



MINUTES

MAY 2023 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Mike Klimesh, Vice Chair	Representative Megan Jones, Chair
Senator Nate Boulton [by teleconference]	Representative Amy Nielsen [by teleconference]
Senator Mike Bousselot	Representative Rick L. Olson [by teleconference]
Senator Waylon Brown [by teleconference]	Representative Michael V. Sexton [by teleconference]
Senator Pam Jochum [by teleconference]	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: 4/5/23, 4/19/23, 5/3/23

Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 10:30 a.m. on Monday, May 8, 2023, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the April 10, 2023, meeting were approved. The next meeting was scheduled for Tuesday, June 13, 2023, at 10:30 a.m. Mr. Ristow described a possible timeline for completing updates to the Iowa Administrative Code (IAC) necessary due to 2023 Iowa Acts, Senate File 514, as prescribed by section 2805 of the Act. He described how some updates could occur under the procedures established by Executive Order 10 and some could be accomplished editorially. Committee members asked where the review schedule established pursuant to the executive order could be found, and he noted it is available online. Members expressed appreciation for the effort that will go into the review of the IAC required under the executive order and stated such a review is overdue. Mr. Ewing described a recent example of significant editorial reorganization of rules undertaken by the Department of Revenue. The meeting was adjourned at 11:50 a.m.

Fiscal Overview

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

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg

ARC 6959C (AF), Managed Care, Ch. 73

No discussion on ARC 6959C.

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 6960C (AF), 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 6960C.

ARC 6961C (AF), Licensing and Regulation of Foster Family Homes—Definitions, Communicable Diseases, Whooping Cough Vaccine Religious Exemption, Ch. 113
Committee members asked what the basis of the definition of the term “fictive kin” in the rulemaking is, and Ms. Freudenberg explained it is based on a national standard.
No action taken on ARC 6961C.

ARC 6962C (AF), Group Living Foster Care Facilities—Five-Year Review of Rules, Ch. 114
No discussion on ARC 6962C.

ARC 6963C (AF), 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 6963C.

ARC 6964C (AF), 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 6964C.

ARC 6965C (AF), Child Care Services—Five-Year Review of Rules, Ch. 170
No discussion on ARC 6965C.

ARC 6966C (AF), Dependent Adult Abuse, Ch. 176
No discussion on ARC 6966C.

CORRECTIONS DEPARTMENT

Representing the agency: Michael Savala

ARC 7006C (AF), Parole, Rules 45.1, 45.2
No discussion on ARC 7006C.

ARC 7007C (AF), Iowa State Industries—Sale of Products, Rule 37.2
No discussion on ARC 7007C.

ECONOMIC DEVELOPMENT AUTHORITY

Representing the agency: Lisa Connell

ARC 6978C (AF), State Small Business Credit Initiative, Ch. 112
No discussion on ARC 6978C.

INSPECTIONS AND APPEALS DEPARTMENT

Representing the agency: Ashleigh Hackel

ARC 6972C (AF), Intermediate Care Facilities for the Intellectually Disabled, Ch. 64
No discussion on ARC 6972C.

ARC 6973C (AF), Psychiatric Medical Institutions for Children, Rules 41.1-41.4, 41.6, 41.9, 41.16(2)“b”
No discussion on ARC 6973C.

ARC 6974C (AF), Care Facilities—Physician Assistants, Rules 57.6(2)“a,” 65.1, 71.8(3)“a”(3)
No discussion on ARC 6974C.

ARC 6975C (AF), Hospice License Standards—Five-Year Review of Rules, Physician Assistants, Ch. 53
No discussion on ARC 6975C.

ARC 6976C (AF), 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 6976C.

ARC 7005C (AF), Health Care Facility Self-Identification and Correction of a Class II or III Violation, Rule 56.3(4)
No discussion on ARC 7005C.

TRANSPORTATION DEPARTMENT

Representing the agency: Steve Gent, Kathleen Meredith Evers

ARC 6969C (AF), Driver’s License Issuance, Ch. 605
No discussion on ARC 6969C.

ARC 6970C (AF), 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 6970C.

ARC 7008C (AF), Motor Vehicle Financial Responsibility, Rules 640.1, 640.3-640.7
No discussion on ARC 7008C.

ARC 6971C (AF), Tourist-Oriented Directional Signing, Rules 119.1-119.6
No discussion on ARC 6971C.

REVENUE DEPARTMENT

Representing the agency: Clara Wulfsen

ARC 6987C (AF), Electronic Filing of Income Tax Returns—Electronic Signatures, Rule 8.5(2)“b”
No discussion on ARC 6987C.

ARC 6988C (AF), Appeals, Taxpayer Representation, and Other Administrative Procedures, Ch. 7
No discussion on ARC 6988C.

ARC 6989C (AF), Sales of Diapers, Rule 220.17
No discussion on ARC 6989C.

ARC 6990C (AF), Mandatory Electronic Filing—Exceptions, Rule 8.7(5)
No discussion on ARC 6990C.

ARC 7003C (AF), Fiduciary Income Tax Returns—Extension of Time to File, Rule 700.5
No discussion on ARC 7003C.

ARC 7004C (AF), Manufacturers of Food or Food Ingredients, Rule 215.2
No discussion on ARC 7004C.

ARC 7009C (AF), Golf and Country Clubs and All Commercial Recreation, Rule 216.3

Committee members asked how many people expressed significant concerns about the recently implemented rule taxing commercial recreation services (701 IAC 216.3). Ms. Wulfsen explained that the governor's office indicated that it had received about a dozen phone calls and that there is not an electronic record of the communications available to share with the committee. Members asked her to explain the impetus for adopting 701 IAC 216.3. She explained that the Iowa Code provides that there shall be a sales tax on commercial recreation. The department has tried to interpret "commercial recreation" via rulemaking which resulted in sometimes confusing guidance and unpopular declaratory orders that started to focus on the amount of instruction involved in an activity. She provided the example in which playing a round of golf was subject to sales tax, while being taught yoga at a studio was not subject to sales tax. The department decided that the interpretation had gotten excessive and that the Iowa Code requires all commercial recreation to be subject to sales tax, resulting in the adoption of 701 IAC 216.3. Members asked if a round of golf included as part of a lesson with a golf pro, or flying an airplane with an instructor, is taxable. Ms. Wulfsen responded that she will check with the department's sales tax policy expert and get back to the committee.

Committee members asked if, per the fiscal note, the department did in fact advise taxpayers to ignore newly adopted 701 IAC 216.3. She responded that the department did so based on a recommendation from the governor's office after, at the behest of the governor's office, the department commenced rulemaking to rescind 701 IAC 216.3 and reinstate the old rule on commercial recreation. She confirmed that the old rule would be reinstated as a result of the rulemaking. Members expressed their discomfort with a peremptory decision being made outside of the rulemaking process, and with the fact that legislation was not the basis for the taxation decision. Members stated that it is important to identify the 12 people who commented to the governor's office, to establish a record and create accountability. Ms. Wulfsen stated that the department's policy experts and attorneys had conducted a comprehensive review of the department's administrative rules and concluded that the department had exceeded its authority in delineating what should be taxable as commercial recreation. She noted that the definition of commercial activity in the Iowa Code is unclear. Members asked if the department prefers more clearly defined terms in regard to what the legislature intends to tax. She confirmed that is correct.

No action taken on ARC 7009C.

NATURAL RESOURCE COMMISSION

Representing the agency: Tamara Mcintosh, Chris Ensminger

ARC 7012C (AF), Physician Assistants; Other Medical Care Providers, Rules 12.25, 15.22, 94.10(1)

No discussion on ARC 7012C.

ARC 6977C (NOIA), Deer Hunting by Residents—General Licenses, Antlerless-Deer-Only, Rules 106.1, 106.6(6)

Committee members asked what the commission's methodology is for setting standards for deer hunting as established in the rulemaking. Mr. Ensminger described the various sources of information the commission relies on. Members asked if the changes in limits in various counties amounted to a net increase or decrease in the number of tags statewide, and he stated it was a net increase of 100 tags.

No action taken on ARC 6977C.

ARC 7010C (AF), Furbearer Hunting, Trapping—Season Dates, Rules 108.1-108.9

Committee members asked what the consensus was among the public comments received in opposition to the rulemaking. Mr. Ensminger explained that commenters had a variety of reasons for opposition, including opposition to trapping altogether, opposition to classifying raccoons as nuisance animals, and opposition to the use of harvest as the primary means of reducing the raccoon population. He indicated extending the fur harvest season by one month was not a significant cause of opposition.

Committee members asked if recently enacted legislation, 2023 Iowa Acts, House File 317, which also related to the taking of furbearers, was substantively the same as this rulemaking and whether further rulemaking based on House File 317 would be needed. Mr. Ensminger explained that the legislation

concerned certain agricultural land owners who are experiencing problems with furbearers while the rulemaking relates to hunting or trapping recreationally; therefore, the legislation and the rulemaking are substantively different and are targeted toward different groups of people. He stated that these species can biologically sustain the changes made in the rulemaking.

Committee members stated a delay of the rulemaking may be needed and that it would be preferable to center the rulemaking on the content of the legislation. Ms. McIntosh explained that there is significant overlap between the rulemaking and the legislation and noted the rulemaking was commenced prior to the introduction of the legislation. She stated that the commission believes the legislation is self executing and will not require any further rulemaking. Members stated the content of the rulemaking could have been included in the legislation, but was not. She responded that the commission understood the intent of the legislation to be distinct from that of the rulemaking. Mr. Ensminger noted that if the rulemaking is delayed, farmers would be able to harvest furbearers in circumstances where hunters and trappers could not.

Seventy-day delay. Additional Review at June ARRC Meeting

A motion for a 70-day delay of ARC 7010C carried by a 10-0 roll call vote. Additional review will occur at the June 13 committee meeting.

PUBLIC EMPLOYMENT RELATIONS BOARD

Representing the agency: Allison Steuterman

ARC 7011C (AF), 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
No discussion on ARC 7011C.