



MINUTES

OCTOBER 2018 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Mark Chelgren, Chair	Representative Dawn E. Pettengill, Vice Chair
Senator Jim Carlin [by teleconference]	Representative Megan Jones
Senator Mark Costello	Representative Amy Nielsen [by teleconference]
Senator Wally E. Horn	Representative Rick Olson
Senator Pam Jochum	Representative Guy Vander Linden

EX OFFICIO, NONVOTING MEMBER: Sam Langholz, Administrative Rules Coordinator, Office of the Governor

LSA CONTACTS: Organizational staffing provided and minutes prepared by Jack Ewing, Senior Legal Counsel, 515.281.6048, and Amber Shanahan-Fricke, Legal Counsel, 515.725.7354

BULLETINS NEEDED FOR THIS MEETING: 9/12/18, 9/26/18

Procedural Business

Senator Chelgren convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:04 a. m. on Tuesday, October 9, 2018, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the September 11, 2018, meeting were approved. The next meeting was scheduled for Tuesday, November 13, 2018, at 9:00 a.m. In light of 2015 legislation that rulemaking shall be promulgated within six months, Representative Jones requested a list of agencies that had outstanding rulemakings at the end of each year beginning in 2015. Mr. Jack Ewing responded that he would provide that information. The meeting was adjourned at 12:04 p.m.

Fiscal Overview

Ms. Christin Mechler, Fiscal Legislative Analyst, presented the Legislative Services Agency (LSA) fiscal report. Committee members inquired how much the current Iowa premium tax is, and asked "how big is the piece of the pie?" Ms. Angel Banks-Adams, Fiscal Legislative Analyst, responded that there is currently a 1 percent Iowa premium tax assessed, but she was uncertain of the scope of self-insured Multiple Employer Welfare Arrangements (MEWAs) coming into the market as a result of this rulemaking. Committee members requested that Ms. Banks-Adams provide additional information to Mr. Ewing on behalf of the committee.

PROFESSIONAL LICENSING AND REGULATION BUREAU

Representing the agency: Lori SchraderBachar

ARC 4007C (NOIA), Organization and Operation, Proposed Amendments to Chapter 1

No discussion on ARC 4007C.

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).

ACCOUNTANCY EXAMINING BOARD

Representing the agency: Robert Lampe

ARC 3988C (NOIA), Review of Rules; Online Licensing and Renewals; Accountancy Designations, Proposed Amendments to Chapters 3-5, 7-10, and 15
No discussion on ARC 3988C.

INTERIOR DESIGN EXAMINING BOARD

Representing the agency: Lori SchraderBachar

ARC 4011C (AF), Registration; Continuing Education, Amendments to Rules 2.3, 2.4, and 3.1 and Subrules 2.2(1) and 3.2(3)
No discussion on ARC 4011C.

REAL ESTATE APPRAISER EXAMINING BOARD

Representing the agency: Brandy March

ARC 4006C (NOIA), Real Estate Appraiser Qualification Criteria, Proposed Amendments to Chapters 1, 3-6, and 15
No discussion on ARC 4006C.

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg, Janee Harvey

ARC 4031C (NOIA), Medical Assistance Provider Eligibility — Behavioral Health Services Providers, Psychologists, Proposed Amendments to Rules 77.2 and 77.6
No discussion on ARC 4031C.

ARC 4032C (NOIA), Subsidized Guardianship Program, Proposed Amendments to Chapter 204
No discussion on ARC 4032C.

ARC 4033C (NOIA), Subsidized Adoptions, Proposed Amendments to Chapter 201

In response to a concern by committee members that aid may be suspended upon a complaint prior to an investigation, Ms. Freudenberg stated that payments would not be suspended or terminated until an allegation is determined to be founded. Ms. Harvey confirmed that these rules are possible under a new federal policy to provide for suspension of the adoption subsidy payment rather than a limited choice between continuation or termination of benefits. Ms. Harvey explained that an adoption subsidy is provided to the adoptive parent with the intention that it be used for the needs of the child.

Upon inquiry from committee members, Ms. Harvey clarified that an adoption subsidy is provided to parents in approximately 95 percent of adoptions of children out of foster care.

Committee members inquired who would be the decision maker on withdrawing the subsidy. Ms. Harvey indicated that a department social worker would make the decision based upon policies and procedures, which are set forth in a manual. Ms. Harvey indicated that the parents would need to demonstrate documentation of financial support.

Committee members inquired what documentation is required to defend an allegation that an adoption subsidy is not being used to financially support a child. Committee members mentioned that they were aware of examples of baseless complaints being made against adoptive parents. Committee members were concerned that adoptive parents were going to be micromanaged to such a degree that it would take away any incentive to adopt. Ms. Harvey provided examples of documentation. In response to an inquiry from committee members, Ms. Harvey indicated that the department would hope to work closely, but not heavy-handedly, with adoptive parents who have been accused of not financially supporting their adoptive children to gather the facts and understand circumstances. Ms. Harvey stated

the department is concerned when it hears of homeless youth who do not have money to eat but their adoptive parents continue to receive a subsidy.

Committee members recounted observing a history of overreach by the department. Committee members inquired how long the parents are subject to oversight by the department for proper use of the subsidy. Ms. Harvey stated that the rule would make oversight permissible while the subsidy was in place. Ms. Harvey stated that the idea is not to be ruthless or to disrupt adoptions. She stated that every adoption includes a contract and that the department would introduce the suspension language into the contract. She explained that termination decisions are appealable. She also stated that if a suspension was found to not be warranted, the department would provide retroactive payments.

In response to an inquiry from committee members, Ms. Harvey indicated that there are many circumstances where adoptive parents are receiving subsidies when the child is no longer living with the parent, rather the child is back in foster care, living in group care, or is homeless. Committee members followed up by stating that it sounds like the department is making the right decision in utilizing the suspension option; it allows flexibility to protect taxpayer money and also protect the needs of children.

No action taken on ARC 4033C.

ADMINISTRATIVE SERVICES DEPARTMENT

Representing the agency: Tami Wiencek

ARC 4018C (NOIA), Procurement of State Vehicles — Elimination of Life Cycle Costing, Proposed Amendments to Rule 117.12
No discussion on ARC 4018C.

ARC 4019C (NOIA), Hiring of Iowa National Service Corps or AmeriCorps Participants, Proposed Amendment to Subrule 54.5(3)
No discussion on ARC 4019C.

ARC 4020C (NOIA), Peace Officers and Fire Fighters—Continuation of Benefits, Proposed Amendment to Subrule 64.15(3)
No discussion on ARC 4020C.

ARC 4021C (NOIA), Update of Processes, Procedures, and References, Proposed Amendments to Chapters 4, 6, 43, 45, 46, 60, 64, 71, 103, 110, and 117-119
No discussion on ARC 4021C.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT

Representing the agency: Margaret Thomson

ARC 3993C (AF), Pre-Entry Permitting for Importation of Poultry, Domestic Fowl and Hatching Eggs, Amendment to Rules 65.1 and 65.2 and Subrule 65.11(2)
No discussion on ARC 3993C.

ARC 4004C (NOIA), Agricultural Lime—Sampling, Proposed Amendments to Rules 43.20, 43.32, and 43.34 and Subrule 43.35(1)

Committee members asked whether there is a quote from Iowa State University or from any other vendor that shows the cost of testing of agricultural liming material or specialty lime on the market. Ms. Thomson indicated that the department has asked Iowa State for a quote and Iowa State has not provided one yet. Ms. Thomson indicated that the department has looked at all of the state labs in Iowa; they do not do both of the tests the department needs. Ms. Thomson also indicated that the department has a quote from a laboratory in Minneapolis and a laboratory in Omaha. The low price was \$60 per sample from the laboratory in Omaha.

No action taken on ARC 4004C.

ALCOHOLIC BEVERAGES DIVISION

Representing the agency: Stephanie Strauss

ARC 3994C (AF), Personal Importation of Alcoholic Liquor, Wine, and Beer, Amendments to Chapter 9

Ms. Lori Runkle, a member of the public, inquired whether the rulemaking applied to personal importation across state lines or internationally. Ms. Strauss indicated that the new law applied in both scenarios for personal use.

No action taken on ARC 3994C.

UTILITIES DIVISION

Representing the agency: Matthew Oetker

ARC 3990C (NOIA), Energy Efficiency Planning and Reporting for Natural Gas and Electric Utilities Not Required to be Rate-Regulated, Proposed Rescission of Chapter 36

No discussion on ARC 3990C.

IOWA FINANCE AUTHORITY

Representing the agency: Mark Thompson

ARC 4028C (NOIA), Military Service Member Home Ownership Assistance Program — Definitions of “Manufactured Home” and “Qualified Home,” Proposed Amendments to Rule 27.2

No discussion on ARC 4028C.

ARC 4037C (AF), Low-Income Housing Tax Credits, Amendments to Rules 12.1 and 12.2

No discussion on ARC 4037C.

ARC 4038C (AF), Home and Community-Based Services Rent Subsidy Program, Amendments to Chapter 24

No discussion on ARC 4038C.

INSPECTIONS AND APPEALS DEPARTMENT

Representing the agency: David Werning

ARC 4013C (AF), General Provisions for Social and Charitable Gambling, Amendments to Chapter 100

No discussion on ARC 4013C.

ARC 4014C (AF), Bingo, Amendments to Chapter 103

No discussion on ARC 4014C.

ARC 4015C (AF), Amusement Devices, Amendments to Chapters 104 and 105

No discussion on ARC 4015C.

ARC 4016C (AF), Card Game Tournaments by Veterans Organizations, Amendments to Chapter 106

No discussion on ARC 4016C.

ARC 4026C (NOIA), Food and Consumer Safety—Food Code Updates, Inspection Frequency, License Fees, Time/Temperature Control for Safety Foods, Proposed Amendments to Chapter 30

Committee members confirmed with Mr. Werning that the state administrative rules are being changed because the federal food code issued by the U.S. Food and Drug Administration changed and the General Assembly enacted 2018 Iowa Acts, Senate File 2390, which amends Iowa Code chapter 137F.

Committee members stated that the fiscal impact regarding the increase in fees of \$1.2 million is excessive. Committee members inquired whether the department adhered to the federal rules closely. Mr. Werning indicated that there are no inspection fees in federal code. Mr. Werning further indicated that the increase in fees was the department's decision; the policies and procedures were from the federal code. Committee members indicated that they thought the increase of \$1.2 million was substantial. Mr. Werning indicated that the fees cover the food safety inspection services performed by the department. Mr. Werning stated that Iowa does not have re-inspection fees like other states. Committee members indicated that this is a noticed rule and suggested that the department take a second look at the rule before bringing it back to the committee.

No action taken on ARC 4026C.

ARC 4027C (NOIA), Food Establishment and Food Processing Plant Inspections, Proposed Amendments to Chapter 31

Committee members discussed this "mushroom" rule and inquired how the morel mushroom identification expert course at Iowa State University has been going. Mr. Werning indicated that it has been fairly popular, particularly in the spring in Iowa.

Committee members indicated that a change to the rule made the rule confusing. Mr. Werning agreed that readability was difficult and stated that the department would look at the rule.

No action taken on ARC 4027C.

ENVIRONMENTAL PROTECTION COMMISSION

Representing the agency: Jennifer Wright

ARC 3995C (AF), 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, Amendments to Chapters 119, 123, 144, 211, and 214

In response to an inquiry from committee members, Ms. Wright stated that regional collections centers support this rulemaking even though the commission did not make changes to the noticed language based on the centers' public comments.

No action taken on ARC 3995C.

REVENUE DEPARTMENT

Representing the agency: Tim Reilly

ARC 4003C (ANOIA), Commercial Fertilizer and Agricultural Limestone—Exemption from Sales and Use Tax, Proposed Amendments to Rules 17.4 and 226.6 and Subrule 18.57(1)

No discussion on ARC 4003C.

ARC 4009C (NOIA), Baseball and Softball Complex Sales Tax Rebate, Proposed Amendment to Rule 235.2

Committee members questioned whether this rulemaking implements only the 2018 legislation cited in the preamble to the rulemaking or if it also implements legislation from 2016. Mr. Reilly explained that the rulemaking implements both pieces of legislation. Committee members asked that the adopted rule filing cite both pieces of legislation. Mr. Reilly stated that the department will review this matter before adoption of the rulemaking.

No action taken on ARC 4009C.

ARC 4023C (NOIA), Raceway Facility Sales Tax Rebate, Proposed Amendment to Rule 235.3

Committee members asked why the department's fiscal impact statement differs from that of the Fiscal Services Division of the LSA. Mr. Reilly explained that the department's statement reflects that the rulemaking will not have any fiscal impact beyond that attributed to the enabling legislation, while the LSA statement reflects the fiscal impact of the enabling legislation. Committee members asked if the department has any data on economic growth resulting from the sales tax rebate. Mr. Reilly stated that he would look into this and follow up with the committee later.

No action taken on ARC 4023C.

ARC 4024C (NOIA), State-Imposed and Locally Imposed Hotel and Motel Taxes, Proposed Amendments to Chapters 103-105 and 241

No discussion on ARC 4024C.

ARC 4025C (NOIA), Research Activities Credit, Proposed Amendments to Rules 42.11 and 52.7

No discussion on ARC 4025C.

ARC 4022C (NOIA), Section 179 Expensing, Proposed Amendments to Rules 40.65, 53.23, and 59.24

No discussion on ARC 4022C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon

ARC 4034C (NOIA), Concussion and Brain Injury Return-to-Play Protocol, Proposed Adoption of New Chapter 54

Committee members asked whether language in the rulemaking referring to a “concussion or brain injury” should instead refer to a “concussion and brain injury,” as a concussion is a kind of brain injury. Ms. Dixon explained that the enabling legislation uses “or,” not “and,” and the department based the language of the rulemaking on the legislation. She stated that she would have further discussion with committee members after the meeting. Committee members asked about the status of the return-to-learn protocol required by the legislation. Ms. Dixon explained that the legislation requires the Department of Education to develop the protocol and that she is not sure of its status.

Mr. Doug Struyk made a public comment on behalf of the Iowa Athletic Trainers’ Society. He stated that society members will attend the department’s public hearing to share their thoughts on the rulemaking. He stated that the society considers a concussion to be a brain injury and would like to see the relevant language of the rulemaking corrected, but does not want to violate the language of the legislation. He stated that he is unsure if rulemaking will be needed for the return-to-learn protocol under the language of the legislation and given that such protocols would be individualized for each student.

No action taken on ARC 4034C.

PROFESSIONAL LICENSURE DIVISION

Representing the agency: Venus Vendoures-Walsh

ARC 4035C (NOIA), Speech Pathologists and Audiologists — Licensure by Endorsement, Proposed Amendment to Rule 300.9

No discussion on ARC 4035C.

ARC 4036C (NOIA), Speech Pathologists and Audiologists — Code of Ethics, Proposed Amendment to Subrule 304.2(31)

No discussion on ARC 4036C.

DENTAL BOARD

Representing the agency: Jill Stuecker

ARC 4005C (NOIA), Review of Applications for License, Permit, or Registration, Proposed Amendments to Rule 11.8 and Subrule 20.7(5)

No discussion on ARC 4005C.

MEDICINE BOARD

Representing the agency: Kent Nebel

ARC 3992C (NOIA), Supervision of Physician Assistants at Remote Medical Sites, Proposed Amendment to Subrule 21.4(6)
No discussion on ARC 3992C.

PHARMACY BOARD

Representing the agency: Sue Mears

ARC 4029C (NOIA), Pharmacy Operations — Delegation of Functions, Pharmacist Absence, Reference Library, Security, Dispensing, Records, Proposed Amendments to Chapters 5, 7, and 8
No discussion on ARC 4029C.

ARC 4030C (NOIA), Dispensing and Electronic Transfer of Prescriptions by Pharmacy Technicians, Proposed Amendments to Rules 3.21, 3.23, 6.7, and 6.9 and Subrule 3.22(1)
No discussion on ARC 4030C.

SECRETARY OF STATE

Representing the agency: Molly Hammer

ARC 3989C (NOIA), Local Option Sales and Services Tax Elections in Qualified Counties, Proposed Amendment to Rule 21.804
No discussion on ARC 3989C.

ARC 4017C (AF), Post-Election Audit, Amendments to Chapter 26
No discussion on ARC 4017C.

TRANSPORTATION DEPARTMENT

Representing the agency: Sara Siedsma, Steve Gent

ARC 3998C (AF), Automated Traffic Enforcement on the Primary Road System, Rescission of Chapter 144
Committee members expressed disagreement with the Iowa Supreme Court decision on which this rulemaking is based, but acknowledged that the department must comply with it.
No action taken on ARC 3998C.

ARC 3999C (AF), Vehicle Registration and Certificate of Title; Salvage, Amendments to Chapters 400 and 405
No discussion on ARC 3999C.

ARC 4000C (AF), Driver's License Issuance, Amendments to Chapter 605
No discussion on ARC 4000C.

ARC 4001C (AF), OWI—Sobriety and Drug Monitoring Program, License Restriction and Reinstatement, Reporting, Amendments to Chapter 620
No discussion on ARC 4001C.

ARC 4002C (AF), Driver's Licenses for Undercover Law Enforcement Officers, Amendments to Chapter 625
In response to an inquiry from committee members, Ms. Siedsma explained that an undercover license is a driver's license issued to an undercover law enforcement officer.
No action taken on ARC 4002C.

MANAGEMENT DEPARTMENT

Representing the agency: David Roederer

ARC 4008C (NOIA), Suspension and Reinstatement of State Funds, Proposed Amendments to Chapter 13

Mr. Roederer and committee members engaged in a discussion regarding whether the rulemaking applied to schools. Mr. Roederer indicated that the rulemaking does not apply to schools. Committee members inquired why the rulemaking did not explicitly state that schools are excluded. Mr. Roederer indicated that 2018 Iowa Acts, Senate File 481, includes a definition of “local entity” and a school is not in the definition; therefore, the enabling legislation and the corresponding rulemaking do not apply to schools. Committee members stated that usually the law is restated in the rulemaking. Other committee members suggested the rulemaking be revised to explicitly provide for schools to be excluded. Mr. Roederer said the department would take that suggestion under advisement and stated he did not anticipate making such a change would be a problem.

No action taken on ARC 4008C.

PUBLIC SAFETY DEPARTMENT

Representing the agency: Barb Edmondson

ARC 4010C (FEAN), Statewide Sobriety and Drug Monitoring Program, Adoption of New Chapter 159

No discussion on ARC 4010C.

INSURANCE DIVISION

Representing the agency: Doug Ommen, Chance McElhaney, Andria Seip

ARC 4039C (FEAN), Multiple Employer Welfare Arrangements, Amendments to Chapter 77

Committee members questioned why the rules require that an association must be in existence for five years in order to form a MEWA. Mr. Ommen explained that 2018 Iowa Acts, Senate File 2349, replaced previous restrictive requirements on the formation of MEWAs with a requirement that the division establish membership stability standards for MEWAs by rule. The five-year requirement is part of the division’s new membership stability standards. In additional discussion on this subject, he explained that the five-year requirement, including its penalty provisions for early departure from the health insurance market, is intended to ensure membership stability through continuous participation in the market, that the five-year limit is unlikely to decrease participation by MEWAs in the health insurance market, and that the division may seek legislative action in regard to formation of MEWAs by newer associations, although he would be concerned about opening the door too wide in that regard. Mr. McElhaney, also representing the division, noted that the division received no negative feedback about the five-year requirement.

In response to additional questions from committee members, Mr. Ommen and Ms. Seip explained that there are no legal restrictions on establishing MEWAs based on geographic areas, that the recent interest in establishing MEWAs in Iowa is due to statutory changes and customers fleeing the individual health insurance market, that the division has communicated with existing MEWAs to determine best practices relating to MEWAs, that this rulemaking will not affect existing MEWAs, that MEWAs are intended to provide lower-cost alternatives to the individual health insurance market, and that MEWAs are not subject to mandates under the federal Affordable Care Act, but are subject to mandates under state law.

Mr. Scott Sundstrom made a public comment on behalf of Wellmark Blue Cross Blue Shield. He explained that Wellmark supports this rulemaking and that the rulemaking includes consumer protection while ensuring stability in the health insurance market. He stated that the rulemaking is in full compliance with federal law. He noted that Wellmark runs an existing MEWA for bankers and provided additional background on the effects of the rulemaking on the health insurance market. In response to questions from committee members, he explained that he foresees a modest increase in health insurance premiums in Iowa next year due to a decline in the individual health insurance market and that “employee” under the rulemaking would include realtors.

Ms. Paula Dierenfeld made a public comment on behalf of the Iowa Association of Insurers. She explained that the association circulated this rulemaking among its members, and the division made some changes to the noticed language based on the association's feedback. The association supports the rulemaking.

Committee members expressed concern about the increased cost of health insurance in Iowa.
No action taken on ARC 4039C.

ARC 4041C (NOIA), Fully Insured Multiple Employer Welfare Arrangements; Fully Insured and Self-Insured Association Health Plans, Adoption of New Rules 77.4-77.6
No discussion on ARC 4041C.

Respectfully submitted,

APPROVED:

Chair Mark Chelgren

Vice Chair Dawn Pettengill