

IOWA PUBLIC INFORMATION BOARD – Rules Committee

MEMBERS

Joan Corbin, Pella (Government Representative, 2024-2028)
E. J. Giovannetti, Urbandale (Public Representative, 2022-2026)
Joel McCrea, Pleasant Hill (Media Representative, 2022-2026)

STAFF

Erika Eckley, Executive Director
Kimberly Murphy, Deputy Director

Use the following link to watch the IPIB meeting live:

<https://youtube.com/@IowaPublicInformationBoard>

Note: If you wish to make public comment to the Board, please send an email to IPIB@iowa.gov prior to the meeting.

Agenda

August 15, 2024, Noon

Location: Iowa Department of Agriculture and Land Stewardship

Conference Room: Teams Room, 2nd Floor

Wallace Building

502 East 9th Street, Des Moines

- I. Call to Order
- II. Approval of agenda*
- III. Approve Minutes from July 18, 2024, Rules Committee Meeting*
- IV. Public Comment (5-minute limit per speaker)
- V. Overview of Discussion Guide – IPIB Complaint Process*
- VI. Discussion of Timeline and Next Steps*
- VII. Discussion of Next Committee Meeting
- VIII. Adjourn

*** Attachment**

IOWA PUBLIC INFORMATION BOARD – RULES COMMITTEE

July 18, 2024
Unapproved Minutes

The Iowa Public Information Board Rules Committee met on July 18, 2024, at noon at the offices of the Department of Agriculture and Land Stewardship located at 502 East 9th Street, Des Moines. The following Rules Committee members participated: Joan Corbin, Pella (arrived after start of meeting); E.J. Giovannetti, Urbandale; Joel McCrea, Pleasant Hill. Also present were IPIB Executive Director, Erika Eckley; IPIB Deputy Director, Kimberly Murphy; IPIB Intern, Erik Johnson. A quorum was declared present.

- I. **Approval of Agenda.** On a **motion** by McCrea, **second** Giovannetti, to adopt the agenda. Unanimously adopted, 2-0.
- II. **Select Committee Chair.** On a **motion** by McCrea, **second** by Giovannetti, to table the selection of a committee chair. Unanimously adopted, 2-0.
- III. **Public Forum.** There was no public comment.
- IV. **Overview of Executive Order 10.** Murphy gave an overview of Executive Order 10. There was Committee discussion.
- V. **Implementation Timeline.** Murphy gave an overview of the implementation timeline for compliance with Executive Order 10. There was Committee discussion.
- VI. **Discussion of Committee Goals.** There was Committee discussion. The Committee would like a standing meeting prior to the monthly IPIB Board meeting. The next meeting of the Committee will be in August.
- VII. **Discussion of Tabled Agenda Item - Selection of Committee Chair.** There was Committee discussion. On a **motion** by McCrea, **second** by Giovannetti, to select Corbin as the chair of the Rules Committee. Unanimously adopted, 3-0.
- VIII. **Adjournment.** On a **motion** by Giovannetti, **second** by McCrea, to adjourn the Committee. Unanimously adopted, 3-0.

Discussion Guide – Administrative Rules – Chapter 2

Complaint Process

NOTE: This document is a discussion guide used to prompt discussion, questions, and feedback regarding the Complaint process utilized by the Iowa Public Information Board. This is not an administrative rules draft. This is an instrument designed to initiate a discussion of public policy and to determine best practices and approaches regarding the Complaint process. *The IPIB Rules Committee makes no recommendation nor takes any position on any of the items identified at this time.*

Capitalized terms reflect terms that are officially defined within the definitions section.

Definitions:

“Board” means the Iowa Public Information Board created and defined in Iowa Code section 23.3.

“Complaint” means a written and signed document filed with the Board alleging a violation of Chapter 21 or 22, as defined in Iowa Code Chapter 23.

“Complainant” means a person who files a Complaint with the Board, as defined in Iowa Code Chapter 23.

“Form” **FOR DISCUSSION – see below.**

“Probable cause” means evidence has been provided to demonstrate a reasonable belief that a violation of Chapter 21 or Chapter 22 exists. Probable cause is more than a suspicion and is the presentation of facts that would establish a belief in a reasonable person that a violation occurred.

“Reasonable Diligence” means the degree of diligence expected from someone of ordinary prudence under the circumstances.

“Respondent” means any agency or other unit of state or local government, custodian, government official, or government employee who is the subject of a Complaint, as defined in Iowa Code Chapter 23.

“Respondent” does not include the judicial or legislative branches of state government or any entity, officer, or employee of those branches, or the governor or the office of the governor as the Board does not have jurisdiction over these bodies pursuant to Iowa Code Chapter 23.12.

Filing of Complaint:

Any Complainant may file a Complaint with the Board alleging a violation of Iowa Code Chapters 21 or 22.

Timing of Complaint:

The Complainant shall file a Complaint within sixty calendar days from the time the alleged violation occurred or the Complainant could have become aware of the violation with Reasonable Diligence. Any dispute regarding timing, the Complainant’s awareness of the violation, and whether the Complaint

meets statutory timing requirements shall be resolved by the Board based on the circumstances of the Complaint.

Form of Complaint: FOR DISCUSSION¹

A Complaint shall be submitted in writing and on the Form designated by the Board. A Complaint may also be accepted without using the designated Form if the Complaint contains the elements of information required by the Form.

Content of Complaint:

The Complaint shall include in the body of the Complaint or the attachments thereto any information, issues, and arguments that support the Complainant's position. The Complaint may also include any attachments, affidavits, certifications, or other documentation deemed relevant or supportive of the allegations set forth in the Complaint.

- Any amendments to the Complaint received after filing will be reviewed by the Board. The Board, at its discretion, may allow an amendment after filing based on the facts and circumstances of the Complaint.
- The Board, at its discretion, may merge Complaints based on the facts and circumstances of each Complaint.

Complaint Process:

Upon receipt of a Complaint, the Board will review the Complaint and determine whether the Complaint is within the Board's jurisdiction, appears legally sufficient, and has merit.

- **FOR DISCUSSION.** In order to expedite proceedings, the Board may delegate dismissal or acceptance of a Complaint **to the executive director²**, subject to review by the Board.
- The Board's review of a Complaint for legal sufficiency is not a contested case proceeding and shall be made solely on the facts alleged in the Complaint and the results of the initial review conducted by employees of the Board.

Complaint Process – Dismissal: FOR DISCUSSION³.

The Board shall issue a dismissal order if the Board determines that the Complaint is outside the Board's jurisdiction, appears legally insufficient, or does not have merit. A copy of the dismissal order shall be provided to the Complainant. The dismissal order shall explain the reasons for the dismissal.

Complaint Process – Acceptance: FOR DISCUSSION⁴.

¹ Need to discuss whether a form should be utilized and the pros and cons of requiring a form. N.J. requires a form, but will accept a case without a form. The form can be found on the website. A Complainant can also call and request that a Complaint Form be mailed.

² Need to discuss whether the Board wants this responsibility to rest exclusively with the director or whether other IPIB attorneys can be delegated dismissal or acceptance. Nothing in Chapter 23 dictates this role to the director (exclusively or otherwise). For consideration, could be helpful if the Director becomes unavailable for any reason.

³ There are some differences in the initial processing of the Complaint for dismissal.

⁴ See footnote above.

If the Board determines that the Complaint is within the Board's jurisdiction, appears legally sufficient, and has merit, the Board will accept the Complaint. Upon acceptance, the Board shall:

- Provide notification of acceptance in writing to the Complainant and Respondent.
- Provide all available information to the Respondent, including the Complaint and any supporting documentation provided by the Complainant as part of the Complaint.
- Request a response to the Complaint from the Respondent.

Respondent's Response to Complaint:

The Respondent, upon request to respond to the Complaint pursuant to [insert above citation], shall submit a written and signed response to the Complaint within fourteen calendar days. The Board may grant an extension to the Respondent for the Respondent's response based on a justifiable reason and the facts and circumstances of the Complaint. The Respondent's response shall include the details of the Respondent's position for each element of the Complaint and any information, defenses, and arguments that support the Respondent's position.

Complainant's Response to Respondent:

The Complainant shall be granted the opportunity to respond to the Respondent's response.

Informal Resolution Process:

Following acceptance of the Complaint, the Board, acting through the employees of the Board, shall work with the Complainant and Respondent to develop a resolution in response to the Complaint.

- If the informal resolution process resolves the Complaint, the Complaint shall be dismissed as resolved by the Board. The Complaint may also be withdrawn by the Complainant.
- If the Complainant or Respondent decline the informal resolution process or if the informal resolution process fails to resolve the Complaint, the Board shall initiate a formal investigation.

Formal Investigation:

If the Complainant or Respondent decline the informal resolution process or if the information resolution process fails to resolve the Complaint, the Board shall initiate a formal investigation to determine whether there is probable cause to believe a violation of Iowa Code Chapter 21 or 22 has occurred. Upon initiating a formal investigation, the Board shall provide notification of a formal investigation in writing to the Complainant and Respondent.

- During the formal investigation process, the Complainant and Respondent may be asked to provide additional information. Failure to respond to requests for information may result in a finding of probable cause or dismissal of the Complaint.
- Formal investigation actions may include, but are not limited to, the following:
 - Reviewing applicable laws, rules, regulations, and policies;
 - Requesting statements from the Complainant and Respondent;
 - Submitting verbal or written requests for information to other persons and governmental bodies;
 - Examining and copying relevant records;

- Issuing investigative subpoenas requiring the production of books, papers, records, electronic records and other real evidence, as well as requiring the attendance and testimony of witnesses;
- Holding hearings; and
- Any other methods determine appropriate by the Board.
- Following the formal investigation, the employees of the Board shall make a report to the Board and shall provide a recommendation related to probable cause.

Burden of Proof: PLACEHOLDER FOR DISCUSSION (still researching these components)

- For Chapter 21, the burden of proof is on the Complainant to demonstrate that that the Respondent is subject to Chapter 21 and has held a closed session. Once the Complainant meets this burden of proof, the burden of proof shifts to the Respondent to demonstrate compliance with the requirements of Chapter 21.
- For Chapter 22, the burden of proof is on the Complainant to demonstrate that the Respondent is subject to the requirements of Chapter 22, that the records in question are government records, and that the Respondent refused to make the records available. Once the Complainant meets this burden of proof, the burden of proof shifts to the Respondent to demonstrate compliance with the requirements of Chapter 22.

Settlements: PLACEHOLDER FOR DISCUSSION (still researching these components)

Settlements may be negotiated during the formal investigation or after commencement of a contested case proceeding. Negotiations shall be conducted between the prosecutor and a governmental body or government official against whom a Complaint has been filed.

- The Board may designate the chairperson or another board member to participate in settlement negotiations after initiation of a contested case.
- If settlement negotiations are undertaken after a contested case has been initiated, the respondent may be required to waive any objections to ex parte communications concerning settlement discussion.
- A settlement shall be in writing and is subject to approval of a majority of the Board. If the Board declines to approve a proposed settlement, the settlement shall have no force or effect.

Probable Cause Finding:

Upon receipt and review of the formal investigative report and any recommendations, the Board may:

- Redirect the Complaint for further investigation.
- Dismiss the Complaint for lack of jurisdiction or lack of probable cause to believe there has been a violation of Chapter 21 or 22. The Board shall issue a written dismissal order and a copy of the dismissal order shall be provided to the Complainant and the Respondent. The dismissal order shall explain the reasons for the dismissal.
- Dismiss the Complaint without a determination regarding probable cause as an exercise of administrative discretion.
 - The Board shall issue a written dismissal order and a copy of the dismissal order shall be provided to the Complainant and the Respondent. The dismissal order shall explain the reasons for the dismissal.

- **FOR DISCUSSION.** Determine that the Complaint is within the Board’s jurisdiction and there is probable cause to believe a violation of Chapter 21 or Chapter 22 has occurred and direct administrative resolution of the matter as provided in subrule [insert applicable subrule].
 - The probable cause order shall be provided in writing to the Complainant and Respondent. The probable cause order shall explain the reasons for the probable cause finding.
- Determine that the Complaint is within the Board’s jurisdiction and there is probable cause to believe a violation of Chapter 21 or Chapter 22 has occurred and initiate a contested case proceeding.
 - The probable cause order shall be provided in writing to the Complainant and Respondent. The probable cause order shall initiate a contested case proceeding pursuant to Iowa Code Chapter 17A. The Board shall designate a prosecutor and direct the issuance of a statement of charges to initiate the contested case proceeding pursuant to subrule [insert applicable subrule].

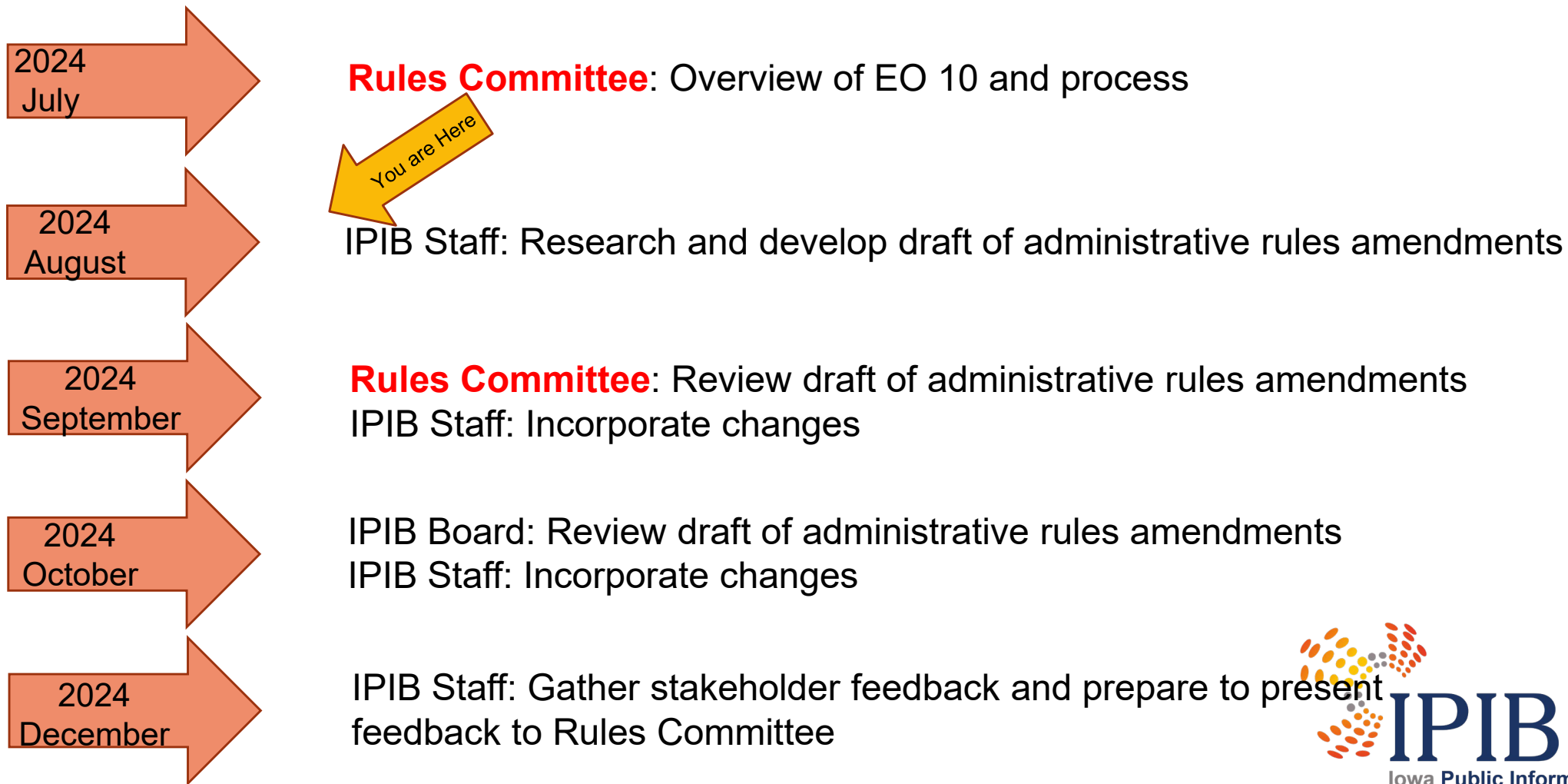
Civil Penalties and Other Appropriate Remedies: PLACEHOLDER FOR DISCUSSION (still researching these components)

If it is determined after a contested case proceeding that a violation of statute or rule under the Board’s jurisdiction has occurred, the Board may impose any of the remedies set out in Iowa Code Section XXXXX.

Appeal: PLACEHOLDER FOR DISCUSSION (still researching these components)

Placeholder for appeal, including appeal of any informal or administrative resolution.

Detailed Timeline (subject to change)



Detailed Timeline

2025
January

Rules Committee: Review stakeholder feedback
IPIB Staff: Incorporate changes

2025
February

IPIB Board: Review stakeholder feedback and incorporated changes
IPIB Staff: Incorporate any additional changes
IPIB Staff: Begin analysis and Rules Report

2025
March

Rules Committee: Review draft of analysis and Rules Report
IPIB Staff: Incorporate any changes

2025
April

IPIB Board: Review draft of analysis and Rules Report
IPIB Staff: Incorporate any additional changes

2025
May

IPIB Board: Final review and approval of administrative rules, analysis, and Rules Report

Detailed Timeline

