



MINUTES

JANUARY 2021 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

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

EX OFFICIO, NONVOTING MEMBER: Michael Boal, 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 Kate O'Connor, Legal Counsel, 515.281.6329

BULLETINS NEEDED FOR THIS MEETING: 12/16/20, 12/30/20

Procedural Business

Senator Brown convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9 a.m. on Friday, January 8, 2021, in Room 103, State Capitol, Des Moines, Iowa. The minutes of the December 8, 2020, meeting were approved. The next meeting was scheduled for February 5, 2020, at the State Capitol in Des Moines, Iowa. Mr. Ewing discussed procedures for those participating in the meeting via Zoom. Mr. Ewing also provided brief instructions on operating the new microphone system. The meeting was adjourned at 11:55 p.m.

Fiscal Overview

Ms. Christin Mechler, Fiscal Legislative Analyst, presented the LSA fiscal report. Committee members asked why a fiscal impact summary was not provided for the Department of Education's ARC 5326C, senior year plus program. Ms. Lora Vargason, fiscal analyst, stated that she would review the rulemaking and follow up with the committee.

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg

ARC 5336C (NOIA), Home Health Agency Services—Ordering and Signing Treatment Plan, Rule 78.9
No discussion on ARC 5336C.

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).

ARC 5337C (NOIA), Child Development Homes; Child Care Homes, Rules 110.6(3), 110.8(3)“e,” 110.14(1)“f,” 110.15(1)“e,” 120.8(3)“e”

Committee members requested that the department include the bill number that the rulemaking is implementing in the “state or federal law implemented” section of the bulletin. Ms. Freudenberg stated that the department will do so going forward.

No action taken on ARC 5337C.

ARC 5361C (AF), 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 5361C.

ARC 5362C (AF), Uniform Prior Authorization Process, Rules 78.10, 78.28, 79.8

No discussion on ARC 5362C.

ARC 5363C (AF), Family Support Statewide Database—Departmental Use, Rule 155.4(2)

No discussion on ARC 5363C.

ARC 5364C (AF), Prescription Drug Automatic Refill Program, Rule 78.2(6)“b”(2)

No discussion on ARC 5364C.

INSPECTIONS AND APPEALS DEPARTMENT

Representing the agency: Ashleigh Hackel

ARC 5335C (NOIA), Criminal History Background Check — Provisional Employment, Conditions, Rules 50.9, 51.41, 58.11(3), 67.19

No discussion on ARC 5335C.

ARC 5353C (AF), Inspection Standards for Food Establishments — Adoption by Reference of 2017 Food Code, Rules 30.2, 31.1, 31.4

No discussion on ARC 5353C.

ARC 5354C (AF), Food and Consumer Safety—Stand Operated by a Minor, Rule 30.2

No discussion on ARC 5354C.

RACING AND GAMING COMMISSION

Representing the agency: Brian Ohorilko

ARC 5315C (NOIA), Wagering; Horse Racing, Rules 8.1, 10.2(9), 10.4 to 10.6, 14.8(3)

No discussion on ARC 5315C.

STATE PUBLIC DEFENDER

Representing the agency: Kurt Swaim

ARC 5342C (NOIA), Waivers, Attorney Fee Contracts—Indigent Defense, Ch. 6, Rule 11.3

No discussion on ARC 5342C.

IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM

Representing the agency: Cheryl Vander Hart

ARC 5359C (NOIA), Contribution Rates; Terms and Requirements; Death Benefits and Beneficiaries; Open and Confidential Records, Chs. 4, 5, 11 to 14, 17, 19

No discussion on ARC 5359C.

ENVIRONMENTAL PROTECTION COMMISSION

Representing the agency: Elaine Douskey

ARC 5316C (NOIA), Underground Storage Tanks, Chs. 134 to 136

Committee members asked if there will be a formal process for review of alternative test methods. Ms. Douskey explained that the commission will use a process similar to the commission's waiver process. The commission will allow proposals to be submitted with justification and documentation as to why the test method is valid. She stated that the department will review submissions and seek outside expertise when necessary.

Mr. John Maynes, speaking on behalf of FUEL Iowa, thanked the commission for their long history of collaboration with FUEL Iowa and for their work on the rulemaking. He stated that the rulemaking threatens the rural fuel distribution network and will have a serious impact on small businesses due to onerous new testing requirements from the federal Environmental Protection Agency (EPA). He explained that the EPA grants the commission the authority to review alternative test methods beyond those in the federal regulations. He also explained that Iowa Code section 455B.474 requires rulemaking to be consistent with, and not more stringent than, federal rules. He expressed concern that the rulemaking requires mandated examinations conducted by the Department of Natural Resources (DNR), whereas currently multiple third-party providers provide training and proctor examinations. He stated that the new requirement will be a burden for owner-operators. He also stated that the requirement of 85 percent for a passing grade on the examination, which is not required by federal law, is burdensome. He urged the commission not to impose limitations that are stricter than federal regulations.

Mr. Patrick Rounds, speaking on behalf of Petroleum Marketers Management Insurance Company (PMMIC), explained that the rulemaking has been in process since 2015, and is based on a federal statute enacted in 2005. He stated that PMMIC insures two-thirds of the underground storage tanks in the state, and its subsidiaries perform 80 percent of the compliance inspections. He explained that stakeholders are concerned that the rulemaking goes beyond federal requirements. In addition, the policies and forms the DNR created to go along with the rulemaking, such as the walk-through inspection form on the DNR's internet site, impose requirements that exceed federal requirements. He stated that stakeholders will be submitting comments and asked the committee to encourage the commission to work with stakeholders prior to adoption of the rulemaking. He noted that about 50 small owner-operators go out of business every year and the rulemaking will force more of them out of business.

Committee members asked if larger owners are more able to bear the burden imposed by the rulemaking. Mr. Rounds responded that larger owners have more ability to obtain financing to manage the costs of rebuilding a tank. Smaller owners in "fringe" areas, however, do not always have access to financing to replace a tank.

Committee members encouraged the commission to work with stakeholders on the rulemaking and to not go beyond federal requirements.

No action taken on ARC 5316C.

PUBLIC SAFETY DEPARTMENT

Representing the agency: Jean Guttenfelder

ARC 5339C (NOIA), Fire Safe Cigarette Certification Program, Ch. 61

Committee members asked what a fire safe cigarette is. Ms. Guttenfelder explained that the chapter was originally called reduced ignition propensity cigarettes; however, the industry refers to these cigarettes as fire safe cigarettes. She stated that the department is concerned about using the acronym "RIP" versus "FSC" in reference to cigarettes, and noted that FSC is the industry standard and used for marking cigarette packaging and cartons.

Committee members asked what a reduced ignition cigarette is. Ms. Guttenfelder explained that brands have to be tested in accordance with prescribed methods to show that the brand meets the standards to be considered fire safe, and state law requires that all cigarettes sold in Iowa meet the testing standards. Members asked what makes a reduced ignition cigarette different from other cigarettes. She explained

that manufacturers have to certify to the state fire marshal that a cigarette brand has passed the required testing, and the department maintains a list that is accessible to the public that lists the brands that can be sold in Iowa.

Committee members asked what the difference is between regular cigarettes and fire safe cigarettes. Ms. Guttenfelder stated that all cigarettes sold in Iowa have to be fire safe. Members asked why the department was proposing the rulemaking. She explained that the rule requiring testing has been in place since 2008, and that the rulemaking brings the language into line with the industry and with programs administered by the State Fire Marshal. Members asked if the rulemaking is just a name change from RIP to FSC. She confirmed that is the case and that the rulemaking also provides specific program contact information. Members asked if fire safe cigarettes are safer than other cigarettes. She explained that fire safe cigarettes extinguish themselves and will not cause a fire if, for example, someone falls asleep with a cigarette. Members expressed concern that members of the public may misunderstand the meaning of fire safe cigarette.

No action taken on ARC 5339C.

REVENUE DEPARTMENT

Representing the agency: Clara Wulfsen

ARC 5358C (NOIA), Taxable and Exempt Sales — Purchases by Certain Government Entities and Instrumentalities of Government, Sales Price, Rule 18.5

No discussion on ARC 5358C.

TRANSPORTATION DEPARTMENT

Representing the agency: Tracy George, Tim Crouch, Kristin Haar, Brooks Glasnapp

ARC 5311C (NOIA), OWI and Implied Consent—24/7 Sobriety and Drug Monitoring Program, Rules 620.3 (1)“c,” 620.5(8), 620.17

No discussion on ARC 5311C.

ARC 5340C (NOIA), International Registration Plan (IRP) for Fleet Vehicles, Ch. 500

Committee members stated that the existing process can be difficult for some counties that operate fleet vehicles or rental cars. Members provided an example of a county that can only get five tags a day and goes to the county treasurer every day to get the five tags. The county has to locate each of the five vehicles, which can be anywhere, including in a different state. Members asked if the rulemaking eases some of these types of burdens. Ms. George affirmed that the rulemaking does ease some burdens. She explained that if the criteria in the rulemaking are satisfied, if a vehicle is removed from a fleet during registration renewal, the motor carrier can self-certify credential destruction. Members stated that they hesitate to recommend another plate; however, the members recommended that the department consider a fleet vehicle plate so that motor carriers do not have to locate individual vehicles. Members expressed appreciation that the department is trying to relieve some of the administrative burdens related to fleet vehicles.

No action taken on ARC 5340C.

ARC 5344C (AF), Special Registration Plates, Rules 401.2(1)“b,” 401.4, 401.6(2)“a,” 401.14

No discussion on ARC 5344C.

ARC 5345C (AF), Salvage Motor Vehicles, Rules 405.1 to 405.3, 405.6(1)“b,” 405.7, 405.8, 405.10 (1), 405.15

No discussion on ARC 5345C.

ARC 5312C (NOIA), Applications—Training Fellowships, Special Projects; Public Transit Bureau; Definition of “Urban Transit System,” Rules 920.2, 920.3, 920.4(2)

No discussion on ARC 5312C.

ARC 5313C (NOIA), Capital Match Revolving Loan Fund; Public Transit Infrastructure Grant Program, Rules 923.1(2), 923.3(2), 923.4, 924.2, 924.3, 924.10(4), 924.16(3)

No discussion on ARC 5313C.

ARC 5314C (NOIA), Logo Signing, Rules 118.2, 118.4, 118.5(1)“a”

No discussion on ARC 5314C.

ARC 5341C (NOIA), Lighting at Primary-Secondary Intersections, Rules 136.1, 136.2, 136.6

No discussion on ARC 5341C.

ACCOUNTANCY EXAMINING BOARD

Representing the agency: Robert Lampe

ARC 5357C (NOIA), Denial of Licensure; Criminal Convictions, Rules 3.1(2), 3.4(3), 4.1(2), 4.2(3), 5.1(1), 5.3, 6.3(3), 6.4(1), 7.2(3), 8.1, 12.1, 13.5(1), 14.3(11)

Committee members noted that the rulemaking states “or any other applicable law or rule” and asked if other boards under the Department of Commerce are going to use that approach, or use prescriptive language to implement 2020 Iowa Acts, House File 2627. Mr. Lampe stated that he is uncertain if the other boards will use the same format as the other boards work with different assistant attorney generals. Members asked if the board had adopted the list of disqualifying convictions for licensure. He affirmed that it had and noted that the list is posted on the board’s internet site.

No action taken on ARC 5357C.

ENGINEERING AND LAND SURVEYING EXAMINING BOARD

Representing the agency: Robert Lampe

ARC 5356C (NOIA), Temporary Permits; Licensure by Verification, Rules 3.3(4), 5.3

Committee members asked why the board is considering rulemaking that cross-references rulemaking that the committee has not seen. Mr. Lampe stated that it is the board’s understanding that the law already allows for temporary licensure so the board is adopting rulemaking to support the law.

No action taken on ARC 5356C.

ARCHITECTURAL EXAMINING BOARD

Representing the agency: Lori SchraderBachar

ARC 5355C (NOIA), Board Administration; License Renewal; Continuing Education, Chs. 1 to 4, 6, 7

No discussion on ARC 5355C.

INTERIOR DESIGN EXAMINING BOARD

Representing the agency: Lori SchraderBachar

ARC 5360C (NOIA), Retired Status; Reinstatement to Active Status; Waivers; License Renewal; Continuing Education, Rules 1.1, 1.3, 1.8, 2.1(4), 2.2 to 2.5, 3.2(3), 3.3(2)

Committee members asked why the board created a separate license for retired registered interior designers. Ms. SchraderBachar clarified that it is not a new license; it is just a new status for former registered designers who retire. She noted that the “retired” designation is used by other boards under the Professional Licensing Bureau including architects, engineers and land surveyors, and landscape architects. Members asked if registered designers in retired status are required to complete continuing education (CE) requirements. She stated that a retired registered designer is not required to complete CE requirements as the designer is not allowed to practice as a registered designer. Committee members explained that the Iowa Supreme Court Office of Professional Regulation requires Iowa attorneys to apply for an exemption to licensing requirements each year that an attorney seeks to defer their license. Members suggested that the board look at that approach for exemptions to registration requirements for retired registered designers.

Committee members asked if a registered designer in retired status can pay their fees, catch up on CE, and become an active registered designer. Ms. SchraderBachar confirmed that is correct. She also explained that a person does not need to be registered to conduct business as a designer; however, they must be registered to practice as a registered designer. Members expressed concern about having a retired designer designation in the rulemaking.

Committee members noted that all requirements from 2020 Iowa Acts, House File 2627, are not included in the rulemaking. Ms. SchraderBachar stated that the Professional Licensing Bureau has further rulemaking upcoming next month, and it will include more details about criminal convictions and an alternative pathway to licensure.

No action taken on ARC 5360C.

PROFESSIONAL LICENSURE DIVISION

Representing the agency: Steven Garrison

ARC 5368C (NOIA), Physician Assistants—Licensure, Criminal Convictions, Wallet Cards, Rules 326.4(7), 326.9, 329.2(11)

No discussion on ARC 5368C.

ARC 5367C (NOIA), Duplicate Wallet Card; Criminal Convictions; Licensure by Verification, Chs. 4, 5, 14, 19, 2

Committee members asked if the boards under the division will be adopting a list of applicable criminal convictions. Mr. Garrison explained that the boards have been adopting lists of such convictions, and he can provide further information about such lists.

No action taken on ARC 5367C.

DENTAL BOARD

Representing the agency: Jill Stuecker

ARC 5371C (NOIA), Licensure; Criminal Convictions, Chs. 11, 20, 30, 52; Adopt Ch. 50

No discussion on ARC 5371C.

ARC 5318C (AF), Continuing Education—Volunteer Dental Services, Rules 25.5(2), 25.6(1), 25.9(8)

No discussion on ARC 5318C.

ARC 5366C (AF), Clinical Examinations on Manikins; Dental and Dental Hygiene Applicant Examinations, Rules 11.2(2), 11.3(2), 11.5(2), 11.6(2), 11.7, 12.1, 12.4

No discussion on ARC 5366C.

MEDICINE BOARD

Representing the agency: Joseph Fraioli

ARC 5370C (NOIA), Waivers, Rules 3.1, 3.4, 3.17, 8.11, 9.18, 10.6, 11.6, 13.21, 17.4(2), 17.5(13), 17.11, 17.30, 19.8, 20.8(12), 20.20, 20.25, 21.8, 23.1
No discussion on ARC 5370C.

ARC 5372C (NOIA), Appointment of Executive Director, Rule 1.3
No discussion on ARC 5372C.

PHARMACY BOARD

Representing the agency: Andrew Funk, Sue Mears

ARC 5346C (AF), Controlled Substances, Precursor Substances, Rules 10.30(2)“g,” 10.38(3), 10.39, 10.42, 12.1
No discussion on ARC 5346C.

ARC 5347C (AF), Temporary Designation of Controlled Substances, Rule 10.39
No discussion on ARC 5347C.

ARC 5348C (AF), 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, 34.1, 34.4, 34.12, 39.10
No discussion on ARC 5348C.

ARC 5349C (AF), Schedule I and II Controlled Substances—Perpetual Inventory, Ordering, Distributing, Rules 10.17, 10.18, 11.27
Committee members asked what the difference is between a perpetual inventory and an on-hand inventory. Ms. Mears explained that pharmacies are required to keep a constantly updated log of the amount of all Schedule II substances they have on hand
No action taken on ARC 5349C.

ARC 5350C (AF), 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 5350C.

ARC 5351C (AF), Accreditation—Wholesale Distributors, Third-Party Logistics Providers, Rules 17.3(1)“c,” 43.3(1)
No discussion on ARC 5351C.

ARC 5352C (AF), Nuclear Pharmacy Practice—Adoption by Reference of USP General Chapter 825, Rule 16.4(6)
No discussion on ARC 5352C.

ARC 5365C (NOIA), Temporary Designation of Controlled Substances, Rule 10.39
No discussion on ARC 5365C.

ARC 5369C (NOIA), Controlled Substances, Veterinarian Access to Data, Definitions, Rules 37.2, 37.7(1)“d,” 37.8, 37.16
No discussion on ARC 5369C.

IOWA FINANCE AUTHORITY

Representing the agency: Kristin Hanks-Bents

ARC 5343C (AF), Use of Emergency Solutions Grant Program Funds to Renovate Emergency Shelters, Rules 42.4, 42.5
No discussion on ARC 5343C.

ECONOMIC DEVELOPMENT AUTHORITY

Representing the agency: Lisa Connell

ARC 5319C (AF), Reinvestment Districts Program, Ch. 200
No discussion on ARC 5319C.

EDUCATION DEPARTMENT

Representing the agency: Thomas Mayes

ARC 5325C (AF), Computer Science—General Accreditation Standards, Rules 12.5, 12.11
No discussion on ARC 5325C.

ARC 5326C (AF), 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 5326C.

ARC 5327C (AF), Community College Faculty Qualifications, Rule 24.5(1)
No discussion on ARC 5327C.

ARC 5328C (AF), Funding for Children Residing in State Institutions or Mental Health Institutes—Removal of Reference to Iowa Juvenile Home, Rules 34.1, 34.2, 34.4(2), 34.6(3)“d”
No discussion on ARC 5328C.

ARC 5329C (AF), Special Education—Clearing Classrooms, Rule 41.320(7)
No discussion on ARC 5329C.

ARC 5330C (AF), Educator Preparation Program Standards, Rules 79.2, 79.13(4)“a,” 79.14(7)“a,” 79.15(2), 79.16, 79.17, 79.21(2)
Committee members asked what the rulemaking requires of school administrators in regard to human relations, noting that the language on this subject seemed brief. Mr. Mayes explained that the language aligns with the language of current teacher standards. He agreed that the language lacks detail and stated that the human relations component of the rules would be subject to further review soon.
No action taken on ARC 5330C.

ARC 5331C (AF), School Leadership Standards for Administrators, Rule 83.10
No discussion on ARC 5331C.

ARC 5333C (AF), General Accreditation Standards, Rule 12.10(8)
Committee members asked for further background on the rulemaking. Mr. Mayes explained that recent legislation had removed a sunset on this pilot program, making it permanent. He further explained that the program provides alternative pathways for accreditation of nonpublic schools.
No action taken on ARC 5333C.

ARC 5332C (AF), Corporal Punishment, Physical Restraint, Seclusion, and Other Physical Contact With Students, Ch. 103
Committee members expressed concern regarding a requirement in the rulemaking that schools notify the parents of a student subject to seclusion or physical restraint within one hour or the end of the school day, whichever is first. Members questioned how this requirement could be implemented when such actions against a student become necessary toward the end of a school day and expressed concern regarding imposition of a regulatory requirement with which compliance may not be possible. Mr. Mayes explained that the standard was set in order to avoid having a student be the first one to notify a parent that seclusion or physical restraint has occurred. He further explained that the rulemaking acknowledges that full compliance may not always be possible, and requires documentation of such incidents instead. He stated that the rules were not intended to place schools in no-win situations, but were intended to protect public safety.

EDUCATIONAL EXAMINERS BOARD

Representing the agency: Joanne Tubbs

ARC 5320C (AF), Board Address; Waivers, Chs. 1 to 6, 11
No discussion on ARC 5320C.

ARC 5323C (AF), Career and Technical Education Instructor Qualifications, Rule 22.9(3)“c”
No discussion on ARC 5323C.

ARC 5324C (AF), Unethical Practice, Rule 25.3(6)
No discussion on ARC 5324C.

ARC 5321C (AF), Licensure for Out-of-State Applicants, Rules 13.5, 13.15, 13.16(1), 18.6, 22.1(2)“d,” 27.2
Committee members asked if the change to the class G license was based on a statutory change. Ms. Tubbs explained that the board had only moved the existing class G license language to a different chapter. Members asked if the requirement that an applicant for a professional service exchange license meet at least 75 percent of the minimum coursework requirements was based on a statutory change. She explained that the requirement is in existing rules and that the requirement allows an applicant to receive a regional exchange license if the applicant meets the 75% requirement. The applicant then has a set number of years to complete the remaining coursework.
No action taken on ARC 5321C.

ARC 5322C (AF), 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”
No discussion on ARC 5322C.