



# MINUTES

## NOVEMBER 2022 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

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### MEMBERS PRESENT

Senator Waylon Brown, Chair	Representative Megan Jones, Vice Chair
Senator Julian B. Garrett [by teleconference]	Representative Mike Bousselot [by teleconference]
Senator Jesse Green	Representative Amy Nielsen [by teleconference]
Senator Robert Hogg [by teleconference]	Representative Rick L. Olson
Senator Pam Jochum [by teleconference]	Representative Mike Sexton

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

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### BULLETINS NEEDED FOR THIS MEETING: 10/19/22, 11/2/22

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#### Procedural Business

Senator Brown convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9 a.m. on Tuesday, November 15, 2022, in Room 116, State Capitol, Des Moines, Iowa. Video of the meeting has been posted here: [www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=705](http://www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=705). The minutes of the October 11, 2022, meeting were approved. The next two meetings were scheduled for Monday, December 12, 2022, at 9 a.m. and Friday, January 6, 2023, at 9 a.m. Mr. Ewing explained that the terms of membership of current committee members would expire after the January meeting. Mr. Ewing also noted that the committee has previously established its December meeting as the deadline for agencies to submit their summaries of their five-year review of rules to the committee. He stated he would email agencies a reminder and notify the committee of any outstanding summaries at the December meeting. Mr. Ewing additionally asked if he could prepare a new draft of a technical bill relating to the rulemaking process for the committee to consider sponsoring at a future meeting. He provided background on similar bills recently sponsored by the committee. Committee members stated this could be considered at the December or January meetings. The meeting was adjourned at 10:30 a.m.

#### Fiscal Overview

Mr. Eric Richardson, Fiscal Legislative Analyst, presented the LSA fiscal report.

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).

## **HUMAN SERVICES DEPARTMENT**

Representing the agency: Nancy Freudenberg

Emergency filing, approval required: Home- and Community-Based Services, Chs. 78, 79, 83

Ms. Freudenberg summarized the rules and why the department felt emergency rulemaking was necessary.

### **Emergency Rulemaking Authorized**

A motion to authorize emergency rulemaking carried by a 10-0 short form vote.

ARC 6613C (AF), Disability Services Management, Ch. 25

No discussion on ARC 6613C.

ARC 6619C (NOIA), Medical and Remedial Services—Acute Psychiatric Intensive Care, Rules 78.3(8), 79.1(5)“i”

No discussion on ARC 6619C.

ARC 6620C (NOIA), Information and Records—Five-Year Review of Rules, Rules 96.1(3)“a,” 96.3(2)“b”

No discussion on ARC 6620C.

ARC 6621C (NOIA), Collections—Five-Year Review of Rules, Ch. 95

No discussion on ARC 6621C.

ARC 6622C (NOIA), Collection Services Center—Five-Year Review of Rules, Rules 97.2, 97.5, 97.6

No discussion on ARC 6622C.

ARC 6623C (AF), Facility Participation, Rules 54.1-54.3, 54.5-54.8

No discussion on ARC 6623C.

ARC 6624C (AF), Home- and Community-Based Habilitation Services—Eligibility, Rule 78.27(2)

No discussion on ARC 6624C.

ARC 6625C (AF), Reimbursement of Providers of Medical and Health Services—Cost Report Reviews, Rule 79.1

No discussion on ARC 6625C.

ARC 6626C (AF), Child Care Centers; Child Development Homes; Child Care Homes, Rules 109.4(2), 109.6, 109.7, 109.10, 109.11, 110.9(4), 110.15(1)“c,” 120.9(2)

No discussion on ARC 6626C.

ARC 6627C (AF), Residential Facilities for Children with an Intellectual Disability or Brain Injury—Five-Year Review of Rules, Rule 116.2

No discussion on ARC 6627C.

ARC 6628C (AF), Record Check Evaluations—Documentation, Rule 119.3(1)

No discussion on ARC 6628C.

ARC 6634C (AF), PROMISE JOBS Program, Ch. 93

No discussion on ARC 6634C.

ARC 6635C (AF), Child Care Expansion Programs, Ch. 168

No discussion on ARC 6635C.

## **PROFESSIONAL LICENSURE DIVISION**

Representing the agency: Steven Garrison

ARC 6597C (NOIA), Massage Therapists—Mandatory Reporter Training, Rules 131.8(4), 133.3(2)

No discussion on ARC 6597C.

## **BANKING DIVISION**

Representing the agency: Zachary Hingst

ARC 6602C (NOIA), Description of Organization—Scope, Application, Ch. 1  
No discussion on ARC 6602C.

ARC 6603C (NOIA), State Banks—Terms, Applications, Electronic Activities, Rule 2.2, 2.3, 2.5, 2.7(4), 2.18  
No discussion on ARC 6603C.

ARC 6604C (NOIA), General Definition of “Bank,” Rule 8.9  
No discussion on ARC 6604C.

ARC 6605C (NOIA), Legal Lending Limits, Rule 9.3(3)“a”  
No discussion on ARC 6605C.

## **UTILITIES DIVISION**

Representing the agency: Matthew Oetker, Cecil Wright

ARC 6595C (NOIA), Gathering Lines—Renewable Natural Gas Facilities, Rules 10.1, 10.3(1)

Ms. Haley Van Loon, speaking on behalf of various renewable natural gas and biogas producers, expressed concern regarding the rulemaking imposing delay, expense, and uncertainty on the permitting process, given that state policy supports expansion of digester and renewable natural gas projects. She stated that the board already has access to information that will allow it to carry out inspections required by the federal Pipeline and Hazardous Material Safety Administration (PHMSA).

Committee members expressed concern regarding Ms. Van Loon’s remarks and noted that the General Assembly had worked to promote anaerobic digesters. Members asked if the cost of projects would be impacted by the rulemaking. Mr. Wright explained that the full permitting process would likely not be adopted by the board. He noted that commenters on the rulemaking had good suggestions for ways to make the board aware when construction is beginning so that an inspection can occur. He stated that the board has two requirements: the board, as an agent of PHMSA, must inspect these pipelines and the board must ensure the pipelines are constructed in accordance with federal and state safety regulations. He explained that the comments showed ways to reduce the regulatory burden of the rulemaking and that the cost of projects would not be affected other than perhaps the cost of attorneys.

Committee members urged the board to work with commenters and stated that the board appeared to be complicating efforts by the commenters to comply with the underlying legislation. Members indicated they would not support the rulemaking if the commenters were not also supportive. Mr. Wright noted that PHMSA requires that it be notified when these pipelines are operational but not before they are constructed. PHMSA then notifies the board. He stated that the board needs to conduct inspections during construction, but that the board’s permitting process is probably more than is required by PHMSA. He noted an example where construction was completed but PHMSA was never notified. He stated the board must know where these projects are so they can be inspected.

Committee members asked how many anaerobic digesters there are in the state and how many anticipate using pipelines. Mr. Wright explained that the comments indicated there are 13 anaerobic digesters in the state, but the board has not been notified of that many, and the board does not know the intended purpose of each digester.

No action taken on ARC 6595C.

ARC 6596C (NOIA), Equipment Distribution Program—Purpose, Application Process, Eligibility, Rules 37.1, 37.4  
No discussion on ARC 6596C.

## **CORRECTIONS DEPARTMENT**

Representing the agency: Michael Savala

ARC 6607C (NOIA), Physician Assistants, Rules 45.2(1)“e,” 50.15, 50.16(5), 50.24(5)“a,” 51.13, 51.14(4), 51.20(5)“a”

No discussion on ARC 6607C.

## **ECONOMIC DEVELOPMENT AUTHORITY**

Representing the agency: Lisa Connell

ARC 6592C (NOIA), Endow Iowa Tax Credits, Ch. 47

Mr. David Adelman, speaking on behalf of Iowa Community Foundations (ICF), expressed support for lowering the maximum amount of tax credit that an individual taxpayer may claim, noting this would expand the base of the credit that could be used. He recognized that the authority needed to eliminate the waitlist for the credit. He stated that ICF would pursue legislation to keep the program from being suspended due to the elimination of the waitlist.

No action taken on ARC 6592C.

ARC 6593C (NOIA), Brownfield and Grayfield Redevelopment—Tax Credits, Ch. 65

No discussion on ARC 6593C.

ARC 6594C (NOIA), STEM BEST, Targeted Small Business Certification — Program Appropriations, Physician Assistants, Ch. 15

No discussion on ARC 6594C.

ARC 6612C (AF), Sports Tourism Program—Marketing Fund, Infrastructure Fund, Chs. 214, 215, 216

No discussion on ARC 6612C.

## **IOWA FINANCE AUTHORITY**

Representing the agency: Kristin Hanks-Bents

ARC 6618C (NOIA), Four Percent Qualified Allocation Plan, Rules 12.1(1), 12.2(1)

No discussion on ARC 6618C.

## **COLLEGE STUDENT AID COMMISSION**

Representing the agency: Todd Brown

ARC 6598C (NOIA), Health Care Award Program, Ch. 26

No discussion on ARC 6598C.

## **INSPECTIONS AND APPEALS DEPARTMENT**

Representing the agency: Ashleigh Hackel

ARC 6609C (NOIA), Foster Care Facility Inspections; Confidential Records, Chs. 5, 40

No discussion on ARC 6609C.

ARC 6633C (NOIA), Dependent Adult Abuse—Five-Year Review of Rules, Rules 52.1-52.4, 52.7, 52.8

No discussion on ARC 6633C.

## **RACING AND GAMING COMMISSION**

Representing the agency: Brian Ohorilko

ARC 6610C (NOIA), Penalties; Uniform Requirements; Pari-Mutuel Wagering, Simulcasting and Advance Deposit Wagering; Prohibited Areas; Devices; Methods of Transfer or Deposits; Sports Wagering; Fantasy Sports Contests, Chs. 4, 5, 8, 10-14

Mr. Wes Ehrecke, speaking on behalf of the Iowa Gaming Association (IGA), expressed support for the rulemaking and thanked the commission for working with IGA on revising language in the rulemaking relating to fines.

No action taken on ARC 6610C.

## **REVENUE DEPARTMENT**

Representing the agency: Clara Wulfsen, Brad Hopkins

ARC 6601C (NOIA), Property Assessment Appeal Board, Rules 71.21, 126.1-126.11

No discussion on ARC 6601C.

ARC 6611C (NOIA), Exemptions; Computation of Tax; Sales and Use Tax on Construction Activities; Foods for Human Consumption, Prescription Drugs, Insulin, Hypodermic Syringes, Diabetic Testing Materials, Prosthetic, Orthotic or Orthopedic Devices, Chs. 14, 19, 209, 219, 287

No discussion on ARC 6611C.

## **TRANSPORTATION DEPARTMENT**

Representing the agency: Tracy George, Tim McClung, Kelli Huser, Kathleen Meredith Eyers

ARC 6614C (AF), Contested Cases, Rules 13.4, 13.7, 13.12(3)

No discussion on ARC 6614C.

ARC 6615C (AF), Persons with Disabilities Parking Permits, Ch. 411

No discussion on ARC 6615C.

ARC 6616C (AF), Airport Registration; Special Certificates for Aircraft, Chs. 720, 750

No discussion on ARC 6616C.

ARC 6617C (AF), Driver's Licenses for Active Duty Military Service Members and Veterans, Rule 605.10

No discussion on ARC 6617C.

## **LABOR SERVICES DIVISION**

Representing the agency: Lanny Zieman

ARC 6599C (NOIA), Physician Assistants, Chs. 155, 169, 173, 174, 176, 177

No discussion on ARC 6599C.

ARC 6600C (NOIA), Child Labor—Power-Driven Bakery Machines, Pizza Dough Roller Exception, Rule 32.8(10)

No discussion on ARC 6600C.

## **NATURAL RESOURCES DEPARTMENT**

Representing the agency: Noah Poppelreiter

ARC 6629C (NOIA), Groundwater Hazard Documentation, Rules 9.1(4), 9.2

Committee members asked for more information about the availability of the form for the groundwater hazard statement. Mr. Poppelreiter explained that the current form is available online and copies are available in county recorders' offices. The new form is also available online and will replace the current form once the rulemaking is final.

No action taken on ARC 6629C.

## **NATURAL RESOURCE COMMISSION**

Representing the agency: Michelle Wilson

ARC 6630C (NOIA), Grant Programs—Conflicts of Interest, Electronic Filing, Filing Deadlines, Chs. 23, 27, 30, 33, 35

No discussion on ARC 6630C.

## **WORKFORCE DEVELOPMENT DEPARTMENT**

Representing the agency: Jeffrey Koncsol

ARC 6606C (NOIA), Unemployment Insurance—Overpayments, Voluntary Shared Work, Maximum Number of Benefit Weeks, Misconduct, Salary Guidelines, Contested Cases, Appeals, Chs. 23, 24, 26

Committee members asked for more information about the public comments received by the department. Mr. Koncsol explained that the Employment Appeal Board took issue with the use of the word "claimant" instead of "party," and Iowa Legal Aid and the American Civil Liberties Union of Iowa expressed concern with certain language in the rulemaking regarding misconduct, which was based on the statute. He offered to forward the comments to the committee, and members asked him to do so.

No action taken on ARC 6606C.

## **ENVIRONMENTAL PROTECTION COMMISSION**

Representing the agency: Amie Davidson, Christine Paulson

ARC 6631C (NOIA), Air Quality, Rules 20.2, 22.100, 23.1, 25.1(9), 28.1

No discussion on ARC 6631C.

ARC 6632C (NOIA), Beverage Container Deposits, Rules 107.1, 107.5, 107.7-107.9, 107.11-107.14

Mr. David Adelman, speaking for the Iowa Wholesale Beer Distributors Association, thanked the commission for the rulemaking and offered feedback on commission policies regarding beverage container redemption, but noted that no changes to the rulemaking were needed.

No action taken on ARC 6632C.