



MINUTES

FEBRUARY 2021 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Zach Whiting, Vice Chair
Senator Waylon Brown
Senator Jesse Green
Senator Robert Hogg [by teleconference]
Senator Pam Jochum [by teleconference]

Representative Megan Jones, Chair
Representative Jon Jacobsen [by teleconference]
Representative Rick L. Olson
Representative Mike Sexton [by teleconference]

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: 2/10/21, 2/24/21

Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9 a.m. on Friday, February 26, 2021, in Room 103, State Capitol, Des Moines, Iowa. The meeting constituted the March ARRC meeting which was held a week early to avoid a conflict with the first funnel. The minutes of the February 5, 2021, meeting were approved. The next meeting was scheduled for April 9, 2021, at the State Capitol in Des Moines, Iowa. Mr. Ewing discussed procedures for those participating in the meeting via Zoom. He reviewed a draft bill he had prepared containing various technical statutory changes relating to rulemaking. Committee members asked for clarification of a 21-day period associated with the bill being filed. Mr. Ewing explained that a bill sponsored by the ARRC is not subject to the funnel deadlines. He further explained that a committee must act within 21 days after the bill is referred to the committee unless the bill is referred to the Ways and Means Committee or to the Appropriations Committee. A motion to authorize Mr. Ewing to finalize the draft so that the draft can be filed carried on a 7-2 roll call vote. Members referenced another bill related to rulemaking that had been assigned to the House State Government Committee and stated that there had been discussion related to the “pocket veto” that results when agencies either delay rulemaking or fail to do rulemaking as required by legislation. The meeting was adjourned at 11:15 a.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, Lisa Cook

ARC 5417C (AF), Child Support Recovery Unit—Administrative Appeals Procedures, Chs. 9, 95 to 100
No discussion on ARC 5417C.

ARC 5418C (AF), Billing of Physician Assistant Services, Rules 77.49, 78.1
No discussion on ARC 5418C.

ARC 5419C (AF), HCBS Elderly Waiver Budget Cap, Rules 83.22(2)“c,” 83.28
No discussion on ARC 5419C.

ARC 5420C (AF), Aftercare Services Program, Rules 187.2(3)“c,” 187.3
No discussion on ARC 5420C.

ARC 5437C (NOIA), Electronic Visit Verification, Chs. 73, 78, 83

Committee members asked if providers have adapted to using electronic visit verification (EVV), if it is working well, and if consumer-directed attendant care (CDAC) providers and homemaker providers that do not have access to a computer are having issues with EVV. Ms. Freudenberg explained that extensive EVV training had been conducted for providers, case managers, and members; and that a provider or member that does not have access to a computer or to a cell phone can use a member’s home phone. She also explained that if the Internet is unavailable, a provider can log into a portal at the provider’s office.

Ms. Cook stated that although there has been a learning curve, there have not been many issues with EVV. She also stated that both access and billing have improved. Committee members expressed concern that some CDAC providers have been unable to file their paperwork. Ms. Freudenberg responded that a CDAC provider who is having issues should confirm with their employer that the provider has the correct application installed on their cell phone. Members asked who provides training locally. Ms. Freudenberg stated that CareBridge is the primary trainer and she offered to work directly with providers and committee members to help resolve any issues.

No action taken on ARC 5437C.

ARC 5471C (NOIA), Travel Trailers—Time Frame for Consideration as Permanent Place of Habitation, Rule 58.1

No discussion on ARC 5471C.

INSURANCE DIVISION

Representing the agency: Tracy Swalwell

ARC 5472C (NOIA), Long-Term Care Insurance, Chs. 39, 72
No discussion on ARC 5472C.

LANDSCAPE ARCHITECTURAL EXAMINING BOARD

Representing the agency: Jill Simbro

ARC 5430C (NOIA), Five-Year Review of Rules; Continuing Education; Criminal Convictions, Rules 1.1, 1.2, 1.10(2), 2.2-2.5, 2.7, 2.8, 2.10, 2.11, 3.3, 4.1(7)
No discussion on ARC 5430C.

REAL ESTATE APPRAISER EXAMINING BOARD

Representing the agency: Brandy March

ARC 5484C (AF), Licensure; Eligibility Determinations; Waivers; Petitions for Rulemaking; Public Records, Chs. 1, 3-7, 13, 18, 20, 22, 25, 26
No discussion on ARC 5484C.

UTILITIES DIVISION

Representing the agency: Matthew Oetker

ARC 5475C (NOIA), Electric Utility Service, Ch. 20
No discussion on ARC 5475C.

ECONOMIC DEVELOPMENT AUTHORITY

Representing the agency: Lisa Connell

ARC 5438C (NOIA), Waivers, Ch. 199
No discussion on ARC 5438C.

ARC 5439C (NOIA), High Quality Jobs Program—Changing a Maintenance Period Completion Date, Rules 187.3(1), 187.4(2)“d”
No discussion on ARC 5439C.

ARC 5480C (AF), Apprenticeships, Chs. 12, 13, 14
No discussion on ARC 5480C.

IOWA FINANCE AUTHORITY

Representing the agency: Kristin Hanks-Bents

ARC 5412C (NOIA), Waivers, Rules 11.2, 18.1, 18.4, 18.6, 18.12, 18.13
No discussion on ARC 5412C.

ARC 5414C (NOIA), Authority Board—Voting Members, Rule 1.3(2)
No discussion on ARC 5414C.

ARC 5468C (NOIA), First Amended 9 Percent Qualified Allocation Plan, Rules 12.1(2), 12.2(2)
No discussion on ARC 5468C.

EDUCATION DEPARTMENT

Representing the agency: Thomas Mayes

ARC 5462C (NOIA), Financial Management of Categorical Funding—Custodial Funds, Rule 98.101
No discussion on ARC 5462C.

ARC 5463C (NOIA), Open Enrollment of Special Education Students, Rules 17.6(3), 17.11
No discussion on ARC 5463C.

ARC 5464C (NOIA), Supplementary Weighting—English Language Learners, Rule 60.6
No discussion on ARC 5464C.

ARC 5465C (NOIA), Waivers, Ch. 4
No discussion on ARC 5465C.

ARC 5466C (NOIA), Procedures—Rulemaking, Petitions for Rulemaking, Rules 2.7(3), 2.12(2), 2.17(3), 2.18 to 2.20

No discussion on ARC 5466C.

ARC 5467C (NOIA), Work-Based Learning Programs, Ch. 48

No discussion on ARC 5467C.

ARC 5479C (NOIA), Organization and Operation, Rule 1.4(1)

No discussion on ARC 5479C.

EDUCATIONAL EXAMINERS BOARD

Representing the agency: Darcy Hathaway

ARC 5416C (AF), Dyslexia Specialist Endorsement, Rule 13.28(36)

No discussion on ARC 5416C.

INSPECTIONS AND APPEALS DEPARTMENT

Representing the agency: Ashleigh Hackel

ARC 5421C (AF), Criminal History Background Check—Provisional Employment, Conditions, Rules 50.9, 51.41, 58.11(3), 67.19

No discussion on ARC 5421C.

LABOR SERVICES DIVISION

Representing the agency: Kathleen Uehling

ARC 5436C (NOIA), Elevators—Controlling or Preventing Access, Alterations, Agency Address, Waivers, Chs. 65-67, 69-72

Committee members asked if the address update included in the rulemaking was necessary. Mr. Ewing explained that the process for agency addresses to be updated editorially is still in development and most agencies are not yet aware of the process.

No action taken on ARC 5436C.

TRANSPORTATION DEPARTMENT

Representing the agency: Sara Siedsma, Tina Greenfield, Kelly Popp, Tim Crouch

ARC 5411C (NOIA), Federal Regulations — Federal Medical Certificate Form for Commercial Driver's License; Motor Carriers; Hazardous Materials, Rules 520.1, 529.1, 607.28(7), 607.37(1)“a,” 607.50

No discussion on ARC 5411C.

ARC 5413C (NOIA), Transporter Plates—Contact Information, Form Submission, Application Process, Fees, Rules 424.1(1), 424.4(2)

No discussion on ARC 5413C.

ARC 5428C (AF), Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight, Rules 511.2(4), 511.4(2)“a,” 511.5, 511.7, 511.8(1)“e,” 511.9, 511.12, 511.15(4)

No discussion on ARC 5428C.

ARC 5429C (AF), 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 5429C.

ARC 5410C (NOIA), Holiday Rest Stops; Promotion of Iowa Agricultural Products at Interstate Rest Areas; Maintenance Bureau, Rules 105.2(4), 105.4, 105.5, 106.3, 106.4
No discussion on ARC 5410C.

ARC 5425C (AF), Adopt-a-Highway-Program—Online Information, Sponsors, Rules 121.2, 121.3, 121.5, 121.6(1)
No discussion on ARC 5425C.

ARC 5427C (AF), Rights-of-Way; Primary Road Extensions, Rules 150.2, 150.3, 150.5(1)
No discussion on ARC 5427C.

ARC 5424C (AF), Public Records—Request for Records, Confidentiality, Copies, Rules 4.3, 4.9(6)
No discussion on ARC 5424C.

ARC 5426C (AF), Signing on Primary Highways — Traffic and Safety Bureau, Iowa Medal of Honor Highway, Ch. 131
No discussion on ARC 5426C.

VETERINARY MEDICINE BOARD

Representing the agency: Colin Tadlock, Jeff Kaisand

ARC 5431C (NOIA), Prescribing and Dispensing a Drug Directly to a Client, Rule 12.3(1)
Committee members asked what the practical effect is of the rulemaking. Mr. Tadlock explained that the rulemaking allows individuals in rural communities to obtain a prescription for their pet directly from their veterinarian rather than requiring travel to a pet store or a pharmacy to fill the prescription. He also explained that the rulemaking provides clear authority for a veterinarian to charge a fee for dispensing a drug directly to a client. Members asked for an explanation regarding current practices related to a veterinarian dispensing a prescription drug directly to a client. Dr. Kaisand explained that the rulemaking clarifies that an individual may either fill a prescription for their pet at a pharmacy, or a veterinarian may charge a fee for dispensing the drug directly to the client.
No action taken on ARC 5431C.

ARC 5432C (NOIA), Registration as Veterinary Technician by Verification, Rule 8.11
No discussion on ARC 5432C.

ARC 5433C (NOIA), Applicants With Work Experience in Jurisdictions Without Licensure Requirements, Rule 8.12
Committee members asked if the rulemaking enables the board to investigate a veterinary technician's (vet tech) work performance in the state in which the vet tech worked prior to relocating to Iowa. Mr. Tadlock stated that the burden is on an applicant to satisfactorily prove to the board that the applicant is qualified to work as a vet tech in Iowa. Members asked if the board will ask an applicant if the applicant has been subject to any work-related lawsuits in their former state. He confirmed that the board will not ask an applicant about work-related lawsuits, and as an applicant is not subject to professional regulation in their former state there will not be information available concerning regulatory actions taken against the applicant related to their job performance. Members expressed concern that under the rulemaking a vet tech may be permitted to work in Iowa even if they are not qualified to do so. He stated that the board will consider the committee's comments and concerns.
No action taken on ARC 5433C.

ARC 5434C (NOIA), Licensure by Verification, Rules 1.4, 6.6-6.8
No discussion on ARC 5434C.

ARC 5474C (NOIA), Licensure by Verification—Application Fee, Rule 6.2
No discussion on ARC 5474C.

ARC 5485C (AF), Disclosure of Patient Records, Rule 12.4(2)
No discussion on ARC 5485C.

REVENUE DEPARTMENT

Representing the agency: Mike Mertens

ARC 5469C (NOIA), Geothermal Heat Pump Tax Credit, Rule 42.47
No discussion on ARC 5469C.

ARC 5470C (NOIA), Solar Energy System Tax Credit, Rules 42.48, 52.44, 58.22
No discussion on ARC 5470C.

RACING AND GAMING COMMISSION

Representing the agency: Brian Ohorilko

ARC 5423C (AF), Wagering; Horse Racing, Rules 8.1, 10.2(9), 10.4-10.6, 14.8(3)
No discussion on ARC 5423C.

ARC 5422C (AF), Waivers; Petitions for Rulemaking; Licensee Responsibilities; Sports and Other Wagering;
Gambling Games; Electronic Wagering Accounts; Fantasy Sports Contests, Amendments to Chs. 1, 2,
5, 8, 11 to 14
No discussion on ARC 5422C.

DENTAL BOARD

Representing the agency: Jill Stuecker

ARC 5441C (NOIA), Petitions for Rulemaking; Waivers; Reporting Requirements, Rules 7.1, 7.4, 7.5
No discussion on ARC 5441C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon

ARC 5483C (AF), Plumbing and Mechanical Systems Professionals — Continuing Education, Waivers,
Petitions, Chs. 30, 31, 36
No discussion on ARC 5483C.

ARC 5476C (NOIA), State Mechanical Code—Adoption of International Mechanical Code, 2021 Edition, by
Reference, Rules 61.1-61.5
No discussion on ARC 5476C.

ARC 5478C (NOIA), State Plumbing Code — Adoption of Uniform Plumbing Code, 2021 Edition, by
Reference, Ch. 25
No discussion on ARC 5478C.

NURSING BOARD

Representing the agency: Kathy Weinberg

ARC 5482C (AF), Waivers, Amendments to Ch. 15
No discussion on ARC 5482C.

ARC 5481C (AF), Nursing Practice for Registered Nurses/Licensed Practical Nurses, Ch. 6
No discussion on ARC 5481C.

NATURAL RESOURCE COMMISSION

Representing the agency: Tamara McIntosh, Matt Bruner

ARC 5435C (NOIA), Deer Hunting by Residents—Firearms, Rules 106.7, 106.10(5)

Committee members asked if the language “with the consent of a parent or guardian” that is included in the rulemaking is consistent with 2020 Iowa Acts, House File 716. Ms. McIntosh confirmed that the language is consistent with the legislation.

No action taken on ARC 5435C.

PUBLIC SAFETY DEPARTMENT

Representing the agency: Sarah Jennings

ARC 5440C (NOIA), Blue Alert Program, Rules 89.300-89.307

No discussion on ARC 5440C.

Emergency filing, approval required: Standards for Electrical Work—2020 National Electrical Code (NEC), Ch. 504

Committee members thanked the department for its work on the rulemaking. Mr. Scott Webster, a member of Bettendorf’s city council, explained that his area of the state gets competition from bordering states and he expressed concern that the amendment and sunset provision had not been subject to public comment. Committee members responded that there had been multiple opportunities for public comment on the rulemaking. He asked what emergency prompted the emergency rulemaking as only a handful of states have adopted the 2020 NEC. He explained that he had previously served on the state building code board of review and if a code was amended, the board had to allow for either a 30 or 60-day public comment period. He also explained that he had attended meetings where NEC-type codes are developed and that the codes are driven by special interests. He provided an example of a smoke detector code that had been amended and that required two-phase smoke detectors even though two-phase smoke detectors were not available. He stated that breakers are already difficult to find in his area of the state and that very few manufacturers make arc fault circuit interrupters (AFCI). He also stated that the rulemaking will affect the affordability of homes in eastern Iowa, and the additional regulations increase overall expenses. He noted that he has a negative opinion of AFCIs as he had AFCIs in his house, and they failed to trip when he had a house fire. He expressed to the committee that he does not think current AFCI technology is safe.

Mr. Jay Iverson, executive officer of Homebuilders Association of Iowa (association), stated that the association had offered amendments that did not adversely affect health or safety; however, the department disregarded the amendments. He noted that the association does not object to the adoption of the NEC; however, the NEC is commonly adopted with amendments. He expressed concern that increased regulatory burdens increases the cost of building homes. He explained that he is the vice president of Homes for Iowa, the home building program at the Newton correctional facility, and that the program builds homes for rural Iowa and tries to keep the cost at \$75,000. He stated that currently 30 percent of the cost of building a single-family home is due to regulatory burdens.

Mr. Dan Buuck, senior program manager with the National Association of Homebuilders, stated that he was a voting member of code-making panel 2 (CMP-2) which has responsibility over the NEC section where AFCIs are addressed. He also stated that he is speaking on his own behalf and not on behalf of CMP-2. He explained that he was a member of CMP-2 when AFCI requirements were added to kitchen and laundry areas; however, CMP-2 did not have clear substantiation of fires in those areas to justify that addition. He further explained that AFCIs should not have been expanded into those areas as moisture is present and that has resulted in greater use of dual-function AFCIs/ground fault circuit interrupters (GFCIs) in those areas. He stated that this creates problems when newer energy-efficient appliances cause nuisance tripping of the dual-function breaker and a homeowner replaces the dual-function breaker with a standard breaker and removes the GFCI protection. He also stated that if a homeowner contacts a contractor to replace an AFCI/GFCI, the frustration and added cost sometimes leads the contractor to replace the dual-function breaker with a standard breaker. He explained that this is costly for the homeowner and misleads the homeowner into believing that their home is in compliance with the applicable NEC. He noted that newer homes do not require AFCIs, as the NEC has advanced greatly over the last few decades. He explained that the study that originally led to the

inclusion of AFCIs in the NEC demonstrated that the majority of homes where fires occurred had been wired in compliance with either the 1965 or an earlier edition of the NEC, and that the advances in the NEC since that time have resulted in greater fire safety in newer homes. He further explained that the expansion of AFCI requirements has caused so much concern that 22 states have amended, or made exceptions to, the AFCI requirements. He stated that the amendments proposed by the association reflect that newer homes already address the issues meant to be addressed by requiring GFCIs in areas of homes where GFCIs have not traditionally been required.

Emergency Rulemaking Authorized

A motion to authorize the emergency rulemaking passed on a 9-0 roll call vote.