



MINUTES

MARCH 2020 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Waylon Brown, Chair
Senator Robert Hogg
Senator Pam Jochum
Senator Zach Whiting

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

EX OFFICIO, NONVOTING MEMBER: Michael Boal, Deputy Legal Counsel, Office of the Governor

LSA CONTACTS: Organizational staffing provided by Jack Ewing, Administrative Code Editor, 515.281.6048, and Kate O'Connor, Legal Counsel, 515.281.6329. Minutes prepared by Jack Ewing, Administrative Code Editor

BULLETINS NEEDED FOR THIS MEETING: 2/12/20, 2/26/20

Procedural Business

Senator Brown convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:05 a.m. on Friday, March 6, 2020, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the February 7, 2020, meeting were approved. The next meeting was scheduled for Friday, April 3, at 9:00 a.m. at the State Capitol in Des Moines, Iowa. [The next meeting was subsequently rescheduled for Friday, April 3, at 9:30 a.m. as a videoconference via Zoom.] Mr. Ewing provided a summary of the updated 2019 rules analysis report and noted that agency responses had been received for all outstanding rulemaking from the 2019 Legislative Session. Representative Jones described a draft of legislation prepared by Mr. Ewing at her request that would reduce appropriations to agencies that do not adopt certain required rulemaking within one year of the enabling legislation becoming effective. Some committee members expressed support for the legislation. Others noted that agencies have been carrying out rulemaking in a more timely manner of their own accord, expressed concern about the financial impact of the legislation on some agencies, and expressed a preference to wait and see how much progress agencies make toward timely rulemaking on their own. Committee members asked Mr. Boal what the Governor's position on the legislation is. Mr. Boal explained that he had not discussed the legislation with her, but would do so. Committee members agreed to discuss the legislation further at the April 3 meeting after the Governor's position is known. The meeting was adjourned at 11:40 p.m.

Fiscal Overview

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

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, Julie Allison, Marissa Eyanson

ARC 4897C (AF), Case Management Services, Chs. 73, 78, 83, 90
No discussion on ARC 4897C.

ARC 4898C (AF), Statewide Monthly Standard Deduction for Personal Care Services at a Residential Care Facility, Rule 75.1(35)“g”(2)
No discussion on ARC 4898C.

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

Public comment was received from Mr. Casey Ficek on behalf of the Iowa Pharmacy Association (IPA). He thanked the department for listening to feedback from IPA and making some changes to the rulemaking. He stated that IPA is still concerned regarding the prohibition on automatic refills. He acknowledged possible benefits of the prohibition, but asserted there is a significant difference between mail order pharmacies and local pharmacies regarding automatic refills. He explained that mail order pharmacies will sometimes continue to mail medications even after a patient has died, leading to waste. He explained that automatic refills do not cause such waste at a local pharmacy, where a patient picks up the prescription themselves and has the opportunity to talk with a pharmacist and where the pharmacist can discontinue automatic refills if a patient does not show up. In response to a question from committee members, he explained that in order for a pharmacy to provide an automatic refill, the patient or prescriber must request it. He was unsure how a patient request for automatic refills could be conveyed to a pharmacy under the rulemaking.

Ms. Eyanson said she handles her automatic refills via text message. Committee members asked how this would be handled for an older long-term care patient who may not use text messaging. She explained that the department works closely with pharmacies and doctors to meet the needs of the long-term care population. She explained that the rulemaking was pursued at the recommendation of the state’s Medicaid Fraud Control Unit as well as to comply with federal legislation. Committee members urged the department to address those matters more directly in the rules. She provided a handout on the department’s rationale for the rulemaking. She explained that the department is ready to implement the rulemaking without delay.

Committee members asked if IPA still has concerns regarding language in the rulemaking pertaining to dispensing fees. Mr. Ficek explained that IPA would prefer that the language not be included, but the department’s explanation of refill tolerance had provided some helpful clarification. He explained that IPA is more concerned about having to provide different services under Medicare and Medicaid than it is about the dispensing fee language itself.

Public comment was received from Mr. Mark Joyce on behalf of Hy-Vee. He explained that Hy-Vee has 13,000 automatic refills in the Medicaid program in Iowa. He sought a delay of the portion of the rulemaking pertaining to automatic refills. He acknowledged that the issue came to his attention late in the rulemaking process. He expressed concern that the process for initiating automatic refills via text message is unclear.

Committee members expressed concern about ending automatic refills for current patients and the language of the rulemaking pertaining to dispensing fees.

Ms. Freudenberg expressed openness to delaying the entire rulemaking rather than portions of it.

Session Delay

A motion for a session delay carried on a voice vote with nine members present. Committee members stated that further review of this rulemaking will occur in summer 2020.

ARC 4900C (AF), Nursing Facilities—Calculation of Depreciation, Leasing Arrangements, Iowa Medicaid Enterprise, Rules 81.6, 81.10, 81.13
No discussion on ARC 4900C.

ARC 4901C (AF), Elimination of Application Fee for Child Support Recovery Services, Rules 95.2(4), 95.18(3)
No discussion on ARC 4901C.

ARC 4911C (NOIA), Dependent Adult Abuse—Personal Degradation, Rules 176.1, 176.3
No discussion on ARC 4911C.

ARC 4912C (NOIA), Removal of Healthy and Well Kids in Iowa Program Third-Party Administrator, Ch. 86
No discussion on ARC 4912C.

ARC 4937C (NOIA), Child Care Assistance Plus Program—Eligibility, Income Guidelines, Age Groups, Rules 170.2(1)“a,” 170.4

Committee members asked if the income limit in current rules is in compliance with federal law. Ms. Freudenberg and Ms. Allison explained that it was compliant when it was established, but federal requirements had changed since then. Committee members asked if the rulemaking would address the income cliff effect. Ms. Allison explained that the increased income threshold in the rulemaking is high enough that few participants in the program would experience the cliff effect. Committee members asked for more information regarding families who would be subject to the new income threshold in the rulemaking, and Ms. Allison agreed to provide it.

No action taken on ARC 4937C.

ARC 4896C (AF), Disability Services Management—Children’s Behavioral Health Services, Ch. 25

No discussion on ARC 4896C.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT

Representing the agency: Maison Bleam

ARC 4944C (NOIA), Bulk Dry Animal Nutrients Licenses, Rule 49.2

No discussion on ARC 4944C.

ARC 4946C (AF), Dairy—Adoption by Reference of Public Health Service Regulations, Rules 68.1, 68.13

No discussion on ARC 4946C.

ARC 4947C (AF), National Institute of Standards and Technology (NIST) Handbook 130—Adoption by Reference of Section Relating to Gasoline-Ethanol Blends, Rule 85.39

Committee members asked if there had been an increase in the sales of E15 gasoline since the federal Environmental Protection Agency amended a regulation on the subject this summer. Mr. Bleam explained that sales had increased nationwide, but more specific data is proprietary.

No action taken on ARC 4947C.

AUDITOR OF STATE

Representing the agency: John McCormally

ARC 4929C (AF), Periodic Examination Fee Schedule, Rule 21.2

No discussion on ARC 4929C.

IOWA FINANCE AUTHORITY

Representing the agency: Kristin Hanks-Bents

ARC 4902C (AF), Beginning Farmer Tax Credit and Loan Programs, Rules 44.1-44.7

No discussion on ARC 4902C.

INSPECTIONS AND APPEALS DEPARTMENT

Representing the agency: Ashleigh Hackel

ARC 4923C (NOIA), 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 if the department had the authority to add another variety of mushroom to those authorized by prior legislation for sale at farmers markets. Ms. Hackel explained that the legislation referenced three varieties of wild golden oyster mushrooms, and the rulemaking adds a fourth variety that is less common in Iowa. She explained that the department feels that the reference in the legislation to wild golden oyster mushrooms would cover additional varieties of that mushroom. Committee members questioned whether that approach was appropriate.

In response to another question from committee members, Ms. Hackel explained that not all items in the rulemaking pertain specifically to farmers markets.

Committee members asked how the various subjects of the rulemaking are related, and Ms. Hackel explained that they all relate to food safety. Mr. Ewing explained that the subject matters that can be included in a single rulemaking document are not limited in the same manner as legislation.

No action taken on ARC 4923C.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Representing the agency: David Martin

ARC 4925C (NOIA), Contribution Rates; Retirement Benefits; Disability; Death Benefits and Beneficiaries; Recognition of Agents, Chs. 4, 11-14, 20

Committee members asked how an amendment that allows people in a trial work period under the federal Social Security disability program to continue receiving Iowa public employees' retirement system (IPERS) benefits would affect the fiscal impact of the rulemaking. Mr. Martin explained that the fiscal impact would be minimal and that the amendment conformed to a practice IPERS had been carrying out until a recent audit determined that the amendment was necessary.

Mr. Mike Lose, a retired Polk County deputy, made a public comment in support of that amendment. He explained that he was receiving Social Security disability benefits and hoped to take advantage of the amendment while returning to work in a non-street position. Mr. Martin clarified that IPERS has been working with Mr. Lose on the amendment, which is intended to benefit people such as Mr. Lose.

No action taken on ARC 4925C.

ENVIRONMENTAL PROTECTION COMMISSION

Representing the agency: Diane Moles

ARC 4919C (NOIA), Wastewater and Water Supply Delegated Construction Permitting Authority; Water Use Permitting, Ch. 9, Rules 50.4(2)“b”(2), 50.7(3)“a”

Ms. Moles explained that legislation affecting the same rules amended by the rulemaking may be enacted during the 2020 Legislative Session, in which case the commission would file an amended notice to include implementation of the legislation in the rulemaking. Committee members stated such a situation is a good example of why the committee should hesitate to pursue legislation concerning untimely rulemaking as discussed under procedural business.

No action taken on ARC 4919C.

NATURAL RESOURCE COMMISSION

Representing the agency: Trace Kendig, George Scholten, Chris Ensminger

ARC 4914C (NOIA), Waterfowl and Coot Hunting Seasons and Zones, Rules 91.1, 91.3

In response to questions from committee members, Mr. Ensminger explained that a coot is a water fowl similar to a duck that is prevalent throughout the state.

No action taken on ARC 4914C.

ARC 4918C (NOIA), Designation of “No Anchoring” and “No Boating” Zoned Areas on Rathbun Lake, Rule 40.5

In response to questions from committee members, Mr. Kendig explained that the rulemaking was pursued based on a petition for rulemaking from the Lake Rathbun Marina in order to prevent damage to the marina from people boating or fishing in the area, as the marina generates more traffic in the area. He explained that the activity in the area could threaten the underwater electrical wiring recently installed in the area.

No action taken on ARC 4918C.

ARC 4920C (NOIA), Permits for Application of Chemicals to Public Waters for Removal of Aquatic Plants for Navigational and Recreational Purposes, Rule 54.5(1)

No discussion on ARC 4920C.

ARC 4921C (NOIA), Fish Kill Counting and Assessment of Restitution—Use of American Fisheries Society (AFS) Special Publication 35, Rule 113.2

Committee members asked how often the commission needs to assess damages based on a fish kill, and Mr. Scholten explained that it varies year to year and agreed to provide further information.

No action taken on ARC 4921C.

ARC 4922C (NOIA), Fishing Regulations, Rule 81.2

No discussion on ARC 4922C.

ARC 4924C (NOIA), Virtual Fishing Tournaments, Rules 44.2, 44.5(4), 44.8

Committee members asked how it could be verified that a photo of a caught fish was taken at the virtual fishing event. Mr. Scholten explained that some events use phone applications for such purposes, and there are other means of verification as well.

Committee members asked if the commission is concerned about the mortality rate of such events on the fish population, even if such events are catch and release. Mr. Scholten explained that fish populations are monitored on an annual basis and such tournaments have minimal impact on fish population compared to the average angler.

No action taken on ARC 4924C.

PROFESSIONAL LICENSURE DIVISION

Representing the agency: Steven Garrison

ARC 4917C (NOIA), Physical Therapists and Physical Therapist Assistants, Occupational Therapists and Occupational Therapy Assistants—License Reactivation, Rules 200.15(3), 206.11(3)

No discussion on ARC 4917C.

ARC 4951C (AF), Optometrists—Prescription of Controlled Substances, Rules 181.3(2)“c,” 182.4(3), 183.2(31)

No discussion on ARC 4951C.

ARC 4953C (AF), Physician Assistants—Electronic Transmission of Prescriptions, Rule 327.6(4)

No discussion on ARC 4953C.

DENTAL BOARD

Representing the agency: Jill Stuecker

ARC 4948C (AF), Dental Assistant Registration Examination—Elimination of Remediation Requirement, Rules 20.2, 20.5(2), 20.11-20.17, 22.5

No discussion on ARC 4948C.

NURSING BOARD

Representing the agency: Kathy Weinberg, Tessa Register, Rhonda Ruby

ARC 4926C (AF), Child Abuse and Dependent Adult Abuse Reporter Training; Wallet Cards; Internet-Based Test of English as a Foreign Language, Rules 3.1, 3.6(2)“c,” 3.7
No discussion on ARC 4926C.

ARC 4927C (AF), Continuing Education; Child Abuse and Dependent Adult Abuse Mandatory Reporter Training, Rule 5.2
No discussion on ARC 4927C.

ARC 4945C (NOIA), Iowa Nurse Assistance Program, Rules 19.1, 19.2, 19.4, 19.6
Committee members asked if the program is intended for nurses with substance abuse problems, and Ms. Register explained that it is, if a nurse has a qualifying substance abuse problem. Committee members asked how a nurse could self-report verbally under the program, given the amendment that only allows written self-reporting. Ms. Ruby explained that the board generally requests a written self-report after a verbal report about a nurse is received.
No action taken on ARC 4945C.

PHARMACY BOARD

Representing the agency: Sue Mears

ARC 4903C (AF), Prescriptions for Expedited Partner Therapy, Rules 6.10(1), 6.13(4), 7.12, 8.19, 8.21, 18.3(4)
No discussion on ARC 4903C.

ARC 4904C (AF), Temporary Scheduling of Synthetic Cathinones as Schedule I Controlled Substances, Rule 10.39(5)
No discussion on ARC 4904C.

TRANSPORTATION DEPARTMENT

Representing the agency: Sara Siedsma

ARC 4895C (NOIA), Federal Motor Carrier Safety and Hazardous Materials Regulations—Adoption by Reference, Rules 520.1, 520.5, 529.1, 607.10(1)“c”
No discussion on ARC 4895C.

ARC 4908C (AF), Special Registration Plates—Blackout Plates, Electronic Submission of Applications, Ch. 401
No discussion on ARC 4908C.

ARC 4909C (AF), Driver Education, Rules 634.1, 634.2, 634.4, 634.6-634.8, 634.11
In response to questions from committee members, Ms. Siedsma explained that the rulemaking does not affect parent-taught driver education and that she would need to check on whether parent-taught driver education has the same standards as required by the rulemaking.
No action taken on ARC 4909C.

ARC 4939C (NOIA), Office Name and Contact Information Update, Rule 410.1(3)
Committee members asked if the rulemaking is an example of a situation that could be addressed outside of the rulemaking process under legislation drafted by Mr. Ewing and previously approved by the committee, and Mr. Ewing stated that it is.
No action taken on ARC 4939C.

LABOR SERVICES DIVISION

Representing the agency: Kathleen Uehling

ARC 4894C (NOIA), Hazardous Occupations for Youth; Amusement Ride Operating Permits; Asbestos Abatement; Definitions of “Construction,” “Mixed Martial Arts”; Address and Statutory Language Updates, Chs. 1, 4, 32, 38, 61, 150, 155, 156, 177

Committee members asked why the application period for an operating permit in Item 17 is being increased from 14 to 30 days and how that would impact venues like Arnold’s Park and the Clay County Fair. Ms. Uehling explained that Arnold’s Park would not be impacted because it operates year-round, but that the rulemaking would give the division more time to process paperwork for seasonal operators, and that the division would not deny a permit because it is untimely.

No action taken on ARC 4894C.

ARC 4938C (NOIA), Penalties for Occupational Safety and Health Citations, Rule 3.11(1)

No discussion on ARC 4938C.

ARC 4940C (NOIA), Debt Collection—Technical and Conforming Changes, Chs. 61, 71, 90, 155

No discussion on ARC 4940C.

UTILITIES DIVISION

Representing the agency: Matthew Oetker

ARC 4957C (AF), Intrastate Gas Pipelines and Underground Gas Storage, Ch. 10

No discussion on ARC 4957C.

REVENUE DEPARTMENT

Representing the agency: Benjamin Clough, Tim Reilly

ARC 4915C (NOIA), Sales and Use Tax Exemption for Grain Bins, Rules 226.19(4), 226.20

Committee members asked if the tax exemption for grain bins would include a fan attached to the grain bin, and Mr. Reilly explained that the rulemaking will clarify that fans both inside and outside a grain bin are covered by the exemption.

No action taken on ARC 4915C.

ARC 4916C (NOIA), Sales Tax Exemption for Manufacturers—Exclusion of Persons Primarily Engaged in Listed Activities, Rule 230.15(4)“c”

No discussion on ARC 4916C.

ARC 4942C (NOIA), Tax Return Preparers, Rule 7.36

No discussion on ARC 4942C.

ARC 4955C (AF), Global Intangible Low Tax Income; Apportionment of Investment Income, Rules 54.2, 59.28(2)“p”

Mr. Tom Sands made a public comment on behalf of the Iowa Taxpayers Association. He urged that a 70-day delay be imposed on the rulemaking to allow time for legislation on the same subject, for which a subcommittee is scheduled, to be acted on in the 2020 Legislative Session. Mr. Jim Henter, speaking on behalf of the Iowa Retail Federation and Mr. Brad Hartkopf, speaking on behalf of the Association of Business and Industry, agreed with Mr. Sands.

Committee members asked for the department’s opinion on imposing a delay, and Mr. Reilly stated that it was the committee’s decision, but 70 days would theoretically allow enough time for legislation to be enacted.

Committee members asked if the rulemaking was affected by federal law and how taxpayers would be affected by the rulemaking. Mr. Reilly explained that the rulemaking was triggered by 2017 federal tax legislation, with which Iowa law is coupled to some extent. Mr. Reilly and Mr. Clough explained that corporate income tax filers have a variety of due dates, but most corporations subject to the rulemaking

probably file their taxes in October. They were unsure how many corporate filers would be affected by the rulemaking, but stated it was possible that some corporations file in April who would benefit from having the rulemaking in effect sooner.

A motion was made for a 70-day delay on the rulemaking. Committee members asked if the rulemaking reflects the requirements of Iowa law, and Mr. Reilly said it did.

Committee members asked for more information about the pending legislation on the subject of the rulemaking. Mr. Reilly explained that the legislation treats the affected income as a dividend. Mr. Sands explained that his organization, and he thought Mr. Henter's and Mr. Hartkopf's were registered in favor of the legislation.

Committee members, noting Mr. Reilly's response that the rulemaking was required under Iowa law, withdrew the motion for a 70-day delay.

No action taken on ARC 4955C.

SECRETARY OF STATE

Representing the agency: Heidi Burhans

ARC 4932C (AF), Felony Conviction Verification Process, Rule 28.4

Committee members asked how the secretary would address a person with a deferred judgment on a felony conviction who had not completed their parole. Ms. Burhans explained that they are not supposed to be passed on to the secretary by clerks of court, and the secretary refers those back to the clerk when that occurs.

No action taken on ARC 4932C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon, Sarah Reisetter

ARC 4905C (AF), Iowa Care for Yourself Program, Ch. 8

No discussion on ARC 4905C.

ARC 4906C (AF), Lead-Based Paint Activities, Rules 70.2-70.6, 70.10

No discussion on ARC 4906C.

ARC 4907C (AF), Student Loan Default/Noncompliance with Agreement for Payment of Obligation, Ch. 195

No discussion on ARC 4907C.

ARC 4928C (AF), Medical Cannabidiol Program, Rules 154.1, 154.16(7), 154.22(4), 154.23(1), 154.25(2), 154.40(7)

Ms. Dixon explained that the published effective date of the rulemaking was incorrect and that the effective date would be corrected to June 1 in a future bulletin.

Committee members asked if the rulemaking resolves all concerns raised when a session delay was imposed on prior rulemaking on the subject. Ms. Dixon and Ms. Reisetter explained that the rulemaking resolved all matters impacted by the session delay except an item providing for certain restrictions on advertising by health care practitioners relating to cannabidiol, which the State Board of Health decided not to address.

Mr. Dane Schumann made a public comment on behalf of MedPharm. He thanked the department for its work on the rulemaking and explained that there is more work on the subject going on during the 2020 Legislative Session.

No action taken on ARC 4928C.