



MINUTES

AUGUST 2020 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Waylon Brown, Chair	Representative Megan Jones, Vice Chair
Senator Mark Costello	Representative Steven Holt [by teleconference]
Senator Pam Jochum [by teleconference]	Representative Joe Mitchell
Senator Zach Whiting	Representative Rick L. Olson

EX OFFICIO, NONVOTING MEMBER: Michael Boal, Deputy Legal Counsel, 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: 2/12/20, 7/15/20, 7/29/20

Procedural Business

Senator Brown convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:05 a.m. on Tuesday, August 11, 2020, in Room 103, State Capitol, Des Moines, Iowa. Mr. Ewing discussed procedures for those participating in the meeting by telephone. The minutes of the July 14, 2020, meeting were approved. The next meeting was scheduled for September 8, 2020, at the State Capitol in Des Moines, Iowa. The meeting was adjourned at 11:40 a.m.

Fiscal Overview

Ms. Christin Mechler, Fiscal Legislative Analyst, presented the LSA fiscal report.

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg

ARC 4899C (AF), Medical Assistance — Drug Policies, Prior Authorization for Medication-Assisted Treatment, Prescription Refills, Chs. 78, 79

Ms. Freudenberg explained that concerns raised by stakeholders when the session delay was imposed on ARC 4899C at the committee's March 6, 2020, meeting had been resolved except with respect to concerns regarding prescription refills. Concerns regarding prescription refills would be resolved by further rulemaking.

Delay Lifted

A motion to lift the session delay on ARC 4899C except with respect to amendments to subrule 78.2(6) carried 8-0 on a record roll call vote.

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).

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT

Representing the agency: Maison Bleam

ARC 5108C (NOIA), National Institute of Standards and Technology (NIST) Handbooks 44, 130, and 133—
Adoption by Reference, Rule 85.39
No discussion on ARC 5108C.

ARC 5118C (AF), Bulk Dry Animal Nutrients Licenses, Rule 49.2
No discussion on ARC 5118C.

CHIEF INFORMATION OFFICER, OFFICE OF THE

Representing the agency: Matt Behrens

ARC 5110C (NOIA), Broadband—Targeted Service Areas, Project Certification, Grants Program, Rules 20.1-
20.6, 21.2, 21.3, 21.6, 21.7, 22.1, 22.2, 22.4-22.6, 22.8
No discussion on ARC 5110C.

ALCOHOLIC BEVERAGES DIVISION

Representing the agency: Stephanie Strauss

ARC 5078C (NOIA), Personal Importation of Alcoholic Liquor, Wine, and Beer, Rules 9.1, 9.2
No discussion on ARC 5078C.

ARC 5111C (NOIA), Filling and Selling of Beer and Wine in a Container Other Than the Original Container,
Rules 4.6, 4.11

Committee members asked for an update on rules regarding to-go cocktails that were authorized in the same legislation as this rulemaking. Ms. Strauss explained that the bill gave the division emergency rulemaking authority, and the division has been working on those rules in consultation with other agencies and stakeholders.

No action taken on ARC 5111C.

INSURANCE DIVISION

Representing the agency: Tracy Swalwell

ARC 5109C (NOIA), Contested Cases; Waivers; Interventions, Chs. 3, 4
No discussion on ARC 5109C.

UTILITIES DIVISION

Representing the agency: Matthew Oetker

ARC 5107C (NOIA), Rate Cases, Tariffs, and Rate-Regulation Election Practice and Procedure, Ch. 26
Committee members stated that significant discussion of these rules has occurred and urged the Iowa Utilities Board to work with affected stakeholders to resolve issues with the rulemaking.

Ms. Julie Vande Hoef spoke on behalf of Alliant Energy. She asserted that the proposed rules would be cumbersome, cause confusion for customers, hinder economic development, and increase energy costs. She expressed support for a future test year approach, which would allow customers and the state to plan energy costs. She also expressed support for requiring rate-regulated utilities to use a template for customer notifications and expressed concern regarding the removal of the template requirement in the proposed rules and its replacement with a hearing process instead. She asserted the new process would not be efficient or cost-effective. She asked that required customer notice include overall customer impact and a notice template for historic and future test year approaches. She also sought clearly defined filing requirements for future test year forecasts and urged the board to review detailed

recommendations filed by Alliant regarding the proposed rules. She expressed hope that an effective subsequent proceeding requirement could be formulated and sought further input as the board continues work on the rulemaking.

Mr. Tony Phillips spoke on behalf of Black Hills Energy. He expressed concern regarding the requirements for a subsequent proceeding, which he asserted would lead to additional litigation. He stated that the requirements are not supported by the Iowa Code. He also expressed concern regarding the requirements relating to earnings. He asserted the requirements would discourage the use of a future test year and did not account for the possibility of receiving lower earnings than projected.

Ms. Paula Dierenfeld spoke on behalf of the Iowa Business Energy Coalition. She explained that the board and stakeholders have been working on this subject for years and expressed appreciation for the board's efforts thus far. She stated that the rulemaking is generally moving in the right direction and in compliance with statutory requirements, although minor modifications may still be necessary.

Ms. Jennifer Easler, the Consumer Advocate, also spoke. She agreed with Ms. Dierenfeld's comments and expressed support for using the current rulemaking process to balance the interests of interested parties. She explained that the future test year approach is designed to obtain information used to set utility rates and that having good information is important to ensuring an effective rate-setting process. No action taken on ARC 5107C.

ARC 5121C (AF), Electric Lines, Ch. 11

Committee members stated that significant feedback had been received on the rulemaking concerning several issues from a variety of stakeholders. Members expressed concern regarding the definitions contained in the rulemaking, particularly the definition of "affected person" and its reference to "good-faith effort." Members also stated that the rulemaking should require better notice for property tenants than only a good-faith effort.

Mr. Todd Schulz spoke on behalf of ITC Midwest. He requested a 70-day delay on two components of the rulemaking regarding submission of voluntary route studies with petitions, and railroad crossings. He asserted that these components have possible unintended consequences and noted proposed compromise language. Ms. Leanna Whipple, also speaking on behalf of ITC Midwest, acknowledged the Iowa Utilities Board's intent to ensure parties have sufficient time to review a route study, but noted that the board can grant parties additional time to review such information and asserted that the rule may have unintended consequences because route studies typically exceed the statutory requirements at issue, therefore utilities may be incentivized to simplify route studies or to not conduct them at all. She asked for additional time to work with the board and the Office of Consumer Advocate to resolve the unintended consequences. She asserted that the language concerning railroad crossings reverses the statutory presumption that railroads consent to crossing by electric lines by instead forcing utilities to prove that railroads have not claimed a special circumstance that would render the statutory presumption inapplicable. She explained that the timeline for completing construction of a railroad crossing and paying the applicable fee is not compatible with the 120-day timeline in the rule language. Regarding a solution proposed by the Office of Consumer Advocate to resolve the issue by having the board waive the rule as needed, she explained that it would be problematic to have to repeatedly seek waivers when the issue recurs.

In response to Mr. Schulz's and Ms. Whipple's comments, Mr. Oetker asserted that ITC Midwest is misreading the language concerning railroads, but the rule can be waived if needed. He indicated that the new language regarding route studies was in response to recent litigation where utilities waited for what the board considered too long before filing route studies that had been completed well before hearings had been scheduled in the litigation. He stated that the board wants landowners to have the information in the route study sooner and emphasized the evidentiary value of the information contained in a route study, both to demonstrate that a utility has met statutory requirements and to give information to landowners. He maintained that utilities would be unlikely to stop carrying out such studies.

Committee members asked for more information on why the requirement to submit route studies would be problematic. Ms. Whipple explained that the vast majority of franchise petitions are granted based on evidence contained in the petition itself, so the statutory requirements are met without the need for the information in the route study. Route studies contain information well beyond the statutory requirements and are used to investigate circumstances, such as endangered species, archaeological,

and tribal concerns, that are particular to each route. She suggested that the board may be assuming that route studies are carried out to prove statutory compliance, which she stated is only one portion of the information in the study. She stated that ITC Midwest would be willing to share such information when it is contested in a hearing, but requiring that route studies be submitted in other circumstances would create confusion and unnecessarily add further process requirements and heightened scrutiny. She also asserted that requiring route studies to be submitted so early in the process would require that such studies be scaled back in scope.

Mr. John Long spoke on behalf of the Office of Consumer Advocate. He expressed support for the board's approach regarding route studies and railroad crossings.

70-Day Delay

A motion for a 70-day delay carried on a 7-1 record roll call vote.

INSPECTIONS AND APPEALS DEPARTMENT

Representing the agency: Ashleigh Hackel

ARC 5119C (AF), Inspection Standards for Food Establishments and Processing Plants — Mushrooms, Prohibition of Animals, Adoption of Federal Regulations, Rules 30.2, 31.1, 31.2(9)

Committee members asked what the connection is between the various topics addressed by the rulemaking. Ms. Hackel explained that the department may address such topics separately in the future, although they entail amendments to the same chapters of rules.

Committee members asked for more information about the types of mushrooms authorized for sale at farmers markets. Ms. Hackel explained that the rulemaking authorizes the types of mushrooms provided in the underlying legislation. Members questioned whether the two hours of required training for wild-harvested mushroom identification experts was necessary.

No action taken on ARC 5119C.

NATURAL RESOURCE COMMISSION

Representing the agency: Susan Stocker, Brian Hickman

ARC 5079C (NOIA), Zoning of Mississippi River, City of Lansing, Rule 40.62

Committee members expressed their appreciation to the commission for proactively working with business owners and the city of Lansing.

No action taken on ARC 5079C.

ARC 5112C (NOIA), Habitat and Public Access Program—Agreement Template, Habitat Contractor, Rule 22.14

No discussion on ARC 5112C.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT

Representing the agency: Blake DeRouchey

ARC 5085C (NOIA), Local Emergency Management—Recovery and Mitigation Plans, Rule 7.3(4)“d”

No discussion on ARC 5085C.

NURSING BOARD

Representing the agency: Kathy Weinberg

ARC 5116C (NOIA), Administrative and Regulatory Authority—Hiring and Supervising of Executive Director, Rule 1.3(2)“j”

Committee members stated that 2019 Acts, House File 7566, section 59, provides that the Director of the Department of Public Health has the authority to appoint or to terminate the Executive Director of the Boards of Nursing, Medicine, Pharmacy, and of the Dental Board. The rule, however, requires that a majority of the Board of Nursing approve the appointment or termination and the committee inquired if that requirement is in conflict with House File 766. Ms. Weinberg stated that the language from the rule comes directly from the law and does not change the intent of the law. Committee members stated that it is not clear if the rule gives the director the authority to act at the direction of the board, or with the input of the board, and requested that Ms. Weinberg clarify the intent of the rule prior to the committee reviewing it again.

No action taken on ARC 5116C.

ARC 5117C (NOIA), Nursing Education Programs—Preceptors, Rules 2.1, 2.4(2), 2.15 to 2.18

No discussion on ARC 5117C.

PHARMACY BOARD

Representing the agency: Sue Mears

ARC 5096C (AF), Controlled Substance Registration—Renewal, Cancellation, Rule 10.9(7)

Committee members asked under what circumstances, other than no longer practicing in this state, or upon the expiration or delinquency of a registration, does an individual no longer require a registration. Ms. Mears stated that an individual may change to a type of practice that does not involve controlled substances, but primarily it is in circumstances where an individual leaves the state.

No action taken on ARC 5096C.

ARC 5113C (NOIA), Administrative Staff; Service Animals; Immunization Protocols; Waivers; Petition for Rule Making, Rules 1.2, 2.4(2), 2.7, 8.5(5), 13.16(8), 16.6, 26.4, Ch. 34, 39.10

No discussion on ARC 5113C.

ARC 5114C (NOIA), Schedule I and II Controlled Substances—Perpetual Inventory, Ordering, Distributing, Rules 10.17, 10.18, 11.27

No discussion on ARC 5114C.

ARC 5115C (NOIA), Patient Information for Drug Utilization Review; Contact Information for Electronically Transmitted Prescription, Rules 8.21, 21.6(1)“d,” 21.7(3)

No discussion on ARC 5115C.

REVENUE DEPARTMENT

Representing the agency: Tim Reilly

ARC 5077C (NOIA), Sale, Transfer or Exchange of Tangible Personal Property or Taxable Enumerated Services Between Affiliated Corporations, Rules 18.32, 213.24

Mr. Ben Hammes, speaking on behalf of Master Builders of Iowa, stated that some member companies, for liability reasons, establish separate holding companies to hold equipment that is often located on construction sites. The member companies are concerned about being taxed on equipment both when it is purchased and again when the equipment is leased to the operational side of the company. Mr. Hammes expressed his gratitude to the department for engaging in past discussions and for an upcoming phone call that has been scheduled to clarify the language in the rule.

No action taken on ARC 5077C.

ARC 5098C (AF), Sales and Use Tax Exemption for Grain Bins, Rules 226.19(4), 226.20

Mr. Cody Edwards, an attorney with Dickinson Law representing Countryside Construction, expressed concern with the lack of clarity in the sales and use taxation of grain bins and requested that more clarity be provided regarding the classification of tangible personal property versus real property. Mr. Edwards stated that taxable and exempt materials related to grain bins as listed in the rulemaking are ambiguous as to whether a specific material is taxable to the contractor or to the end user. Mr. Edwards explained that it is unclear whether a contractor can purchase a specific material as exempt for resale or whether the contractor must pay sales tax on the material because it becomes part of a grain bin structure. Mr. Edwards requested that the rulemaking be placed on hold until it is clarified.

Mr. Reilly explained that the department determined that it is better to treat grain bins and the materials used to construct grain bins in the same manner as other construction-related materials and projects. This means that similar to other construction projects, contractors must maintain records of the materials purchased so if the contractor does not pay sales tax at the time the materials are purchased, the contractor remits use tax when the materials are used in a construction project. Mr. Reilly stated that the department attempted to clarify this through the examples that are provided in the rulemaking. Mr. Reilly also stated that any ambiguity is eliminated by the fact that the rulemaking states that grain bins are real property and that grain bin materials are building materials.

Committee members asked which materials will be taxed and which materials will be exempt if the rulemaking does not go into effect. Mr. Reilly explained that the exemption in Iowa Code §423.3(16A) went into effect on July 1, 2020, and that the exemption is not dependent on the rulemaking.

Committee members asked why permanent sweeps or augers are exempt and removable sweeps and augers are taxable. Mr. Reilly responded that the exemption applies to equipment that is permanently attached to a grain bin due to the definition of “grain bin” in the rule and because the equipment is permanently attached, it cannot be used for other purposes.

Committee members asked that Mr. Edwards summarize the grain bin tax issue for the committee so the committee can conduct a special review at the December meeting.

Additional Review

The committee will conduct a special review at the December ARRC meeting.

ARC 5099C (AF), Sales Tax Exemption for Manufacturers — Exclusion of Persons Primarily Engaged in Listed Activities, Rule 230.15(4)“c”

No discussion on ARC 5099C.

ARC 5103C (ANOIA), Tax Return Preparers, Rule 7.36

No discussion on ARC 5103C.

ARC 5104C (NOIA), Homestead Tax Credit; Military Service Tax Exemption, Rules 80.1, 80.2

No discussion on ARC 5104C.

TRANSPORTATION DEPARTMENT

Representing the agency: Jim Nelson, Sara Siedsma

ARC 5080C (NOIA), Electric Vehicle Fees, Rules 400.1, 400.16, 400.32, 400.44(1), 400.60, 505.1 to 505.4, 505.6(2)“b”

Committee members asked if the special registration fee for electric vehicles is annual or is based on how frequently the vehicle is used. Ms. Siedsma confirmed that the fee is assessed annually. Committee members inquired if the special registration fee is based on the weight of the vehicle. Ms. Siedsma explained that the special registration fee is in addition to the registration fee that is paid based on the weight and value of a vehicle. Committee members asked where the special registration fees are deposited. Ms. Siedsma replied the fees are deposited in the road and tax fund.

No action taken on ARC 5080C.

ARC 5081C (NOIA), Bridge Permits for Certain Implements of Husbandry, Rule 181.1

No discussion on ARC 5081C.

ARC 5100C (NOIA), Driver's Licenses for Undercover Law Enforcement Officers—Expiration Date, Rule 625.3(2)

No discussion on ARC 5100C.

ARC 5101C (NOIA), Motor Vehicle Equipment—Specially Constructed or Reconstructed Autocycles, Rules 450.2, 450.4(1), 450.5

No discussion on ARC 5101C.

ARC 5102C (NOIA), Motorcycle Rider Education, Rules 602.2(1), 635.2, 635.3, 635.4(1), 635.5 to 635.7

No discussion on ARC 5102C.

VOLUNTEER SERVICE, IOWA COMMISSION ON

Representing the agency: Adam Lounsbury

ARC 5086C (NOIA), Organization and Operation—Contact Information, Meeting Minutes, Rule 1.2

Committee members asked Mr. Ewing if in the future the types of changes accomplished by this rulemaking could be dealt with statutorily rather than by rulemaking. Mr. Ewing indicated that a process is being developed for agencies to make changes such as updating agency addresses and phone numbers.

No action taken on ARC 5086C.

ARC 5088C (NOIA), Future Ready Iowa Volunteer Mentor Program—Mentor/Mentee Agreement, Texting Program, Rules 13.4, 13.5(1)

No discussion on ARC 5088C.

ARC 5120C (NOIA), Iowa National Service Corps Program, Ch. 14

No discussion on ARC 5120C.

LABOR SERVICES DIVISION

Representing the agency: Kathleen Uehling

ARC 5089C (FEAN), Conveyances—Delay of ASME Enforcement Date, Rules 72.10(2), 73.1

No discussion on ARC 5089C.

PUBLIC SAFETY DEPARTMENT

Representing the agency: Daniel Wood, Patrick Hoyer

ARC 5083C (NOIA), Smoke Alarms/Detectors, Ch. 210

Committee members expressed their appreciation for the department's work on the rules.

No action taken on ARC 5083C.

ARC 5084C (NOIA), Governor's Traffic Safety Bureau, Amendments to Ch. 20

No discussion on ARC 5084C.

ARC 5105C (NOIA), Consumer Fireworks Sales Licensing and Safety Standards, Rules 265.20, 265.23, 265.26, 265.27, 265.31, 265.40 to 265.43, 265.51(4)

No discussion on ARC 5105C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon, Melissa Bird

ARC 5082C (NOIA), Medical Cannabidiol Program, Amendments to Ch. 154

Mr. Dane Schumann, representing MedPharm Iowa, expressed concern regarding the process for a health care practitioner to certify a patient for a level of tetrahydrocannabinol (THC) higher than the legal limit of 4.5 grams in a 90-day period. Mr. Schumann stated that this process will result in the health care practitioner prescribing THC, which because THC is a schedule 1 drug, is prohibited. Mr. Schumann indicated that the department has created a form for health care practitioners to use to certify patients. Mr. Schumann stated that it appears that the department is trying to mirror the Illinois process for having health care practitioners certify patients to exceed the legal THC limit, and if so, MedPharm requests that the department follow the Illinois process of having health care practitioners recommend a higher dose and the department approving the higher dose. Mr. Schumann stated that this will insulate health care practitioners from liability with the department.

Mr. Schumann also stated that MedPharm requests that the rulemaking specify that a laboratory that meets the definition of “laboratory” as defined in 2020 Iowa Acts, House File 2589, will be approved by the department.

No action taken on ARC 5082C.

ARC 5087C (NOIA), Death Registration; Fetal Death Certificate; Disinterment Permit Issuance, Rules 95.1, 97.3 to 97.5, 97.14

Committee members asked why the rulemaking states that a fetal death record shall not be entered into the electronic death record system. Ms. Bird explained that a fetal death certificate is in paper form and that after the stakeholders have completed the certificate it is sent to the department for entry into the electronic death record system. Committee members asked if this was to avoid redundant entries. Ms. Bird confirmed that is correct.

No action taken on ARC 5087C.