



MINUTES

FEBRUARY 2019 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Waylon Brown, Vice Chair
Senator Mark Costello
Senator Robert Hogg
Senator Zach Whiting

Representative Megan Jones, Chair
Representative Steven Holt
Representative Joe Mitchell
Representative Amy Nielsen
Representative Rick L. Olson

EX OFFICIO, NONVOTING MEMBER: Sam Langholz, 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 Amber Shanahan-Fricke, Legal Counsel, 515.725.7354

BULLETINS NEEDED FOR THIS MEETING: 1/16/19, 1/30/19

Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:04 a.m. on Friday, February 8, 2019, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the January 8, 2019, meeting were approved. The next meeting was scheduled for Friday, March 8, 2019, at 9:00 a.m. Mr. Jack Ewing, Administrative Code Editor, provided a rule tracking update. The ARRC voted unanimously in favor, by voice vote, of nominating Representative Jones as Chairperson of the ARRC. The ARRC voted unanimously in favor, by voice vote, of nominating Senator Brown as Vice-Chairperson of the ARRC. Representative Jones encouraged agencies to follow the six-month law and implement rules within six months following the effective date of the implementing legislation. Additionally, Representative Jones encouraged agencies to contact floor managers of bills when implementing legislation by promulgating rules. Mr. Ewing presented the ARRC rules of procedure and explained that the committee staff information was out of date. The ARRC voted to adopt the ARRC rules of procedure with changes to the committee staff information. The meeting was adjourned at 11:37 a.m.

Fiscal Overview

Ms. Christin Mechler, Fiscal Legislative Analyst, presented the Legislative Services Agency (LSA) fiscal report.

SECRETARY OF STATE

Representing the agency: Molly Widen

ARC 4222C (NOIA), Primary Election — Nominations by Write-In Votes for Certain Offices, Proposed Rescission of Rule 21.602
No discussion on ARC 4222C.

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).

INSURANCE DIVISION

Representing the agency: Doug Ommen

ARC 4242C (NOIA), Short-Term Limited-Duration Health Insurance Policies, Proposed Amendment to Rule 35.23 and Proposed Adoption of Rules 36.4(17), 36.6(11), and 36.7(13)

Committee members inquired whether short-term plans that used to exist, which allowed consumers liberal ability to choose what they wanted, will continue to exist or whether such plans will now cease to exist under such rulemaking. Mr. Ommen stated that there would be some adjustment to very short-term plans, but such plans essentially will function as such plans always have functioned. Mr. Ommen stated that for plans longer than 180 days there will be a requirement for coverage for an annual check-up. Additional restrictions for longer plans that take the role of traditional major medical plans are being put in place, stated Mr. Ommen.

Committee members inquired whether a renewable plan requires a person to go without coverage for one day. Mr. Ommen stated that there is currently litigation on this issue; however, the rulemaking addresses the issue by providing that if a company advertises a plan as renewable, then the company must guarantee it as renewable. The person would not need to go one day without coverage, stated Mr. Ommen. Mr. Ommen stated this might be used by a person seeking the coverage as a bridge from retirement to Medicare.

Ms. Paula Dierenfeld, a member of the public, spoke on behalf of the Federation of Iowa Insurers, stating that Mr. Ommen spoke to the Federation and the companies composing the Federation and expressed support of the rulemaking.

No action taken on ARC 4242C.

ADMINISTRATIVE SERVICES DEPARTMENT

Representing the agency: Tami Wiencek, Janet Phipps

ARC 4244C (AF), Update of Human Resources Policies and Procedures, Amendments to Rules 68.1, 68.2(2), and 68.6

Committee members inquired whether the department intends that the mandatory training will be attended by statewide elected officials. Ms. Phipps stated that the department will encourage it; indicating that some statewide elected officials are covered by merit rules. Committee members inquired about the examples of sexual harassment and expressed concern that example number 3 was so narrow that it would imply that other situations, which the committee members deemed unacceptable, were acceptable. Ms. Phipps responded that the rulemaking initially omitted the examples, but examples were later added upon request, and the examples came from Iowa Code section 19B.12. Ms. Phipps also stated that actions may be found to violate the employment policy, which do not fit neatly within the examples. Additionally, Ms. Phipps stated that even if an action does not meet the legal standard of sexual harassment as a matter of law it may violate the employment policy. Committee members commented that perhaps a bill request is needed if committee members have a problem with the examples. Committee members inquired about why the rule states that the director of the department shall do the investigation unless otherwise directed by the Governor, but there is no standard as to why another person shall do this investigation or who shall do this investigation. Committee members inquired as to the circumstances that would lead to this scenario. Ms. Phipps stated this would occur if there was an allegation against her or a high-ranking person in the department. Committee members stated that the committee would prefer that the reason of a conflict of interest was stated in the rule in order to avoid the exercise of political favoritism by the Governor. Committee members inquired about the documentation of attendance at sexual harassment training by state employees. Ms. Phipps stated that documentation occurs and that she would make that available.

No action taken on ARC 4244C.

HUMAN SERVICES DEPARTMENT

Representing the agency: Jana Rhoads, Marissa Eyanson

ARC 4239C (NOIA), Dependent Adult Abuse—Update of Forms and Information, Proposed Amendments to Rules 176.4(2), 176.6, 176.10(10), and 176.15(2)
No discussion on ARC 4239C.

ARC 4258C (NOIA), Managed Care Organizations—Inclusion of Advanced Registered Nurse Practitioners and Physician Assistants as Primary Care Providers, Proposed Adoption of Rule 73.8(5)
No discussion on ARC 4258C.

Additional Comments

Committee members said the department should be forewarned that people were investigating whether the department misappropriated funds for rules that have not been completed. Committee members stated that committee members understood the department had done this before; that the department had been shifting money around to circumvent rules.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT

Representing the agency: Bernardo Granwehr

ARC 4260C (AF), Noxious Weeds, Amendments to Chapter 58
Committee members stated that committee members spoke to a floor manager of the bill, Representative Jared Klein, and he was very supportive of the language in the rulemaking.
No action taken on ARC 4260C.

ARC 4261C (AF), Meat and Poultry Regulations, Amendments to Rules 76.1 to 76.4
No discussion on ARC 4261C.

SOIL CONSERVATION AND WATER QUALITY DIVISION

Representing the agency: Bernardo Granwehr

ARC 4235C (NOIA), Increase in Eligible Costs of Certain Soil Erosion Control and Water Protection Practices, Proposed Rescission of Rule 10.20 and Proposed Amendments to Rules 10.60(1)“b” and 12.84
No discussion on ARC 4235C.

AUDITOR OF STATE

Representing the agency: John McCormally

ARC 4245C (AF), Organization and Procedures, Amendments to Rules 25.4, 25.7, and 25.8 and Rescission of Rules 25.5 and 25.6
Committee members inquired why the annual audits population threshold was changed from 700 to 2,000, and the time frame of audit once every four years was stricken and replaced by “as otherwise provided by law.” Mr. McCormally responded that the amendment was proposed to be consistent with Iowa Code section 11.6. Mr. McCormally explained that cities with a population less than 2,000 or a budget less than \$2 million are subject to a periodic audit and are audited in effect once every eight years.
No action taken on ARC 4245C.

UTILITIES DIVISION

Representing the agency: Matthew Oetker

ARC 4253C (AF), Complaint Procedures, Amendments to Chapter 6
No discussion on ARC 4253C.

ARC 4254C (AF), Universal Service, Amendments to Rules 39.2, 39.3, 39.6, 39.7, and 39.8(1)
No discussion on ARC 4254C.

ARC 4255C (NOT), Inmate Calling Rates, Notice of Termination of Rulemaking Relating to Rule 22.19(8)
No discussion on ARC 4255C.

ARC 4272C (AF), Civil Penalties, Amendments to Chapter 8
No discussion on ARC 4272C.

ARC 4273C (AF), Utility Records—Access, Retention, Amendments to Chapter 18
No discussion on ARC 4273C.

ARC 4274C (AF), Energy Efficiency Planning and Reporting for Natural Gas and Electric Utilities Not Required to Be Rate-Regulated, Rescission of Chapter 36
No discussion on ARC 4274C.

ECONOMIC DEVELOPMENT AUTHORITY

Representing the agency: Kristin Hanks-Bents

ARC 4262C (AF), Iowa Energy Center Grant Program, Adoption of Chapter 404
No discussion on ARC 4262C.

ARC 4263C (AF), Alternate Energy Revolving Loan Program, Adoption of Chapter 405
No discussion on ARC 4263C.

EGG COUNCIL, IOWA

Representing the agency: Kevin Stiles

ARC 4223C (NOIA), Nomination Petitions; Rule Updates, Proposed Amendments to Chapters 1 to 5
No discussion on ARC 4223C.

INSPECTIONS AND APPEALS DEPARTMENT

Representing the agency: Patrice Fagen

ARC 4264C (AF), Design and Construction Standards for Nursing Facilities, Amendments to Rules 61.2(3), 61.6, and 61.9
No discussion on ARC 4264C.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Representing the agency: Gregg Schochenmaier

ARC 4238C (NOIA), Contribution Rates; Sick and Compensatory Time; Bona Fide Funds; Vesting; Service Credit and Purchases; IRC Section 415 Testing; Beneficiaries; Alternate Payees; Overpayments and Underpayments, Proposed Amendments to Chapters 4, 6 to 9, 11, 12, 14, and 16
No discussion on ARC 4238C.

CITY FINANCE COMMITTEE

Representing the agency: Ted Nellesen

ARC 4234C (NOIA), Transfers of Moneys Between Funds, Proposed Amendments to Rules 2.1 and 2.5(1)
No discussion on ARC 4234C.

NATURAL RESOURCES DEPARTMENT

Representing the agency: Sherry Armtzen

ARC 4226C (NOIA), State Park and Recreation Area Fees, Proposed Adoption of Chapter 16
No discussion on ARC 4226C.

NATURAL RESOURCE COMMISSION

Representing the agency: Sherry Armtzen

ARC 4225C (NOIA), Camping, Rental Facility, Vessel Storage, and Other Special Privilege Fees, Proposed Amendments to Rules 61.2 to 61.6 and 61.22(1)“b”
No discussion on ARC 4225C.

ENVIRONMENTAL PROTECTION COMMISSION

Representing the agency: Matthew Dvorak

ARC 4227C (NOIA), Surface Water Classification, Proposed Amendment to Rule 61.3(5)

In response to questions from committee members, Mr. Dvorak explained the process the commission uses to designate usage of waters, which includes electrofishing, flow and depth measurements, and possibly interviews with residents of the area. A report on the water based on the data is then published for input from the public and affected facilities. He also explained that the repercussions of a facility discharging into an area designated as a recreation area include disinfection to meet E. coli standards and that this rulemaking implements a statutory permitting process.

No action taken on ARC 4227C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon

ARC 4240C (NOIA), Vaporizable Forms of Medical Cannabidiol, Proposed Amendment to Rule 154.14

In response to questions from committee members, Ms. Dixon explained that the department was given authority to establish allowable forms of medical cannabidiol in prior legislation and that the allowable forms are listed in the rulemaking.

No action taken on ARC 4240C.

PHARMACY BOARD

Representing the agency: Sue Mears

ARC 4266C (AF), Supervision of Pharmacist-Interns, Amendment to Rule 4.9

In response to a question from committee members, Ms. Mears explained that language governing activities of pharmacist interns not carried out for the purpose of the internship is necessary because a pharmacist intern might be engaging activities as a pharmacy technician rather than as a pharmacy intern.

No action taken on ARC 4266C.

ARC 4267C (AF), Pharmacy Operations—Delegation of Functions, Pharmacist Absence, Reference Library, Security, Dispensing, Records, Amendments to Chapters 5, 7, and 8
No discussion on ARC 4267C.

ARC 4268C (AF), Universal Practice Standards—Licenses, Fees; Telepharmacy, Amendments to Rules 8.35 and 13.16
In response to a question from committee members, Ms. Mears explained how the late penalty fee for an application for license change is calculated.
No action taken on ARC 4268C.

ARC 4269C (AF), Temporary Scheduling of Cannabidiol Drug Products as Schedule V Controlled Substances, Adoption of Rule 10.39(4)
In response to questions from committee members, Ms. Mears explained that Schedule V is the lowest schedule of controlled substances maintained by the federal Food and Drug Administration and that the General Assembly has two years to codify the classification of substances in this rulemaking or the classification by rule will expire.
No action taken on ARC 4269C.

ARC 4270C (AF), Expanded Practice Standards—Statewide Protocols, Amendments to Chapter 39
Committee members asked why the board used the term “prescribe” in the rulemaking when the underlying statute uses the term “order” instead. Ms. Mears explained that the term “order,” as used in the bill, has a different meaning in a retail setting than in a hospital setting, but functionally the terms are the same. In response to another question, she explained that the protocols referenced in the rulemaking are not yet available on the board’s internet site because they are still being developed.
Committee members, Mr. Ewing, and Ms. Mears discussed a draft of double-barreled rulemaking prepared by the board and distributed to the committee by Mr. Ewing that would change instances of “prescribe” to “order.” Ms. Mears explained that the board could approve the rulemaking at its March 13 meeting and file it soon thereafter.

70-Day Delay

A motion was made for a 70-day delay of ARC 4270C. Mr. Ewing explained the committee’s delay powers, including lifting a delay at a later time. Mr. Casey Ficek made a public comment on behalf of the Iowa Pharmacy Association. He explained that a current law regarding vaccinations would sunset on July 1, 2019, and that pharmacists hope for a smooth transition to a new law on July 1, 2019. He expressed concern that a delay of the rulemaking close to the transition date might complicate the transition. The motion for a 70-day delay carried 9-0 on a record roll call vote.

Emergency Rulemaking Authorized

Mr. Ewing explained emergency rulemaking procedures, including the committee’s power to authorize emergency rulemaking. Mr. Ewing also explained double-barreled rulemaking. A motion to authorize emergency rulemaking by the board in accordance with the draft provided to the committee carried 9-0 on a record roll call vote.

Additional Review at April ARRC Meeting

Committee members scheduled additional review of this matter for its April meeting. Mr. Ewing explained that the authorized emergency rulemaking would be scheduled by the board to go into effect on the date of the April meeting, at which time the committee could vote to lift the delay, resulting in the delayed rulemaking and the authorized emergency rulemaking going into effect on the same day.

TRANSPORTATION DEPARTMENT

Representing the agency: Sara Siedsma, Angel Robinson, Jim Nelson, Alex Jansen, Deanna Maifield, Cheryl Williams, Mike Harvey

ARC 4228C (NOIA), Public Improvement Quotation Process—Retained Funds, Proposed Amendments to Chapter 180

No discussion on ARC 4228C.

ARC 4236C (NOIA), Procurement of Equipment, Materials, Supplies and Services; Exemptions from Competition with Private Enterprise, Proposed Amendments to Chapters 20 and 25

No discussion on ARC 4236C.

ARC 4257C (NOIA), Permitting of Implements of Husbandry—Manual for Bridge Evaluation, Proposed Amendment to Rule 181.1(2)

No discussion on ARC 4257C.

ARC 4229C (NOIA), Operating While Intoxicated Revocations—Issuance of Temporary Restricted License, Installation of Ignition Interlock Device, Proposed Amendment to Rule 620.3

Committee members asked why the rule language provides that the department “may” issue a temporary restricted license to an eligible person, but that the department “shall not” issue such a license to an ineligible person. Ms. Siedsma was unsure. Committee members asked her to inquire within the department for an answer, and she agreed.

No action taken on ARC 4229C.

ARC 4230C (NOIA), Motor Vehicle Dealer Licensing for Final-Stage Manufacturers; Business Records; Security Interest Notation on Certificate of Title, Proposed Amendments to Rules 400.1, 400.4, 400.8 (2), and 425.10(3)“c,” and Adoption of Rules 425.11 to 425.13

Committee members expressed appreciation that the department implemented three bills in one rulemaking and noted that the floor managers of those bills were satisfied with the rulemaking.

Mr. Brad Hartkopf made a public comment on behalf of the Association of Business and Industry (ABI). He expressed support for the rulemaking and noted that ABI worked with the department on the rulemaking and the underlying legislation.

No action taken on ARC 4230C.

ARC 4231C (NOIA), Permitted Tandem Axle Weights, Proposed Adoption of Rule 511.13(6)

No discussion on ARC 4231C.

ARC 4232C (NOIA), Initial Application for Firefighter Plates, Proposed Amendment to Rule 401.9(1)

No discussion on ARC 4232C.

ARC 4233C (NOIA), For-Hire Intrastate Motor Carrier Authority, Proposed Amendments to Rules 524.1 to 524.8, 524.11, 524.12(1)“b,” 524.15, and 524.18

Committee members expressed appreciation to the department for the rulemaking, noting that affected stakeholders were satisfied with the rulemaking.

No action taken on ARC 4233C.

ARC 4256C (NOIA), Federal Motor Carrier Safety and Hazardous Materials Regulations—Adoption by Reference, Proposed Amendments to Rules 520.1(1), 529.1, and 607.10(1)“c”

No discussion on ARC 4256C.

ARC 4271C (AF), Minors’ School Licenses; Licensing Information and Forms; Waiver of Accompanying Driver for Intermediate Licensee, Proposed Amendments to Chapter 602

No discussion on ARC 4271C.

LABOR SERVICES DIVISION

Representing the agency: Kathleen Uehling

ARC 4237C (NOIA), Conveyance Safety Program—Elevator Alterations, Fees, Proposed Amendments to Rules 71.10(4) and 71.16(4)
No discussion on ARC 4237C.

REAL ESTATE APPRAISER EXAMINING BOARD

Representing the agency: Brandy March

ARC 4224C (NOIA), Oversight by Superintendent of Banking—Update of Rules, Amendments to Chapters 1, 3, 5, 6, 8, 9, 11, 16, and 17 and Adoption of Chapters 18 to 25
No discussion on ARC 4224C.

MEDICINE BOARD

Representing the agency: Kent Nebel

ARC 4241C (NOIA), Standards of Practice—Medical Cannabidiol, Proposed Amendment to Rule 13.15(1)
No discussion on ARC 4241C.

ARC 4248C (AF), Standards of Practice—Medical Cannabidiol, Amendment to Rule 13.15(1)
No discussion on ARC 4248C.

ARC 4246C (AF), Application and Licensure Fees—Acupuncturists, Genetic Counselors, Amendment to Rule 8.2(2) and Adoption of Rule 8.14
No discussion on ARC 4246C.

ARC 4247C (AF), Standards of Practice for Medical Directors of Medical Spas—Delegation and Supervision of Medical Aesthetic Services Performed by Qualified Licensed or Certified Nonphysician Persons or Qualified Laser Technicians, Amendment to Rule 13.8
No discussion on ARC 4247C.

ARC 4249C (AF), Prescribing Psychologists, Adoption of Chapter 19
No discussion on ARC 4249C.

PROFESSIONAL LICENSURE DIVISION

Representing the agency: Tony Alden, Sharon Dozier

ARC 4251C (AF), Prescribing Psychologists, Adoption of Chapter 244
No discussion on ARC 4251C.

ARC 4259C (NOIA), Polysomnographic Technologists and Respiratory Care and Polysomnographic Practitioners—Continuing Education, Telehealth Visits, Proposed Amendments to Chapters 262 and 265
No discussion on ARC 4259C.

Additional Committee Discussion

Committee members discussed procedures for when a committee meeting runs ahead of schedule. Members noted that persons addressing the committee should arrive 30 minutes ahead of schedule, and agency presentations may be rearranged depending on which agency representatives are present and ready to speak if the meeting runs ahead of schedule.