



MINUTES

MARCH 2023 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Mike Klimesh, Vice Chair	Representative Megan Jones, Chair
Senator Nate Boulton	Representative Amy Nielsen
Senator Mike Boussetot [by teleconference]	Representative Rick L. Olson [by teleconference]
Senator Waylon Brown	Representative Michael V. Sexton [by teleconference]
Senator Pam Jochum	Representative David 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: 2/8/23, 2/22/23

Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9 a.m. on Monday, March 13, 2023, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the February 13, 2023, meeting were approved. The next meeting was scheduled for Monday, April 10, 2023, at 9 a.m. Committee members voted to approve the committee rules of procedure. Mr. Ewing provided an update on agencies' five-year review of rules. Members provided an overview of the proposal to implement a process for agency signatures on rulemaking filings. The meeting was adjourned at 11:45 a.m.

Fiscal Overview

Mr. Chris Ubben, Fiscal Legislative Analyst, presented the LSA fiscal report. Committee members asked if, in relation to weights and measures of electric fuel, the use of "may" versus "shall" as provided in ARC 6921C impacts the fiscal note. Mr. Ubben responded that he will double check with the department and get back to the committee.

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg

ARC 6850C (AF), Appeals and Hearings; Emergency Assistance, Rules 7.3(3)(c), 7.4(3), 58.1-58.8, 58.23(1), 58.31

No discussion on ARC 6850C.

ARC 6851C (AF), Medicaid Claim Submission for Payment—Five-Year Review of Rules, Ch. 80

No discussion on ARC 6851C.

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 6852C (AF), Intermediate Care Facilities for Persons with an Intellectual Disability—Reimbursement Rates, Wage Add-On Factor, Rule 82.5(17)

Committee members asked how many employees were impacted and how much the employees' wages increased. Ms. Freudenberg said she would obtain that information and provide it to the committee.

No action taken on ARC 6852C.

ARC 6853C (AF), Family Planning Program—Five-Year Review of Rules, Ch. 87

No discussion on ARC 6853C.

ARC 6854C (AF), Case Management Services—Five-Year Review of Rules, Rules 90.1, 90.2, 90.3(2), 90.6(1), 90.7(3)

No discussion on ARC 6854C.

ARC 6855C (AF), Support Enforcement Services—Five-Year Review of Rules, Ch. 98

No discussion on ARC 6855C.

ARC 6856C (AF), Paternity Establishment; Support Obligations, Ch. 99

Committee members asked if changing “alleged father” to “a party” is intended to broaden the number of individuals who are allowed to request a conference. Ms. Freudenberg explained that the department is trying to align with what is allowed by the courts.

No action taken on ARC 6856C.

ARC 6857C (AF), Foster Care Contracting—Definitions, Forms, Citations, 152.1, 152.2, 152.4(1)“h,” 152.5

Emergency Filing, Approval Required: Child Care Initiative

Ms. Freudenberg stated the department was withdrawing its request for approval of emergency rulemaking.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon

ARC 6847C (AF), Physician Assistants, Chs. 9, 11, 91, 109, 142

No discussion on ARC 6847C.

ARC 6848C (AF), Radon Testing and Analysis—Certification, National Consensus Radon Measurement, School District Employee Measurement Training, Ch. 43

No discussion on ARC 6848C.

ARC 6849C (AF), Vital Records—Certificate of Nonviable Birth, Rules 95.6(1)(h), 95.15-95.18

No discussion on ARC 6849C.

PHARMACY BOARD

Representing the agency: Sue Mears

ARC 6843C (AF), Temporary Designation of Controlled Substances, Rule 10.39(6)

No discussion on ARC 6843C.

ARC 6844C (AF), Iowa Prescription Monitoring Program—Definition of “Opioid Antagonist,” Advisory Council, Rules 37.2, 37.4

No discussion on ARC 6844C.

ARC 6874C (NOIA), Temporary Designation of Controlled Substances; Precursor Substances, Rules 10.39, 12.1(1)

No discussion on ARC 6874C.

ARC 6906C (NOIA), Controlled Substances Act Registration—Business Locations, Rule 10.4

No discussion on ARC 6906C.

ADMINISTRATIVE SERVICES DEPARTMENT

Representing the agency: Tami Wiencek

ARC 6864C (AF), State Driver Guidelines for State Vehicle Use and Fueling, Ch. 103
No discussion on ARC 6864C.

ARC 6865C (AF), Annual Comprehensive Financial Report, Rules 40.1, 110.3
No discussion on ARC 6865C.

ARC 6866C (AF), Physician Assistants, Rules 63.2(2)(h), 63.19
No discussion on ARC 6866C.

ARC 6883C (NOIA), Five Year Review of Rules, Chs. 1, 4, 6, 20, 25, 26, 41, 100, 118
No discussion on ARC 6883C.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT

Representing the agency: Colin Tadlock

ARC 6907C (NOIA), Marketing—Choose Iowa Promotional Program, Value-Added Agricultural Program,
Ch. 52
No discussion on ARC 6907C.

UTILITIES DIVISION

Representing the agency: Matthew Oetker

ARC 6918C (NOIA), Electric Transmission Line Companies, Rules 11.6(1), 11.8(2), 11.10, 11.12(1)
Committee members asked what length of transmission line can be installed to a substation without a new application being submitted. Mr. Oetker responded that under the amendments as proposed, a tap would be allowed without a new application. He explained that while a tap is not a defined length of line, as a matter of practice it is a short transmission line between a franchise line and a substation. Members asked if the right of eminent domain applies to taps. He responded that if a company needed additional land rights and wanted the board to grant the company the right of eminent domain, the company would have to go through the amendment process and the usual procedure for contested case hearings. If land rights are changed from an original application, an amendment would be required.
No action taken on ARC 6918C.

CORRECTIONS DEPARTMENT

Representing the agency: Michael Savala

ARC 6905C (AF), 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 6905C.

ARC 6914C (NOIA), Parole, Rules 45.1, 45.2
No discussion on ARC 6914C.

ARC 6915C (NOIA), Iowa State Industries—Sale of Products, Rule 37.2
No discussion on ARC 6915C.

ECONOMIC DEVELOPMENT AUTHORITY

Representing the agency: Lisa Connell

ARC 6891C (AF), Employee Stock Ownership Plan (ESOP) Formation Assistance, Rules 56.2-56.4
No discussion on ARC 6891C.

ARC 6892C (AF), Empower Rural Iowa Initiative, Chs. 28-30, 220-222

Committee members asked if applicants are required to participate in Iowa Great Places to be eligible for the rural innovation grant program or the rural housing needs assessment grant program. Ms. Connell replied that participation in Iowa Great Places gives an applicant additional points as part of the scoring criteria. She noted that it already had been part of the scoring criteria, it just had not been included in the rules. Members asked if the Iowa Great Places citizen advisory board oversees applications from applicants that are not Iowa Great Places participants. She stated that she will check with the individual who oversees the rural innovation grant program or the rural housing needs assessment grant program and provide that information to the committee.

No action taken on ARC 6892C.

ARC 6916C (NOIA), Iowa Jobs Training Program—Definitions of “Eligible Business” and “Employee,” Rule 7.3

No discussion on ARC 6916C.

IOWA FINANCE AUTHORITY

Representing the agency: Kristin Hanks-Bents

ARC 6899C (AF), Four Percent Qualified Allocation Plan, Rules 12.1(1), 12.2(1)

No discussion on ARC 6899C.

EDUCATION DEPARTMENT

Representing the agency: Thomas Mayes

ARC 6875C (NOIA), Family Support Mentoring Program, Rules 41.329, 120.347

No discussion on ARC 6875C.

ARC 6876C (NOIA), Child Development Coordinating Council; Educational Support Programs for Parents of Children Who Are at Risk, Chs. 64, 67

No discussion on ARC 6876C.

ARC 6877C (NOIA), Accreditation of Area Education Agencies, Rule 72.4

No discussion on ARC 6877C.

ARC 6880C (NOIA), School Health Services, Rules 14.1, 14.2(1), 14.3

No discussion on ARC 6880C.

EDUCATIONAL EXAMINERS BOARD

Representing the agency: Joanne Tubbs

ARC 6867C (AF), Out-of-Country Applicants Praxis Exemption; Content Specialist Authorization; Professional Service License, Rules 13.5(3), 22.15, 27.2(5)(c)

No discussion on ARC 6867C.

ARC 6868C (AF), Special Education Instructional Strategist Endorsement, Rule 14.2(10)

No discussion on ARC 6868C.

ARC 6869C (AF), Work-Based Learning Program Supervisor Authorization, Rule 22.14

No discussion on ARC 6869C.

ARC 6870C (AF), Teacher Licensure—Reciprocity, Rules 13.1(1), 13.5(2), 13.6, 13.17(1), 18.6, 22.1(2)(d), 22.2(1), 22.4, 27.2
No discussion on ARC 6870C.

INSPECTIONS AND APPEALS DEPARTMENT

Representing the agency: Ashleigh Hackel

ARC 6859C (AF), Hotels and Motels—Five-Year Review of Rules, Rules 30.2, 30.4(4), 30.8(4), 37.2, 37.4, 37.6-37.10
No discussion on ARC 6859C.

ARC 6860C (AF), Governor’s Award for Quality Care, Rule 54.8
No discussion on ARC 6860C.

ARC 6861C (AF), Contested Cases Involving Permits to Carry Weapons and Acquire Firearms—Five-Year Review of Rules, Rules 11.2, 11.3(1), 11.6-11.8, 11.11, 11.14
No discussion on ARC 6861C.

ARC 6862C (AF), Five-Year Review of Rules, Chs. 1-5, 7, 8
No discussion on ARC 6862C.

ARC 6863C (AF), Contractor Requirements, Ch. 35
No discussion on ARC 6863C.

ARC 6878C (NOIA), Hospice License Standards—Five-Year Review of Rules, Physician Assistants, Ch. 53
No discussion on ARC 6878C.

ARC 6879C (NOIA), Alcoholic Beverage Licensing — Social and Charitable Gambling, Registered Amusement Devices, Rules 100.1, 100.4, 100.6, 103.2(4), 103.9, 105.2, 105.6(4), 105.7, 105.9(1), 105.11(2)(a), 105.12
No discussion on ARC 6879C.

ARC 6908C (NOIA), Nursing Facilities—Five-Year Review of Rules, Physician Assistants, Ch. 58
No discussion on ARC 6908C.

ARC 6909C (NOIA), Boarding Homes—Five-Year Review of Rules, Ch. 66
No discussion on ARC 6909C.

ARC 6910C (NOIA), Minimum Physical Standards for Residential Care Facilities, Ch. 60
No discussion on ARC 6910C.

ARC 6911C (NOIA), Health Care Facilities Administration—Five-Year Review of Rules, Rules 50.3(3)(f), 50.6-50.9, 50.11
No discussion on ARC 6911C.

RACING AND GAMING COMMISSION

Representing the agency: Brian Ohorilko

ARC 6894C (AF), Alternative Simulcast Operators; Waiver Summary Reports; Conduct Accountability; Occupational Licenses; Vendor Licenses; Advance Deposit Wagering; Physician Assistants, Chs. 1, 5, 6, 8
No discussion on ARC 6894C.

ARC 6895C (AF), 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
No discussion on ARC 6895C.

TRANSPORTATION DEPARTMENT

Representing the agency: Kelli Huser, Kathleen Meredith Eyers, Brooks Glasnapp

ARC 6845C (AF), Emergency Vehicle Certificates, Rules 451.2, 451.3
No discussion on ARC 6845C.

ARC 6846C (AF), Driver’s Licenses for Undercover Law Enforcement Officers, Ch. 625
No discussion on ARC 6846C.

ARC 6885C (NOIA), Tourist-Oriented Directional Signing, Rules 119.1-119.6
Committee members asked if the population of 5,000 or more criterion listed under the location requirements in the rulemaking is a population guideline for placement of signage. Mr. Glasnapp confirmed that requirement is in line with federal requirements. He further clarified that the 5,000 or more population criterion is intended to exclude towns of that size from the program, as this is a rural signage program. Members asked if the requirement that a business derive a major portion of income or visitors from road users that do not reside in the area is also a federal requirement. He confirmed it is and stated that businesses would self-certify that they meet the requirement.
No action taken on ARC 6885C.

ARC 6917C (NOIA), Motor Vehicle Financial Responsibility, Rules 640.1, 640.3-640.7
No discussion on ARC 6917C.

ENVIRONMENTAL PROTECTION COMMISSION

Representing the agency: Christine Paulson, Keith Wilken

ARC 6873C (AF), Air Quality, Rules 20.2, 22.100, 23.1, 25.1(9), 28.1
No discussion on ARC 6873C.

ARC 6884C (NOIA), Underground Storage Tanks—Biofuel Compatibility, Rule 135.4
No discussion on ARC 6884C.

SECRETARY OF STATE

Representing the agency: Eric Gookin

ARC 6887C (AF), Fees, Chs. 30, 40
No discussion on ARC 6887C.

ARC 6886C (NOIA), Five-Year Review of Rules, Chs. 1-4, 30, 40, 42, 43, 45
No discussion on ARC 6886C.

LABOR SERVICES DIVISION

Representing the agency: Mitchell Mahan

ARC 6881C (NOIA), Federal Occupational Safety and Health Standards—Penalties for Citations, Rule 3.11(1)
No discussion on ARC 6881C.

REVENUE DEPARTMENT

Representing the agency: Clara Wulfsen, Brad Hopkins

ARC 6842C (AF), 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, 203, 219, 287
No discussion on ARC 6842C.

ARC 6858C (AF), Property Assessment Appeal Board, Rules 102.21, 115.1-115.11
No discussion on ARC 6858C.

ARC 6871C (AF), Register of Eligible Candidates—Assessor, Deputy Assessor, Rule 103.12
No discussion on ARC 6871C.

ARC 6872C (AF), Contact Information—Challenges to Administrative Levies, Marijuana and Controlled Substances Tax Stamp, Rules 25.5, 262.2
No discussion on ARC 6872C.

ARC 6882C (NOIA), Electronic Filing of Income Tax Returns—Electronic Signatures, Rule 8.5(2)(b)
No discussion on ARC 6882C.

ARC 6901C (AF), Farm to Food Donation Tax Credit, Rules 304.51, 501.45
No discussion on ARC 6901C.

ARC 6902C (AF), Income and Franchise Tax—COVID-19 Grant Exclusion, Qualifying Programs, Rules 302.86, 502.30
No discussion on ARC 6902C.

ARC 6903C (AF), Geothermal Heat Pump Tax Credit, Rule 304.47
No discussion on ARC 6903C.

ARC 6904C (AF), Withholding, Rules 300.1(8), 307.1(1)(c), 307.3, 307.5
No discussion on ARC 6904C.

ARC 6919C (NOIA), Fiduciary Income Tax Returns—Extension of Time to File, Rule 700.5
No discussion on ARC 6919C.

ARC 6920C (NOIA), Sales of Diapers, Rule 220.17
No discussion on ARC 6920C.

ARC 6921C (NOIA), Electric Fuel Excise Tax, Ch. 260, 262

Committee members asked if Airbnbs and rental residential locations are required to apply for a license to sell or dispense electric fuel. Ms. Wulfsen explained that if an Airbnb is also used as the owner's primary residence for a majority of the year, a license is not required. Members asked how the electric fuel dispensed at a charging station is gauged. She responded that the department is working with the Department of Transportation (DOT) and the Iowa Department of Agriculture and Land Stewardship (IDALS) to answer that question. She stated it is her understanding that there is a piece of equipment that can be plugged into a charging station to gauge the amount of electric fuel that has been dispensed. Members asked if the department is making a prudent decision if the cost to implement the rulemaking is compared to the revenue generated. Ms. Wulfsen responded that is a value judgment she would leave to the committee to decide. Members asked the cost of the piece of equipment used to measure the amount of electric fuel dispensed. She responded that IDALS requested a \$50,000 appropriation but she is uncertain if that represents the total cost.

Committee members asked if individuals from the department utilize that piece of equipment to test all fuel charging stations in the state. Ms. Wulfsen responded that the department is currently in talks with the DOT and IDALS to determine how to assign that responsibility. Members stated that IDALS does not have enough people to conduct fuel testing and there is a bill this session that requires testing to occur every other year, rather than annually, due to the personnel shortage. Members asked how many charging stations there currently are in Iowa. Ms. Wulfsen responded that she will obtain that information from the DOT and provide it to the committee. Members expressed concern that the revenue generated will not be enough to cover the costs of implementing the program, and that the taxpayers who do not have electric vehicles will be forced to pay the difference. Members asked where the generated revenue will be deposited. Ms. Wulfsen responded that the revenue will be deposited into the road use tax fund. Members asked what fund would be used to cover a shortfall if enough revenue is not generated to cover the cost of the program. Ms. Wulfsen stated that she will find out and provide that information to the committee.

No action taken on ARC 6921C.

ARC 6922C (NOIA), Mandatory Electronic Filing—Exceptions, Rule 8.7(5)

No discussion on ARC 6922C.

ARC 6923C (NOIA), Appeals, Taxpayer Representation, and Other Administrative Procedures, Ch. 7

No discussion on ARC 6923C.

ARC 6924C (NOIA), Manufacturers of Food or Food Ingredients, Rule 215.2

No discussion on ARC 6924C.

ARC 6900C (AF), Pass-Through Entity Composite Returns, Chs. 302, 304, 307, 404, 405, 501, 601, 700

No discussion on ARC 6900C.

WORKFORCE DEVELOPMENT DEPARTMENT

Representing the agency: Jeffrey Koncsol

ARC 6893C (AF), Unemployment Insurance—Overpayments, Voluntary Shared Work, Maximum Number of Benefit Weeks, Misconduct, Salary Guidelines, Contested Cases, Appeals, Chs. 23, 24, 26

No discussion on ARC 6893C.

PUBLIC EMPLOYMENT RELATIONS BOARD

Representing the agency: Erik Helland

ARC 6912C (NOIA), General Procedures; Impasse Procedures; Bargaining Unit Determination and Representative Certifications; Retention and Recertification Elections; Elections Fees; Electronic Filing of Documents; Collective Bargaining Agreements; Mediators; Arbitrators, Chs. 2, 3, 6-8, 12-16

Committee members stated that in terms of show cause hearings and whether employers submit employee lists for purposes of recertification elections to the board, it could be argued that employers who do not submit such lists are eliminating an undue burden and not circumnavigating the law as Mr. Helland described. Members asked if it is considered an appropriate cause if an employer comes to a show cause hearing and states they did not submit a list because they do not think an election is necessary. He responded that the legislature delegated the authority to the board to execute Code chapter 20. He acknowledged that while the member's argument is valid, particularly for contract extensions, there is no other way to execute an election. He stated that if the board adopts a rule and an employer violates it, the employer has failed to uphold the requirements. Members asked if the rulemaking is adding an additional requirement to the law. He responded that there is no way to execute the law without that requirement. Members commented, in terms of the recertification notice, that they hoped the board will encourage voter participation.

No action taken on ARC 6912C.

ARC 6913C (NOIA), Determination of Bargaining Units; Certified Employee Representatives; Elections;
Secure Upload System, Chs. 4, 5
No discussion on ARC 6913C.

INSURANCE DIVISION

Representing the agency: Angela Burke Boston

ARC 6890C (AF), Pharmacy Benefits Managers, Ch. 59
No discussion on ARC 6890C.