



MINUTES

JULY 2018 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Mark Costello
Senator Wally E. Horn
Senator Pam Jochum

Representative Dawn E. Pettengill, Vice Chair
Representative Amy Nielsen
Representative Rick Olson
Representative Guy Vander Linden

LSA CONTACTS: Organizational staffing provided and minutes prepared by Amber Shanahan-Fricke, Legal Counsel, 515.725.7354

BULLETINS NEEDED FOR THIS MEETING: 6/6/18, 6/20/18, 7/4/18

Procedural Business

Vice Chairperson Pettengill convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:05 a.m. on Tuesday, July 10, 2018, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the June 12, 2018, meeting were approved. The next meeting was scheduled for August 14, 2018, at 9:00 a.m. Representative Nielsen reported that she may be unable to attend the August meeting. Ms. Shanahan-Fricke announced that Mr. Jack Ewing, Senior Legal Counsel, was on paternity leave following the birth of his daughter. Ms. Shanahan-Fricke announced that Mr. Ed Cook, Senior Legal Counsel, was present and would also be staffing the meeting in Mr. Ewing's absence. In response to an inquiry from Ms. Shanahan-Fricke, committee members indicated that they no longer needed to receive proposed minutes by mail, rather email was sufficient. The meeting was adjourned at 1:26 p.m.

Fiscal Overview

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

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg

ARC 3855C (AF), Provision of Mental Health Services—Documentation, Amendments to Rule 24.4
No discussion on ARC 3855C.

ARC 3869C (FEAN), Statewide Average Private-Pay Cost of Nursing Facility Services and Average Charges and Maximum Rate for Institutional Care, Amendments to Subrule 75.23(3) and Subparagraphs 75.24(3)“b”(1), (2), and (4)
No discussion on ARC 3869C.

ARC 3870C (FEAN), Statewide Average Charge for Care in Mental Health Institute, Amendment to Subparagraph 75.24(3)“b”(3)
No discussion on ARC 3870C.

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 3871C (AF), Appeals—Filing on Behalf of Medicaid Member, Withdrawal, Continuation of Assistance, Amendments to Subrules 7.2(5), 7.5(2), and 7.6(2) and Rules 7.8 and 7.9

No discussion on ARC 3871C.

ARC 3872C (AF), Quality Assurance Assessment Levels for Nursing Facilities, Amendment to Subrule 36.6(2)

No discussion on ARC 3872C.

ARC 3873C (AF), Medicaid for Employed People with Disabilities—Premiums, Amendment to Subparagraph 75.1(39)“b”(3)

No discussion on ARC 3873C.

ARC 3874C (AF), Settings for Home- and Community-Based Services (HCBS) Provision to Medicaid Members, Amendments to Chapters 77, 78, and 83

No discussion on ARC 3874C.

SOIL CONSERVATION AND WATER QUALITY DIVISION

Representing the agency: Margaret Thomson

ARC 3819C (NOIA), Water Protection Practice Standards—Update of Reference to Forestry Technical Guide, Proposed Amendments to Rule 12.83

No discussion on ARC 3819C.

ARC 3839C (AF), Closure of Agricultural Drainage Wells; Watershed Improvement Review Board, Amendments to Chapter 30; Rescission of Chapters 101 to 107

No discussion on ARC 3839C.

ARC 3847C (NOIA), Water Quality Initiative — Eligible Practices, Cost-Share Limitation, Proposed Amendments to Chapter 16

Committee members inquired about when the 50 percent cost share limitation would not apply. Ms. Thomson stated that in the case where the land is being permanently taken out of farming or use the division’s share of the practice cost is negotiated—it might be 25 percent or it might be 100 percent.

No action taken.

VETERINARY MEDICINE BOARD

Representing the agency: Margaret Thomson, David Schmitt

ARC 3821C (NOIA), Veterinary Technician State Examination—Fee, Proposed Amendment to Subrule 8.3(1)

Upon inquiry by committee members, Dr. Schmitt clarified that by striking the term “national” it leaves the term “examination” open to apply to both state and national examinations.

No action taken.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon

ARC 3814C (NOIA), Maternal and Child Health Program, Proposed Amendments to Chapter 76

Committee members inquired whether this rulemaking was a result of legislation. Ms. Dixon indicated that it was a result of refinement of the rule. Ms. Dixon indicated that there was a lot of detail in the prior rule based on the manner in which the federal authority used to administer the program. By having the detail in rule, when the federal authority changed the federal guidance, the Department of Public Health would be out of compliance with federal law. With the new approach, Ms. Dixon indicated that detail that had been in rule will now be provided in grant guidance.

No action taken.

ARC 3815C (NOIA), Center for Rural Health and Primary Care, Proposed Amendments to Chapter 110

Upon inquiry from committee members, Ms. Dixon confirmed that 2017 Iowa Acts, House File 393, instructed that the center for rural health and primary care program be routed through the College Student Aid Commission. Committee members inquired about changes in subrules 110.4(2) and 110.4(3) wherein the advisory committee actions were changed from “will” to “may.” Ms. Dixon responded that the change was dictated by legislation.

No action taken.

ARC 3816C (NOIA), Iowa Law Enforcement Emergency Care Provider, Proposed Rescission of Chapter 139

No discussion on ARC 3816C.

ARC 3833C (AF), Childhood Lead Poisoning Prevention Program, Amendments to Rules 72.1 to 72.3

No discussion on ARC 3833C.

ARC 3834C (AF), Trauma Registry—Updates for Clarification, Amendments to Rules 136.1 and 136.2

Committee members inquired why, in light of the fact that chiropractors are considered health care providers under the Iowa Code, chiropractors are not referenced as health care providers in the rulemaking. Ms. Dixon stated she did not know the reasoning for the difference between the Iowa Code and the rulemaking.

No action taken.

ARC 3835C (AF), Regionalized System of Perinatal Health Care, Amendments to Chapter 150

Committee members and Ms. Dixon discussed that the law requires that the department must follow the standards of the American Academy of Pediatrics and the American Congress of Obstetricians and Gynecologists. Committee members inquired who appoints people on the committee before the rule is in place. Ms. Dixon indicated that she would have to check.

No action taken.

ARC 3836C (AF), Medical Cannabidiol Program, Amendments to Chapter 154

No discussion on ARC 3836C.

ALCOHOLIC BEVERAGES DIVISION

Representing the agency: Stephanie Strauss

ARC 3817C (NOIA), Licenses; Permits; Forms, Proposed Amendments to Chapters 4 and 5; Proposed Rescission of Chapter 12

Ms. Strauss reviewed the rulemaking. Mr. Mike Triplett spoke on behalf of the Iowa Alliance of Surety Companies (the Surety Cos.). Mr. Triplett stated that the Surety Cos. worked with the Alcoholic Beverage Division. Mr. Triplett stated that the division accepted one of the Surety Cos.' changes and the other proposed change was a result of antiquated language in the law and, as such, could not be changed in rule. Mr. Triplett indicated that the Surety Cos. would be pursuing a legislative change next session.

Committee members inquired as to what rule changes the Surety Cos. sought. Ms. Strauss indicated that the Surety Cos. made suggestions regarding Item 6. With regard to subrule 5.9(2), the Surety Cos. suggestion related to the forfeiture of a bond, specifically stating the term "forfeiture" is legally problematic in the law of surety. The division considered replacing the term "forfeiture" with the phrase "payment on bond." The division was sympathetic but concluded such a rule change must be preceded by a statutory change. With regard to subrule 5.9(3), the Surety Cos. also suggested the division strike unnumbered paragraph 2, which relates to the cancellation of a surety bond. The division stated it is going to accept this suggestion because it has no basis in Iowa Code.

No action taken.

ECONOMIC DEVELOPMENT AUTHORITY

Representing the agency: Jennifer Klein

ARC 3842C (NOIA), Iowa Energy Center, Proposed Adoption of New Chapter 403
No discussion on ARC 3842C.

EDUCATION DEPARTMENT

Representing the agency: Nicole Proesch, Gwen Nagel

ARC 3822C (NOIA), Accreditation Standards—Statewide Summative Assessment, Policy Prohibiting the Aiding and Abetting of Sexual Abuse, Proposed Amendments to Subrule 12.3(14) and Subparagraph 12.8(1)“h”

Committee members inquired why Item 1, policy prohibiting the aiding and abetting of sexual abuse, applies for only four years. Ms. Proesch stated that the four-year limitation comes directly from the federal statute.

No action taken.

ARC 3823C (NOIA), Iowa Learning Online—Provision of Distance Education to Students Receiving Private Instruction, Proposed Amendments to Rules 15.10, 15.12, 15.13, 15.14, and 15.15

Upon inquiry from committee members, Ms. Proesch stated that public schools are already using Iowa Learning Online (ILO). Ms. Proesch stated that many schools are using ILO if they have a high-needs subject area but lack enough teachers. Ms. Gwen Nagel, Director of ILO, stated that children are enrolled through their school district. Committee members inquired whether prior to this rule a fee was charged. Ms. Nagel indicated that initially ILO was free but that two years ago ILO began charging a fee. Upon inquiry from committee members, Ms. Nagel indicated that home schooled children are now going to be able to enroll directly with ILO. Committee members asked how different the subrule in Item 4 was, considering it was proposed to be rescinded and adopted in lieu thereof. Ms. Nagel stated that it just adds “receiving private instruction.” Upon inquiry by committee members, Ms. Nagel stated that it costs \$260 per student per semester, which is very average to below average for this region of the country. When asked by committee members, Ms. Nagel did not provide projections as to possible increased enrollment.

No action taken.

ARC 3824C (NOIA), Community Colleges—Career and Technical General Education Credits, Transfer Major Programs, Developmental Education, Proposed Amendments to Rules 21.2 to 21.4
No discussion on ARC 3824C.

EDUCATIONAL EXAMINERS BOARD

Representing the agency: Darcy Hathaway

ARC 3827C (NOIA), Expiration Date of Licenses, Proposed Amendments to Rules 13.6, 13.30, 18.4, 23.2, and 27.2
No discussion on ARC 3827C.

ARC 3829C (AF), Coursework for Out-of-State Applicants; License Renewal for Applicant with Specialist's or Doctor's Degree, Amendments to Rules 13.5, 18.6, 20.6, 20.9, and 27.5
No discussion on ARC 3829C.

COLLEGE STUDENT AID COMMISSION

Representing the agency: Todd Brown

ARC 3843C (NOIA), Meetings of and Voting by the Commission, Proposed Amendment to Subrule 1.2(3)
No discussion on ARC 3843C.

ARC 3844C (AFE), Meetings of and Voting by the Commission, Amendment to Subrule 1.2(3)
No discussion on ARC 3844C.

ARC 3854C (AF), Membership of Commission; Barber and Cosmetology Arts and Sciences Tuition Grant Program, Amendment to Subrule 1.2(2) and Rescission of Chapter 17
No discussion on ARC 3854C.

INSPECTIONS AND APPEALS DEPARTMENT

Representing the agency: David Werning

ARC 3818C (NOIA), Tuberculosis (TB) Screening, Proposed Rescission of Chapter 59 and Adoption of New Chapter 59
No discussion on ARC 3818C.

ARC 3875C (AF), Economic Assistance Fraud Bureau, Rescission of Chapter 74
No discussion on ARC 3875C.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Representing the agency: Gregg Schochenmaier

ARC 3885C (NOIA), Bona Fide Retirement for Newly Elected Officials, Proposed Amendment to Subrule 11.5(1)
No discussion on ARC 3885C.

PUBLIC EMPLOYMENT RELATIONS BOARD

Representing the agency: Amber DeSmet, Diana Machir

ARC 3825C (NOIA), Initialization of a Retention and Recertification Election, Proposed Amendment to Subrule 5.6(1)

Ms. Machir indicated that the proposed rule mirrors the statute and that the amendment is being proposed in order to provide clarity.

Upon inquiry from committee members, Ms. Machir indicated that there are educational, non-public safety, collective bargaining units operating without an agreement. Ms. Machir stated she would not speculate as to why there were no agreements. Ms. Machir indicated that there is no obligation to have a collective bargaining agreement in place. The only mandatory subject of collective bargaining for non-public safety collective bargaining units is base wages. Ms. Machir speculated that the union did not feel that a contract was necessary to negotiate base wages. Committee members questioned whether a union was doing its job if it did not negotiate a contract. Absent a collective bargaining agreement, Ms. Machir stated that the union still has an obligation to fairly represent members in negotiations and all other matters and a duty to negotiate base wages. Ms. Machir indicated that under Iowa Code section 20.15 the triggering event to a retention and recertification election is prior to the expiration of the collective bargaining agreement. In response to questions from committee members, Ms. Machir indicated that the full impact of the changes to Iowa Code chapter 20 has not been seen. Committee members expressed concern that unions could keep operating without agreements. Committee members questioned whether this issue would resolve itself with time.

In response to questions from committee members, Ms. Machir indicated that the statute requires a collective bargaining agreement to be in place to trigger a recertification and retention election and that the rule must reflect this requirement. Committee members expressed disapproval with the rule, suggesting that unions may be exploiting a loophole to avoid the recertification process.

Committee members asked what the implications were of not having an agreement. Ms. Machir indicated that with regard to non-public safety unions, it is to the employer's benefit not to have such an agreement. Committee members stated that it was the General Assembly's intent to continue to require recertification elections on a regular basis and indicated that the Public Employment Relations Board (PERB) was ignoring the intent of the General Assembly. Ms. Machir indicated that she consulted with Tim Cook, General Counsel for the Board of Regents, and attorneys for labor unions and that there was agreement that the statute requires a collective bargaining agreement be in place. Ms. Machir indicated that a contrary interpretation and rule implementation would be challenged in court and predicted that PERB would lose. Committee members indicated that the General Assembly must have overlooked this scenario in drafting this law and will need to revisit it in the next session.

No action taken.

DENTAL BOARD

Representing the agency: Jill Stuecker

ARC 3849C (NOIA), Unauthorized Practice by Dental Hygienist; Public Health Supervision; Name and Address Changes; Use of Silver Diamine Fluoride, Proposed Amendments to Rules 10.4 to 10.6 and Subrule 16.2(2)

Committee members cautioned that there may be issues with a dental hygienist owning a dental clinic as there were problems with physician assistants owning medical clinics; just as physicians assistants need to be supervised by a doctor, dental hygienists need to be supervised by a dentist. Ms. Stuecker responded that a difference may rest in the fact that the Dental Board oversees the licensure of dental hygienists, whereas the Board of Medicine does not oversee physician assistants. Ms. Stuecker reiterated that a dental hygienist must be supervised by a dentist and regardless of dental clinic ownership, a dental hygienist cannot exercise dominion or control over a dentist.

No action taken.

UTILITIES DIVISION

Representing the agency: Matthew Oetker, Cecil Wright

ARC 3850C (NOIA), Complaint Procedures, Proposed Amendments to Chapter 6

Committee members inquired why a person would choose an informal complaint process over the formal complaint process. Additionally, committee members raised the concern that an informal complaint process may lack the requisite due process protections provided by Iowa Code chapter 17A. Mr. Oetker indicated that he did not think that the process violated Iowa Code chapter 17A. Mr. Oetker indicated that he thought that a person might choose the informal process when a formal process was not warranted and an expedited process was desirable. Mr. Wright indicated that this is designed for billing and energy usage issues. By having an informal complaint process and investigation it may allow a customer to get utilities reconnected more quickly. Furthermore, Mr. Wright indicated it allows the complaint to be addressed without the complainant having to obtain an attorney. Mr. Oetker indicated that the Iowa Utilities Board chooses to be more transparent in having an informal process memorialized in rule.

No action taken.

ARC 3851C (NOIA), Civil Penalties, Proposed Amendments to Chapter 8

No discussion on ARC 3851C.

ARC 3852C (NOIA), Evaluation of Management Efficiency of Rate-Regulated Utilities, Proposed Amendments to Chapter 29

No discussion on ARC 3852C.

PHARMACY BOARD

Representing the agency: Sue Mears

ARC 3845C (NOT), Repackaging of VA Medications, Terminating the Amendments to Rule 22.6

No discussion on ARC 3845C.

ARC 3848C (NOIA), Correctional Pharmacy Practice, Proposing Amendments to Rules 15.4 and 15.7 and Subrules 15.5(3) and 15.8(1)

No discussion on ARC 3848C.

ARC 3857C (AF), Imitation Controlled Substances, Amendments to Rules 1.2, 3.29, 4.10, 5.24, 10.44, 17.18, 19.11, and 41.6 and Subrules 3.30(1), 4.11(1), and 5.26(1)

No discussion on ARC 3857C.

ARC 3858C (AF), Practice Standards, Amendments to Chapters 4, 8, 13, 18, and 19; Adoption of Chapter 39

No discussion on ARC 3858C.

ARC 3859C (AF), Care Facility Pharmacy Practice, Amendments to Chapters 10 and 23

No discussion on ARC 3859C.

ARC 3860C (AF), Temporary Designation of Controlled Substances—Synthetic Opioids, Opioid Analgesic; Precursor Substances, Amendments to Rules 10.39 and 10.42

No discussion on ARC 3860C.

ARC 3861C (AF), Registration—Medical Director-Based Service Program, Amendment to Subrule 11.3(1)

No discussion on ARC 3861C.

ARC 3862C (AF), Telepharmacy Practice—Functions of Pharmacy Support Person, Amendment to Subrule 13.8(7)

No discussion on ARC 3862C.

ARC 3863C (AF), Centralized Prescription Filling and Processing, Amendments to Rule 18.3, 18.10, and 18.15 and Subrule 18.5(2)
No discussion on ARC 3863C.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT

Representing the agency: John Benson

ARC 3846C (NOIA), Adoption of Hazard Mitigation Plan and Disaster Recovery Plan, Proposed Amendments to Rules 9.3 and 9.4
No discussion on ARC 3846C.

ARC 3868C (AF), 911 Telephone Systems, Amendments to Rules 10.2, 10.7, 10.9, and 10.13 and Subrule 10.4(2)

Committee members stated it was their recollection that the prior projected cost for the 911 system was \$6 million from the General Fund but now it is being projected at \$10 million and it is coming from the 911 Fund. The committee members sought an explanation. Mr. Benson explained that the statewide 911 radio system is being deployed by the Department of Public Safety and the 911 Fund was able to support the initial two years of the lease payment on it. Mr. Benson identified the subsequent funding sources.

No action taken.

ARCHITECTURAL EXAMINING BOARD

Representing the agency: Lori SchraderBachar

ARC 3853C (AF), Need for Professional Architectural Services—Exceptions, Amendments to Rules 5.1, 5.3, and 5.4
No discussion on ARC 3853C.

INTERIOR DESIGN EXAMINING BOARD

Representing the agency: Lori SchraderBachar, Jay Reyhons

ARC 3841C (NOIA), Registration; Continuing Education, Proposed Amendments to Rules 2.3, 2.4, and 3.1 and Subrules 2.2(1) and 3.2(3)

In response to an inquiry from committee members, Ms. SchraderBachar indicated that the continuing education requirement remains the same but is reworded to be standardized with other licensing boards. Ms. SchraderBachar indicated a \$50 fee would be charged if a person wanted an 11-inch by 17-inch wall, color certificate in addition to a free, standard black and white, 8 1/2-inch by 11-inch certificate. Committee members inquired how a registered interior designer obtains contact hours. Mr. Reyhons responded that a national association hosts seminars and vendors conduct seminars. In response to a question of whether the Interior Design Examining Board certifies seminars, Mr. Reyhons stated that there is a governing body that certifies seminars. In response to an inquiry from committee members about how a person starts a career as a certified interior designer, Mr. Reyhons stated that there are two paths. The first path is that a person gains a college degree (minimum two-year), engages in post-college work, and obtains certification by passing the National Council for Interior Design Qualification (NCIDQ) exam. The second path is a reciprocity path for persons who have been registered/licensed in another jurisdiction. In response to an inquiry from committee members, Mr. Reyhons stated that in light of home improvement shows and the do-it-yourself (DIY) movement, there is an advantage to hiring a registered interior designer because the latter has knowledge of building codes, life safety codes, and accessibility codes. Mr. Reyhons described the difference between a registered interior designer and an architect, stating that the architect has a broader range with a greater education.

No action taken.

MEDICINE BOARD

Representing the agency: Kent Nebel

ARC 3830C (AF), Standards of Practice—Medical Cannabidiol, Adoption of New Rule 13.15
No discussion on ARC 3830C.

TRANSPORTATION DEPARTMENT

Representing the agency: Stuart Anderson, Sara Siedsma, Steve Gent, Nicole Fox

ARC 3820C (NOIA), Special Registration Plates, Proposed Amendments to Chapter 401
No discussion on ARC 3820C.

ARC 3840C (AF), Federal Motor Carrier Safety and Hazardous Materials Regulations — Adoption by Reference, Amendments to Rules 520.1, 529.1, and 529.2 and Paragraph 607.10(1)“c”
No discussion on ARC 3840C.

ARC 3864C (NOIA), Automated Traffic Enforcement on the Primary Road System, Proposed Rescission of Chapter 144
Committee members commented that it was a hard-fought fight to get these rules implemented in the Administrative Rules Review Committee. Committee members expressed disappointment that the General Assembly was unable to pass any legislation on the subject. Mr. Gent indicated that this is a controversial issue and that is why the General Assembly has not been able to pass a law on the issue.

No action taken.

ARC 3865C (NOIA), Driver’s License Issuance, Proposed Amendments to Chapter 605
No discussion on ARC 3865C.

ARC 3866C (NOIA), Driver’s Licenses for Undercover Law Enforcement Officers, Proposed Amendments to Chapter 625
No discussion on ARC 3866C.

ARC 3878C (AF), Highway Bridge Program for Cities and Counties; Swapping of Surface Transportation Block Grant Funds, Amendments to Chapters 161 and 162
No discussion on ARC 3878C.

ARC 3879C (AF), Reimbursable Services and Supplies, Amendments to Paragraph 174.3(1)“a”
No discussion on ARC 3879C.

ARC 3880C (AF), Aeronautics and Aviation Vertical Infrastructure—Correction of Citations, Amendments to Chapters 700, 710, 715, 716, and 717
No discussion on ARC 3880C.

ARC 3881C (AF), Railroad Transportation and Safety, Amendments to Chapters 800, 810, and 813
No discussion on ARC 3881C.

ARC 3882C (AF), Notification of Railroad Accidents/Incidents, Amendments to Chapter 802
No discussion on ARC 3882C.

ARC 3883C (AF), Railroad Revolving Loan and Grant Fund Program, Amendments to Chapter 822
No discussion on ARC 3883C.

REGENTS BOARD

Representing the agency: Jason Pontius, Aimee Claeys

ARC 3867C (NOIA), Regent Admission Index, Change in Calculation, Proposed Amendment to Subrule 1.1(2)

Mr. Pontius indicated that the Board of Regents is proposing to go back to one formula for calculating automatic admissions, which does not include utilizing high school rank. Mr. Pontius indicated that 54 Iowa high schools and 47 percent of the applicants do not report high school rank. Committee members expressed disappointment that schools do not rank students anymore. Mr. Pontius indicated that most schools that do not rank fall into the following two categories: large, suburban schools and small, private schools. Mr. Pontius indicated that schools worry that ranking disadvantages very strong student bodies. Committee members expressed that not utilizing high school rank in the admissions process takes away the incentive to achieve the class rank of number one.

No action taken.

ARC 3877C (AF), Traffic and Parking at Universities, Amendments to Chapter 4

In response to an inquiry from committee members, Ms. Claeys indicated that there are different disability placards for parking on campus than that which are issued by the Department of Transportation. Additionally, Ms. Claeys indicated that this rulemaking updates the process and procedures for obtaining a disability campus parking permit.

No action taken.

ENVIRONMENTAL PROTECTION COMMISSION

Representing the agency: Tom Anderson

ARC 3826C (NOIA), Solid Waste Management and Disposal—Regional Collection Centers and Satellite Facilities, Household Hazardous Materials, Financial Assistance for Management of Household Hazardous Materials and Waste from Very Small Quantity Generators, Proposed Amendments to Chapters 119 and 211; Proposed Rescission of Chapters 123, 144, and 214; and Proposed Adoption of New Chapter 123

No discussion on ARC 3826C.

LABOR SERVICES DIVISION

Representing the agency: Mitchell Mahan

ARC 3856C (AF), Conveyances, Amendments to Chapters 66 to 73

No discussion on ARC 3856C.

NATURAL RESOURCE COMMISSION

Representing the agency: Rhonda Fowler, Tyler Harms, Bruce Trautman, Chris Ensminger

ARC 3828C (NOIA), Snowmobile Fee Grants, Cost-Share Programs, and Contracts, Proposed Adoption of Rule 47.10 and Rescission of Rules 47.30 to 47.47

No discussion on ARC 3828C.

ARC 3831C (AF), Deer Hunting by Residents and Nonresidents, Amendments to Chapters 94 and 106

Mr. Tyler Harms, Mr. Chris Ensminger, and Mr. Bruce Trautman, represented the Natural Resource Commission, reviewed the rulemaking, and responded to questions from the committee. Mr. Harms indicated that changes were made to the final rule based upon significant public comment. Specifically, the following changes were implemented and approved by the commission. A proposed six cartridge limit for firearms allowed for deer hunting was struck from the final rule. A proposed removal of handguns as an allowable method of take during the late muzzleloader season was struck from the final rule. Language defining a legal handgun for deer hunting specifically referring to shoulder stock and long barrel modifications was amended to reflect what is outlined in Iowa Code section 481A.48(5). Finally, in response to 2018 Iowa Acts, House File 631, language has been added since publication of the Notice to amend subrule 106.10(2) to allow youth deer hunting licenses and tags to remain valid, if unfilled, in all subsequent deer hunting seasons.

Upon inquiry from committee members, Mr. Harms stated that no straight wall cartridge rifles that were legal last year are illegal this year.

Mr. Scott Jones, a member of the public, appeared and requested a session delay pertaining to subparagraph 106.7(2)“c”(3) regarding the design of a pistol. Mr. Jones stated that the commission does not have authority to enact such rules. Mr. Jones indicated that the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has a definition of pistol. Mr. Jones also indicated that a state administrative rule definition of pistol would be unnecessary, redundant, and would confuse Iowa sportsmen and women because a federal definition of pistol already exists.

Contrary to Mr. Jones' assertion that federal law defines a pistol, committee members stated they were given information that ATF does not concern itself with differentiating between long guns and handguns. Mr. Ensminger stated that the commission has requested information from ATF to help write a definition that is clear and that ATF has been unable to help. Mr. Ensminger said the Department of Natural Resources (DNR) is not able to address how the ATF would define pistol. Mr. Jones provided a reference to a federal statutory definition. Committee members and Mr. Jones engaged in a discussion about how the definition he provided varies from the definition provided by the commission. Some committee members indicated that a session delay was not necessary because the General Assembly had already had the opportunity to take action on the issue with gun omnibus bills the past two legislative sessions.

In response to a question from committee members, Acting Director Bruce Trautman stated that the commission's position on a session delay of a portion of Item 10 is that it is acceptable to the commission whether the ARRC chooses to delay the rule or not. Mr. Trautman stated that the commission was not going to put this description in the hunting rules and regulations book.

Committee members inquired why the commission would want a description that is in opposition to a federal description. Mr. Trautman indicated that when the description was developed, he did not believe it was in opposition to the ATF description. The description does not exclude firearms. Mr. Trautman indicated the commission believes it was a good attempt at describing firearms.

Other committee members indicated that this issue did not come up during the previous legislative session and perhaps it should be addressed during a future legislative session and then the rule could potentially be changed. Mr. Trautman agreed this should be addressed during session. Mr. Trautman reiterated it will not be placed into the hunting rules and regulation book.

Mr. Jones indicated that he did not believe that the commission had the authority to define a pistol.

Upon inquiry, Mr. Trautman stated that the feedback he received is that the pistol description does not include a hammerless revolver or a pistol grip that sticks straight down or comes back. Mr. Trautman stated that now he sees that the description could have been more descriptive.

Mr. Trautman reiterated that it is the commission's legal opinion and the conservation officer's opinion that no firearms that meet the definition of a handgun or a pistol are being excluded. He stated that he agrees the rule causes confusion and that is why it is being left out of the hunting rules and regulations book. Committee members suggested that the commission put an educational statement on their website. Mr. Trautman stated he is making efforts to educate, work with stakeholders, and ensure that his conservation officers have a full understanding of what is the law in this instance. Furthermore, conservation officers are willing to meet with sportsmen and women who have questions regarding whether their firearms are allowable.

No action taken.

ARC 3832C (AF), Wild Turkey Spring and Fall Hunting, Amendments to Chapters 98 and 99
No discussion on ARC 3832C.

Respectfully submitted,

APPROVED:

Chair Mark Chelgren

Vice Chair Dawn Pettengill