



MINUTES

SEPTEMBER 2023 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Mike Klimesh, Vice Chair
Senator Nate Boulton
Senator Mike Boussetot
Senator Cindy Winckler [by teleconference]

Representative Megan Jones, Chair
Representative Amy Nielsen [by teleconference]
Representative Rick L. Olson
Representative Michael V. Sexton
Representative David E. Young

EX OFFICIO, NONVOTING MEMBER: Nate Ristow, Administrative Rules Coordinator, Office of the Governor

LSA CONTACTS: Organizational staffing provided and minutes prepared by Jack Ewing, Administrative Code Editor, 515.281.6048, and Kate O'Connor, Legal Counsel, 515.281.6329

BULLETINS NEEDED FOR THIS MEETING: 8/9/23, 8/23/23

Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 10:30 a.m. on Tuesday, September 5, 2023, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the August 15, 2023, meeting were approved. The next meeting was scheduled for Tuesday, October 10, 2023, at 10:30 a.m. Mr. Ewing reminded the committee that the October meeting will be a three-bulletin meeting. Chairperson Jones briefly discussed the bill draft regarding sinkholes that was distributed to the committee. She stated that the bill may be contemplated at the next committee meeting and the time period until then would be a good opportunity for committee members and the public to have discussions, ask questions, and propose changes. Mr. Ristow gave an update on the status of the rules review mandated by Executive Order 10. The meeting was adjourned at 11:15 a.m.

Fiscal Overview

Mr. Adam Broich, Fiscal Legislative Analyst, presented the LSA fiscal report.

ECONOMIC DEVELOPMENT AUTHORITY

Representing the agency: Lisa Connell

ARC 7056C (AF), Review of Rules, Chs. 4, 27, 32, 34, 35, 37, 40, 41, 46, 70, 78, 79, 164
No discussion on ARC 7056C.

ARC 7057C (AF), Employer Child Care Tax Credit, Ch. 57
No discussion on ARC 7057C.

Rulemaking type is indicated in parentheses following the ARC number. The acronyms have the following meanings: Notice of Intended Action (NOIA), Amended Notice of Intended Action (ANOIA), Notice of Termination (NOT), Adopted and Filed Emergency (AFE), Filed Emergency After Notice (FEAN), and Adopted and Filed (AF).

ARC 7066C (NOIA), Butchery Innovation and Revitalization Program, Ch. 51
No discussion on ARC 7066C.

IOWA FINANCE AUTHORITY

Representing the agency: Kristin Hanks-Bents

ARC 7060C (AF), Low-Income Housing Tax Credits—Qualified Allocation Plans, Rules 12.1, 12.2
No discussion on ARC 7060C.

SECRETARY OF STATE

Representing the agency: Carl Dietz

ARC 7059C (AF), Five-Year Review of Rules, Chs. 1-4, 30, 40, 42, 43, 45
No discussion on ARC 7059C.

ENVIRONMENTAL PROTECTION COMMISSION

Representing the agency: Keith Wilken

ARC 7058C (AF), Underground Storage Tanks—Biofuel Compatibility, Rule 135.4
No discussion on ARC 7058C.

NATURAL RESOURCE COMMISSION

Representing the agency: Chris Ensminger

ARC 7053C (FEAN), Deer Hunting by Residents—General Licenses, Antlerless-Deer-Only, Rules 106.1, 106.6(6)
No discussion on ARC 7053C.

REVENUE DEPARTMENT

Representing the agency: Clara Wulfsen

ARC 7054C (NOIA), Setoff of Debts Owed to Public Agencies, Ch. 26
No discussion on ARC 7054C.

HUMAN SERVICES DEPARTMENT

Representing the agency: Sara Reisetter

ARC 7062C (NOIA), Agency Realignment, Rules 1.8, 9.12(1)
No discussion on ARC 7062C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Sarah Reisetter

ARC 7064C (NOIA), Agency Realignment, Chs. 170-175, 176
No discussion on ARC 7064C.

HUMAN RIGHTS DEPARTMENT

Representing the agency: Sarah Reisetter

ARC 7063C (NOIA), Agency Realignment, Chs. 1-7
No discussion on ARC 7063C.

CHILD ADVOCACY BOARD

Representing the agency: Sarah Reisetter

ARC 7065C (NOIA), Agency Realignment, Chs. 1-5
No discussion on ARC 7065C.

EDUCATION DEPARTMENT

Representing the agency: Thomas Mayes, Kassandra Cline

ARC 7061C (AF), Students First Act—Education Savings Accounts, Ch. 20

Committee members asked if defining “annual income” the same as “net income” is similar to the way awards are made through student tuition organizations (STOs), with either 300 or 400 percent of poverty level. Mr. Mayes responded that he is not sure. It is his understanding that different STOs may select different lines on the state tax return to determine applicants’ annual income; however, the department has specified the line on the state tax return that is to be used to determine applicants’ annual income. Members asked if it is possible for an applicant to either qualify or not qualify for an STO, and still qualify for an education savings account (ESA), and if that indicates inconsistency in the determination of poverty level. He replied that while it is conceivable as each STO sets its own poverty guidelines, it is unlikely that will result in inconsistency.

Committee members asked if the annual income used by the Department of Health and Human Services (HHS) to identify the federal poverty standard is the same as that used for ESAs. Mr. Mayes responded that he was not certain. The department had, however, considered different ways to calculate annual income and he would follow up with HHS. Ms. Cline added that if an applicant had not completed a 2022 tax return, ESA eligibility could be proven through proof of eligibility for a state assistance program such as cash assistance or SNAP. Members stated that the department’s process included additional steps that are not included in the rulemaking. Mr. Mayes disagreed and stated that the statute allows the department director to request additional information if annual income cannot be determined through an applicant’s tax return. Members asked if the income threshold issue is moot in 2025. He confirmed that is correct. Members stated that while families must go through a verification process for SNAP and HHS programs, it is unclear whether due diligence had been done for the ESA program. The rulemaking created entitlements and different qualifications for ESAs than the qualifications required for SNAP and other HHS programs. Members expressed disappointment that the rulemaking made qualifying for ESAs easier than qualifying for other programs.

Ms. Melissa Peterson, Iowa State Education Association, commented on the definition of “annual income.” She stated that STOs calculate annual income pursuant to Iowa Code section 422.7 and asked why ESAs calculate it differently. She also asked why the director may consider income reductions after an applicant’s tax return had been filed if that same discretion is not allowed for other programs that are based on federal poverty guidelines. She stated that it appears the department is trying to increase the number of individuals eligible for ESAs, and asked for examples of income reductions that would allow an individual to be eligible for an ESA if they were initially ineligible. She also asked, as there is a standing unlimited appropriation for ESAs, how the committee and the entire legislature would be able to assess the cost added to the ESA program during the two years that income requirements are in place. Members stated that they share Ms. Peterson’s concerns and expressed the need for consistency for at-risk students. Mr. Mayes responded that while “annual income” is defined for STOs, each STO decides which line of applicants’ tax returns are used and therefore the STO program is not a model of consistency. He provided examples, including a medical emergency or a layoff, that may allow an individual to be eligible for an ESA after the individual was originally determined to be ineligible. He stated that less than a dozen individuals may have an income reduction

that makes them eligible for an ESA and that the department was justified in considering those situations. Ms. Cline provided additional examples, including a divorce and a birth that occurred prior to the June 30 deadline in 2023, and stated that the department required each applicant to submit additional documentation of the applicable event and the subsequent impact to the applicant's household income. In the case of an eligibility determination that is not based on an applicant's 2022 tax return, additional documentation must be submitted.

Ms. Peterson expressed appreciation for the department's explanation and its thoughtfulness regarding the issue of annual income, however, she asked the committee to consider requiring that the flexibility allowed for the ESA program be applied to other programs such as SNAP and access to health insurance. She expressed disappointment that the issue of timely notification of enrollment in private schools for students using ESAs was not addressed in the rulemaking. She stated that the department has the authority to direct the ESA vendor to share the impact that ESA enrollments will have on public school systems and asked for a timeline in which this would be addressed so public schools could prepare for the next school year. Members asked that the department work with Ms. Peterson to address her concerns. Mr. Mayes stated that the intent was to use the vendor's platform and its internal business rules as the least restrictive alternative to rulemaking, and the contract with the vendor contained specific requirements regarding data collection. He also stated that the state wanted to give the least restrictive alternative an opportunity to work.

No action taken on ARC 7061C.