



MINUTES

MAY 2021 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

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

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

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: 4/7/21, 4/21/21

Procedural Business

Senator Whiting convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9 a.m. on Friday, May 7, 2021, in Room 103, State Capitol, Des Moines, Iowa. The minutes of the April 9, 2021, meeting were approved. The next meeting was scheduled for June 8. Mr. Ewing discussed procedures for those participating in the meeting via Zoom. He briefly reviewed the LSA rules analysis report for the bills enacted in the 2020 Legislative Session. He also reviewed the status of the technical bill sponsored by the ARRC. The meeting was adjourned at 11 a.m.

Fiscal Overview

Mr. Adam Broich, Fiscal Legislative Analyst, presented the LSA fiscal report.

CREDIT UNION DIVISION

Representing the agency: Jessica Pollmeier

ARC 5577C (NOIA), Waivers, Ch. 23
No discussion on ARC 5577C.

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg

ARC 5540C (AF), Kinship Caregiver Program, Rules 156.1, 156.7, 156.8(5), 202.1, 202.4(3)“a”
No discussion on ARC 5540C.

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 5549C (NOIA), Food Assistance—Supplemental Nutrition Assistance Program (SNAP), Opportunity to Waive Right to Administrative Disqualification Hearing, Rules 7.1, 7.2, 7.4(3), 7.19
Committee members stated that they understand the department’s desire to avoid unnecessary hearings and asked how many administrative disqualification hearings there are on an annual basis. Ms. Freudenberg responded that there are several hundred hearings annually. She explained that for this type of hearing federal regulations require that an individual be provided a written 30-day advance notice of the hearing; however, the individual is not required to participate in the hearing.
No action taken on ARC 5549C.

ARC 5550C (NOIA), Waivers, Rules 83.61(4)“d,” 83.82(4)“d,” 83.123(1)“e”
No discussion on ARC 5550C.

ARC 5585C (NOIA), Payment for Transportation of Students, Rule 151.22(2)“b”
No discussion on ARC 5585C.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT

Representing the agency: Colin Tadlock

ARC 5588C (NOIA), Veterinarian Certification — Removal of Reference to Pseudorabies Advisory Committee, Rule 64.162(1)
No discussion on ARC 5588C.

ARC 5575C (NOIA), Waivers, Chs. 8, 90, 91
No discussion on ARC 5575C.

SOIL CONSERVATION AND WATER QUALITY DIVISION

Representing the agency: Colin Tadlock

ARC 5576C (NOIA), Waivers, Ch. 8
No discussion on ARC 5576C.

CIVIL RIGHTS COMMISSION

Representing the agency: Haley Wurdinger

ARC 5565C (NOIA), Waivers, Rule 15.3
No discussion on ARC 5565C.

PROFESSIONAL LICENSING AND REGULATION BUREAU

Representing the agency: Lori SchraderBachar

ARC 5573C (AF), Waivers; Licensure; Criminal Convictions, Chs. 5, 14, 15
No discussion on ARC 5573C.

ARCHITECTURAL EXAMINING BOARD

Representing the agency: Lori SchraderBachar

ARC 5563C (AF), Board Administration; License Renewal; Continuing Education, Chs. 1-4, 6, 7
No discussion on ARC 5563C.

INTERIOR DESIGN EXAMINING BOARD

Representing the agency: Lori SchraderBachar

ARC 5568C (AF), Waivers; License Renewal; Continuing Education, Rules 1.3, 1.8, 2.2, 2.4, 3.2(3), 3.3(2)
No discussion on ARC 5568C.

ACCOUNTANCY EXAMINING BOARD

Representing the agency: Robert Lampe

ARC 5562C (AF), 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)
No discussion on ARC 5562C.

ENGINEERING AND LAND SURVEYING EXAMINING BOARD

Representing the agency: Robert Lampe

ARC 5564C (AF), Temporary Permits; Licensure by Verification, Rules 3.3(4), 5.3
No discussion on ARC 5564C.

LANDSCAPE ARCHITECTURAL EXAMINING BOARD

Representing the agency: Jill Simbro

ARC 5571C (AF), Five-Year Review of Rules; Continuing Education; Criminal Convictions, Rules 1.1, 1.2,
1.10(2), 2.2 to 2.5, 2.7, 2.8, 2.10, 2.11, 3.3, 4.1(7)“b”
No discussion on ARC 5571C.

LIBRARIES AND INFORMATION SERVICES DIVISION

Representing the agency: Michael Scott

ARC 5584C (NOIA), Waivers, Ch. 10
No discussion on ARC 5584C.

INSPECTIONS AND APPEALS DEPARTMENT

Representing the agency: Ashleigh Hackel

ARC 5551C (NOIA), Removal of Hospital Licensing Board, Rules 6.2, 6.11(1)
No discussion on ARC 5551C.

ARC 5552C (NOIA), Consumable Hemp Products—Unit of Measurement for Residual Solvent Limits, Rule
32.3(2)“b”

Committee members asked if the rulemaking is the result of a policy change or the result of a
typographical error. Ms. Hackel explained that the department misinterpreted a symbol in a table that is
used by the consumable hemp industry.

No action taken on ARC 5552C.

ARC 5560C (NOIA), Waivers, Chs. 6, 41, 50, 51, 57, 58, 60, 61, 63-65, 71
No discussion on ARC 5560C.

ARC 5567C (NOIA), Deaf and Hard-of-Hearing Persons—Terminology, Rules 57.24(4), 58.39(7), 63.21(4),
65.25(2), 71.21(3)“b”

No discussion on ARC 5567C.

IOWA PUBLIC INFORMATION BOARD

Representing the agency: Zach Goodrich

ARC 5569C (AF), Delegation of Advisory Opinions, Rule 1.3(2)
No discussion on ARC 5569C.

ARC 5578C (NOIA), Waivers, Ch. 9
No discussion on ARC 5578C.

PROFESSIONAL LICENSURE DIVISION

Representing the agency: Steven Garrison

ARC 5554C (NOIA), Hearing Aid Specialists—Telehealth Appointments, Rules 123.4(1)“g,” 123.5
No discussion on ARC 5554C.

ARC 5555C (NOIA), Physician Assistants—Telemedicine, Rule 327.9
No discussion on ARC 5555C.

ARC 5556C (NOIA), Practice of Speech Pathologists and Audiologists, Ch. 301
No discussion on ARC 5556C.

ARC 5557C (NOIA), Barbers—Mobile Barbershops, Licensing, Rules 21.11, 21.19
No discussion on ARC 5557C.

PUBLIC SAFETY DEPARTMENT

Representing the agency: Brian Young, Sarah Jennings

ARC 5558C (NOIA), Statewide Sobriety and Drug Monitoring Program, Rule 159.12(1)
No discussion on ARC 5558C.

ARC 5559C (NOIA), Responsibility for Installation of Light-Emitting Carbon Monoxide Alarm for Deaf or Hard-of-Hearing Tenant, Rule 211.20
No discussion on ARC 5559C.

ARC 5586C (NOIA), Sex Offender Registry—Continuous Sexual Abuse of a Child, Rules 83.2-83.4
No discussion on ARC 5586C.

ARC 5587C (NOIA), Standards for Electrician and Electrical Contractor Licensing — Reciprocity, Disqualifying Convictions, Fee Structure, Military Spouses, Chs. 500, 502, 506
Committee members inquired about the origin of the new definitions included in the rulemaking. Mr. Young replied that the attorney general’s office provided guidance on the definitions. Members stated that the department cites Iowa Code chapter 272C and Iowa Code section 103.6 as authority for the rulemaking; however, the definitions are not in either. Mr. Young responded that he will speak with the Attorney General’s office and follow up with the committee.

Committee members stated that “rehabilitation” as described in rule 502.8(1)(c) is a misstatement of the law, and contrary to the description, in some circumstances the burden is not on the applicant to prove by clear and convincing evidence that the applicant is rehabilitated. Mr. Young stated that he will bring the matter to the attention of the Attorney General’s office and report back to the committee.
No action taken on ARC 5587C.

ARC 5591C (AF), Blue Alert Program, Rules 89.300-89.307
No discussion on ARC 5591C.

PHARMACY BOARD

Representing the agency: Andrew Funk, Sue Mears

ARC 5541C (AF), Temporary Designation of Controlled Substances, Rule 10.39

No discussion on ARC 5541C.

ARC 5542C (AF), Pharmacy Technicians, Rules 3.1, 3.3, 3.8-3.12, 3.20 to 3.24, 3.30, 3.31, 6.9(3)

No discussion on ARC 5542C.

ARC 5543C (AF), Pharmacy Support Persons, Ch. 5

Committee members asked how the board educates pharmacies and individuals to ensure that they are aware of the registration requirements for pharmacy support persons. Ms. Mears explained that at both the notice and the adopted stages of rulemaking, the board puts out a press release regarding the rulemaking. She stated that the board's compliance officers speak to pharmacy personnel about new rulemaking during audits, and the department also distributes a quarterly newsletter to all licensees that provides information on rulemaking. She confirmed that the onus is on the pharmacy to ensure that all of its pharmacy support persons are properly registered.

No action taken on ARC 5543C.

ARC 5544C (AF), Pharmacist-Interns, Rules 4.6-4.8, 4.11, 4.12

No discussion on ARC 5544C.

ARC 5545C (AF), Controlled Substances, Veterinarian Access to Data, Definitions, Rules 37.2, 37.7(1)“d,” 37.8, 37.16

No discussion on ARC 5545C.

REVENUE DEPARTMENT

Representing the agency: Clara Wulfsen

ARC 5553C (NOIA), Honey Creek Premier Destination Park Bonds, Rule 40.3

No discussion on ARC 5553C.

ARC 5579C (NOIA), Payment of Fees, Taxes, Interest, and Penalties — Remittances Payable to the Department, Rules 12.2, 70.17, 78.16, 82.5(2)

No discussion on ARC 5579C.

ARC 5589C (AF), Geothermal Heat Pump Tax Credit, Rule 42.47

No discussion on ARC 5589C.

ARC 5590C (AF), Solar Energy System Tax Credit, Rules 42.48, 52.44, 58.22

Committee members asked how large the backlog is for solar energy system tax credits for eligible installations. Ms. Wulfsen replied that she will obtain that information and provide it to the committee. Members asked Ms. Wulfsen if she is aware of people who have installed separate meters in order to receive additional tax credits. She stated that she does not know how many instances of separate meter installations have occurred. Members commented that the wait list seems to be due to the popularity of the solar tax credit.

Mr. Christopher Rants, representing the Iowa Solar Energy Trade Association (association), thanked the department for its work on the rulemaking. He stated that the association supports the rulemaking; however, unless the General Assembly takes action before it adjourns sine die, the solar tax credit will end. He also stated that the association has proposed legislation and explained that based on information received from the department, 1,968 Iowans are on the wait list to receive the solar tax credit. He explained that despite those individuals applying for the solar tax credit and making the investment necessary to qualify for the credit, if the program expires, while some commercial applicants may still receive the solar tax credit, residential applicants will not. He stated that to remedy the issue, Iowa can either recouple with the federal extension, or decouple from the federal tax credit. He commented that the tax credit is very popular and has been used in all 99 counties, and he encouraged the committee to speak with other members of the General Assembly regarding legislation to remedy the issue. Members asked what the average tax credit is for those on the wait list, and he stated he would try to find out.
No action taken on ARC 5590C.

WORKFORCE DEVELOPMENT DEPARTMENT

Representing the agency: David Steen, Nicole Merrill

ARC 5561C (NOIA), Contested Case Proceedings, Rules 26.8, 26.14

Committee members asked how frequently a party files a request to reopen the record and also appeals to the Employment Appeal Board (EAB). Ms. Merrill responded that it is an infrequent occurrence as her team works closely with the EAB and tries to provide the EAB notice when a party requests to reopen the record. She stated that she receives feedback from the public that the process is very confusing. Members asked if a party can appeal to the EAB on the basis that the administrative law judge failed to consider an issue. Members provided an example of the appeal procedure in a district court. She explained that the administrative appeal process is more informal than the district court appeal process. She further explained that these administrative hearings involve parties who failed to appear for a hearing, and a party may appeal to the EAB for any reason. Members expressed concern that the rulemaking makes the administrative process more formal, and most claimants are not represented by counsel. Members also expressed concern that the rulemaking does not allow a presiding officer to vacate a decision upon the officer's own motion, and suggested that the department preserve that option.

No action taken on ARC 5561C.

LAW ENFORCEMENT ACADEMY

Representing the agency: Russell Rigdon

ARC 5572C (AF), Law Enforcement Officers and Reserve Peace Officers — Training, Emergency Care Providers, Amend Chs. 1-3, 6, 8, 10, 14

No discussion on ARC 5572C.

CHIEF INFORMATION OFFICER, OFFICE OF THE

Representing the agency: Pearson Skepnek

Emergency Filing, Review Required: Broadband—Targeted Service Areas, Grants Program, Chs. 20, 22

Committee members asked if faster internet service results in lower reimbursement. Mr. Skepnek explained that all new projects have to support broadband download and upload speeds of 100/100 or 100/120, and reimbursement is pursuant to tier 1, 2, or 3 targeted service areas (TSA). Members asked if the fastest download speed is the tier 3 TSA. He explained that the reimbursement that is available for each TSA tier is dependent upon the download speeds already available in that TSA tier. He provided a hypothetical example of a project built in a rural part of the state where there is currently no broadband available in a census block and explained that the project would be eligible for a 75 percent tier 1 TSA reimbursement. He provided another hypothetical example of a project built in a tier 3 TSA that has existing broadband speeds between 50 and 80 mb/second and explained that the project would

be eligible for a 35 percent reimbursement. He indicated that the TSA tiers were established to help define the broadband speeds currently available in each census block.

EDUCATION DEPARTMENT

Representing the agency: Thomas Mayes

ARC 5581C (NOIA), Online and Virtual Learning, Adopt Ch. 15

No discussion on ARC 5581C.

ARC 5582C (NOIA), Educator Preparation Programs—Accreditation, Approval Criteria, Rules 79.2, 79.4, 79.9

No discussion on ARC 5582C.

ARC 5583C (NOIA), Drinking Drivers Instructional Course—Online Delivery, In-Person Delivery, Rules 21.31, 21.32(1)

Committee members asked why the rulemaking refers to “drinking drivers” rather than “drunk drivers” or a “sobriety course.” He stated he will look into the reason for the terminology and get back to the committee.

No action taken on ARC 5583C.

ARC 5580C (NOIA), Therapeutic Classrooms; Telehealth Services on School Premises, Ch. 14

No discussion on ARC 5580C.