

FEBRUARY 2014 AGENDA

The Administrative Rules Review Committee will hold its regular, statutory meeting on Friday, February 7, 2014, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

BULLETINS NEEDED FOR THIS MEETING: 1/8/14, 1/22/14

NOTICE

Times listed for review are approximate. If you will be attending a particular review, please arrive 15 to 30 minutes before the scheduled time.

		Bulletin	Page
9:00	Selection of Committee Chair* Committee Business *§17A.8(4) "b" provides that for the term commencing with the convening of the second regular session of each general assembly and ending upon the convening of the first regular session of the next general assembly, the chairperson shall be chosen by the committee from its members who are members of the senate. Friday, March 7th meeting?		
9:05	FISCAL OVERVIEW Adam Broich		
9:15	HUMAN SERVICES DEPARTMENT[441] Nancy Freudenberg 1-8438		
	Appeals and hearings, amendments to ch 7 Filed ARC 1261C	1/8/14	1584
	Confidentiality of support payment records, 9.11, 97.3(3) Filed ARC 1262C	1/8/14	1593
	State supplementary assistance program—annual adjustments to eligibility and payment levels, 51.4(1), 51.7, 52.1 Notice ARC 1267C , also Filed Emergency ARC 1268C	1/8/14	1578
	Medicaid—member lock-in, 75.30 Notice ARC 1265C , also Filed Emergency ARC 1266C	1/8/14	1579
	Nonemergency medical transportation, 78.13 Filed ARC 1264C	1/8/14	1594
	Healthy and well kids in Iowa (HAWK-I) program, amendments to ch 86 Filed Emergency After Notice ARC 1287C	1/8/14	1582
	Record check evaluations for certain employers and educational training programs, 119.1 to 119.5 Filed ARC 1263C	1/8/14	1599
9:30	UTILITIES DIVISION[199] Amy Christensen 1-6326 COMMERCE DEPARTMENT[181]"umbrella" Pole attachment procedures, 25.4 Filed ARC 1259C	1/8/14	1618
9:40	CHILD ADVOCACY BOARD[489] Jim Hennessey Jim.Hennessey@dia.iowa.gov INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella" Court appointed special advocate program, chs 4, 5 Notice ARC 1285C	1/8/14	1557
9:50	ECONOMIC DEVELOPMENT AUTHORITY[261] Tim Whipple 5-3124 Tax credits for investments in qualifying businesses—time frame for submittal of documentation, 115.9(1) Notice ARC 1289C	1/22/14	1633
10:00	INSPECTIONS AND APPEALS DEPARTMENT[481] Dave Werning 1-7376 Limitations on food activities for assisted living and adult day services programs not licensed as food establishments, 69.28(6), 70.28(6) Notice ARC 1291C	1/22/14	1634

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10:10	LABOR SERVICES DIVISION[875] Kathleen Uehling 1-5915 WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella" Bidder preferences in government contracting, ch 156 Filed ARC 1271C	1/8/14	1604
10:20	LOTTERY AUTHORITY, IOWA[531] Mary Newbauer 515-725-7906 Suspension of retailers for ticket sales to underage persons, 12.12(4) Notice ARC 1283C	1/8/14	1568
10:30	PUBLIC HEALTH DEPARTMENT[641] Barb Nervig 281-4344 James.Goodrich@idph.iowa.gov 5-2093 Vision screening, ch 52 Notice ARC 1293C Vital records—overpayment of fees, 95.6(2) Notice ARC 1294C Scope of practice for emergency medical care providers, 131.3(3)"b," 132.2(4)"b" Notice ARC 1292C	1/22/14 1/22/14 1/22/14	1642 1646 1647
10:45	VOTER REGISTRATION COMMISSION[821] Reisetter, Sarah 281-0145 Revision of official Iowa voter registration application, 2.16 Notice ARC 1281C	1/8/14	1576
11:00	INSURANCE DIVISION[191] COMMERCE DEPARTMENT[181]"umbrella" Duties of pharmacy benefits managers and insurers, 59.1 to 59.10 Notice ARC 1295C	1/22/14	1635
11:10	TRANSPORTATION DEPARTMENT[761] General Contact: Tracy George 515-239- 1358 Automated traffic enforcement on the primary road system, ch 144 Filed ARC 1260C	1/8/14	1614
NO REPRESENTATIVE REQUESTED TO APPEAR			
XX:00	ACCOUNTANCY EXAMINING BOARD[193A] Professional Licensing and Regulation Bureau[193] COMMERCE DEPARTMENT[181]"umbrella" Renewal cycle for reinstated licensees, 10.5(7) Notice ARC 1284C	1/8/14	1553
XX:00	AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21] Grape and wine development funding program, rescind ch 52 Filed ARC 1290C Trichomoniasis testing of bulls brought into Iowa, 65.4(3)"c" Filed ARC 1278C Other financial statements for grain warehouse operators and grain dealers, 90.8, 91.8 Notice ARC 1280C	1/22/14 1/8/14 1/8/14	1651 1584 1554
XX:00	ARCHITECTURAL EXAMINING BOARD[193B] Professional Licensing and Regulation Bureau[193] COMMERCE DEPARTMENT[181]"umbrella" Registration—retired status, 2.5, 2.11 Notice ARC 1282C	1/8/14	1555
XX:00	EDUCATIONAL EXAMINERS BOARD[282] EDUCATION DEPARTMENT[281]"umbrella" Teacher intern license—minimum grade point average, 13.9(3) Notice ARC 1272C	1/8/14	1564

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XX:00 EMPLOYMENT APPEAL BOARD[486]		
<small>INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"</small>		
Online filing of unemployment insurance appeals, 2.2, 3.1(2) <u>Notice ARC 1269C</u>	1/8/14	1565
 XX:00 INSURANCE DIVISION[191]		
<small>COMMERCE DEPARTMENT[181]"umbrella"</small>		
Credit for reinsurance—update of cross references, 5.33 <u>Filed ARC 1279C</u>	1/8/14	1602
 XX:00 PROFESSIONAL LICENSURE DIVISION[645]		
<small>PUBLIC HEALTH DEPARTMENT[641]"umbrella"</small>		
Mortuary science—funeral director duties, record keeping, internship, preceptorship, licensure by endorsement, 100.1, 100.2, 100.11, 101.5, 101.8 <u>Filed ARC 1274C</u>	1/8/14	1609
Mortuary science—disposition of remains, renewal notices, 100.10(3), 101.10(1), 101.13(2) <u>Filed ARC 1275C</u>	1/8/14	1613
 XX:00 TRANSPORTATION DEPARTMENT[761]		
Bridge safety fund, rescind ch 162 <u>Notice ARC 1288C</u>	1/22/14	1648
Aviation programs—eligibility; funding; application process; project review, approval, and administration, amendments to chs 700, 710, 715 to 717 <u>Notice ARC 1270C</u>	1/8/14	1569
 XX:00 WORKFORCE DEVELOPMENT DEPARTMENT[871]		
Vacation pay deductible from unemployment, 24.13(3), 24.16(1) <u>Notice ARC 1286C</u>	1/8/14	1577
Online filing of unemployment insurance appeals, 26.4 to 26.6, 26.9, 26.16 <u>Filed ARC 1276C</u>	1/8/14	1622
Appealing party’s participation in appeal hearing, 26.14 <u>Filed ARC 1277C</u>	1/8/14	1623

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Notice of Intended Action

1. General Referral, 6 votes. §17A.8(7)
2. Regulatory Analysis, 6 votes. §17A.4A
3. Objection, 6 votes. §17A.4(6)
4. 70 day suspension of further action, 7 votes. HF 586, §3

Adopted

1. General Referral, 6 votes. §17A.8(7)
2. Informal Regulatory Analysis, 6 votes. No statutory authority, customary.
3. Objection, 6 votes. §17A.4(6)
4. 70 Day Delay, 7 votes. §17A.4 (7)
5. Session Delay, 7 votes. §17A.8(9)

Adopted and Filed without Notice

1. **Mandatory prior approval by ARRC, 6 votes. HF 586, §1**
2. General Referral, 6 votes. §17A.8(7)
3. Regulatory Analysis, 6 votes. §17A.4A
4. Objection, 6 votes. §17A.4(6)
5. 180 Day Sunset Objection, 7 votes. §17A.4(3)
6. Suspension of applicability until 180 sunset, 7 votes. HF 586, §1

Adopted and Filed Emergency

1. **Mandatory prior approval by ARRC, 6 votes. HF 586, §1**
2. General Referral, 6 votes. §17A.8(7)
3. Regulatory Analysis, 6 votes. §17A.4A
4. Objection, 6 votes. §17A.4(6)
5. 180 Day Sunset Objection, 7 votes. §17A.4(3)
6. Suspension of applicability until 180 sunset, 7 votes. HF 586, §1
7. 70 Day suspension of applicability, 7 votes. HF 586, § 2
8. Session suspension of applicability, 7 votes. HF 586, § 4

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Adopted and Filed
Emergency After
Notice

1. General Referral, 6 votes. §17A.8(7)
2. Regulatory Analysis, 6 votes. §17A.4A
3. Objection, 6 votes. §17A.4(6)
4. 70 Day suspension of applicability, 7 votes. HF 586, § 2
5. Session suspension of applicability, 7 votes. HF 586, § 4

Notice of Termination No Action.

Rules in effect (by
special review)

1. General Referral, 6 votes. §17A.8(7)
2. Informal Regulatory Analysis, 6 votes. No statutory authority, customary.
3. Objection, 6 votes. §17A.4(6)

ARRC-approved Legislation, 6 votes, 3 from each chamber. Joint Rule 19.

Any rules-related
matter

SUSPENSION OF NOTICE-HF 586, §3. Seven votes required. The committee, following Notice of Intended Action, may suspend further action relating to that notice for seventy days.

REGULATORY ANALYSIS-§17A.4A. Six votes required. Each regulatory analysis must include quantifications of the data and must take account of both short-term and long-term consequences. An agency must issue a regulatory analysis of a proposed rule if an appropriate request is made within thirty-two days after the notice is published. When an analysis has been requested the agency must extend the time for public comment on the proposed rule for twenty days beyond the date a summary of the analysis is published in the IAB.

INFORMAL REGULATORY ANALYSIS-No statutory authority, customary. Six votes required. The committee has on occasion informally requested an agency to conduct a regulatory

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analysis of a rule after the statutory period for requesting a regulatory analysis pursuant to § 17A.4A has elapsed. This may include a rule that is already in effect. While a statutory regulatory analysis will typically be extensive and take a significant amount of time to complete, an informal regulatory analysis may be more simple and concise for the purpose of conveying information to the committee in a timely manner. An agency will typically comply with such a request without issue.

GENERAL REFERRAL-§17A.8. Six votes required. The committee may refer *any* rule, whether proposed or in effect, to the General Assembly for further study. This power does not impact the enforceability or legality of the rule; it is simply a mechanism to bring a rule-making issue to the attention of the legislature. A letter is prepared summarizing the issue and sent to the Speaker of the House and President of the Senate. Those officers then forward the material to the appropriate standing committees. Any additional action is discretionary with the standing committee members.

OBJECTION-§17A.4(6)-Six votes required. An objection may be imposed on *any* rule, whether proposed or in effect. It is a document outlining the committee's opinion that a rule is "unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to the agency." If that rule is subsequently challenged in court, the objection strips away the presumption of validity that is normally accorded administrative rules and forces the agency to prove the legality of the rule. If the agency fails, it must pay both the court costs and the attorney fees of the person challenging the rule.

THE "EMERGENCY" RULE APPROVAL- HF 586, §1. Six votes required. The committee must approve the filing of a rule that is either adopted and filed emergency or adopted and filed without notice, pursuant to Code §17A.4(3). To the extent practicable, these approval reviews will be scheduled during the regular monthly meeting. When necessary the committee will schedule a special telephonic conference.

THE "EMERGENCY" RULE OBJECTION-§17A.4. Seven votes required. The committee can object to the "emergency" filing of a rule and sunset the rule after 180 days. At one time *all* emergency rules were temporary, but the problem was that a large majority of these filings were appropriate and should be left in effect. The solution was to make "emergency" rules permanent; but in those cases where abuse occurs, the committee is empowered to transform them into temporary rules by filing the objection. This procedural objection is not necessarily an attack on the rule itself; it is an attack on the procedure used to implement the rule.

THE "EMERGENCY" RULE SUSPENSION-House File 586, §1. Seven votes required. If the committee objects to the "emergency" adoption of a rule, the committee may also suspend the applicability of the rule until the 180 sunset.

SESSION DELAY-§17A.8(9). Seven votes required. A session delay may be imposed only before the effective date of the rule has passed. It postpones the effective date of the rule, or a designated portion of a rule, until the adjournment of the next session of the General Assembly. A letter is prepared summarizing the issue and is sent to the Speaker of the House and President of the Senate. Those officers then forward the material to the appropriate standing committees. Any

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additional action is discretionary with the committee members. If the legislature takes no action, the rule automatically goes into effect upon adjournment.

EMERGENCY RULE SESSION SUSPENSION- HF 586, § 4. Seven votes required. Within thirty-five days of its effective date, an emergency rule may be suspended until the adjournment of the next session of the General Assembly. A letter is prepared summarizing the issue and is sent to the Speaker of the House and President of the Senate. Those officers then forward the material to the appropriate standing committees. Any additional action is discretionary with the committee members. If the legislature takes no action, the rule automatically goes into effect upon adjournment.

SEVENTY DAY DELAY-§17A.4(5). Seven votes required. A seventy day delay may be imposed only before the effective date of the rule has passed. It is simply a tool to buy more time to review a proposed rule. It is most frequently used to create a “cooling off” period before the committee takes more drastic action, giving interested persons an opportunity to reach compromises or solutions. At the end of the period, the committee meets again to review the filing and retains all of its original powers. This power is used frequently by the committee.

EMERGENCY RULE SEVENTY DAY SUSPENSION-HF 586, § 2. Seven votes required. Within thirty-five days of its effective date, an emergency rule may be suspended for seventy days. A seventy day delay serves a function similar to a seventy day delay.

SPECIAL REVIEW-§17A.8(6). By request. Section 17A.8(6) provides that “[t]he committee shall meet for the purpose of selectively reviewing rules, whether proposed *or in effect*.” There is no statutory procedure for how the committee reviews rules that are in effect; typically a committee member who would like the committee to review a rule that is in effect will submit the request to the chair, who will then add the request to the committee’s next agenda. Notice will be provided to the appropriate agency that the agency will be expected to have a representative present at the meeting to review the rule. So that the agency will have adequate time to prepare for such a review, it is advisable to submit a request for a special review at least a week before the committee’s monthly meeting. Actions the committee may take on a rule that is already in effect are limited; the committee can make a general referral, impose an objection, or request an informal regulatory analysis.

ARRC LEGISLATION-Joint Rule 19. Six votes required, majority of each house. The Committee may introduce a bill relating to rules into either house, at any time. The bill must be referred to a standing committee, which must take action on the bill within three weeks of referral, except bills referred to appropriations and ways and means committees. ARRC bills are exempt from the funnel.

WHY DO SOME COMMITTEE ACTIONS REQUIRE SEVEN VOTES? The power to delay the effective date of a rule impinges upon the constitution role of the executive branch. Article III, § 1 of the Iowa Constitution states:

“The powers of the government of Iowa shall be divided into three separate departments — the legislative, the executive, and the judicial: and no person charged with the exercise of powers properly belonging to one of these

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departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.”

The supermajority requirement ensures that the Committee will not act precipitously in exercising these powers.