Iowa Code chapter 17A.** Pursuant to Iowa Code section 2C.9(6), the promulgation of rules relating to the organization, operation, and procedures of the office of ombudsman is exempt from the provisions of Iowa Code chapter 17A, the Iowa Administrative Procedure Act.

**4.1(2) Definition.** As used in this chapter, "agency" means the office of the ombudsman.

**141—4.2(2C) Adoption of rule.**

**4.2(1) Time of adoption.** The agency may adopt a rule at any time.

**4.2(2) Manner of adoption.** The agency is exempt from the procedural requirements for rule making in Iowa Code section 17A.4. The agency shall file each rule the agency adopted with the administrative code editor, who shall publish the rule in the Iowa Administrative Code. The agency shall file the rule for publication as soon as practicable after adoption of the rule.

**4.2(3) Review by service committee.** The agency may submit a proposed rule to the service committee of the legislative council for the committee's review and comment before the rule is adopted and published. If the agency submits a proposed rule to the service committee, the agency shall provide the text of the rule and include a preamble containing:

- a. A statement of the purpose of the rule;
- b. A reference to all rules repealed, amended, or suspended by the rule; and
- c. A reference to the specific statutory or other authority authorizing adoption of the rule.

**4.2(4) Publication in Iowa Administrative Bulletin.** The agency may submit an adopted rule to the administrative rules review committee and request that the adopted rule be published in the Iowa Administrative Bulletin.

**4.2(5) Exempt from governor's review.** An adopted rule of the agency is not subject to review by the governor and may not be rescinded by executive order of the governor.

**141—4.3(2C) Contents, style, and form of rule.**

**4.3(1) Contents.** Each rule adopted by the agency shall contain the text of the rule and, in addition:

- a. The date the agency adopted the rule.
- b. A reference to the specific statutory or other authority authorizing adoption of the rule; and
- c. The effective date of the rule.

**4.3(2) Incorporation by reference.** The agency may incorporate, by reference in an adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the agency determines that the incorporation of its text in the agency-adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient.



OMBUDSMAN[141](cont'd)

*a.* The reference in the agency-adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the adopted rule does not include any later amendments or editions of the incorporated matter.

*b.* The agency may incorporate such matter by reference in an adopted rule only if the source from which the matter originated makes copies of it readily available to the public. The agency shall retain permanently a copy of any material incorporated by reference in a rule of the agency. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the agency or the originating source.

**4.3(3)** *References to materials not published in full.* When the administrative code editor decides to omit the full text of an adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the agency shall submit to the administrative code editor for inclusion in the Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material.

*a.* This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the adopted rule and of significant issues involved in the rule. The statement shall also describe how a copy of the full text of the adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the agency. The agency will provide a copy of that full text at actual cost upon request.

*b.* At the request of the administrative code editor, the agency shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

**4.3(4)** *Style and form.* In preparing its rules for publication in the Iowa Administrative Code, the agency shall follow the uniform numbering system, form and style prescribed by the administrative code editor.

These rules are intended to implement Iowa Code section 2C.9(6).

ITEM 5. Rescind **141—Chapter 5 and Chapter 6.**

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]  
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/26/16.

**ARC 2778C**

## **PROFESSIONAL LICENSURE DIVISION[645]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 152C.3, the Board of Massage Therapy hereby amends Chapter 131, "Licensure of Massage Therapists," and Chapter 133, "Continuing Education for Massage Therapists," Iowa Administrative Code.

These amendments ease regulatory burdens for massage therapists while maintaining continuing education standards that will ensure the ongoing competency of practitioners in the state of Iowa. These amendments will afford the same protection of the health and safety of Iowans as the current regulations and will also reduce the cost of maintaining a massage therapy license. These amendments reduce biennial continuing education requirements for massage therapists from 24 hours to 16 hours, while requiring a minimum of 8 hours every two years in hands-on massage therapy courses. In addition, the amendments eliminate the confusing "Category A" and "Category B" designations for continuing education courses, which are a common source of questions and are difficult for a number of practicing massage therapists to understand. These amendments also address a reported shortage of quality hands-on continuing education courses in the rural areas of the state by allowing more flexibility in terms of the modalities in which continuing education hours may be obtained.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2503C** on April 27, 2016. A public hearing was held on May 18, 2016.

Public comment was received from the Federation of State Massage Therapy Boards. The Federation requested a change to Item 10 regarding passing an examination for continuing education. The Federation requested that the Board of Massage Therapy remove the word “certifying.” The Board of Massage Therapy agreed with the request. The only change from the amendments published under Notice is the removal of the word “certifying” from paragraph 133.3(2)“j” in Item 10.

Waiver provisions pertaining to these administrative rules are contained in Chapter 18.

The Board of Massage Therapy adopted these amendments on September 6, 2016.

After analysis and review of this rule making, no impact on jobs is expected.

These amendments are intended to implement Iowa Code sections 152C.3 and 272C.2.

These amendments will become effective November 30, 2016.

The following amendments are adopted.

ITEM 1. Rescind subrule **131.2(6)**.

ITEM 2. Renumber subrules **131.2(7)** to **131.2(10)** as **131.2(6)** to **131.2(9)**.

ITEM 3. Amend rule 645—131.4(152C), introductory paragraph, as follows:

**645—131.4(152C) Examination requirements.** The examination required by the board shall be the examination required pursuant to subrule ~~131.2(7)~~ 131.2(6).

ITEM 4. Rescind paragraph **131.5(1)“c.”**

ITEM 5. Reletter paragraphs **131.5(1)“d”** to **“f”** as **131.5(1)“c”** to **“e.”**

ITEM 6. Amend subrule 131.8(3) as follows:

**131.8(3)** A licensee seeking renewal shall:

*a.* Meet the continuing education requirements of rule 645—133.2(152C) and the mandatory reporting requirements of subrule 131.8(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

*b.* Submit the completed renewal application and renewal fee before the license expiration date; and

~~*c.* Submit evidence of current certification in CPR.~~

ITEM 7. Amend subparagraph **131.14(3)“a”(2)** as follows:

(2) Verification of completion of ~~12 hours of continuing education within two years of application for reactivation or, beginning August 15, 2006, for a licensee whose license is inactive, verification of completion of 24~~ 16 hours of continuing education within two years of application.

ITEM 8. Amend subparagraph **131.14(3)“b”(2)** as follows:

(2) Verification of completion of ~~12 hours of continuing education within two years of application for reactivation or, for a licensee whose license expires August 15, 2006, or thereafter, verification of completion of 24~~ 16 hours of continuing education within two years of application; and

ITEM 9. Amend rule 645—133.2(152C), introductory paragraph, as follows:

**645—133.2(152C) Continuing education requirements.** Each biennium, each person who is licensed to practice as a massage therapist in this state shall be required to complete a minimum of ~~24~~ 16 hours of continuing education. A biennium is a two-year period beginning with the date the license was granted.

ITEM 10. Amend subrule 133.3(2) as follows:

**133.3(2) Specific criteria.** A licensee shall obtain a minimum of ~~24~~ 16 hours of continuing education credit every two years. ~~Twelve hours must be obtained in Category A and 12 hours may be in either Category A or B. A licensee may choose to obtain all 24 hours in Category A. A minimum of 8 hours of the 16 hours must be hands-on training. A maximum of 8 hours of the 16 hours may be independent study.~~ Licensees may obtain continuing education hours of credit by:

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

- ~~a. — Category A specific continuing education requirements.~~
- ~~(1) — A minimum of 12 hours of the 24 hours shall be:~~
- ~~1. — Direct, hands-on training attended personally by the licensee;~~
  - ~~2. — Related to the actual practice of massage/bodywork therapy;~~
  - ~~3. — Sponsored by a local, state, national or international professional organization or chapter of massage/bodywork therapy, or a professional, hands-on school of massage/bodywork therapy that meets or exceeds the standards set forth in 645—Chapter 132;~~
  - ~~4. — Presented by a massage/bodywork therapist with a minimum of five years of clinical experience in massage/bodywork therapy. The individuals presenting the continuing education activity must have specialized education, training and experience by reason of which said individuals are considered qualified concerning the subject matter of the program.~~
- ~~(2) — Excluded content areas for continuing education in Category A are any massage/bodywork techniques that do not directly make physical contact with the body and that are outside the scope of practice in accordance with the definition of massage therapy set forth in rule 645—131.1(152C), including but not limited to: Reiki, Barbara Brennan Healing Sciences, reflexology, bloodletting, and ear candling.~~
- ~~b. — Category B specific continuing education requirements.~~
- ~~(1) — A maximum of 12 hours of the 24 hours may be in either of the following:~~
- ~~1. — Content areas that are programs of learning which contribute directly to professional competency and enhance the practice of the licensee.~~
  - ~~2. — Content areas that are hands-on training programs.~~
  - ~~(2) — Programs that are taken in Category B do not have to be sponsored by organizations noted in 133.3(2)“a”(1)“3” and instructors do not have to have a minimum of five years of clinical experience in massage/bodywork therapy.~~
  - ~~(3) — A licensee may receive credit on a one-time basis, not to exceed two hours of continuing education credit every two years, for delivery of course(s) in a massage school setting, if the following criteria are met:~~
- ~~1. — The course(s) is part of a curriculum approved by the board as outlined in 645—132.4(152C);~~
  - ~~2. — The licensee is qualified to teach the course(s) as outlined in 645—132.3(152C);~~
  - ~~3. — The school provides an official written statement that verifies the following:~~
    - ~~● — Course title and number of credit hours;~~
    - ~~● — Inclusive dates the course was taught by the licensee;~~
    - ~~● — Teaching qualifications of the licensee.~~
  - ~~(4) — A maximum of six hours may be obtained in independent study courses in the areas of massage/bodywork techniques, ethics, mandatory reporter training, and practice management.~~
  - ~~(5) — A licensee shall obtain two hours of credit in CPR for every two-year renewal period.~~
  - ~~(6) — Only the number of hours obtained during the two-year renewal period to meet mandatory reporter training requirements may be utilized in the renewal period. No hours shall be carried over into the next biennium.~~
  - ~~(7) — Excluded content areas for continuing education in Category B include, but are not limited to, any program or training that is outside the scope of practice of massage therapy in accordance with the definition of massage therapy set forth in rule 645—131.1(152C) or that does not enhance professional competency relating to the field of massage/bodywork therapy. Bloodletting and ear candling are excluded content areas.~~
- ~~a. Attending workshops, conferences, or symposiums.~~
- ~~b. Accessing online training, such as viewing interactive conferences, attending webinars, or completing online training courses.~~
- ~~c. Teaching curriculum at a school of massage therapy or presenting professional continuing education programs that meet the criteria listed in this subrule. One hour of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit. A maximum of 4 hours may be awarded under this paragraph per biennium.~~

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

d. Completing academic courses that directly relate to the professional competency of the licensee. Official transcripts indicating successful completion of academic courses that apply to the field of massage therapy will be necessary in order for the licensee to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

1 academic clock hour = 1 continuing education hour of credit

e. Teaching in an approved college, university, or graduate school. The licensee may receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

f. Authoring research the results of which are published in a recognized professional publication. The licensee shall receive 5 hours of credit per page.

g. Taking courses directly beneficial to business practices necessary for operating a massage practice. Content areas include, but are not limited to, business management, financial management, accounting, tax preparation, marketing, human relations, communication skills, business ethics, and massage ethics.

h. Taking courses related to personal skills topics, such as career burnout, communication skills, human relations, and other like topics.

i. Completing programs which enhance a supplemental or complementary skill set directly related to promoting the public health while providing massage therapy. Content areas include, but are not limited to, CPR, first aid, mandatory reporter training, contraindication training, sanitation, and geriatric care.

j. Passing a board-approved national examination administered by the Federation of State Massage Therapy Boards or the National Certification Board for Therapeutic Massage Therapy and Bodywork within the biennial continuing education compliance period. A copy of the applicant's official notification may be used by the board as verification.

[Filed 9/26/16, effective 11/30/16]

[Published 10/26/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/26/16.

**ARC 2786C**

**REVENUE DEPARTMENT[701]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 427.1(40), the Department of Revenue hereby amends Chapter 80, "Property Tax Credits and Exemptions," Iowa Administrative Code.

These amendments update the Department's rule on the property tax exemption for broadband infrastructure to address issues raised by the rules adopted by the Office of the Chief Information Officer addressing the same subject matter (see **ARC 2782C** published herein). First, the Department determined that the definition of "date of completion" originally adopted by the Department is too narrow. The amended definition will better reflect the letter of the law, which requires only that broadband infrastructure offer or facilitate broadband service at the requisite speeds in a targeted service area, rather than that the entire area receive the broadband service at the requisite speeds in order for a certified project to be complete. Additionally, upon review with the Iowa Code Editor, the Department determined that the effective date of the law was actually July 1, 2015, rather than June 22, 2015, the date on which the Governor signed the bill. Consequently, the definition of "targeted service area" is amended to reflect the correct effective date. Finally, the amendments to subrule 80.31(5) accommodate

## REVENUE DEPARTMENT[701](cont'd)

applications that involve targeted service areas that are under appeal pursuant to the rules promulgated by the Office of the Chief Information Officer, including making the approval of those applications contingent on the outcome of the appeal.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2703C** on August 31, 2016. No public hearing was held on these amendments. No public comments were received on these amendments. These amendments are identical to those published under Notice.

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 of Revenue adopted these amendments on October 5, 2016.

After analysis and review of this rule making, the Department finds that no negative impact on jobs exists.

These amendments are intended to implement Iowa Code section 427.1.

These amendments will become effective November 30, 2016.

The following amendments are adopted.

ITEM 1. Amend subrule 80.31(1) as follows:

**80.31(1) Definitions.** For purposes of this rule, the following definitions shall govern.

*“Broadband”* means a high-speed, high-capacity electronic transmission medium, including fixed wireless and mobile wireless mediums, that can carry data signals from independent network sources by establishing different bandwidth channels and that is commonly used to deliver Internet services to the public.

*“Broadband infrastructure”* means the physical infrastructure used for the transmission of data that provides broadband services. “Broadband infrastructure” does not include land, buildings, structures, improvements, or equipment not directly used in the transmission of data via broadband.

*“Certified project”* means the installation of broadband infrastructure certified by the office of the chief information officer to serve a targeted service area.

*“Communications service provider”* means a service provider that provides broadband service.

*“Date of commencement”* means the date first occurring after July 1, 2015, and before July 1, 2020, in which broadband infrastructure used in a certified project becomes property taxed as real property as determined by Iowa Code section 427A.1.

*“Date of completion”* or *“completed”* means the date that ~~the entire targeted service area receives~~ a communications service provider offers or facilitates broadband service delivered at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in a targeted service area.

*“Installation of the broadband infrastructure”* means the labor, construction, building, and furnishing of new physical infrastructure used for the transmission of data that provides broadband services. “Installation of the broadband infrastructure” does not include the process of removing existing infrastructure, fixtures, or other real property in preparation of installation of the broadband infrastructure.

*“Targeted service area”* means a U.S. Census Bureau census block located in this state, including any crop operation located within the census block, within which no communications service provider offers or facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as of ~~June 22, 2015~~ July 1, 2015.

ITEM 2. Amend subparagraph **80.31(5)“b”(4)** as follows:

(4) Certification from the office of the chief information officer pursuant to Iowa Code section 8B.10 that the installation is being performed or was completed in a targeted service area, including whether or not the targeted service area designation is under appeal pursuant to rule 129—21.7(8B,427), and that it facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed.

REVENUE DEPARTMENT[701](cont'd)

ITEM 3. Amend paragraph **80.31(5)“d”** as follows:

*d. Approval or denial of application.* All applications shall be submitted to the department of revenue. The department shall forward applications for property subject to local assessment to the board of supervisors of the county in which the exempt property is located. The department shall retain the applications for centrally assessed property. The department and the board of supervisors, as applicable, shall notify an applicant of approval or denial of an application for exemption by March 1 of the assessment year in which the application was submitted. The notification shall include a notification of the applicant's right to appeal. The board of supervisors shall forward all approved applications and any necessary information regarding the applications to the appropriate local assessor by March 1 of the assessment year in which the application was submitted.

Approval of an application involving a targeted service area that is under appeal pursuant to rule 129—21.7(8B,427) shall be contingent on the outcome of the appeal. In the event that an application is approved and the targeted service area designation subsequently is revoked upon appeal, the approved exemption shall also be revoked at that time.

[Filed 10/7/16, effective 11/30/16]

[Published 10/26/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/26/16.

**ARC 2783C**

## **STATE PUBLIC DEFENDER[493]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender hereby amends Chapter 12, “Claims for Indigent Defense Services,” Iowa Administrative Code.

These amendments will require court-appointed attorneys to submit attorney fee claims for payment to the State Public Defender's Office using an online system. The amendments are intended to allow the State Public Defender to achieve greater efficiencies and overall improvements in the processing, review and payment of attorney fee claims. The amendments also specify the manner in which the online claims must be submitted.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 31, 2016, as **ARC 2685C**.

A public hearing was held on September 22, 2016, at 2:30 p.m. in Conference Room 424, Fourth Floor, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa. Interested persons also had the opportunity to make written suggestions or comments on the proposed amendments on or before September 22, 2016.

A number of comments were received from indigent defense contract attorneys. Most of the comments concerned the compatibility of the attorneys' billing programs with the form of the itemization required by the online system. The State Public Defender's Office has worked with individual attorneys to attempt to make the transition to the new online system as user-friendly as possible. These amendments are identical to those published under Notice of Intended Action.

The State Public Defender does not believe that these amendments pose any financial hardship on any regulated entity or individual.

After review and analysis of this rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 13B and 815.

These amendments shall become effective November 30, 2016.

The following amendments are adopted.

ITEM 1. Amend paragraph **12.2(1)“a”** as follows:

*a.* A completed fee claim on a form promulgated by the state public defender.

**(1)** Adult fee claims, including all trial-level criminal and postconviction relief proceedings, misdemeanor appeals to district court, and applications for discretionary review or applications for

STATE PUBLIC DEFENDER[493](cont'd)

interlocutory appeals to the Iowa supreme court, must be submitted on an Adult form. Juvenile fee claims, including petitions on appeal and applications for interlocutory appeals, must be submitted on a Juvenile form. Appellate fee claims, including claims for all criminal and postconviction relief appeals, work performed after the granting of an application for discretionary review or for interlocutory appeal, and work performed after full briefing is ordered following a juvenile petition on appeal, must be submitted on an Appellate form. The For paper claims submitted on or before December 31, 2016, the claim forms may be downloaded from the state public defender Web site: <http://spd.iowa.gov>.

(2) Claims submitted on or after January 1, 2017, shall be submitted electronically via the online claims Web site: <https://spdclaims.iowa.gov>. Effective January 1, 2017, any reference in these rules to forms for Adult, Juvenile, or Appellate claims means the respective electronic claims submission page on the online claims Web site. The state public defender, at the state public defender's sole discretion, may grant limited exceptions to the requirement that claims be submitted electronically via the online claims Web site.

ITEM 2. Amend subparagraph **12.2(1)“f”(6)** as follows:

(6) ~~The~~ For paper claims submitted on or before December 31, 2016, the itemization must be typed in at least 10-point type on 8½" × 11" paper. For claims submitted on or after January 1, 2017, the itemization shall be submitted electronically via the Attorney Hours grid on the appropriate claims submission page on the online claims Web site. Separate electronic attachments of itemizations will not be accepted.

[Filed 10/5/16, effective 11/30/16]

[Published 10/26/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/26/16.