



MINUTES

NOVEMBER 2020 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Waylon Brown, Chair	Representative Megan Jones, Vice Chair
Senator Mark Costello [by teleconference]	Representative Steven Holt
Senator Robert Hogg [by teleconference]	Representative Joe Mitchell
Senator Zach Whiting	Representative Amy Nielsen [by teleconference]
	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: 10/7/20, 10/21/20

Procedural Business

Senator Brown convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:05 a.m. on Tuesday, November 10, 2020, in Room 103, State Capitol, Des Moines, Iowa. The minutes of the October 13, 2020, meeting were approved. The next meeting was scheduled for December 8, 2020, at the State Capitol in Des Moines. Mr. Ewing discussed procedures for those participating in the meeting via Zoom. The meeting was adjourned at 11 p.m.

Fiscal Overview

Ms. Christin Mechler, Fiscal Legislative Analyst, presented the LSA fiscal report. With regard to the Real Estate Appraiser Examining Board's ARC 5237C, committee members expressed concern that the rulemaking decreases license renewal fees while at the same time increases the initial examination fee. Committee members asked how much additional revenue will be generated by increasing the initial examination fee. Ms. Brandy March, speaking on behalf of the board, stated that between 2018 and the current date, only 21 initial examination fees have been received. Committee members asked for reassurance that the board will not return in a year and ask for an increase in fees because the decrease in fees in the rulemaking negatively impacts the board's revenue. Ms. March responded that the board is not concerned with impact to its revenue.

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).

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg

ARC 5228C (NOIA), Prescription Drug Automatic Refill Program, Rule 78.2(6)“b”(2)

Committee members asked if there is a process in place to check with members approximately every 90 days to ensure that a prescription that is part of an automatic refill program is still needed by the member. Ms. Freudenberg stated that the automatic refill program is renewed annually, however, each prescription drug is reviewed every time it is refilled. Ms. Freudenberg also stated that each member's eligibility is reviewed monthly. Committee members asked if a member's automatic refill prescriptions are confirmed at the same time the member's eligibility is confirmed. Ms. Freudenberg stated that she will verify the process and follow up with the committee. Ms. Freudenberg confirmed for the committee that opioids and similar drugs are not eligible for the automatic refill program.

Committee members asked how the department envisions the confirmation process. Ms. Freudenberg responded that depending on a member's communications capability the confirmation could be conveyed by text, email, written authorization, or phone call, and that the confirmation must be documented by the provider in the member's record. Committee members asked if the department has concerns with how confirmations are obtained. Ms. Freudenberg reiterated that confirmations will be conveyed by different means based on members' capabilities.

No action taken on ARC 5228C.

ARC 5229C (NOIA), Uniform Prior Authorization Process, Rules 78.10, 78.28, 79.8

No discussion on ARC 5229C.

ARC 5230C (NOIA), Child Abuse and Dependent Adult Abuse Mandatory Reporter Training, Rules 77.37, 108.2(9), 108.6(3), 108.8, 109.7(2), 109.14(3), 113.8(1), 117.2(3), 117.8(3)

No discussion on ARC 5230C.

ARC 5231C (NOIA), Family Support Statewide Database—Departmental Use, Rule 155.4(2)

Committee members asked if the rulemaking is intended to render HIPPA inapplicable to participants' data. Ms. Freudenberg confirmed that is correct and further stated that the data is not protected health information. Committee members asked what safeguards are in place to protect participants' private health information. Ms. Freudenberg stated that there is a memorandum of understanding (MOU) between the department, the department of public health, and other state agencies that use the database to ensure that private health information is not released. Committee members asked what happens if private health information is accidentally released. Ms. Freudenberg stated that HIPPA does not apply; however, if the information that is released is confidential, the MOU will be reviewed to determine how to handle the situation. Committee members asked Ms. Freudenberg for a copy of the MOU and expressed concern that the release of private health information by an employee will simply be treated as a human resources issue. Committee members also expressed concern that if an individual's private health information is released, the release of the information cannot be undone. Committee members stated that Iowans do not have the option to monitor the dissemination of their health information across state agencies and a MOU that states that health information is protected is inadequate. Committee members stated that the attorney general's involvement with the issue provided some reassurance, however, committee members are uncomfortable with the department's assertion that federal law does not apply to participants' data contained in the database. Committee members also expressed concern that Iowans are being given a false sense of security that their health data is secure. Ms. Freudenberg stated that she will provide the committee with a copy of the MOU.

Committee members, referencing the purpose and summary section in the administrative bulletin, asked what "system quality assurance" means. Ms. Freudenberg stated that the term is vague but is intended to ensure that all data is represented as so many databases are involved. Committee members provided an example of a data exchange between the attorney general's office and the department of revenue in which the office of the chief information officer reviewed the system quality assurance to make certain the data exchange was secure. Committee members also provided an example of a hospital using data related to knee surgeries performed at the hospital to make decisions about hiring additional surgeons. Committee members stated that the health information reviewed by the hospital is aggregated, rather than personally identifiable health information. Committee members asked if the health information shared under the rulemaking will be aggregated, or shared as personally identifiable

health information. Ms. Freudenberg stated that she believes the information will be aggregated, however, she will provide the committee with more information and examples of the reports that will be shared under the rulemaking. Committee members stated that if the legislative health information advisory committee still exists, its members should also receive the information and reports.

No action taken on ARC 5231C.

BANKING DIVISION

Representing the agency: Zachary Hingst

ARC 5211C (NOIA), Waivers, Amendments to Ch. 12

No discussion on ARC 5211C.

REAL ESTATE APPRAISER EXAMINING BOARD

Representing the agency: Brandy March

ARC 5237C (AF), Comprehensive Review of Rules, Amendments to Chs. 1, 4 to 7, 9 to 12, 15, 17

Committee members asked if the board has the ability to waive the application fee for a new applicant if the fee is burdensome. Ms. March stated that she will consult legal counsel and provide that information to the committee. Committee members expressed concern that the rulemaking increases fees for new applicants, which may be burdensome, while at the same time decreases fees for established appraisers.

No action taken on ARC 5237C.

IOWA FINANCE AUTHORITY

Representing the agency: Kristin Hanks-Bents

ARC 5219C (NOIA), Use of Emergency Solutions Grant Program Funds to Renovate Emergency Shelters, Rules 42.4, 42.5

Committee members noted that the fiscal impact summary for the rulemaking shows Iowa's cost-share as approximately \$20.9 million. Committee members asked if the \$11 million that the authority was allocated under the CARES Act is part of the \$20.9 million, or if the state is paying \$20.9 million out of the general fund and supplementing it with the \$11 million. Ms. Hanks-Bents stated that the \$11 million is part of the \$20.9 million and that it is federal funding and not coming from the state's general fund. Ms. Hanks-Bents stated that the authority is the fiscal agency disbursing the federal funds.

Committee members asked if the federal program places limitations or qualifications, such as expanding occupancy or completing structural updates, on the renovation of emergency shelters. Ms. Hanks-Bents stated that she believes the program is meant to be broad but will look into it and provide the committee with additional information.

No action taken on ARC 5219C.

EDUCATION DEPARTMENT

Representing the agency: Thomas Mayes

ARC 5207C (NOIA), Computer Science—General Accreditation Standards, Rules 12.5, 12.11

No discussion on ARC 5207C.

ARC 5208C (NOIA), Senior Year Plus Program—Part-Time Enrollment Limitation; Summer College Credit Program, Rules 22.2(2)“b,” 22.6, 22.11, 22.21, 22.33

No discussion on ARC 5208C.

ARC 5209C (NOIA), Community College Faculty Qualifications, Rule 24.5(1)
No discussion on ARC 5209C.

EDUCATIONAL EXAMINERS BOARD

Representing the agency: Darcy Hathaway, Joanne Tubbs

ARC 5212C (NOIA), Endorsements; Authorizations, Rules 13.28, 15.7, 18.5, 18.9(1)“b,” 18.10(2), 18.11(2), 22.12, 23.1, 23.4, 23.5, 27.3(7)“a”

Committee members asked which House or Senate file authorized the rulemaking. Ms. Hathaway stated that the rulemaking was initiated by the board and not prompted by legislation. Committee members asked what the impetus was for the rulemaking. Ms. Joanne Tubbs, lead administrative consultant for the board, stated that if changes are not the result of legislation the changes are generally prompted by stakeholder feedback and Iowa educational associations, such as the School Administrators of Iowa, that conduct surveys and provide the results to the board. In addition, the board is made up of educators and administrators who receive input from their communities and school districts. Committee members asked why, specifically, the changes in the rulemaking were initiated. Ms. Tubbs responded that much of the rulemaking is clean-up, such as moving authorizations to the authorization chapter and aligning administrator standards with federal standards. Ms. Tubbs stated that the endorsement changes in the rulemaking generated the most public comments and came about because of concerns expressed by educators and administrators.

Ms. Tubbs explained that currently there are two ways to be a social studies teacher at the high school level. An individual can be a specialist such as having a degree in history and teaching American and world history, or an individual can obtain an all social sciences endorsement and be authorized to teach in seven different social sciences areas. Ms. Tubbs also explained that to obtain the endorsement, educators are required to complete 51 semester hours and complete the content for seven social sciences subjects, even if they are never going to teach in all seven areas. The rulemaking maintains the 51 semester hours requirements, however, teachers are allowed to select content for just the social science areas they want to teach. Committee members asked if that means there is no actual reduction in the education requirements for the subjects in which a teacher is authorized to teach. Ms. Tubbs confirmed that a teacher must still complete 51 semester hours, however, their authority will be limited to the subjects for which they have completed the required content.

Committee members requested that for large rulemakings, the board provide the committee with the same type of side-by-side analysis of the current rules and the changes being made to the rules that the Department of Education provides the committee for large rulemakings. Ms. Tubbs stated that such an analysis can be provided to the committee. Committee members expressed appreciation for the flexibility the rulemaking provides to teachers.

No action taken on ARC 5212C.

ARC 5213C (NOIA), Board Address; Waivers, Amendments to Chs. 1 to 6, 11
No discussion on ARC 5213C.

ARC 5214C (NOIA), Unethical Practice, Rule 25.3(6)
No discussion on ARC 5214C.

ARC 5215C (NOIA), Career and Technical Education Instructor Qualifications, Rule 22.9(3)“c”
No discussion on ARC 5215C.

ARC 5216C (NOIA), Licensure for Out-of-State Applicants, Rules 13.5, 13.15, 13.16(1), 18.6, 22.1(2)“d,” 27.2

Committee members stated that while the rulemaking implements 2020 Iowa Acts, House File 2627, there is still ambiguity in the rulemaking. Committee members asked if Iowa is going to accept lower requirements and grant an out-of-state applicant an Iowa endorsement if the out-of-state applicant has an endorsement that does not meet the requirements for a comparable endorsement in Iowa. Ms. Tubbs stated that the rulemaking is not addressing requirements as much as it is addressing situations where Iowa has an endorsement that cannot be stand-alone and has to accompany another endorsement. Ms. Tubbs provided an example of a middle school endorsement—if an individual gets a 5-8 endorsement in language arts and math, it has to be attached to a 5-12, K-6, or K-8 endorsement. Surrounding states, however, often have a stand-alone middle school endorsement. Ms. Tubbs stated that the rulemaking allows those applicants to receive a middle school endorsement like they would receive in Wisconsin or Illinois. Ms. Tubbs stated that Iowa can grant the most comparable endorsement and that the requirements for the endorsement are not necessarily different; the requirements just need to be adjusted to grant licensure to out-of-state applicants.

Committee members stated that they understood that licensure was to be granted on a temporary basis and out-of-state applicants had to apply for renewal; however, that is not reflected in the rulemaking. Ms. Tubbs responded that she will double-check, but does not believe that is required by the legislation.

Committee members noted that the rulemaking strikes the word “traditional” to describe the teacher preparation program required to be completed by an out-of-state applicant in order to be eligible for a substitute teacher license. Committee members asked what type of teacher preparation is acceptable and how that will be monitored by the board. Ms. Tubbs stated that the word “traditional” is no longer necessary as the rulemaking requires that an out-of-state applicant be eligible to hold a license in Iowa in order to be granted a substitute license. Ms. Tubbs stated that the board determined that an individual could come in to Iowa with nontraditional teacher preparation and the statute requires the board to grant the individual a substitute license. Committee members asked what Ms. Tubbs meant by “nontraditional” teacher preparation. Ms. Tubbs stated that some states allow a person with a bachelors degree to begin teaching while completing the pedagogy requirements. Ms. Tubbs state that typically an individual must complete the pedagogy program before being licensed in their home state. An individual, therefore, is ineligible for licensure in Iowa until they have taught for three years and are licensed in their home state. Committee members asked if the board knows which states do not require an individual to teach three years before granting the individual a license and how the board will be certain an individual has that experience before Iowa grants them a substitute license. Ms. Tubbs stated that states have different vocabulary to describe licensure, however, the board will use data compiled by a national professional organization to ensure that an individual has a full license in their home state before the individual is granted a substitute license under the rulemaking.

Committee members asked if an individual may be granted a class G license if they are admitted and enrolled, but have not completed, a school counseling program. Ms. Tubbs confirmed that is correct and explained that school counseling is different than regular teacher preparation, as school counseling requires a one-year counseling internship. Ms. Tubbs explained that the rulemaking allows an individual to complete the internship while being subject to the board’s code of conduct and ethics. In order to be eligible for a class G license, an individual has to have completed all other coursework. Ms. Tubbs further explained that after an individual completes the internship, the individual is eligible for a full license. She noted that this is provided for in the current rules and that the rulemaking just moved those rules to a different section.

Committee members asked that the board work with individual committee members to answer their questions, as this is a large rulemaking. Committee members also recommended that the board proceed cautiously to ensure that out-of-state applicants are not allowed to teach in Iowa if they circumvent the rules or the qualifications applicable to licensure of Iowa teachers.

No action taken on ARC 5216C.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA

Representing the agency: Andrew Greenberg

ARC 5236C (NOIA), Update of Rules; Chs. 3-6, 8, 15

Committee members noted that the rulemaking covers a number of bills dating back to 2014, which can make it difficult to ensure that legislative intent was fully carried out. Members urged the board to update its rules in a more timely manner going forward. Members expressed appreciation for the board carrying out the rulemaking under its new executive director, Mr. Mike Marshall. Mr. Greenberg noted that he and Mr. Marshall only recently became employed by the board.

Committee members stated that a chart tracking how the rulemaking implemented various legislation, similar to what the Department of Education had previously distributed to the committee, would have been helpful for this rulemaking.

No action taken on ARC 5236C.

ENVIRONMENTAL PROTECTION COMMISSION

Representing the agency: Roger Bruner

ARC 5226C (AF), Aquatic Life Water Quality Criteria for Certain Metals, Rule 61.3(3)

No discussion on ARC 5226C.

PROFESSIONAL LICENSURE DIVISION

Representing the agency: Steven Garrison

ARC 5225C (AF), Psychologists—Licensure, Rules 240.1-240.10, 240.12(2)“b”

No discussion on ARC 5225C.

PHARMACY BOARD

Representing the agency: Andrew Funk

ARC 5235C (NOIA), Pharmacist-Interns, Amendments to Rules 4.6, 4.7, 4.8, 4.12; New Rule 4.11

Committee members asked what the \$30 fee and the \$15 nonrefundable fee provided in the rulemaking would be used for. Mr. Funk explained that the \$30 fee covers the one-time costs associated with registration, while the \$15 nonrefundable fee is for providing written verification of licensure and is intended to draw attention to the availability of a free, electronic database that can be used to verify licensure as an alternative to the more time-intensive process of written verification.

Committee members asked how the board settled on the amount of \$15 and how many written verifications there are per year. Mr. Funk explained that the amount is based on the time spent on a written verification, which is at least 15 minutes. He was unsure how many written verifications there are per year, but stated that most requests use the free, electronic option.

No action taken on ARC 5235C.

REVENUE DEPARTMENT

Representing the agency: Tim Reilly, Clara Wulfsen

ARC 5201C (AF), Sale, Transfer or Exchange of Tangible Personal Property or Taxable Enumerated Services Between Affiliated Corporations, Rules 18.32, 213.24

Committee members noted that affected stakeholders had expressed concerns regarding the rulemaking and stated that legislators have an interest in reviewing statutes enacted by the General Assembly as well as actions taken by agencies pursuant to such statutes. Members commended the department for its work on the rulemaking.

Mr. Ben Hammes, speaking on behalf of Master Builders of Iowa (MBI), explained that MBI pursued this matter with the department based on concerns raised by its tax attorneys and contractor members who believe the rulemaking would lead to double taxation on equipment leased between sister companies. He noted that the department had rejected MBI's proposed changes to the language, but he complimented the department's work on the rulemaking. He stated that MBI has proposed and is working with the department on legislative changes to the underlying statutory language. He sought a session delay on the rulemaking.

Session Delay

A motion for a session delay on ARC 5201C carried on a 9-0 record roll call vote.

ARC 5210C (ANOIA), Homestead Tax Credit; Military Service Tax Exemption, Rules 80.1, 80.2
No discussion on ARC 5210C.

ARC 5218C (NOIA), Agricultural Production; Silviculture; Aquaculture; Plants, Rules 211.1, 226.12, 226.18
No discussion on ARC 5218C.

Emergency Filing, Approval Required: Signature Requirements, Rules 7.5(3), 8.2

Ms. Wulfsen explained that the rulemaking would allow the use of electronic signatures on paper forms, whereas electronic signatures are currently only allowed on electronic forms. She explained that this is necessary due to the increase in conducting business by electronic means due to Covid-19 and will allow for safer, contact-free use of forms by practitioners and taxpayers. She stated that the department hopes these rules can become effective before the next wave of tax deadlines.

Emergency Rulemaking Authorized

A motion to approve emergency rulemaking by the department carried on a 9-0 record roll call vote.

TRANSPORTATION DEPARTMENT

Representing the agency: Tracy George, Jim Nelson, Sara Siedsma

ARC 5202C (AF), Bridge Permits for Certain Implements of Husbandry, Rule 181.1
No discussion on ARC 5202C.

ARC 5203C (AF), Motor Vehicle Equipment—Specially Constructed or Reconstructed Autocycles, Rules 450.1, 450.2, 450.4(1), 450.5
No discussion on ARC 5203C.

ARC 5204C (AF), Motorcycle Rider Education, Rules 602.2(1), 635.2, 635.3, 635.4(1), 635.5 to 635.7
No discussion on ARC 5204C.

ARC 5205C (AF), Driver's Licenses for Undercover Law Enforcement Officers—Expiration Date, Rule 625.3 (2)
No discussion on ARC 5205C.

ARC 5232C (NOIA), Special Registration Plates, Rules 401.2(1)“b,” 401.4, 401.6(2)“a,” 401.14
After verifying that the rulemaking allowed the number zero to be used on personalized ham radio license plates, committee members thanked the department for addressing that issue.
No action taken on ARC 5232C.

ARC 5233C (NOIA), Salvage Motor Vehicles, Rules 405.1, 405.2, 405.3 (3), 405.6 (1)“b,” 405.7, 405.8, 405.10(1), 405.15
No discussion on ARC 5233C.

LABOR SERVICES DIVISION

Representing the agency: Kathleen Uehling

ARC 5234C (NOIA), Federal Occupational Safety and Health Standards for Beryllium Construction, Cranes and Derricks—Adoption by Reference, Rules 10.4, 26.1
No discussion on ARC 5234C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon

ARC 5199C (AF), Death Registration; Fetal Death Certificate; Disinterment Permit Issuance, Rules 95.1, 97.3-97.5, 97.14
No discussion on ARC 5199C.

ARC 5200C (AF), Medical Cannabidiol Program, Ch. 154
No discussion on ARC 5200C.

ALCOHOLIC BEVERAGES DIVISION

Representing the agency: Stephanie Strauss

ARC 5220C (NOIA), Filling and Selling of Mixed Drinks or Cocktails in a Container Other Than the Original Container, Rule 4.10, also Filed Emergency ARC 5221C.
No discussion on ARC 5220C or ARC 5221C.

UTILITIES DIVISION

Representing the agency: Matthew Oetker

ARC 5206C (AF), Ratemaking Principles Proceeding, Ch. 41
No discussion on ARC 5206C.

ARC 5217C (NOIA), Electric Lines, Rules 11.2, 11.3(3), 11.5(1)“d”(6)
Committee members thanked the department working with affected stakeholders on this rulemaking.
No action taken on ARC 5217C.