



# MINUTES

## NOVEMBER 2019 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

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### MEMBERS PRESENT

Senator Waylon Brown, Vice Chair  
Senator Mark Costello  
Senator Robert Hogg  
Senator Pam Jochum  
Senator Zach Whiting

Representative Megan Jones, Chair  
Representative Steven Holt  
Representative Joe Mitchell  
Representative Amy Nielsen  
Representative Rick L. Olson

EX OFFICIO, NONVOTING MEMBER: Sam Langholz, 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 Amber Shanahan-Fricke, Legal Counsel, 515.725.7354

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### BULLETINS NEEDED FOR THIS MEETING: 10/9/19, 10/23/19

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#### Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:03 a.m. on Tuesday, November 12, 2019, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the October 8, 2019, meeting were approved. The next meeting was scheduled for Tuesday, December 10, 2019, at 9:00 a.m. at the State Capitol in Des Moines, Iowa. Representative Jones asked committee members to stay after the adjournment of the meeting for a brief discussion with Fiscal Services Division staff regarding process improvement concerning the fiscal overview report. The meeting was adjourned at 12:53 p.m.

#### Fiscal Overview

Ms. Christin Mechler, Fiscal Legislative Analyst, presented the LSA fiscal report. With regard to the Department of Transportation's Notice ARC 4715C, committee members asked for an explanation as to why the law has a positive impact on the Statutory Allocations Fund and a negative impact on the Road Use Tax Fund. Ms. Mechler replied that the Fiscal Legislative Analyst who wrote the analysis was not present due to a scheduling conflict; as such, she would have him respond at a later time. With regard to the Department of Agriculture and Land Stewardship's Notice ARC 4697C, committee members clarified with Ms. Mechler that the expenditures utilized in this rulemaking were not authorized in the department's budget, but rather came from federal funds.

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).

## **CHIEF INFORMATION OFFICER, OFFICE OF THE**

Representing the agency: Matt Behrens

### **ARC 4710C (NOIA), Waivers, Proposed Adoption of Chapter 7**

Committee members stated that the rulemaking had similarities with the Lottery Authority's recent proposed rules (Notice ARC 4563 reviewed at the August 12, 2019 ARRC meeting). Committee members stated that this rulemaking appears to remove the public from the waiver process and consolidate the power of the Chief Information Officer or a designee and that this is problematic. Furthermore, committee members expressed displeasure with a provision in the rulemaking that provides that a Chief Information Officer's failure to act after a period of time on a petition for waiver shall be deemed a denial of the petition. Committee members asked for additional clarification. Mr. Behrens stated he would oblige in providing clarification and reviewing Lottery Authority rules. Committee members criticized the drafting of the rulemaking, which provides that waiver means a "waiver and variance" but "variance" does not mean a "waiver." Mr. Behrens stated he would look into the issue. Committee members advised to choose one definition or the other. Mr. Ewing stated that Iowa Code chapter 17A provides a single definition for "waiver or variance." Committee members suggested a possible legislative change to Iowa Code chapter 17A.

No action taken on ARC 4710C.

### **ARC 4711C (NOIA), Procurement of Information Technology, Proposed Adoption of Chapter 10**

Committee members noted that the Fiscal Services Division was unable to quantify the fiscal impact of the rulemaking, but the Office of the Chief Information Officer (OCIO) asserted a positive fiscal impact. Committee members asked Mr. Behrens to quantify the potential savings that the rulemaking could yield. Mr. Behrens was hesitant to give a finite number but stated that state contracts worth hundreds of millions of dollars are entered into for information technology and stated that if the processes are centralized, savings may be achieved.

Committee members asked Mr. Behrens to provide an example of a recent vendor selected for information technology purposes. Mr. Behrens stated that a recent Request for Proposals was issued for desktop support, specifically for a provider to come to an agency and fix computers on site. The contract was awarded to Insight to provide service to agencies, including the Iowa Veterans Home. Mr. Behrens stated that if the computer was beyond repair, OCIO has a contract with a different provider to purchase a new computer at a group rate.

No action taken on ARC 4711C.

### **ARC 4712C (NOIA), Information Technology Governance, Proposed Adoption of Chapter 8**

Committee members inquired whether the Judicial Branch is a participating agency in this program. Mr. Behrens responded that he did not think so. Committee members asked Mr. Behrens to confirm. Committee members recalled the courthouse break-ins and opined that the Judicial Branch process has room for improvement. Committee members stated that the OCIO is setting out a good process; and suggested that the OCIO process could be a good guideline for the Judicial Branch as it moves forward.

No action taken on ARC 4712C.

### **ARC 4730C (NOIA), Vendor Appeals, Proposed Adoption of Chapter 11**

No discussion on ARC 4730C.

## **ALCOHOLIC BEVERAGES DIVISION**

Representing the agency: Stephanie Strauss

### **ARC 4688C (NOIA), Alcoholic Beverages Trade Practices, Proposed Rescission of Rule 16.41**

No discussion on ARC 4688C.

## **REAL ESTATE APPRAISER EXAMINING BOARD**

Representing the agency: Rodney Reed

ARC 4707C (AF), Certification — Qualifying Experience, Demonstration Appraisals, Supervision of Associates or Trainees, Amendments to Rules 1.20(2), 5.6(2), 6.6(2), and 15.3(1)  
No discussion on ARC 4707C.

ARC 4708C (AF), Prohibition of Discipline for Student Loan Nonrepayment; Military Service Credit and Reciprocity; Impaired Licensee Review Committee; Social Security Numbers and Proof of Legal Presence; Vendor Appeals, Amendments to Chapters 21 and 25 and Adoption of Chapters 26–29  
No discussion on ARC 4708C.

## **HISTORICAL DIVISION**

Representing the agency: Anthony Jahn

ARC 4721C (NOIA), Confidential Records; Ancient Records; Vital Statistics, Proposed Amendments to Rule 3.9  
No discussion on ARC 4721C.

## **ECONOMIC DEVELOPMENT AUTHORITY**

Representing the agency: Jennifer Klein

ARC 4723C (NOIA), Disaster Recovery Housing Program, Proposed Amendment of Rule 48.3 (15) and Adoption of Rules 48.9–48.13, also Filed Emergency ARC 4724C.

Committee members inquired how many applications for the program have been received and how much construction has begun on awarded projects. Ms. Klein stated that she believed at least four applications have been received and she did not believe any awards had been made at this time. Ms. Klein indicated that the Authority is currently gathering additional information on the projects, awards are made on a rolling basis, and decisions should be made in coming weeks. She indicated that she could notify the committee when awards are made. In response to an inquiry from committee members, Ms. Klein indicated \$10 million is available for this fiscal year and the following three years collectively.

No action taken on ARC 4723C or ARC 4724C.

## **IOWA FINANCE AUTHORITY**

Representing the agency: Kristin Hanks-Bents

ARC 4729C (NOIA), Beginning Farmer Tax Credit and Loan Programs, Proposed Amendments to Rules 44.1-44.7

No discussion on ARC 4729C.

## **EDUCATION DEPARTMENT**

Representing the agency: Nicole Proesch, Jeremy Varner

ARC 4682C (NOIA), Education Program Standards—Contracted Courses Used to Meet School or School District Requirements, Proposed Amendment of Rule 12.5

No discussion on ARC 4682C.

ARC 4683C (NOIA), Senior Year Plus Program, Proposed Amendments to Chapter 22

No discussion on ARC 4683C.

ARC 4684C (NOIA), Career Academy Incentive Fund, Proposed Adoption of Rule 46.13

Ms. Emily Piper, on behalf of the Iowa Association of School Boards (IASB), offered public comment. Ms. Piper stated that IASB had raised some concerns about how the Career Academy Incentive funds would be directed, and the minimum and maximum size of grants that would be given within three different criteria. Ms. Piper stated IASB preferred more flexibility, but they had discussed their concerns with the Department of Education, and believed that IASB would be able to resolve the concerns with the department and support the adopted rulemaking.

No action taken on ARC 4684C.

ARC 4685C (NOIA), Statewide Sales and Services Tax for School Infrastructure, Proposed Amendments to Chapter 96

No discussion on ARC 4685C.

ARC 4686C (NOIA), Supplementary Weighting, Proposed Amendments to Rules 97.1, 97.2(5), 97.5, and 97.8

No discussion on ARC 4686C.

ARC 4687C (NOIA), Financial Management of Categorical Funding — Secure an Advanced Vision for Education Fund, School Nutrition Fund, Proposed Amendments to Rules 98.21, 98.69, and 98.74(3)“b”

No discussion on ARC 4687C.

ARC 4700C (AF), Gap Tuition Assistance Program — Eligibility Criteria, Assessment, Redistribution of Funds, Amendments to Chapter 25

Committee members inquired whether the Gap Tuition Assistance Program and the Last-Dollar Scholarship Program are different. Mr. Jeremy Varner responded that the Gap Tuition Assistance Program provides support for noncredit training programs for short-term job training like Commercial Driver’s License programs, whereas the Last-Dollar Scholarship Program provides support for for-credit training programs. Mr. Varner stated that the programs target different populations.

No action taken on ARC 4700C.

## **ENVIRONMENTAL PROTECTION COMMISSION**

Representing the agency: Kelli Book

ARC 4689C (NOIA), Animal Feeding Operations — Definition of “Common Ownership,” Proposed Amendment to Rule 65.1

Committee members inquired as to how far apart two buildings have to be to prevent the designation of common ownership under this rule, if two animal feeding operations have the same owner. Ms. Book indicated that the requirements for the distance apart would depend on how large the buildings were, which is dictated by rule.

No action taken on ARC 4689C.

## **PROFESSIONAL LICENSURE DIVISION**

Representing the agency: Venus Vendoures-Walsh

ARC 4690C (NOIA), Athletic Trainers — Child Abuse and Dependent Adult Abuse Mandatory Reporter Training, Proposed Amendment to Rule 351.9(4)

No discussion on ARC 4690C.

ARC 4702C (AF), Physical Therapists and Physical Therapist Assistants — Licensure, Examinations, Amendments to Rules 200.2, 200.4, 200.5(2), and 200.7

No discussion on ARC 4702C.

ARC 4727C (NOIA), Social Workers—Continuing Education, Child and Dependent Adult Abuse Mandatory Reporter Training, Proposed Amendment to Rule 280.9(3), Rescission of Rule 281.1 and 281.3(2)“b” and Relettering of Rules 281.3(2)“c” to “k” as 281.3(2)“b” to “j”

No discussion on ARC 4727C.

## **MEDICINE BOARD**

Representing the agency: Kent Nebel

ARC 4714C (AF), Standards of Practice—Appropriate Pain Management, Amendment of Rule 13.2  
No discussion on ARC 4714C.

ARC 4728C (AF), Licensure of Genetic Counselors, Amendments to Chapter 20  
No discussion on ARC 4728C.

## **PHARMACY BOARD**

Representing the agency: Sue Mears

ARC 4691C (NOIA), Changes in Distributor Facility Managers, Proposed Amendment of Rules 17.1 and 17.2 and Proposed Adoption of Rules 17.3(3)“d,” 42.3(8), and 43.3(5)“d”  
No discussion on ARC 4691C.

ARC 4692C (NOIA), Temporary Scheduling of Synthetic Cathinones as Schedule I Controlled Substances, Proposed Amendment of Rule 10.39(5)  
Committee members requested an explanation of what constitutes a synthetic cathinone. Ms. Mears indicated it is an illicit substance that the Drug Enforcement Agency has determined has no medical purpose and has placed as a Schedule I drug. Additionally, Ms. Mears indicated that her understanding was that a synthetic cathinone was a stimulant. Committee members asked if it would be accurate to describe a synthetic cathinone as a drug, which chemical composition is slightly varied from the chemical composition of a banned drug, and Ms. Mears agreed.  
No action taken on ARC 4692C.

ARC 4693C (NOIA), Prescriptions for Expedited Partner Therapy, Proposed Amendment of Rules 6.10(1), 7.12, 8.19(1)“a,” 8.21, and 18.3(4) and Proposed Adoption of Rules 6.13(4) and 8.19(9)  
Committee members stated they were having difficulty with the following two terms in the rulemaking summary: “non-patient specific prescription” and “unnamed partner.” Committee members asked for further explanation on how the process for issuing a non-patient specific prescription works. Ms. Mears stated that patient “A” goes to the doctor and gets diagnosed with a sexually transmitted infection, gets treated for the infection, but does not want to name his or her partner. The doctor can give a second prescription to patient “A” to give to his or her unnamed partner on a non-patient specific prescription without that unnamed partner being evaluated by a doctor or knowing who that patient is. Committee members inquired why chlamydia and gonorrhea are the included sexually transmitted infections in the rulemaking. Ms. Mears responded that the underlying Code section specifies those sexually transmitted infections.  
No action taken on ARC 4693C.

ARC 4694C (NOIA), Transmission of Prescription Drug Orders Between Pharmacies, Proposed Amendment of Rule 6.9  
Committee members asked Ms. Mears to provide an example of the application of this rulemaking. Ms. Mears stated she has seen the need for this rulemaking in long-term care practice where if a person is admitted to a care facility on evenings or weekends after the normal delivery of prescriptions, it would allow a facility to fill a three-day prescription at a local pharmacy without it constituting a transfer of the prescription.  
No action taken on ARC 4694C.

ARC 4695C (NOIA), Technician Product Verification Program; Nonresident Pharmacy Applicants; Records Requests; Pharmacy Closure; Prescription Drug Delivery, Proposed Amendment to Rules 3.21(1), 3.23, 6.8, 6.16(2), 7.6(1)“b,” 7.13(4), 8.9, 8.15, 8.24, 8.35(2)“d” and “e,” 8.35(7), 13.8(7), and 21.2 and Proposed Adoption of Rule 8.35(2)“f”

Committee members inquired about Item 12 of the rulemaking, which provides for the closing or sale of a pharmacy and provides for notification requirements by the pharmacy, from which the Executive Director of the Board of Pharmacy may exempt a pharmacy in the event of an unforeseeable closure. Committee members inquired whether there was an event prompting the new language which allows the Executive Director of the Board of Pharmacy to exempt a pharmacy from one or more of the notification requirements in the event of an unforeseeable closure. Ms. Mears noted that previously the rule set forth certain scenarios where notification was not required, but the board had been presented with another scenario where notification was not feasible—a chain of pharmacies was closing and while the chain did its best to notify patients, it did not know every pharmacy that the prescriptions were being transferred to, so it could not provide timely notification required by rule. Ms. Mears stated that the goal of the rulemaking is to allow the pharmacies to work with the Executive Director of the Board of Pharmacy when there are unforeseen closures and notification is not feasible. Committee members confirmed with Ms. Mears that if intentional nonnotification by a pharmacy were committed, there would still be consequences.

No action taken on ARC 4695C.

ARC 4701C (AF), Authorized Dispensers of Pseudoephedrine Products, Amendment of Rules 10.34, 100.2, and 100.3

No discussion on ARC 4701C.

## **TRANSPORTATION DEPARTMENT**

Representing the agency: Sara Siedsma

ARC 4681C (NOIA), Electronic Submission of Proof of Financial Responsibility, Proposed Amendments to Rules 640.1(3), 640.3, 640.4, 640.5(1), and 640.6 and Proposed Adoption of Rule 524.7(1)“c”

Committee members inquired how many companies provide proof of financial responsibility. Ms. Siedsma responded 50 or fewer companies. Committee members asked if this rulemaking applies to companies that self-insure. Ms. Siedsma replied yes, but she was unsure of the scope. Committee members sought data on how many people are injured in accidents where the company or driver does not have financial responsibility or insurance. Ms. Siedsma stated she would check to see if the department has that data.

Committee members inquired how many times the department’s computer system has failed. Ms. Siedsma did not provide an answer. Committee members inquired if there was going to be a back-up system to the online system for electronic submission of proof of financial responsibility. Ms. Siedsma stated she would look into the issue. Committee members stressed that it would be very important to have a fail-safe back-up system for those required to electronically submit.

No action taken on ARC 4681C.

ARC 4715C (NOIA), Electronic Replacement of Driver’s License or Nonoperator’s Identification Card, Proposed Amendments to Rules 602.2(4), 605.11, and 630.3

No discussion on ARC 4715C.

## **INSPECTIONS AND APPEALS DEPARTMENT**

Representing the agency: Ashleigh Hackel

ARC 4731C (AF), Food and Consumer Safety; Food Establishment and Food Processing Plant Inspections, Proposed Amendments to Rules 30.2, 30.7, 30.9(2), and 31.1(4)

Committee members inquired about the rule regarding a retail food establishment license for gross sales over \$20,000. Ms. Hackel indicated that this language was inadvertently removed in a prior rulemaking and it is being reinserted; there has been no change in law or practice.

No action taken on ARC 4731C.

ARC 4732C (AF), Posted Rules for Games Other Than Bingo and Raffles; Amusement Concessions, Proposed Amendments to Rules 100.8 and 101.1–101.4  
No discussion on ARC 4732C.

## **AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT**

Representing the agency: Maison Bleam, Dr. Katie Rumsey

ARC 4697C (NOIA), Meat and Poultry Inspection — Cooperative Interstate Shipment (CIS) Program, Proposed Amendment to Rule 76.2 and Proposed Rescission and Adoption of Rule 76.6  
No discussion on ARC 4697C.

ARC 4698C (NOIA), Storage of Bulk Dry Animal Nutrients, Proposed Amendments to Rules 49.1 and 49.7  
No discussion on ARC 4698C.

ARC 4696C (NOIA), Animal Welfare, Proposed Rescission and Adoption of Chapter 67  
Committee members thanked the department for its work on the rulemaking.

Members of the public representing dog daycares were present to speak against the following requirements: that the play area provide for a minimum of 75 square feet per dog, that a play area smaller than 1,125 square feet must have a sign placed at the entry of the play area stating the maximum number of dogs in the play area at any one time, that a dog daycare shall not establish a playgroup of more than 15 dogs, that there is a minimum of one person supervising a playgroup, and that at all times when a person is supervising a playgroup he or she is maintaining direct supervision.

Ms. Karissa Schreurs, owner of Canine Country Club, a dog daycare and boarding center, stated that the current rule provides that supervision may be either audible or visual, whereas the proposed rule requires direct supervision. She stated a preference for the rule to remain the same. She also spoke in favor of play areas smaller than 1,125 square feet, explaining that such areas may be sufficient for small dogs and elaborating that a larger area necessarily requires a longer amount of time to reach a fight between two dogs and thus is more dangerous for the dogs.

Dr. Rumsey responded to Ms. Schreurs by stating that the 75-square-foot requirement and the 15-to-1 ratio are current law. She clarified that the rule does not require that many dogs per group, but merely allows it. Similarly, it does not require a space to be that large. Dr. Rumsey explained the importance of direct supervision—to quickly access dogs that have begun to engage in a fight and end the altercation before serious injury occurs. She explained that merely listening for signs of a fight may allow the fight to go undetected until serious injury has already been inflicted.

Ms. Sidney Sjaardema, owner of Bark Avenue, a dog daycare and boarding center, objected to the rulemaking's regulation of dog daycares, overnight lodging, and grooming in the same manner as rescue organizations and commercial breeders. She stated that while the 75-square-foot requirement may be current law, it was not previously strictly enforced; rather, inspectors previously "eyeballed" a room for approximate size and determination whether the animals appeared to be happy. The new sign posting requirement suggests that "eyeballing" will no longer be the standard and that the 75-square-foot requirement will be enforced. Ms. Sjaardema expressed displeasure and indicated that many dog daycares would go out of business. Personally, she stated that she is developing a \$2.6 million facility that will not comply with that standard. She conceded that a minimum square footage should be prescribed, but indicated that 75 square feet was not the right number. She suggested that dog daycares were not represented stakeholders in the drafting of this rulemaking and indicated a desire to be involved in a revision of the rulemaking.

Committee members inquired to Dr. Rumsey regarding the meaning of direct supervision. Dr. Rumsey stated that "direct supervision" was not defined in the rules; rather, the common dictionary understanding was intended. Committee members responded by referring to the different administrative rules governing various professions, specifically doctors, who supervise physician assistants, and veterinarians, who supervise veterinary technicians. With regard to veterinarian rules, committee members indicated veterinarians are only required to exercise direct supervision by being on the premises and being readily available. Dr. Rumsey indicated that the intent for the direct supervision in this rulemaking is for the person to be directly watching dogs with an ability to break up an

altercation. She indicated a willingness to provide a definition in the rulemaking. Committee members expressed disagreement with Dr. Rumsey's desire to require perpetual supervision of the animals. She emphasized that dog fights must be quickly quelled in order to avoid life-threatening injuries. Committee members suggested that a certain level of risk of dog injury was inherent due to commingling, which may lead to dog fights; committee members suggested that perhaps focus would be better spent on ensuring facilities have proper insurance for damages incurred under their supervision.

Ms. Sjaardema responded to the direct supervision discussion including the threat of dog fight injuries by stating that her business has a .003 percent rate of injury and by noting that she has checked with similar businesses and found a comparable rate. She asserted that this is a regulation in search of a problem.

Committee members expressed concern regarding whether there was going to be a practice change among inspectors in the enforcement of the 75-square-foot rule. Committee members expressed support for dog daycare concerns being heard in the rulemaking process and deferral to dog daycare expertise in lieu of extensive regulation.

In response to comments from the public and inquiries from committee members, Mr. Bleam provided the following plan. He intended to file the adopted rulemaking on November 13, 2019, which meant that it would be scheduled for review at the December 10, 2019, ARRC meeting. The department would convene a stakeholder group, including dog daycares to evaluate the 15-to-1 ratio and the 75-square-foot requirement. He noted that these are not new in the proposed rulemaking; they are current law, which a review of inspection reports indicated have been enforced before, including against some businesses that spoke at the public hearing. He also indicated that he was hearing some concern with the direct supervision requirement and committee members were encouraging him to work with stakeholders on this issue and perhaps provide examples in the rulemaking. Furthermore, in light of Ms. Sjaardema's \$2.6 million facility, committee members inquired about the waiver process for this rulemaking, which Mr. Bleam stated was the department's standard waiver and entails a case-by-case analysis. Mr. Bleam went on to state that the department intends to do extensive education on the rulemaking once it is effective and will delay enforcement of the rules by six to nine months; however, the rules which are already in effect will not be delayed. Mr. Bleam stated that roughly half of the 2,057 facilities statewide are inspected by the United States Department of Agriculture each year.

Ms. Alexandria Oldenburg, a certified professional dog trainer, discussed out-of-state, cage-free boarding entities that were interested in expanding into Iowa. She advised that regulation of such entities would be welcomed.

Mr. Dane Schumann, who represents dog daycares, thanked Mr. Bleam and the department for speaking with him in advance of the ARRC meeting and agreeing to convene a stakeholder group to address the concerns of dog daycares.

Ms. Emily Piper spoke on behalf of the Humane Society Legislative Fund of Iowa in support of the rulemaking, arguing in favor of letting the proposed rulemaking go forward and not letting the dispute over the current rules prevent the proposed rules from being implemented. Furthermore, she applauded the expectation of the same high quality of care for animals across all facilities, including dog daycares, required by the proposed rulemaking.

No action taken on ARC 4696C.



## UTILITIES DIVISION

Representing the agency: Matthew Oetker

ARC 4720C (AF), Electric Vehicle Charging Service, Adoption of Rule 20.20

Mr. Denny Puckett spoke on behalf of the Iowa Association of Electric Cooperatives (IAEC). He stated that IAEC supports the expansion of electric vehicle (EV) charging infrastructure under current law. He noted that he did not seek action by the committee on this rulemaking during its previous review, but the Iowa Utilities Board (IUB) had not made any changes to the language of the rulemaking since then. He stated that the IUB had failed to address concerns that the rulemaking violates Iowa's service territory law and asserted that a local utility is the entity that should provide electricity to an EV charging station. Then the entity that provides the station would be considered a customer of the local utility, rather than being considered a utility itself. He stated that IAEC's concerns were made known to the IUB during the rulemaking process and that the IUB declined to include proposed language that would have addressed them. He explained that while the rulemaking references current adjudicatory law as a means of addressing concerns raised about the rulemaking, the statute cited by the rulemaking on this point only refers to electric utilities, not other entities that provide electricity, as contemplated in the rulemaking. He stated that the rulemaking does not address subgeneration of electricity. He stated language proposed by stakeholders would have provided that an EV charging station is not considered a public utility if it purchases electricity from a local utility. The proposed language would also have required analysis of whether an entity providing electricity that is not purchased from a local utility should itself be regulated as a utility. He asserted that the rulemaking, by not requiring such analysis, violates precedent from the Iowa Supreme Court, *SZ Enterprises LLC v. Iowa Utilities Board*, 850 N. W.2d 441 (Iowa 2014). He stated IAEC's goal is for the committee to object to the rulemaking as arbitrary, unreasonable, and inconsistent with the IUB's delegated authority to the extent that it precludes an EV charging station that generates its own electricity and sells it to the owner of an EV from being considered a public utility.

Mr. Oetker responded that there is no statutory provision that excludes or exempts customers from the resale or transaction of electric business. He stated that the board had considered *SZ Enterprises* during the rulemaking process. He explained that the case sets out a multifactor test for determining whether an entity engages in transactions sufficient to treat the entity as acting in the public interest and hence to require that it be regulated as a public utility. He asserted the rulemaking encompasses that test, and the IUB chose not to address the relationship between the generation of electricity and the charging station because the relevant regulatory principles already exist, so the rulemaking need not reiterate them. He asserted that the rulemaking addresses the only unanswered question on this subject, which is whether an electric charging station can provide EV charging services on a commercial basis without being considered a public utility. He stated that such a station is not a public utility, but another kind of entity. Mr. Puckett responded that the IUB chose not to address in the rulemaking unanswered questions raised by stakeholders, but to only address one part of the EV charging transaction, not the entire transaction, which he said is an inappropriate approach.

Mr. Tim Whipple spoke on behalf of the Iowa Association of Municipal Utilities (IAMU). He explained that IAMU represents 136 municipal electric utilities, including both large and small communities. He explained that IAMU's members are positioned differently than some larger utilities due to their smaller rate bases, but share many commonalities as well. He agreed with Mr. Puckett's comments. He stated that IAMU supports the ability of EV charging stations to advertise and sell electricity on a kilowatt hour basis and even a rulemaking that exempts EV charging services from being treated as public utilities, but does not support this particular rulemaking, which should have taken a more balanced approach. He explained that the issue of EV charging had been raised over a year before when the truck stop industry sought a declaratory order from the IUB to modify Alliant Energy's tariff to allow the resale of electricity for the purpose of EV charging. He noted that allowing the resale of electricity presupposes that the electricity was sold in the first place by a local utility under the state service territory law. He explained that IAMU and other stakeholders submitted language to the IUB that would have addressed that issue. He asserted that the rulemaking goes beyond what is necessary to merely allow the resale of electricity for EV charging. He asserted that the IUB has interpreted the term "public utility" in the rulemaking to unnecessarily expand it beyond *SZ Enterprises*. He stated that the rulemaking only needed to direct public utilities to allow resale of electricity for EV charging. He also stated that IAMU seeks a balanced rule that results in more EV charging services around the state while also properly enforcing the state service territory law, which

he stated is the bedrock of affordable electric rates in Iowa. Mr. Oetker responded by rejecting the assertion that the IUB had not taken into consideration the concerns raised by stakeholders during the rulemaking process. He also stated that the stakeholders merely disagreed with the IUB's approach in the rulemaking. He explained that the IUB had drafted alternative language based on Kentucky's approach to this issue and circulated it to stakeholders, but stakeholders raised even greater concerns with the alternative language than with the language of the rulemaking.

Mr. Donald Kom spoke on behalf of the city of Ames' municipal electric services. He stated that Ames supports the expansion of EV infrastructure and that Ames has installed two EV chargers and is adding EVs to the city's fleet. However, he said the role of the state's municipal electric utilities and the state's service territory law must be respected. He described the recent ten-fold increase in the number of electric and hybrid vehicles in Ames. He stated that the increase in the use of EVs will require strategic collaboration among key stakeholders to clear regulatory hurdles to EV charging infrastructure. He noted that the Iowa Energy Plan requires the Iowa Economic Development Authority and Iowa Department of Transportation to develop a plan for the development of EV charging corridors in Iowa. He stated that Ames hopes to be included in that plan, which would allow for the installation of a level three EV charger, which would reduce charging "range anxiety" for EV owners. He stated that the rulemaking raises concerns that Ames may not be able to recover the cost of installing new EV charging infrastructure. He asserted that Ames should be able to recover the cost of providing electricity to EV fueling stations, but the rulemaking opens the door to "stranded investment" if third-party generation of electricity is allowed. He asserted that the rulemaking lacks clarity and would serve as a barrier to the expansion of EV charging infrastructure. He explained that CyRide, the municipal bus service in Ames, was recently awarded a grant to purchase electric buses, which would cost \$30,000–50,000 to meet charging requirements, which would be recovered through sale of electricity. He stated that the rulemaking is silent on the question of whether an EV charging provider is free to source electricity through self-generation or an entity other than the local utility. He expressed a desire for rules that provide regulatory certainty, including clear parameters on when EV charging providers become subject to regulation as utilities, as opposed to this rulemaking that is open to multiple interpretations. He asserted that the rulemaking fails to consider the policies articulated in the state service territory law because it does not condition exemption from regulation as an electric utility on purchasing electricity from a local electric utility. He stated that, in his view, generating electricity behind an electric meter for compensation is consistent with the definition of a public utility. He questioned the implications of the rulemaking deeming electricity sold for EV charging not to be the "furnishing of electricity to the public," particularly whether the language would permit Ames to sell electricity for this purpose without violating the state service territory law if it owned a charging station, and if not, why there should be a distinction between Ames and any other owner of a charging station. He also questioned how the IUB would resolve service territory disputes involving EV charging stations, including whether the rulemaking would allow Ames to provide electricity to a charging station in another service territory or to own such a station itself. Mr. Oetker responded that, contrary to Mr. Kom's expressed desire for regulatory uncertainty, an objection imposed on the rulemaking could lead to the rulemaking being struck down in court, which would increase regulatory uncertainty. He asserted the rulemaking answers the one unanswered question in this area, which is whether EV charging is permissible without becoming a public utility. He acknowledged that other issues raised by the commenters existed, but asserted that the IUB has mechanisms to resolve them, but they have not been brought to IUB's attention and the rulemaking is not the mechanism to resolve them.

Committee members asked if Ames is required to provide electricity to an EV charging station built in its service territory and if the rulemaking would change that. Mr. Kom explained that Ames would be required to provide electricity to any customer in its territory in both scenarios. Mr. Whipple agreed. Mr. Kom stated the difference is that under the rulemaking, Ames might not be able to recoup the cost of building additional equipment necessary to provide the additional required power by selling electricity to the charging station if the station can obtain electricity from another source. Mr. Kom also explained that a charging station could self-generate the needed electricity under current rules and under the rulemaking, while Mr. Whipple asserted that the rulemaking should address this scenario more clearly. Mr. Kom asserted the rulemaking is unclear on whether the rulemaking would allow a charging station to self-generate and also sell any excess electricity generated. Additional discussion occurred between committee members, Mr. Kom, Mr. Whipple, and Mr. Oetker regarding possible scenarios involving the generation and sale of electricity for EV charging if the electricity is generated

by a local electric utility, the charging station, or a third party, and how associated costs might be borne in such scenarios. In further discussion on why the rulemaking did not address the concerns raised by utilities, Mr. Oetker stated that the rulemaking only addresses transactions between charging stations and their customers, and the IUB has no preconceived notions about the relationship between charging stations and electric utilities. He referred to *SZ Enterprises* regarding determination of whether an entity is a public utility and asserted that it would be redundant to include that multifactor test in the rulemaking and also difficult to do so in a way that covers all possible scenarios.

Mr. Bob Rafferty spoke on behalf of Truckstops of Iowa and the Iowa 80 Truck Stop. He stated that truck stops had initiated this policymaking process and expressed support for the rulemaking. He explained that direct current fast chargers used to charge EVs cost over \$100,000 apiece, and truck stops are willing to pay for them. He stated paying for the electricity is negotiated with the local utility and that the Iowa 80 Truck Stop's local utility is working with the truck stop on this. He stated that it can be difficult to negotiate with a local utility because it is a monopoly. He agreed that a local utility should be able to recover the cost of any investment it makes in EV charging infrastructure, which he asserted is not at issue in the rulemaking. He stated that a key question with the rulemaking is what happens if a third-party provider other than a local utility provides the electricity, which he stated the IUB is unwilling to prohibit. He stated that obtaining electricity from a third-party provider for EV charging is no different than obtaining such electricity for any other purpose, which he asserted is an issue that predates the rulemaking. He stated that the Iowa 80 Truck Stop's local utility is not allowing the truck stop to sell electricity by the kilowatt hour, which makes recovery of the truck stop's investment more complicated and uncertain. He characterized this as similar to prohibiting the sale of gas by the gallon. He stated that a consumer would not know what value they are receiving for their money by comparing prices if this sales rate is not allowed. He asserted this is an example of a government monopoly not responding to consumers' needs. He described the rulemaking as the starting line for EV charging in Iowa. He described the IUB's approach to the rulemaking as a middle ground between the current free market for vehicle fueling and the current government-controlled market for electricity. He asserted utilities are uncomfortable with this approach because it removes the sale of electricity for EV charging from utilities' control and allows truck stops to have a portion of the market for this service. He asserted that the 28 states that have decided the question have all determined that EV charging should not be treated like a public utility, so Iowa would be an outlier if it took a different approach. He characterized the IUB's approach as similar to the deregulation of telecommunications several decades prior. He urged the committee not to object to the rulemaking if it favored the IUB's balanced approach to this issue.

Mr. Mark Schuling, Consumer Advocate for the State of Iowa, explained that he had intervened in both the original declaratory order and in the IUB's rulemaking process and agrees with the IUB's approach in the rulemaking. He noted that he had successfully argued *SZ Enterprises*. He asserted that the key question is whether an EV charging station is a utility if it generates its own electricity, which he asserted the IUB answered in the rulemaking as "no." He stated the rulemaking also requires compliance with the state service territory law and all other applicable statutes and regulations.

Mr. Josh Mandelbaum spoke on behalf of the Environmental Law and Policy Center (ELPC). He stated that the ELPC and the Iowa Environmental Council were involved in both the original declaratory order and in the IUB's rulemaking process and are strongly interested in the regulatory framework that allows EVs and other distributed energy such as solar power to exist in Iowa, all of which are impacted by the rulemaking. He expressed support for the rulemaking and characterized all stakeholders for the rulemaking as agreeing with the portion of the rulemaking that provides that an EV charging station is not a public utility. He asserted that the rulemaking essentially applied *SZ Enterprises* to EV charging stations. He described a key piece of the ruling as a question of what function an entity providing electricity actually does. He cited as examples a parking garage, grocery store, coffee shop, hotel, or EV dealership that adds a few EV charging stations. He asserted that adding such stations would not transform those entities into public utilities. Instead, such entities are merely providing an additional service. He asserted that is the analysis required under the ruling and all the stakeholders agree with that conclusion. He stated such analysis would apply to the addition of solar panels as well. He stated that ELPC opposed additional language proposed by utilities that would have taken a less balanced approach. He asserted that the rulemaking provides an opportunity for analysis of questions regarding how distributed generation should be handled. He expressed concern about any possible rule that might be overly broad and hence limit options for businesses regarding EV charging or solar panels and slow

the adoption of EV infrastructure. He asserted that requiring all needed electricity to be purchased from a local utility would impede businesses in this regard. He additionally asserted that the rulemaking is well-balanced and narrowly tailored, and concerns raised by utilities can be addressed under *SZ Enterprises*. He also asserted that most EV chargers, level two chargers, do not require significant infrastructure investments, as they require similar amounts of electricity as a washer and dryer, while more powerful level three chargers are unlikely to be practical for most businesses to build.

Mr. Arick Sears spoke on behalf of MidAmerican Energy. He stated that the rulemaking is not well reasoned. He stated that utilities drafted additional language, both for the rulemaking as noticed and for the IUB's proposed revision based on Kentucky's approach that would have resolved their concerns, but the IUB did not adopt the language or address their concerns. He asserted that the rulemaking, by exempting sale of electricity for EV charging from being considered furnishing electricity to the public, had avoided the analysis required under *SZ Enterprises*. He agreed with Mr. Mandelbaum's assertion that a business that adds a few EV charging stations does not become a public utility, an issue he asserted the utilities' proposed language would have addressed. He stated MidAmerican is not opposed to renewable generation of electricity or appropriately sized generation to offset a customer's own use of electricity. He stated that the problem is the rulemaking does not prevent a customer from doing more than that. He disagreed with Mr. Rafferty's assertion that the 28 states that have decided the question have all determined that EV charging should not be treated like a public utility. He acknowledged that many states had done so, but questioned that exact number. He noted that the number included North Carolina, which still required EV charging stations to purchase electricity from a local utility. Mr. Oetker responded that the revisions Mr. Sears referred to provided that an EV charging service would only be permissible if the electricity was purchased from a local utility. He stated that the IUB had considered the utilities' position, but had disagreed.

Ms. Pam Maggie Taylor spoke on behalf of the Sierra Club. She expressed support for the rulemaking. She explained that the rulemaking had gone through several versions before the language was proposed. She agreed with Mr. Rafferty that the IUB took a balanced approach to the rulemaking. She asserted that EV charging infrastructure must be increased in Iowa or the state would be bypassed by businesses, organizations, and travelers that need such services, therefore it is essential that the rulemaking allow sale of electricity for EV charging by the kilowatt hour.

Committee members noted that the committee's options for taking action on the rulemaking are an objection or a delay and asked Mr. Oetker what the impact of an objection would be. He responded that he would defend the rulemaking in court if asked to do so by the IUB. He was uncertain if the burden shifting imposed by an objection would affect the outcome of a possible suit. He noted that if he were to lose such a suit, the rulemaking would be struck down, which would remove any clarity on the underlying policy questions at issue provided by the rulemaking. He questioned whether such an outcome would be beneficial and suggested a delay might be more appropriate. Committee members stated that the IUB's role in this matter is to strike a balance on the policy questions at issue and that the rulemaking is not balanced.

### **Objection**

A motion for an objection, as provided in a draft distributed to the committee, to rule 199 IAC 20.20, as adopted in ARC 4720C, carried on a 6-3 record roll call vote. Representative Amy Nielsen abstained, citing the House of Representatives Code of Ethics and House of Representatives Rule 76, a rule pertaining to direct financial interests different from other similarly situated members of the public. Mr. Ewing explained the statutory procedures for publication of the objection.

ARC 4709C (AF), Energy Efficiency and Demand Response Planning and Reporting for Natural Gas and Electric Utilities Required to be Rate-Regulated, Rescission and Adoption of Chapter 35  
No discussion on ARC 4709C.