



# MINUTES

## NOVEMBER 2023 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

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### MEMBERS PRESENT

Senator Mike Klimesh, Vice Chair  
Senator Nate Boulton  
Senator Mike Boussetot  
Senator Waylon Brown

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

EX OFFICIO, NONVOTING MEMBER: Molly Severn, 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

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### **BULLETINS NEEDED FOR THIS MEETING: 9/20/23, 10/18/23, 11/1/23**

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#### **Procedural Business**

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 10:30 a.m. on Tuesday, November 14, 2023, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the October 10, 2023, meeting were approved. The next meeting was scheduled for Wednesday, December 6, 2023, at 9:00 a.m. Amendments to the Committee Rules of Procedure prohibiting members from participating by telephonic or electronic means except for special meetings were adopted on a voice vote with nine members present. Members stated that regulatory analyses would be reviewed by the committee on a case-by-case basis going forward and that affected agencies may receive short notice of such reviews. Additional discussion occurred regarding review of regulatory analyses. The meeting was adjourned at 11:40 a.m.

#### **Fiscal Overview**

Mr. Chris Ubben, Fiscal Legislative Analyst, presented the LSA fiscal report.

#### **PHARMACY BOARD**

Representing the agency: Sue Mears

ARC 7104C (NOIA), Temporary Designation of Controlled Substances, Rule 10.39(2)  
No discussion on ARC 7104C.

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).

**ECONOMIC DEVELOPMENT AUTHORITY**

Representing the agency: Lisa Connell

ARC 7105C (NOIA), Renewable Chemical Production Tax Credit Program, Ch. 81  
No discussion on ARC 7105C.

ARC 7106C (NOIA), Tax Credit Programs, Rules 43.3, 47.3(3), 48.4(1), 116.3(6), 116.6  
No discussion on ARC 7106C.

**WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER  
ADMINISTRATION DIVISION**

Representing the agency: Brooke Axiotis

ARC 7107C (NOIA), Regional Industry Sector Partnerships, Rule 7.25  
No discussion on ARC 7107C.

ARC 7108C (NOIA), Statewide Work-Based Learning Intermediary Network, Ch. 31  
No discussion on ARC 7108C.

**REVENUE DEPARTMENT**

Representing the agency: Madelyn Cutler

ARC 7101C (NOIA), Settlement Authority, Chs. 3, 7, 10, 19, 101, 108, 254, 300, 305, 504, 603, 700, 900  
No discussion on ARC 7101C.

ARC 7102C (AF), Capital Gain Deduction for Certain Types of Net Capital Gains; Net Income from a Farm Tenancy Agreement Covering Real Property, Rules 302.38, 302.87, 302.88  
No discussion on ARC 7102C.

ARC 7103C (AF), Capital Gain Exclusion for Elected Employee-Owned Stock in a Qualified Corporation, Rule 301.41

Committee members asked if an employee of Perishable Distributors of Iowa (PDI), a wholly owned subsidiary of Hy-Vee, who is awarded Hy-Vee stock during their employment is eligible for the capital gain exclusion upon retirement. Ms. Cutler responded that she would consult with the department's tax specialist and provide the committee with an answer. Members stated that the proposed rulemaking is stricter than the intent of 2022 Iowa Acts, House File 2317. Members stated that the goal of the legislation was to keep retirees' wealth in the state.

No action taken on ARC 7103C.

ARC 7109C (NOIA), Retirement Income Exclusion, Rules 301.1, 301.5, 302.47, 302.80, 307.1, 307.3(5)  
No discussion on ARC 7109C.

## **RACING AND GAMING COMMISSION**

Representing the agency: Brian Ohorilko

ARC 7070C (NOIA), Proceedings; Sports Wagering; Fantasy Sports Contests, Rules 4.1, 4.4, 4.5, 13.2, 13.5, 13.6(3), 14.7(2), 14.8

Committee members stated that item 12, related to responsibilities of licensees to verify account funding sources, may violate federal law. Mr. Ohorilko responded that item 12 will probably be removed from the proposed rulemaking. Members asked who an account is registered with under item 10, relating to account registration. He replied that accounts are registered with an online sports book and the information utilized to register for an account is consistent with what other states require. Members asked if an individual's complete social security number is required to register an account, and if that presents any security concerns. Mr. Ohorilko responded that just the last four digits of a social security number are required and the information is held by the sports book and not a third party. No action taken on ARC 7070C.

## **PROFESSIONAL LICENSURE DIVISION**

Representing the agency: Maddie Wilcox, Susan Reynolds, Venus Vendoures-Walsh

Regulatory Analysis: Practice of Funeral Directors, Funeral Establishments, and Cremation Establishments, 645—Chapter 100

Committee members stated that while the division may have preferred that the word “provide” rather than the word “consider” had been used in 2023 Iowa Acts, Senate File 193, the legislation intended for the division to use rulemaking to provide more detail and clarification of the law on removal of human remains by a removal technician.

Mr. Mike Triplett, speaking on behalf of the Iowa Funeral Directors Association (IFDA), stated that IFDA had been actively involved with the proposed rulemaking. He agreed that the purpose of the rulemaking is to implement the law. He explained that the Iowa Code contains very little guidance regarding interns or the college credits needed to be a licensed funeral director; however, the rules in both areas provide details to implement the law. He stated that the Board of Mortuary Science created a rules committee made up of three board members and three members of the public. The rules committee completed its work last week and advanced a comprehensive rules package, on a vote of six to zero, that addresses most of the issues that stakeholders have with the proposed rulemaking.

Regulatory Analysis: Licensure of Physical Therapists and Physical Therapist Assistants, 645—Chapter 200

Committee members encouraged the division to take public comments into account as the division moves forward with the rulemaking.

Mr. Doug Struyk, representing the American Physical Therapy Association of Iowa (APTA), stated that the proposed rulemaking eliminated the definition of “physical therapy” that is currently in rules, and replaced it with a reference to the definition of physical therapy in Iowa Code chapter 148A. The definition currently in rules articulates a series of procedures and other scope of practice items that physical therapists use to determine their scope of practice. By eliminating those scope of practice items, the proposed rulemaking eliminated past actions of the Physical Therapist and Occupational Therapist Board, as well as the legislative agreement that placed the scope of practice items in the current rules. He stated that APTA's concerns could be addressed if the scope of practice items that were eliminated were instead moved into the administrative rules for the code of ethics for physical therapists and physical therapist assistants. He also asked that the division consider dry needling during the regulatory analysis. He explained that an Iowa Court of Appeals case ruled that dry needling falls within the scope of physical therapy; however, that is not reflected in the current rules.

## **ARCHITECTURAL EXAMINING BOARD**

Representing the agency: Maddie Wilcox, Lori SchraderBacher

Regulatory Analysis: Licensure, 193B—Chapter 2

Committee members stated that the proposed rulemaking is confusing and provided for two different types of licenses for people that voluntarily gave up their licenses.

## **ACCOUNTANCY EXAMINING BOARD**

Representing the agency: Maddie Wilcox, Robert Lampe

Regulatory Analysis: Practice Privilege for Out-of-State Certified Public Accountant Firms, 193A—Chapter 21

Committee members stated that licensing requirements could be further streamlined. Members asked if “firm” included individual certified public accountants practicing solo. Mr. Lampe explained that Iowa recognizes substantial equivalency which allows out-of-state privileges for individual CPAs. Members stated that the proposed rulemaking for CPA firms that are ineligible for practice privilege contains exceptions to Iowa Code section 542.20 that belong in legislation, not in rulemaking.

## **ENGINEERING AND LAND SURVEYING EXAMINING BOARD**

Representing the agency: Maddie Wilcox, Robert Lampe

Regulatory Analysis: Complaints, Investigations and Disciplinary Action, 193C—Chapter 9

Committee members requested clarification on the meaning of “disciplinary actions are capped at \$1,000 per public order.” Mr. Lampe explained that per offense the board has a limit on the civil penalty that the board can impose. If there were a disciplinary matter with three or four offenses, the board could impose a \$1,000 civil penalty per offense.

## **REAL ESTATE APPRAISER EXAMINING BOARD**

Representing the agency: Maddie Wilcox, Kimberly Gleason

Regulatory Analysis: Renewal, Expiration and Reinstatement of Certificates and Registrations, Retired Status, and Inactive Status, 193F—Chapter 9

Committee members stated that the licensing requirements need to be streamlined.

## **PUBLIC HEALTH DEPARTMENT**

Representing the agency: Sarah Reisetter, Kane Young, Ashleigh Hackel

Regulatory Analysis: Practice of Tattooing, 641—Chapter 22

Committee members asked the department to carefully review the proposed rulemaking and explained that a constituent did not have a fixed sink and was unable to be licensed. Members did not understand why having a mobile sink was a bar to being licensed. Members stated that the changes made in the proposed rulemaking seemed to have increased restrictions on the practice of tattooing, and encouraged the department to proceed cautiously to avoid bloating government rather than streamlining it. Ms. Hackel thanked the committee for its feedback and stated that the department did not make many substantive changes. She further stated that she would be happy to share her redline version with the committee.

Regulatory Analysis: Plumbing and Mechanical Systems Board—Licensee Practice, 641—Chapter 23

Regulatory Analysis: Hepatitis Programs, 641—Chapter 2

Committee members stated that the proposed rulemaking is copied word for word from existing rules, which does not comply with Executive Order 10.

Regulatory Analysis: Health Data, 641—Chapter 177

Committee members asked if individuals' names, social security numbers, and Covid vaccination status are being collected by the department. Ms. Reisetter confirmed that names and social security numbers are not being collected, and stated that she will confirm whether individuals' Covid vaccination status is collected. Members asked for further clarification on the information that is collected and stated that as Iowans, members want to know that their health data is secure and remains confidential.

**HUMAN SERVICES DEPARTMENT**

Representing the agency: Sara Reisetter

Regulatory Analysis: Uniform Rules on Agency Procedure, 441—Chapters 1, 3-5, 7, 9, 16

Committee members asked for clarification related to exceptions to use of release forms, specifically for public officials. Ms. Reisetter responded that it is legacy language and does allow the department to release an individual's confidential information to a legislator if that individual contacted a legislator to obtain assistance with a situation. Committee members requested that the department have further conversations with members regarding this exception as it does not seem appropriate for the department to release an individual's information in those circumstances.