



MINUTES

JULY 2022 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Waylon Brown, Chair
Senator Julian B. Garrett
Senator Jesse Green
Senator Robert Hogg
Senator Pam Jochum

Representative Megan Jones, Vice Chair
Representative Mike Boussetot
Representative Amy Nielsen [by teleconference]
Representative Rick L. Olson
Representative Mike Sexton

EX OFFICIO, NONVOTING MEMBER: Michael Boal, 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: 3/9/22, 6/15/22, 6/29/22

Procedural Business

Senator Brown convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:05 a.m. on Tuesday, July 19, 2022, in Room 116, State Capitol, Des Moines, Iowa. Video of the meeting has been posted here: www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=705. Mr. Ewing explained that due to a system update in the Iowa Communications Network (ICN), the process for members to participate via the ICN has changed. Committee members stated that agencies proposing rules to implement legislation should cite the legislation being implemented. Mr. Ewing stated he would notify agencies accordingly. The minutes of the June 14, 2022, meeting were approved. The next meeting was scheduled for Tuesday, August 9, at 9 a.m. The meeting was adjourned at 11:10 a.m.

Fiscal Overview

Ms. Maria Wagenhofer, Fiscal Legislative Analyst, presented the LSA fiscal report.

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg

ARC 6391C (AF), Nurse Aide Program—Training, Instructor-to-Student Ratio, Rule 81.16(3)“a”
No discussion on ARC 6391C.

ARC 6345C (AF), Department Procedure for Rulemaking—Five-Year Review of Rules, 3.3-3.6, 3.10-3.16
No discussion on ARC 6345C.

ARC 6346C (AF), Payment of Small Claims, Rule 8.1(4)
No discussion on ARC 6346C.

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 6347C (AF), Petitions for Rule Making—Five-Year Review of Rules, Rules 4.1, 4.3
No discussion on ARC 6347C.
- ARC 6348C (AF), Offset of County Debts Owed Department, Ch. 14
No discussion on ARC 6348C.
- ARC 6349C (AF), Mental Health Institutes and Resource Centers—Definitions, Selection of Facility, Rules 28.1, 28.2, 28.7
No discussion on ARC 6349C.
- ARC 6350C (AF), Funding for Local Services—Five-Year Review of Rules, Ch. 153
No discussion on ARC 6350C.
- ARC 6351C (AF), Individual and Family Direct Support—Five-Year Review of Rules, Ch. 184
Committee members indicated that the rulemaking includes updates that should have been implemented in 2010, but acknowledged such updates are more likely to occur due to the ongoing five-year review of rules.
No action taken on ARC 6351C.
- ARC 6362C (NOIA), Collection of Public Assistance Debts—Five-Year Review of Rules, Rules 11.1, 11.2(2), 11.3, 11.5
No discussion on ARC 6362C.
- ARC 6364C (NOIA), Adoption Opportunity Grant Program, Ch. 160
No discussion on ARC 6364C.
- ARC 6365C (NOIA), Iowa Adoption Exchange—Definitions, Process, Rules 203.1, 203.2
No discussion on ARC 6365C.
- ARC 6366C (NOIA), Aftercare Services Program—Five-Year Review of Rules, Rules 187.2(3), 187.3, 187.4
No discussion on ARC 6366C.
- ARC 6367C (NOIA), Guardianship Subsidy Agreements—Five-Year Review of Rules, Ch. 204
Committee members asked how many young people would be affected by the rulemaking, and Ms. Freudenberg explained that the rulemaking resulted from the ongoing five-year review of rules and was nonsubstantive. Members asked how the department determined that the rulemaking was necessary, and she explained that departmental staff suggested that this rulemaking be carried out.
No action taken on ARC 6367C.
- ARC 6368C (NOIA), Family-Life Homes—Five-Year Review of Rules, Ch. 111
No discussion on ARC 6368C.
- ARC 6369C (NOIA), Family Investment Program, Refugee Cash Assistance—Five-Year Review of Rules, Chs. 40, 41, 46, 60
No discussion on ARC 6369C.
- ARC 6370C (NOIA), Certification of Adoption Investigators—Dependent Adult Abuse, Record Checks and Reports, Forms, Rules 107.4(5), 107.5(2)“a”(6), 107.8(1)
No discussion on ARC 6370C.
- ARC 6371C (NOIA), Service Administration General Provisions—Five-Year Review of Rules, Rules 130.2(4), 130.3(1), 130.4, 130.6, 130.7
No discussion on ARC 6371C.
- ARC 6372C (NOIA), Social Casework—Adverse Actions, Rule 131.5
No discussion on ARC 6372C.
- ARC 6377C (NOIA), Five-Year Review of Rules—Facility Assessments, Rules 36.2, 36.6(2)“c,” 36.7, 36.11(5)“b”
No discussion on ARC 6377C.

ARC 6382C (NOIA), Rent Reimbursement Program, Ch. 62

No discussion on ARC 6382C.

ARC 6384C (AF), Appeals and Hearings, Rules 7.1-7.3, 7.6(3)“b,” 7.7(1), 7.9, 7.11, 7.16(3), 7.19

No discussion on ARC 6384C.

ARC 6385C (AF), Food Assistance Program — Change of Name to Supplemental Nutrition Assistance Program (SNAP), Ch. 13

No discussion on ARC 6385C.

ARC 6386C (AF), Autism Support Program—Notice of Adverse Action, Ch. 22

No discussion on ARC 6386C.

ARC 6387C (AF), Interim Assistance Reimbursement—Forms, Rules 57.2, 57.3(1)

No discussion on ARC 6387C.

ARC 6388C (AF), Applied Behavior Analysis Services—Registered Behavior Technicians, Rule 77.26(10)

Committee members asked how many board-certified behavioral analysts there are in Iowa. Ms. Freudenberg stated she would follow up with that information. Members asked for more information about how students could obtain the education necessary to become a registered behavior technician (RBT). She explained that such education could be obtained at community colleges and that she would follow up with information on how many students are currently enrolled and how many RBTs are currently needed in Iowa.

No action taken on ARC 6388C.

ARC 6389C (AF), Dental Program—Payment for Emergency Services, Annual Benefit Maximum, Ch. 78

Committee members asked if the rulemaking includes orthodontic care for children and how many dentists are enrolled in the program. Ms. Freudenberg explained that the rulemaking only applies to adults and that she would follow up with information on the number of enrolled dentists.

No action taken on ARC 6389C.

ARC 6390C (AF), Medical Child Care—Prior Authorization Forms, Rule 78.57(6)“c”(12)

No discussion on ARC 6390C.

ARC 6392C (AF), Iowa Senior Living Trust Fund; Nursing Facility Conversion and Long-Term Care Services Development Grants; Iowa Hospital Trust Fund, Chs. 161, 162, 164

No discussion on ARC 6392C.

ARC 6394C (NOIA), Five-Year Review of Rules—Food Assistance Program, Ch. 65

No discussion on ARC 6394C.

ECONOMIC DEVELOPMENT AUTHORITY

Representing the agency: Lisa Connell

ARC 6356C (AF), Bioscience Development Corporation, Rules 1.2, 1.3 (5)“a,” 1.4, 1.5, 101.2 (1), 106.1, 106.3, 108.1, 108.3, 108.4, 108.6(1)

No discussion on ARC 6356C.

ARC 6359C (NOIA), Workforce Housing Tax Incentives Program, Ch. 48

No discussion on ARC 6359C.

ARC 6383C (NOIA), Iowa Energy Center—Purpose, Quorum, Electronic Meetings, Rules 403.1, 403.3

No discussion on ARC 6383C.

EDUCATION DEPARTMENT

Representing the agency: Thomas Mayes

ARC 6373C (NOIA), Iowa Vocational Rehabilitation Services, Ch. 56
No discussion on ARC 6373C.

ARC 6379C (AF), School-Based Youth Services Programs, Ch. 66
No discussion on ARC 6379C.

ARC 6380C (AF), Gap Tuition Assistance Program, Rules 25.1, 25.24
No discussion on ARC 6380C.

ENVIRONMENTAL PROTECTION COMMISSION

Representing the agency: Theresa Stiner, Jonathan Garton, Dave Schelling

ARC 6352C (AF), Cathode Ray Tube Recycling, Chs. 100, 122
No discussion on ARC 6352C.

ARC 6353C (AF), Floodplain Permitting for Bridges—Backwater Q100, Rule 72.1(2)“a”
No discussion on ARC 6353C.

ARC 6358C (NOIA), NPDES General Permit Nos. 5, 6, 7, 8, and 9, Rule 64.15
Committee members asked for more information about the expiration dates of the various permits, and Mr. Schelling explained that the relevant procedures for coverage by a permit vary depending on the permit at issue. Members asked if having the permits expire at the same time would create an excessive workload for the department, and he explained that the department has databases that handle intake and allow for quick review and approval.
No action taken on ARC 6358C.

NATURAL RESOURCE COMMISSION

Representing the agency: Chris Ensminger

ARC 6354C (AF), Deer Hunting—Licenses, Counties, Quotas, Method of Take, Rules 94.1, 106.1(6), 106.6(6), 106.7(5)

Committee members asked if the counties listed as having an antlerless deer season in January are the only counties that would have such a season. Mr. Ensminger explained that is correct, although recently enacted legislation will result in further rulemaking on this subject later in the year. Members asked if language providing that tags for such a season “may” be issued should instead provide that such tags “shall” be issued. He explained that “may” was used because there may not be sufficient tags left to be issued at the relevant time of year.

No action taken on ARC 6354C.

ARC 6355C (AF), Wildlife Refuges; Waterfowl and Coot Hunting Seasons; Migratory Game Bird Hunting Methods, Rules 52.1, 91.1, 91.3, 91.4, 91.5(1)“b,” 92.3(11)
No discussion on ARC 6355C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon

ARC 6343C (AF), Medical Cannabidiol Program, Ch. 154
No discussion on ARC 6343C.

PROFESSIONAL LICENSURE DIVISION

Representing the agency: Steven Garrison

ARC 6374C (AF), Optometrists—Licensure, Rules 180.2(1), 180.3(1), 180.11
No discussion on ARC 6374C.

ARC 6376C (AF), Cosmetology Arts and Sciences—Apprenticeship, Rules 60.1, 60.2(1), 60.5(7), 61.1,
61.5(5), 61.24(3)
No discussion on ARC 6376C.

ARC 6396C (AF), Barbers—Apprenticeship, Rules 21.1, 21.2, 22.1, 22.3, 22.4(3)
No discussion on ARC 6396C.

ARC 6357C (AF), Marital and Family Therapists, Mental Health Counselors, Behavior Analysts, Assistant
Behavior Analysts, and Social Workers—Supervision, Rules 31.2, 31.5, 31.7, 280.6
No discussion on ARC 6357C.

MEDICINE BOARD

Representing the agency: Joseph Fraioli

ARC 6378C (NOIA), Licensure—Nonaccredited Resident Training, Rule 9.3(1)“c”
No discussion on ARC 6378C.

ARC 6381C (NOIA), Retention of Medical Records—Sudden Death or Abscondence of Physician, Rule
13.7(8)
No discussion on ARC 6381C.

TRANSPORTATION DEPARTMENT

Representing the agency: Kelli Huser, Tammy Nicholson

ARC 6361C (NOIA), Vehicle Recyclers—Licensing, Regulation, Rules 400.23, 431.1-431.3
No discussion on ARC 6361C.

ARC 6395C (NOIA), Intermodal Pilot Project Program, Ch. 201
No discussion on ARC 6395C.

VETERANS AFFAIRS, IOWA DEPARTMENT OF

Representing the agency: Melissa Miller

ARC 6344C (AF), Veterans Trust Fund, Ch. 14

Committee members asked how much money is in the veterans trust fund (fund) at the end of each fiscal year. Ms. Miller stated there has been no money remaining in the fund at the end of the previous three fiscal years. She added that she has had to access the interest earned on moneys in the fund to pay amounts in excess of what is available in the fund to bridge the period until July 1 when the annual transfer and appropriation of \$500,000 from the lottery fund occurs. Members asked what the funding sources are for the money in the fund at the beginning of each fiscal year. Ms. Miller responded that the sources include donations and the annual \$500,000 appropriation, and that an income tax checkoff had also previously been a source of funds. Members asked the dollar amount of the department's annual expenditures from the fund. She responded that for fiscal year 2021, it was \$800,000. Members asked if that amount was for the fiscal year during which the department had lifted the \$20,000 maximum income eligibility threshold. She responded affirmatively and stated that approximately \$600,000 had been spent in the fiscal year prior to the income eligibility threshold being lifted. Members commented that the fund is underfunded. Members asked if the department maintains a waitlist, and Ms. Miller stated that the department does when necessary.

No action taken on ARC 6344C.

IOWA PUBLIC INFORMATION BOARD

Representing the agency: Margaret Johnson

ARC 6360C (NOIA), Complaints; Contested Case Withdrawals; Public Records, Chs. 2, 4, 11

In response to Ms. Johnson indicating that she anticipated the board would not move forward with its proposed new chapter of rules relating to public records requests, but would pursue the other amendments contained in the rulemaking later in the year, committee members asked for clarification regarding the board's plans for the rulemaking and stated that adopting the rulemaking but excluding the new chapter of rules may exceed the scope of the notice of intended action. Ms. Johnson explained that the board would consider what action to take at a board meeting in August, that the board has multiple procedure options to not move forward with the rulemaking, and that the board is inclined to start over with a new rulemaking including only the amendments other than the new chapter. She also noted that the board membership has seen significant turnover. Members urged the board to start over with a new rulemaking and stated that the language on social media in particular is problematic, especially for cities with few staff available to monitor social media.

No action taken on ARC 6360C.

EDUCATIONAL EXAMINERS BOARD

Representing the agency: Nicole Proesch

ARC 6228C (NOIA), Paraeducator Substitute Authorization, Rule 24.4 (9), also Filed Emergency ARC 6229C.

Committee members requested clarification on the current status of these rulemakings. Ms. Proesch explained that these rulemakings resulted from a double-barreled emergency rulemaking process and that the notice of intended action is still pending. The board is reviewing the language of vetoed 2022 Iowa Acts, House File 2493, and will modify the noticed language on adoption to more closely align with the language of the bill. She provided a handout containing language the board is considering.

Mr. Dave Daughton, speaking on behalf of Rural School Advocates of Iowa and School Administrators of Iowa, expressed support for the new language being considered by the board and urged the committee to ensure it is adopted so that schools can utilize paraeducators as provided in the rules.

Ms. Melissa Petersen, speaking on behalf of the Iowa State Education Association, expressed support for the new language and noted that stakeholders registered on House File 2493 were all registered in support.

Ms. Margaret Buckton, speaking on behalf of Rural School Advocates of Iowa and the Urban Education Network of Iowa, explained that teacher shortages exist in both urban and rural settings and stated that the waiver process provided for in the new language is a good way for the board to gather data on teacher shortages. She also stated that the provision in the new language regarding compensation should not be addressed by rule, but should instead be addressed by statute.

No action taken on ARC 6228C or ARC 6229C.