



MINUTES

FEBRUARY 2023 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Mike Klimesh, Vice Chair
Senator Nate Boulton
Senator Mike Bousselot
Senator Waylon Brown
Senator Pam Jochum

Representative Megan Jones, Chair
Representative Amy Nielsen
Representative Rick L. Olson
Representative Michael V. 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

BULLETINS NEEDED FOR THIS MEETING: 11/30/22, 1/11/23, 1/25/23

Procedural Business

Senator Brown convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9 a.m. on Monday, February 13, 2023, in Room 116, State Capitol, Des Moines, Iowa. The committee voted unanimously in favor, by short form, of nominating Representative Jones as chairperson of the ARRC. The committee voted unanimously in favor, by short form, of nominating Senator Klimesh as Vice Chairperson of the ARRC. New members of the ARRC, Senator Klimesh and Senator Boulton, introduced themselves. The minutes of the January 6, 2023, meeting were approved. The next meeting was scheduled for March 13, 2023. Mr. Ewing discussed the committee rules of procedure and the five-year review of rules. Mr. Ewing and Mr. Ristow both noted that they have not received a response from either library and information services or the uniform state laws commission on the five-year review. Representative Jones discussed the possibility of eliminating both in the rules bill if neither are active. Mr. Ristow discussed executive order number 10. Representative Jones and Mr. Ewing discussed the possibility of using an approach for rulemaking, similar to bill drafting, where the individual that drafts the language is identified by their initials on the document. Mr. Ewing stated that it will be important to set parameters and to identify objectives as that process proceeds. The meeting was adjourned at 11:15 a.m.

Fiscal Overview

Mr. Chris Ubben, fiscal legislative analyst, presented the LSA fiscal report. Committee members asked if the contribution rate to the Iowa Public Employees' Retirement System for the protection occupation class is due to it being fully funded. Mr. Xavier Leonard, fiscal analyst, confirmed that is correct.

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

ARC 6809C (NOIA), Child-Placing Agencies—Five-Year Review of Rules, Rules 108.1, 108.2, 108.4, 108.6(5)“d,” 108.7-108.9, 108.10(3)“c”
No discussion on ARC 6809C.

ARC 6810C (NOIA), Payments for Foster Care—Five-Year Review of Rules, Rules 156.6, 156.7(2)“a,” 156.8, 156.10, 156.11, 156.14, 156.15
No discussion on ARC 6810C.

ARC 6811C (NOIA), Child Care Services—Five-Year Review of Rules, Ch. 170
No discussion on ARC 6811C.

ARC 6836C (NOIA), Licensing and Regulation of Foster Family Homes — Definitions, Communicable Diseases, Whooping Cough Vaccine Religious Exemption, Ch. 113
Committee members asked how many babies or children are being diagnosed with whooping cough. Ms. Freudenberg responded that she will find out and provide that information to the committee.
No action taken on ARC 6836C.

ARC 6837C (NOIA), Group Living Foster Care Facilities—Five-Year Review of Rules, Ch. 114
No discussion on ARC 6837C.

ARC 6838C (NOIA), Residential Care Facilities for Children—Contact Time with Caseworkers, Chemical Restraints, Documentation Regarding Use of Control Room, Rules 115.4(2)“a”(3), 115.5, 115.6(2), 115.7(2)“c”
No discussion on ARC 6838C.

ARC 6839C (NOIA), Dependent Adult Abuse, Ch. 176
Committee members asked why the rulemaking is eliminating the department’s ability to make referrals and to be involved in court actions. Ms. Freudenberg explained that the rulemaking is eliminating redundancies, not eliminating the department’s ability to be involved in referrals and court actions.
No action taken on ARC 6839C.

ARC 6808C (NOIA), Managed Care, Ch. 73
No discussion on ARC 6808C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon

ARC 6840C (NOIA), Swimming Pools and Spas, Rules 15.4(1)“e,” 15.5, 15.10(4), 15.12(5), 15.51, 15.52(5)“d”(2)
No discussion on ARC 6840C.

PROFESSIONAL LICENSURE DIVISION

Representing the agency: Steven Garrison

ARC 6814C (NOIA), Barbers—Examination Registration Process, Fees, Rules 5.2, 21.2(1)“e,” 21.3, 21.9(3), 21.11(1), 21.16(2), 21.17(2)
Committee members asked if the board previously paid the examination fee on behalf of applicants. Mr. Garrison responded that the board provided the exam, administered it four times a year, and applicants had to drive to Des Moines to take the exam. The rulemaking provides that a test service will provide and administer the exam, and applicants will not have to drive to Des Moines. The test service will bill the applicant.
No action taken on ARC 6814C.

ARC 6827C (AF), Massage Therapists—Mandatory Reporter Training, Rules 131.8(4), 133.3(2)
No discussion on ARC 6827C.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT

Representing the agency: Colin Tadlock

ARC 6783C (AF), Pesticides—Registration Fees, Rule 45.3
No discussion on ARC 6783C.

ARC 6784C (AF), Advertisement of the Price of Liquid Petroleum Products for Retail Use—Decals, Octane Rating, Ethanol Percentage by Volume, Rule 85.48
No discussion on ARC 6784C.

ARC 6785C (AF), Research Facilities, Rule 67.18
No discussion on ARC 6785C.

ARC 6786C (AF), Federal Wholesome Meat Act Regulations, Voluntary Inspections of Exotic Animals—Adoption by Reference, Rules 76.2, 76.13
No discussion on ARC 6786C.

ARC 6803C (NOIA), Grain Indemnity Fund—Per-Bushel and Participation Fees, Rule 93.8
No discussion on ARC 6803C.

ARC 6804C (NOIA), Motor Fuel and Antifreeze Tests and Standards—Biodiesel Blended Fuels Between B-20 and B-99, Rule 85.33, also Filed Emergency ARC 6805C
No discussion on ARC 6804C or ARC 6805C.

ARC 6806C (NOIA), Hemp—320-Acre Limit, Fee Structure, Sampling Methodology, Rules 96.1, 96.5, 96.7(9), also Filed Emergency ARC 6807C
No discussion on ARC 6806C or ARC 6807C.

SOIL CONSERVATION AND WATER QUALITY DIVISION

Representing the agency: Colin Tadlock

ARC 6817C (NOIA), Time of Meetings, Rule 2.2
No discussion on ARC 6817C.

PAROLE BOARD

Representing the agency: Nicholas Davis

ARC 6824C (NOIA), Five-Year Review of Rules, Chs. 1-9, 11, 13-16
Members commented that the five-year review is important so rules that are no longer relevant are removed from the Iowa Administrative Code.
No action taken on ARC 6824C.

ECONOMIC DEVELOPMENT AUTHORITY

Representing the agency: Lisa Connell

ARC 6792C (AF), Brownfield and Grayfield Redevelopment—Tax Credits, Ch. 65
No discussion on ARC 6792C.

ARC 6793C (AF), Endow Iowa Tax Credits, Ch. 47
No discussion on ARC 6793C.

ARC 6794C (AF), STEM BEST, Targeted Small Business Certification—Program Appropriations, Physician Assistants, Chs. 15, 52
No discussion on ARC 6794C.

ARC 6833C (NOIA), State Small Business Credit Initiative (SSBCI), Ch. 112
Members asked if Manufacturing 4.0 was previously a grant program. Ms. Connell confirmed that it was. Members asked if there are metrics in place to allocate the funds to the five programs and if NAIC codes are one of the metrics. Ms. Connell responded that she will obtain the metric information and provide it to the committee.
No action taken on ARC 6833C.

IOWA FINANCE AUTHORITY

Representing the agency: Kristin Hanks-Bents

ARC 6818C (NOIA), Council on Homelessness—Composition, Quorum, Voting Requirements, Committees, Duties, Ch. 31
No discussion on ARC 6818C.

ARC 6819C (NOIA), Housing Renewal Pilot Program, Ch. 47
Committee members asked if a consortium of local governments is an eligible participant. Ms. Hanks-Bents stated that she will find out and provide that information to the committee.
No action taken on ARC 6819C.

ARC 6820C (NOIA), Disaster Recovery Housing Assistance, Ch. 29
Committee members expressed concern that the rulemaking is vague and may lead to confusion. Members provided the example that if a floodplain administrator determines that a house has flood damage that exceeds 50 percent of the assessed value of the house, it must be elevated to at least one foot above the floodplain before it will even be considered for reconstruction. The rulemaking may lead a person to believe that if they have contacted a program administrator and been approved for funds that it is not necessary for the house to be elevated. Ms. Hanks-Bents responded that she will touch base with the authority's program administrator and get back to the committee. Members asked who refers the homeowner to the authority. She responded that the disaster case manager is responsible for referring the homeowner. Members asked if the rulemaking requiring local official involvement for homeowners, and local program administrator involvement for renters, will result in confusion. She acknowledged that may be an issue and told the committee she will speak with the program administrator and follow up with the committee.
No action taken on ARC 6820C.

INSPECTIONS AND APPEALS DEPARTMENT

Representing the agency: Ashleigh Hackel

ARC 6801C (AF), Dependent Adult Abuse—Five-Year Review of Rules, Rules 52.1-52.4, 52.7, 52.8
No discussion on ARC 6801C.

ARC 6802C (AF), Foster Care Facility Inspections; Confidential Records, Chs. 5, 40
No discussion on ARC 6802C.

ARC 6812C (NOIA), Intermediate Care Facilities for the Intellectually Disabled, Ch. 64
No discussion on ARC 6812C.

ARC 6813C (NOIA), Psychiatric Medical Institutions for Children (PMIC), Rules 41.1-41.4, 41.6, 41.9, 41.16(2)“b”
No discussion on ARC 6813C.

ARC 6834C (NOIA), Care Facilities—Physician Assistants, Rules 57.6(2)“a,” 65.1, 71.8(3)“a”(3)
No discussion on ARC 6834C.

ARC 6835C (NOIA), Health Care Facility Self-Identification and Correction of a Class II or III Violation, Rule 56.3(4)

No discussion on ARC 6835C.

ARC 6711C (AF), Health Care Employment Agencies, Ch. 55

Committee members summarized the reason for the special review. Ms. Hackel stated that the department may have followed the spirit rather than the letter of the law; however, the department was transparent and worked with stakeholders and the committee. She noted that after 2022 Iowa Acts, House File 2521, was passed, the legislation impacted some stakeholders. She noted that the rules will be reviewed again during the moratorium review and apologized for the extent the department acted beyond the intended scope of the legislation. Members stated that the members of the lobby should have been paying attention while the legislation was being passed. Members stated that it is incumbent on lawmakers to pass legislation that is clear, ARRC is to review the letter of the law and not the intent, and agencies' rulemaking should reflect the the letter of the law.

No action taken on ARC 6711C.

STATE PUBLIC DEFENDER

Representing the agency: Kurt Swaim

ARC 6800C (AF), Five-Year Review of Rules, Chs. 1-5, 10-13

No discussion on ARC 6800C.

ARC 6799C (AF), Attorney Claims for Indigent Defense Services, Rules 12.2, 12.4(1), 12.5(1), 12.6(2), 12.8(1)"a"

No discussion on ARC 6799C.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Representing the agency: Elizabeth Hennessey

ARC 6823C (NOIA), Contribution Rates, Administration—Five-Year Review of Rules, Rules 1.3, 4.6, 6.3(15), 11.5, 11.7(6), 12.7, 16.2(3)"i"

No discussion on ARC 6823C.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT

Representing the agency: Blake DeRouchey

ARC 6828C (AF), Report Submissions, Rules 104.1, 104.2

No discussion on ARC 6828C.

ARC 6829C (AF), Mass Notification and Emergency Messaging System, Rules 15.3(1), 15.4

No discussion on ARC 6829C.

ARC 6830C (AF), Iowa Comprehensive Plan, Rules 9.1-9.4

No discussion on ARC 6830C.

ARC 6831C (AF), Repair, Calibration, and Maintenance of Radiological Monitoring, Detection, and Survey Equipment, Ch. 11

No discussion on ARC 6831C.

ARC 6832C (AF), 911 Telephone Systems, Rules 10.2, 10.4(2), 10.9(3)"f," 10.11(1)"c," 10.14

No discussion on ARC 6832C.

TRANSPORTATION DEPARTMENT

Representing the agency: Kathleen Meredith Eyers

ARC 6821C (NOIA), Driver’s License Issuance, Ch. 605

No discussion on ARC 6821C.

ARC 6822C (NOIA), Commercial Driver’s License—Adoption by Reference of Federal Regulations, Rules 520.1(1), 529.1, 607.10(1)“d,” 607.49(6)“f”

No discussion on ARC 6822C.

REVENUE DEPARTMENT

Representing the agency: Clara Wulfsen

Emergency Filing, Approval Required: Commercial Recreation, Rule 216.3

Committee members asked what process the department used to notify the public of the 2022 rulemaking that resulted in the public not commenting until after the rules were adopted. Ms. Wulfsen stated that the department published a NOIA and the proposed rules, the preamble described the changes being made to the existing rules, and no public comments were received during the public comment period. The rulemaking was adopted on November 30 and went into effect on January 4, 2023. The department started to receive feedback after it began to communicate with taxpayers about the need to obtain a sales tax permit for certain commercial recreation services that were not previously taxable.

Members asked how the department notified the public of the change in the definition of “commercial recreation.” She responded that communication was through the NOIA. Members asked if the department sent out fliers, posted it on their Internet site, or otherwise notified the public. Ms. Wulfsen explained that approximately 17,000 subscribers of govdelivery received a copy of the NOIA electronically on the same day that it was posted in the administrative bulletin. She confirmed that no comments were received from any of the recipients of the email. Members asked what other information the subscribers received in the email other than a copy of the NOIA. She responded that the preamble was included in the email and that she would provide a copy of the email to the committee. She noted that the department has addressed the matter internally and will be including more “plain speak” regarding rulemaking in future govdelivery emails to subscribers. Members asked if any of the comments currently being received by the department are from any of the 17,000 subscribers. Ms. Wulfsen responded that comments are being received second-hand and third-hand through legislators and others as there is not a formal mechanism for the department to receive the comments. She stated that she cannot speak to whether any of the comments are from subscribers. Members asked if subscribers can respond to the govdelivery email. She confirmed that they cannot.

Members asked what forced the original rule change. Ms. Wulfsen explained that it was not forced but rather a result of the department’s internal rewrite of its rules. She further explained that the department’s previous interpretation of commercial recreation had varied. She gave an example of a declaratory order that made yoga nontaxable, while spin classes were taxable. For the rulemaking, the department started with a clean slate and made all commercial recreation taxable, which resulted in concerns from the public.

Members expressed concern about creating a practice of changing rulemaking based on public input after the public comment period has closed. This would create a category of people that do not engage in the official process, while people who do engage in the official process have their comments made part of the public record.

The chairperson asked if there was a motion. No member made a motion.

NATURAL RESOURCES DEPARTMENT

Representing the agency: Noah Poppelreiter

ARC 6790C (AF), Groundwater Hazard Documentation, Rules 9.1(4), 9.2

No discussion on ARC 6790C.

NATURAL RESOURCE COMMISSION

Representing the agency: Chris Ensminger, Michelle Wilson

ARC 6787C (AF), Wild Turkey Hunting—Permitted Weapons, Rules 98.2(1)“a,” 98.12(1), 99.8(1)
No discussion on ARC 6787C.

ARC 6788C (AF), Deer Hunting by Residents—Antlerless-Deer-Only Seasons, Deer Depredation Licenses,
Rules 106.1(6), 106.2(5), 106.4(5), 106.6(4), 106.7(5), 106.11(4)
No discussion on ARC 6788C.

ARC 6789C (AF), Grant Programs—Conflicts of Interest, Electronic Filing, Filing Deadlines, Chs. 23, 27, 30,
33, 35
No discussion on ARC 6789C.

ARC 6816C (NOIA), Physician Assistants; Other Medical Care Providers, Rules 12.25, 15.22, 94.10(1)
No discussion on ARC 6816C.

ARC 6815C (NOIA), Furbearer Hunting, Trapping—Season Dates, Rules 108.1-108.9

Committee members asked why the commission extended the fur harvester season to the end of February. Mr. Ensminger responded that the commission looks at participation rates and animal populations. The populations in question are strong, stable, and increasing slightly, and the commission wants to provide as many recreational opportunities as possible as long as it is biologically responsible. Members asked if the commission looks at the number of licenses issued every year and if so, how the number issued this year compares to prior years. He responded that since the 1970s the number of licenses issued has tracked closely with the price paid for furs, and this year fur prices are low. Members noted that fur prices have been low and stagnant for the past 10 years and asked whether there has been a further decline in licenses or if a baseline has been established. He responded that the current number of licenses is the recreational baseline. Members asked how many public hearings the commission held on the rulemaking related to raccoons. Mr. Ensminger responded that one public hearing was held; however, the commission is going to hold 18 listening sessions across the state to get input from fur harvesters and other stakeholders. Members asked if the commission will consider that input when finalizing the rulemaking. He responded in the affirmative. Members asked how the commission notifies the public of the listening sessions. He responded that the commission emailed about 70,000 subscribers and has also advertised the sessions in local newspapers and on local radio. Members asked that he follow up with the committee on the location of the listening sessions. Members asked if the commission has a definition for “dog-proof trap” as there are many variations of dog-proof traps. He responded that he will look into it and follow up with the committee. Members asked why the red and gray fox seasons are being extended when the populations are declining due to coyotes. Members expressed concern that the populations will be further damaged by extending the season. He responded that the commission has noted a consistent decline in the gray fox population and is attempting to identify the cause; however, as only one gray fox was harvested last year the decline is not attributable to harvesting. He noted that the decline is more likely due to disease and habitat. Members asked that Mr. Ensminger provide the committee with the current population of red and gray fox. Members thanked the commission for conducting listening sessions. Members asked if a landowner is required to have a hunting and fishing license to hunt and trap raccoon on their own land. He confirmed that landowners do not need a license to hunt and trap raccoons on their own land, and that nonlandowners are required to have a license. He also confirmed that a hunting and fishing license is an annual license.

No action taken on ARC 6815C.

ENVIRONMENTAL PROTECTION COMMISSION

Representing the agency: Amie Davidson

ARC 6791C (FEAN), Beverage Container Deposits, Rules 107.1-107.5, 107.7-107.9, 107.11-107.14
No discussion on ARC 6791C.

INSURANCE DIVISION

Representing the agency: Angela Burke Boston, Doug Ommen

ARC 6825C (NOIA), Pharmacy Benefits Managers, Rules 59.2, 59.8(5), 59.11

Committee members asked if the information received by the division will provide details on the rebate and coupon dollars, or will the information be an aggregate dollar amount. Commissioner Ommen responded that the information will provide an aggregate amount and not be regionalized.

Mr. Seth Brown, representing the Iowa Pharmacy Association (IPA), thanked the division for its efforts and collaboration. He encouraged the division to utilize the full scope of the division's authority under 2022 Iowa Acts, House File 2384, to regulate pharmacy benefits managers (PBMs). He stated that the division's authority is not federally preempted on this matter. He expressed concern that "specialty drug" is defined in the rulemaking as there is not an industry standard definition. He stated that the IPA looks forward to continued collaboration with the commission moving forward.

Members asked if "specialty drug" is defined in 2022 Iowa Acts, House File 2384. Commissioner Ommen responded that the rulemaking is carrying out the intent of the statute and provides additional guidance. He stated that the division will take public comments under consideration. Members asked if the division's definition of "specialty drug" matches Medicare's definition. Commissioner Ommen stated that the definition is not precisely the same as Medicare's definition; however, comments regarding the definition will be taken under consideration by the division. Members asked why specialty drugs are not part of the data that is required to be reported to the division. Commissioner Ommen stated that specialty drugs have lower utilization and higher prices, and public comments are being considered by the division. Members asked if it will be more difficult for the division to collect data in the future if PBMs change their definition of "rebate." Commissioner Ommen stated that the rulemaking captures all of the current rebate activities by PBMs, and the rulemaking process allows the division to refine the process going forward. Members expressed concern about rulemaking being based on the intent of the law rather than the letter of the law.

Mr. Doug Struyk, speaking on behalf of the Pharmaceutical Care Management Association (PCMA), thanked the division for its efforts and for working with stakeholders on the rulemaking. He stated that PCMA provided written comments to the division and expressed concern that the definitions of "brand name drug" and "generic drug" differ from the federal Food and Drug Administration's (FDA) definitions. He stated that the PCMA encourages the division to utilize the FDA's definitions so that all stakeholders are able to communicate about different things in the same way, and Iowa is consistent with the terms that PBMs use in the rest of the country. Mr. Struyk stated that 2022 Iowa Acts, House File 2384, does not give the division the authority to create a definition for "prescription drug cost reimbursement fee." He also stated that "rebate" and "administrative fee" are statutorily defined terms and the rulemaking should utilize the statutory definitions and follow the letter of the law. He stated that the PCMA is also concerned with the rulemaking that applies to pharmacy services administrative organizations (PSAOs), as PBMs are not involved in transactions between PSAOs and pharmacies. He stated that "third-party administrative fee" is also statutorily defined and should not be added to by the rulemaking. He stated that the PCMA is concerned about reporting data from transactions that occur outside of the state and that there needs to be a "meeting of the minds" on that point. Mr. Struyk stated that the PCMA is concerned that 2022 Iowa Acts, House File 2384, runs afoul of ERISA preemption, as well as several federal court cases. He stated that the PCMA looks forward to working with the division going forward.

No action taken on ARC 6825C.