



# MINUTES

## FEBRUARY 2025 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

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### MEMBERS PRESENT

Senator Mike Klimesh, Vice Chair  
Senator Mike Boussetot  
Senator Dan Dawson  
Senator Sarah Trone Garriott  
Senator Cindy Winckler

Representative Chad Ingels, Chair  
Representative Amy Nielsen  
Representative Rick L. Olson  
Representative Michael V. Sexton  
Representative David E. Young

EX OFFICIO, NONVOTING MEMBER: Steve Blankenship, 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, Division Editor/Supervisor, 515.281.6329

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### BULLETINS NEEDED FOR THIS MEETING: 1/8/25, 1/22/25

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#### Procedural Business

Representative Ingels convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 10 a.m. on Monday, February 10, 2025, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the December 10, 2024, and January 13, 2025, meetings were approved. The next meeting was scheduled for Monday, March 10, 2025, at 10 a.m. Mr. Ewing noted that the republication of the Iowa Administrative Code discussed at the previous meeting was nearly complete. The meeting was adjourned at 11:55 a.m.

#### Fiscal Overview

Mr. Nathan Moore, Legislative Fiscal Analyst, presented the LSA fiscal report.

#### WORKFORCE DEVELOPMENT DEPARTMENT

Representing the agency: Jeffrey Koncsol, Rebecca Stonawski

#### ARC 8789C (AF), Claims and Benefits, Ch. 24

Committee members asked what public comments the department had received on the rulemaking. Ms. Stonawski replied the public comment that had been received was not relevant and had no impact on the rulemaking.

No action taken on ARC 8789C.

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).

## **TRANSPORTATION DEPARTMENT**

Representing the agency: Tracy George, Chris Poole, Zach Engstrom, Mark Holm

### **ARC 8740C (NOIA), Automated Traffic Enforcement Mobile Systems, Ch. 145**

Committee members asked what comments Cedar Rapids had submitted regarding the regulatory analysis on the rulemaking. Mr. Poole responded that the city had submitted nine comments. The city asked that the department include a time frame for permit application reviews, that the department be required to issue a reevaluation report, that the department clarify that a local authority would be permitted to continue using a mobile system until an official decision was issued by the department, that the term “implementation” be replaced with “consideration” in 761 IAC 145.5(1)(e), that 761 IAC 145.5(1)(f) be removed as redundant, that the language in 761 IAC 145.5(2) authorizing the department to rescind a permit be removed, that the language in 761 IAC 145.5(2) giving the department the authority to require modification of a mobile unit be restricted to the exterior of a unit, and that “as deemed appropriate” in 761 IAC 145.5(2) be removed. The city of Cedar Rapids had also commented that the department had exceeded its authority by implementing a mobile location reevaluation process. Members asked if the department had conversations with stakeholders who were currently licensed for mobile traffic cameras regarding the rulemaking. Mr. Poole responded in the negative.

No action taken on ARC 8740C.

### **ARC 8781C (AF), Real Property Acquisition and Relocation Assistance, Ch. 111**

Committee members asked if the rulemaking laid out what a property owner was entitled to when the department or other entity took the owner’s property. Mr. Engstrom replied that the rulemaking sets out what was required under the Uniform Relocation Assistance and Real Property Acquisitions Policies Act. Members asked if that applied to railroads, utilities, and for-profit companies. Mr. Holm stated that the rulemaking applied if the department took property for a public purpose, and the rulemaking did not apply to private utilities. Members asked if the rulemaking applied to railroads. He replied that if a railroad or utility relocation were required due to the impact of a highway improvement project, then the rulemaking might apply.

No action taken on ARC 8781C.

## **EDUCATION DEPARTMENT**

Representing the agency: Thomas Mayes

### **ARC 8757C (NOIA), Practitioner Preparation, Rules 79.13-79.15, 79.24**

No discussion on ARC 8757C.

## **EDUCATIONAL EXAMINERS BOARD**

Representing the agency: Beth Myers, Joanne Tubbs

### **ARC 8812C (AF), Teacher Licenses and Endorsements, Ch. 13**

Committee members asked if the rulemaking resulted in any substantial changes. Ms. Tubbs replied in the negative and stated that the majority of word count reduction had been a result of referring to a Code section, rather than putting the entire Code section into the rulemaking word for word.

No action taken on ARC 8812C.

## **HUMAN SERVICES DEPARTMENT**

Representing the agency: Victoria Daniels, Joe Campos, Ryan Page

### **ARC 8718C (NOIA), Nursing Facilities, Ch. 81**

Mr. Ewing noted 441 IAC 81 was previously subject to an objection by the committee. He explained that if the committee identified a legal defect with a rule, then by a vote of six members the committee could impose an objection on the rule. The committee's legal concern would be reduced to writing by him, in consultation with the committee, and attached to the rule in the Iowa Administrative Code. If there were subsequent litigation related to the rule on which the objection had been imposed, and the litigation was related to the part of the rule on which the objection was based and the subject matter of the objection, that shifted the burden of proof to the agency to prove that the rule was lawful. If the agency lost, the agency would be responsible for court costs and attorney fees. If the rule were subsequently amended or readopted, the objection is removed by operation of law. The objection on this rule was from 1992 and the language from 1992 was largely retained in the new rulemaking. He explained that if the committee were to take any action on the matter it would make more sense to do so when the rule was adopted.

Committee members asked if the reasons for the objection in 1992 were addressed by the department. Ms. Daniels responded that the objection had to do with the credentialing of nurse aides. She stated that she had reviewed the federal regulations and in order to remain in compliance with those regulations, the rule had to retain the 1992 language.

No action taken on ARC 8718C.

### **ARC 8741C (AF), Child Care Assistance Program, Rules 170.2, 170.4**

Committee members asked why it had taken almost a year to adopt the rulemaking after it had been noticed in February 2024. Mr. Campos replied that the delay had been caused by 2024 Iowa Acts, House File 2568, which required additional changes to the rulemaking. Members asked if the rulemaking resulting from 2023 Iowa Acts, House File 707, had been put into practice prior to this current rulemaking. He responded in the negative and members stated that it was disappointing that families missed out on those child care opportunities. He stated that the anticipated effective date for the rulemaking was March 26.

Members asked to follow up on their questions on ARC 8514C from the committee's January meeting. Members stated that the response received from the department indicated that the department's rules allowed 16-year-olds to care for children between the ages of two and five. Members asked how the department interpreted "school age child." Ms. Page replied that as part of the department's red tape review, and in response to 2024 legislation and legislation that had been introduced in the 2025 Session, children outside of school age could be supervised during structured nap times and brief periods of absence less than five minutes. Members asked for confirmation that the department was preemptively passing rules based on legislation that had not passed last session, and had not yet passed in the 2025 Session. She replied that the rulemaking was in response to legislation proposed in the 2025 Session, and in response to conversations the department had with child care providers who indicated that this rulemaking would help with staffing. Members expressed concern that the department had moved ahead with rulemaking that was not based on legislation that had been enacted.

No action taken on ARC 8741C.

## **NATURAL RESOURCES DEPARTMENT**

Representing the agency: Denise Roberg

### **ARC 8646C (NOIA), Special Nonresident Deer and Turkey Licenses, Ch. 12**

No discussion on ARC 8646C.

## ENVIRONMENTAL PROTECTION COMMISSION

Representing the agency: Tamara McIntosh, Chad Fields, Carmily Stone, Courtney Cswercko, Lori McDaniel

ARC 8616C (NOIA), Scope of Division, Definitions, Forms, Public Notice and Education, Consumer Confidence Reports, Reporting, and Record Maintenance, Chs. 40, 42

Mr. Marty Braster, speaking for the Iowa section of the American Waterworks Association, made comments that he stated also applied to ARC 8614C and 8630C. He urged that the current format of the affected chapters of rules be maintained. He explained that the proposed rulemaking would replace portions of the rule language with cross references to the Code of Federal Regulations (CFR) and Iowa Code, which would make the rules less useful to water utilities, which prefer to only need to refer to a single document for all the relevant information rather than three documents.

Committee members asked what the reason is for requiring users of the rules to refer to three documents rather than one. Ms. Stone explained that Executive Order 10 (EO 10) directs agencies to reduce the number of rules and the number of words in rules, and the commission removed language from rules where it was duplicative of language found in the CFR and Iowa Code. Members urged the Department of Natural Resources to consider the comments received on the rulemaking and to focus on making the rules understandable to users before adoption of the rulemaking.

Committee members asked for clarification on how the department approached the rulemaking in light of the directives of EO 10 to reduce the number of rules and the number of words in rules. Ms. McIntosh stated the department would discuss the rulemaking further with the Governor's office. She explained that the department understood EO 10 to specifically direct agencies not to include language in rules that is duplicative of language found elsewhere, which is why the language at issue was removed from the rules.

Committee members asked Mr. Blankenship for clarification on the requirements of EO 10 relating to replacement of language in rules with citations. He explained that the Iowa Administrative Code is not a restatement of the law or a convenience document. He stated that the purpose of EO 10 is clear, that restating the language of the law in rules is inconsistent with EO 10, and that the department is acting consistently with EO 10 in this case. Members stated that the intent of EO 10 was presumably not to make rules more complicated for users.

No action taken on ARC 8616C.

ARC 8629C (NOIA), Scope of Title, Definitions, Wastewater Construction Permits, and Operation Permits; Wastewater Construction and Operation Permits; Pesticide Application to Water Iowa, Chs. 60, 64, 66

Committee members asked if there were any substantive changes when 567 IAC 60, 64, and 66 were combined. Mr. Fields replied that there were none.

No action taken on ARC 8629C.

ARC 8630C (NOIA), Water Use Permit Restrictions or Compensation by Permitted Users to Nonregulated Users Due to Well Interference, Ch. 54

No discussion on ARC 8630C.

ARC 8650C (NOIA), Private Sewage Disposal Systems, Ch. 69

Mr. RG Schwarm, speaking on behalf of Planet Care Biofilters and other septic system manufacturers, stated that the rulemaking may threaten public health and safety. He stated that removing the hierarchy of aeration systems provided in current rules is problematic, as the two different kinds of aeration systems function differently, and many studies have shown that one kind performs much more reliably. He acknowledged removing the hierarchy would have a financial impact on some septic system manufacturers, but stated that stakeholders without a financial interest agree that this change in the rules endangers public health and safety. He stated such danger is contrary to the goals of EO 10. He expressed appreciation for the Department of Natural Resources listening to stakeholders even if they had reached an impasse. He urged that policymakers listen to feedback from those who use these systems.

Committee members asked for clarification on the nature of the impasse between stakeholders and the department. Mr. Schwarm explained that the department told stakeholders that their assertion that the rulemaking endangered public health and safety must be supported by scientific data to be considered by the department. He stated that stakeholders subsequently produced such data, and the department

has indicated it will move forward with the rulemaking regardless. Members asked the department's position on studies produced by stakeholders. Ms. McDaniel disagreed that the department and stakeholders are at an impasse and stated the department could continue to work with stakeholders and consider data provided to the department. Members urged the department to work with stakeholders to reach a resolution before the rules are adopted or the committee may impose a delay.

Mr. Brett Lucas, speaking on behalf of Planet Care Biofilters, stated that the rulemaking included confusing and undefined terms, including incorrect use of the term "effluent," "disturbed soil," "septage," and related terms. He stated that compliance with the rules as proposed would be difficult due to the lack of clarity.

Mr. Van Lucas, speaking on behalf of Indianola Precast and other septic system manufacturers, stated that his business and competitors are all in agreement that the rulemaking is problematic for their customers and the environment. He noted that he and others in his industry serve one-third of Iowans. He noted his industry sells both kinds of aeration systems subject to the current hierarchy, but both kinds are not equivalent. He stated that eliminating the hierarchy will result in increased installation of aerobic treatment units (ATUs), which are more prone to problems and which the current rules were put in place to prevent. He stated that by his calculations, the rulemaking would result in 200,000 gallons of untreated raw sewage running downhill in his area in the first year. He stated it usually takes 10 years to get a rule changed once a problematic rule is put in place. He stated ATUs have a very high rate of mechanical failures and other issues and fail even when properly maintained. He compared ATUs to packed bed media filters, the other kind in the current hierarchy, which he stated do not have such issues.

Mr. Rick Miene, speaking on behalf of Miene Septic Service and the Iowa Onsite Waste Water Association (IOWWA), stated that his business has encountered many issues with ATUs, but not with packed bed media. He stated that IOWWA provides education to most certified septic system installers, and maintenance of ATUs is problematic due to their high failure rate. He stated that he does not feel IOWWA is being heard in its attempts to provide information on this subject to interested parties.

Committee members noted how uncommon it is for the committee to receive this degree of public feedback on rulemaking. Members again urged the department to work with stakeholders to resolve their concerns before the rulemaking is adopted or the rulemaking would not move forward.

No action taken on ARC 8650C.

#### ARC 8652C (NOIA), Protected Water Sources, Ch. 53

Committee members asked how often water sources are designated as protected. Mr. Fields stated this occurs every five years.

No action taken on ARC 8652C.

### **NATURAL RESOURCE COMMISSION**

Representing the agency: Tamara McIntosh, Tammie Krausman, Andy Kellner, Craig Cutts

#### ARC 8611C (NOIA), Operation of Motor Vehicles in Meandered Streams, Navigable Streams and Trout Streams, Ch. 49

Committee members asked if the list of meandered, navigable, and trout streams was static. Mr. Cutts replied that it was static as streams do not change a lot.

No action taken on ARC 8611C.

ARC 8613C (NOIA), Shooting Sports Grant Program, Ch. 56

Committee members asked when funding had last been available for the shooting sports grant program (program). Ms. Krausman stated that she would find out and follow up with the committee. Members asked why funding for the program had run out. She stated that the commission had modernized the existing ranges to make the structures safer, less temporary, and geared toward families and different types of recreational shooters. Members asked if the program fund had also been used for the trap shooting program. She affirmed that was the case for public ranges. Members asked when the program fund last had money. She noted federal funding was involved and stated she would find out and send the information to the committee. Members commented on the growth of shooting sports programs throughout the state and asked if the commission felt that the program had impacted the growth of shooting sports programs. She replied that while opportunities had increased, there would not ever be enough ranges for individuals to be able to shoot as much as they might like to.

No action taken on ARC 8613C.

ARC 8624C (NOIA), Nuisance Wildlife Control, Ch. 114

Committee members asked if the rulemaking made changes other than those related to EO 10. Mr. Kellner confirmed the rulemaking was only related to EO 10.

No action taken on ARC 8624C.

## **LABOR SERVICES DIVISION**

Representing the agency: Mitchell Mahan

ARC 8745C (AF), Child Labor, Ch. 32

Mr. Peter Hird, speaking on behalf of the Iowa Federation of Labor (Federation), expressed appreciation for the division's transparency regarding the rulemaking. He stated that the Federation was concerned that child safety would be negatively impacted by removing the requirement that a parent be present when a child was working at any activity or business operated by the child's parents. He stated that the cap on civil penalties for time and hour violations would not deter employers from employing children during hours when the child should be receiving an education or resting. He stated that the rulemaking would provide a benefit for bad actors and was not good public policy. He also stated that the Federation opposed the enhanced penalty reduction, from 25 percent to 35 percent, for businesses with less than 25 employees as that also would not be a deterrent against violations.

Committee members expressed concern about the reduction in civil penalties and the lack of deterrence. Members stated that they did not find a definition for "prohibited activities" in either Iowa Code chapter 92 or in the rulemaking. Mr. Mahan replied that the statute contained occupations or activities that cannot be engaged in by anyone under 14 or 15 years of age, which were traditionally known as dangerous occupations, and were prohibited activities. Members stated that because legislators used loose language, both "activities that are not permitted" and "activities that are prohibited" appear in Iowa Code chapter 92. He responded that the presumption was that 14-year-olds and 15-year-olds cannot work unless they were doing certain things, which was the idea behind "permitted" and was rooted in the history of the chapter. Members asked if "not permitted" was the same as "prohibited." He responded that they were the same. Members asked why there was not a definition section and if Mr. Mahan recognized a difference between the two terms. He replied that both could be subject to child labor penalties. Members stated that Iowa Code chapter 92 allows the director to expand or limit activities that children could engage in, and asked if the director had done either. He asked where in Iowa Code chapter 92 that language appears. Members responded that it is throughout the chapter. He replied that historically the director, and formerly the labor commissioner, had not exercised that authority. Members stated that historically when children were abused, such as working in a prohibited area, the state had enhanced or increased penalties. He responded that the Iowa Code capped civil penalties for any violation at \$10,000. He stated that the penalty was \$10,000 per child, per day, and the division does not think that such a penalty should apply to a situation where a child worked a few minutes of overtime. Members replied that they appreciated the details regarding penalties; however, there was a large difference between a child working a few minutes of overtime, and a significant violation of law, in which case the penalties should apply and accumulate. He responded that \$2,500 was not a ceiling, it was per child, per day, and increased with each violation.

No action taken on ARC 8745C.

ARC 8835C (AF), General Requirements for Athletic Commission Events, Ch. 169

Committee members asked why a contest between more than two contestants was prohibited, especially wrestling, which would mean no tag team or rumble-style wrestling. Mr. Mahan responded that he had not thought of that type of wrestling but stated that there were health and safety concerns related to wrestling that was not exhibition wrestling.

No action taken on ARC 8835C.

ARC 8838C (AF), Professional Wrestling, Ch. 172

Committee members asked what accessories are considered an “inherently dangerous accessory” as that could include many things like chairs and the ropes on the ring. Mr. Mahan replied that dangerous accessory was meant to include items that could cause cuts and that type of injury. He stated that the division was attempting to allow exhibitions, but still be able to intervene in dangerous situations. Members suggested that the division could make the definition less vague.

No action taken on ARC 8838C.

ARC 8843C (AF), Mixed Martial Arts, Ch. 177

Committee members stated that Iowa had not had a mixed martial arts event for the last 20 years; however, an upcoming ultimate fighting championship (UFC) fight night might be held in Iowa. Members asked if the division had been in touch with UFC to ensure that the rulemaking would make it easy for UFC fight night to be hosted without the need for emergency rulemaking later. He replied that he was not aware of anything in the rules that would prohibit UFC from holding an event in Iowa.

No action taken on ARC 8843C.