



MINUTES

JULY 2023 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Mike Klimesh, Vice Chair
Senator Nate Boulton
Senator Mike Boussetot
Senator Cindy Winckler

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

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

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

BULLETINS NEEDED FOR THIS MEETING: 6/14/23, 6/28/23

Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 7:30 a.m. on Tuesday, July 11, 2023, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the June 13, 2023, meeting will be approved at the next meeting which was scheduled for Tuesday, August 15, 2023, at 10:30 a.m. Mr. Ewing discussed eight objections imposed by the committee that are still currently active, the oldest of which is from 1979. Mr. Ristow confirmed for members that the objections will be reviewed within the next four years as part of the rule review mandated by Executive Order 10. The meeting was adjourned at 8:25 a.m.

Fiscal Overview

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

ECONOMIC DEVELOPMENT AUTHORITY

Representing the agency: Lisa Connell

ARC 7039C (NOIA), Employer Child Care Tax Credit, Ch. 57
No discussion on ARC 7039C.

IOWA FINANCE AUTHORITY

Representing the agency: Kristin Hanks-Bents

ARC 7043C (NOIA), Low-Income Housing Tax Credits—Qualified Allocation Plans, Rules 12.1, 12.2
No discussion on ARC 7043C.

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).

EDUCATION DEPARTMENT

Representing the agency: Thomas Mayes

ARC 7041C (AF), School Health Services, Rules 14.1, 14.2(1), 14.3

No discussion on ARC 7041C.

SOIL CONSERVATION AND WATER QUALITY DIVISION

Representing the agency: Colin Tadlock, Vince Sitzmann, Susan Kozak, Abby Sweet

Special Review: Sinkholes, Chs. 40, 50, 60

Mr. Sitzmann described the department's regulatory authority under Iowa Code chapter 208 and related rules. He then provided background information on a sinkhole that occurred in Knoxville due to an active limestone mining operation and the department's efforts to provide assistance in resolving the situation, including identification of maps of the mine. He stated that there had been some confusion over what entity is responsible for maintaining maps, but the owner of the quarry eventually provided maps voluntarily.

Ms. Kelly Meyers, speaking on behalf of the Marion County Board of Supervisors, explained it was her understanding that the department did not have the regulatory authority needed to resolve the situation, and she urged that the department be given such authority. She stated that reclamation should be done at the sinkhole, to be paid for by the owner of the quarry. She asked if the bond for the site had been released. Mr. Sitzmann explained that the bond had not been released, but the amount of the bond required by law is minimal. He further explained that state law does not give the department oversight of reclamation while a site is being actively mined, only once the mining has concluded. He stated that the department can provide technical assistance in the case of emergency subsidence, but cannot force the owner of the quarry to do reclamation while the site is still being mined. Ms. Meyers urged the General Assembly to give the department the authority to do so.

Additional discussion occurred regarding the sinkhole. Ms. Meyers explained that the sinkhole runs very close to a county road, requiring that the road be closed. She also explained that there is not a federal program governing the mine because it is a limestone mine rather than a coal mine. Mr. Sitzmann explained that there are 15 active underground mines in Iowa, all either limestone or gypsum mines. He further explained that the department receives approximately a dozen complaints about sinkholes a year, and that complaints rarely involve limestone mines or naturally occurring sinkholes. Members asked for more information about mapping of the mine. Mr. Sitzmann explained that subsidence in a limestone mine is rare and that there is no government agency required to have maps or ensure they exist, but such maps are useful in situations such as in Knoxville. He stated that given how long the mine has been in operation, the quarry owner should have maps. Members asked what Marion County should do to resolve the situation. Mr. Sitzmann explained the county should shepherd the reclamation process and keep pressure on the owner of the quarry to rectify the sinkhole. He stated the department has no authority to force the owner to rectify it. Ms. Meyers stated the quarry owner is legally considered the responsible party in the situation. Mr. Sitzmann noted the contract governing the mineral rights for the mine may address the situation. He additionally explained that the \$2,000 bond required by law is intended to cover the closure of the mine, not a sinkhole, which is likely to cost \$30,000-100,000 to rectify. He explained the owner of the quarry is called Bruening. Members asked if there is any guidance available on how the sinkhole should be handled. He explained that each sinkhole is different and engineers will have to determine the correct solution; ultimately it is Bruening's decision.

Committee members stated there is much work to be done to clean up the sinkhole and expressed hope that the persons addressing the committee can work with the General Assembly to resolve the situation. Rep. Brooke Boden, in whose district the sinkhole is located, stated that the maps of the mine she saw are very outdated and would not be helpful if someone falls into the sinkhole. Members stated a bill would be drafted to address the situation. Members asked if the Governor could declare the sinkhole a disaster area. Mr. Ristow stated he would investigate. Members noted that local governments must request a disaster declaration before the Governor can declare one. Mr. Sitzmann and Ms. Kozak noted that the sinkhole is an anomaly given how large it is and that subsidence in a limestone mine is very rare.

INSURANCE DIVISION

Representing the agency: Angela Burke Boston, Andria Seip

ARC 7038C (AF), Pharmacy Benefits Managers, Rules 59.2, 59.8(5), 59.11

Committee members asked if rule 59.8(5) refers to the complaint summary that pharmacy benefits managers (PBMs) are required to file with the commissioner that details all complaints that the PBM received from pharmacies. Ms. Seip confirmed that is correct. Members asked for clarification whether the \$100 late fee is a one-time fee. She stated it is \$100 per day and the fee is consistent with other fees the division has in the administrative rules for PBMs and other entities. She also stated that the division is open to increasing the fee if the legislature feels it is appropriate. She then clarified that the fee is actually a one-time fee if a PBM's complaint summary is not timely filed. Members asked if all PBMs are licensed with the state. She replied that is correct. Members asked if a PBM's failure to timely file the complaint summary can lead to a revocation of the PBM's license. She explained that the division has the authority under Iowa Code section 510B.10 to impose civil and monetary penalties pursuant to Iowa Code section 507B.7. The division may also suspend, revoke, or terminate a PBM's license; however, that requires notice and hearing. Members asked if PBMs are penalized for failing to timely file the annual report under rule 59.11 (4). She replied that the division has the same enforcement authority as she previously described. Members stated that the division's authority to force PBMs to comply with reporting requirements is inadequate.

No action taken on ARC 7038C.