



# MINUTES

## JULY 2021 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

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### MEMBERS PRESENT

Senator Zach Whiting, Vice Chair	Representative Megan Jones, Chair
Senator Pam Jochum [by teleconference]	Representative Jon Jacobsen [by teleconference]
Senator Waylon Brown [by teleconference]	Representative Amy Nielsen
Senator Jesse Green	Representative Rick L. Olson
Senator Robert Hogg [by teleconference]	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

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### BULLETINS NEEDED FOR THIS MEETING: 6/16/21, 6/30/21

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#### Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:05 a.m. on Tuesday, July 13, 2021, in Room 103, State Capitol, Des Moines, Iowa. The minutes of the June 8, 2021, meeting were approved. The next meeting was scheduled for August 10 (subsequently rescheduled to August 17). Mr. Ewing discussed procedures for those participating in the meeting via Zoom. He briefly reviewed the LSA rules analysis report for bills enacted in the 2020 Legislative Session and the five-year rules review conducted by each agency. The meeting was adjourned at 12:20 p.m.

#### Fiscal Overview

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

#### HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg, Janee Harvey

ARC 5675C (FEAN), Child Care Assistance—Fee Schedule, Rule 170.4(2)“a”  
No discussion on ARC 5675C.

ARC 5680C (AF), Subsidized Guardianship Program, Rules 204.1-204.10  
No discussion on ARC 5680C.

ARC 5706C (NOIA), Home and Community-Based Services Habilitation Program—Eligibility Criteria, Staff Training, Scope of Services, Rules 77.25, 78.27  
No discussion on ARC 5706C.

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 5707C (NOIA), Foster Home Insurance Fund—Applicability, Definitions, Payment Limits, Claims, Ch. 158

No discussion on ARC 5707C.

ARC 5708C (NOIA), Prescribing Controlled Substances, Rule 79.17

No discussion on ARC 5708C.

ARC 5709C (NOIA), Child and Spousal Support—Obligations, Terminology, Rules 99.1, 99.2, 99.4(5), 99.69(4), 99.85(1)“d,” 99.91(1), 99.109(2)“b”

No discussion on ARC 5709C.

ARC 5728C (AF), Waivers, Rules 83.61(4)“d,” 83.82(4)“d,” 83.123(1)“e”

No discussion on ARC 5728C.

ARC 5729C (AF), Payment for Transportation of Students, Rule 151.22(2)“b”

No discussion on ARC 5729C.

ARC 5731C (AFE), Child Care Assistance Provider Reimbursement Rates, Rule 170.4(7)“a”

Committee members asked why the rulemaking increases the rate ceiling for nonregistered child care homes in table 4 when section 31(11) of 2021 Iowa Acts, House File 891, directs the department to “set rates in a manner so as to provide incentives for a nonregistered provider to become registered by applying any increase only to registered and licensed providers.” Ms. Harvey explained that the department believes the statutory language is ambiguous and it interprets the language to refer only to quality rating system (QRS) bonus rates, for which nonregistered providers are ineligible. Members disagreed with the department’s interpretation and asserted the reference to providing incentives applied to all reimbursement rates, not only QRS bonus rates. Members questioned how the department’s interpretation would incentivize registration as required by HF 891. She responded that QRS bonuses are considered “rates” as described in the legislation, that the department’s child care assistance provider reimbursement rate structure inherently incentivizes registration, and that recent data showing increased registration by providers demonstrates that registration is being incentivized. She also noted that millions of dollars in recent federal COVID-19 relief funding had only been available to registered providers. Members asserted that the statutory language clearly distinguishes between QRS bonuses and reimbursement rates generally and that the rulemaking is contrary to that language.

Members asked why the 156 affected nonregistered providers are choosing not to register. Ms. Harvey provided an example of a woman who wanted to provide child care for a neighbor’s niece and nephew, who the neighbor was fostering. The woman would not otherwise be providing child care and, despite technical assistance provided by the department, struggled to comply with the various rules and regulations applicable to registered providers, such as standards for fire extinguishers and number of exits. Ms. Harvey also noted that the reimbursement provided is a small amount of money. She was uncertain how many of the 156 nonregistered providers are similarly situated. Members questioned whether such anecdotes are relevant to the interpretation of the statute.

Members questioned how the department came to its interpretation of HF 891. Ms. Harvey explained that the department recommends legislative revision of the ambiguous statutory language and that its interpretation aligns with guidance the department received from legislative leadership regarding the legislative intent. She stated the department was told the legislative intent was for the rate ceiling increases to apply to all rates and for the language on incentivizing registration to apply only to QRS bonus rates. Members agreed that the language is ambiguous and should be revised.

Ms. Sheila Hanson, speaking on behalf of Common Good Iowa, stated she agreed with the comments made by committee members. She asserted that the rulemaking is contrary to the statutory language and explained that recent rate increases have focused only on registered providers.

Members expressed support for the rulemaking other than the content of table 4 regarding nonregistered providers. After a discussion with Mr. Ewing regarding what procedural options were available to the committee regarding table 4, members made a motion for a session suspension of the amendment to table 4. Members asked if such a suspension would cause affected providers to lose the rate increase already in effect, and Ms. Harvey stated it would.

Members disagreed with comments previously made by other members and expressed support for the rulemaking as written, asserting it reflects legislative intent and should be revised legislatively to address any ambiguity. Members asked if nonregistered providers are primarily located in rural Iowa, where lower population leads to fewer available providers. Ms. Harvey stated that is correct and summarized recent legislative action to respond to such “child care deserts.” Members asked Mr. Ewing if the committee would have an opportunity to review this issue and take action as part of the rulemaking process at a future meeting, and he explained that is not clear and will depend on whether the department will seek to revise the language of the emergency rulemaking as part of the double-barreled rulemaking process.

Members making the motion for a session suspension concluded by asserting that the underlying issue is not the availability of child care but whether child care providers choose to register, that the legislative language is clear regarding which rate ceilings should be increased, and that the department should not adopt rules contrary to statutory language for the sake of carrying out legislative intent.

A motion for a session suspension of the amendment to table 4 failed on a 2-8 roll call vote.  
No action taken on ARC 5731C.

ARC 5732C (NOIA), Child Care Assistance Provider Reimbursement Rates, Rule 170.4(7)“a”  
No discussion on ARC 5732C.

#### **ADMINISTRATIVE SERVICES DEPARTMENT**

Representing the agency: Tami Wiencek

ARC 5718C (NOIA), Capitol Complex Operations—Pistols and Revolvers, Rule 100.2

Committee members asked if members of the public go through a metal detector when they enter the Capitol. Ms. Wiencek confirmed that is the case. Members explained that a weapons permit allows an individual to carry a weapon other than a revolver or handgun. Members asked if the rulemaking prevents security personnel from asking a person who sets the detector off, and who states that they are carrying a weapon, to see the weapon to ensure that it is not a weapon other than a pistol or revolver. She responded that the rulemaking comports with the legislation. Members stated that the only way security personnel will know that an individual is not carrying a weapon other than a revolver or pistol is to ask. Members stated that the rulemaking puts the public, legislators, and other people in the Capitol in a precarious position, and recommended that the department rework the rulemaking to take into account the meaning of “weapon” as defined in the Iowa Code, and to allow security personnel to make appropriate inquiries.

No action taken on ARC 5718C.

#### **ALCOHOLIC BEVERAGES DIVISION**

Representing the agency: Tyler Ackerson

ARC 5734C (NOIA), Representatives of Distillers, Rectifiers, Manufacturers, Brewers and Vintners; Transportation and Warehouse, Chs. 7, 8  
No discussion on ARC 5734C.

#### **REAL ESTATE COMMISSION**

Representing the agency: Jeff Evans

ARC 5736C (NOIA), Waivers; Licensure; Education, Rules 1.2, 1.4, 1.5, 3.1, 3.2, 4.1, 4.2, 5.1, 5.11, 5.12, 16.3  
No discussion on ARC 5736C.

## **UTILITIES DIVISION**

Representing the agency: Matthew Oetker

ARC 5685C (AF), Restoration of Agricultural Lands During and After Pipeline Construction, Ch. 9  
No discussion on ARC 5685C.

ARC 5744C (NOIA), Natural Gas Standards, Rules 10.1(3), 10.2(2), 10.12(1), 19.1(3), 19.2, 19.5(2), 19.11, 19.14(3)“a”  
No discussion on ARC 5744C.

## **IOWA FINANCE AUTHORITY**

Representing the agency: Kristin Hanks-Bents

ARC 5717C (FEAN), First Amended 9 Percent Qualified Allocation Plan, Rules 12.1(2), 12.2(2)  
No discussion on ARC 5717C.

## **LAW ENFORCEMENT ACADEMY**

Representing the agency: Russell Rigdon

ARC 5689C (NOIA), Petitions for Rulemaking; Terminology; Public Safety Telecommunicators; Waivers, Chs. 1, 3, 13, 16  
No discussion on ARC 5689C.

## **EDUCATION DEPARTMENT**

Representing the agency: Thomas Mayes

ARC 5737C (NOIA), Independent Private Instruction—Restriction From Certain Forms of Online Learning, Rules 15.6, 15.8(4)  
No discussion on ARC 5737C.

ARC 5738C (NOIA), Private Instruction, Ch. 31  
No discussion on ARC 5738C.

ARC 5739C (AF), Therapeutic Classrooms; Telehealth Services on School Premises, Ch. 14  
No discussion on ARC 5739C.

ARC 5740C (AF), Online and Virtual Learning, Ch. 15  
No discussion on ARC 5740C.

ARC 5741C (AF), Drinking Drivers Instructional Course—Online Delivery, In-Person Delivery, Rules 21.31, 21.32(1)  
No discussion on ARC 5741C.

ARC 5742C (AF), Educator Preparation Programs—Accreditation, Approval Criteria, Rules 79.2, 79.4, 79.9  
No discussion on ARC 5742C.

ARC 5745C (NOIA), Voluntary Diversity Plans; Open Enrollment, Rules 17.2-17.9, 17.11(4), 17.13, 17.14  
No discussion on ARC 5745C.

ARC 5746C (NOIA), Interscholastic Athletic Contest Eligibility, Rule 36.15  
No discussion on ARC 5746C.

## **INSPECTIONS AND APPEALS DEPARTMENT**

Representing the agency: Ashleigh Hackel

ARC 5701C (NOIA), Exceptions to the Food Code—Wild-Harvested Mushrooms, Cultivated Mushrooms, Rules 30.2, 31.1(4)  
No discussion on ARC 5701C.

ARC 5702C (NOIA), Toilets and Lavatories at Food Establishments, Rule 31.1  
No discussion on ARC 5702C.

ARC 5703C (NOIA), Definition of “Food Processing Plant”; Adoption by Reference of 2021 Federal Regulations, Rules 30.2, 31.2(9)  
No discussion on ARC 5703C.

ARC 5711C (AF), 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 5711C.

ARC 5719C (AF), Waivers, Chs. 6, 41, 50, 51, 57, 58, 60, 61, 63-65, 71  
No discussion on ARC 5719C.

## **PUBLIC HEALTH DEPARTMENT**

Representing the agency: Susan Dixon

ARC 5683C (AF), Radiation, Rules 41.1, 42.2, 42.10, 42.13(5), 42.22, 42.26, 42.31(2)“e”(1)  
No discussion on ARC 5683C.

ARC 5684C (AF), Definition of “Dust-Lead Hazard,” Rule 69.2  
No discussion on ARC 5684C.

## **PROFESSIONAL LICENSURE DIVISION**

Representing the agency: Steven Garrison

ARC 5686C (AF), Barbers—Mobile Barbershops, Licensing, Rules 21.11, 21.19  
Committee members asked if the rulemaking should state that a mobile barbershop license shall be issued “to” rather than “for” a permanent physical address to make it clear that a mobile barbershop is not required to have a permanent physical address. Mr. Garrison stated that the rulemaking is phrased as is because a licensee is required to provide a permanent physical address for the board to mail the licensee’s license. Members stated that is already addressed in the rulemaking by the requirement that “[t]he licensee is required to provide a permanent physical address for board correspondence.” Mr. Garrison responded that he will confer with the board’s legal counsel and follow up with the committee.  
No action taken on ARC 5686C.

## **PHARMACY BOARD**

Representing the agency: Sue Mears

ARC 5704C (NOIA), Deaf and Hard-of-Hearing Persons—Terminology, Rule 6.14(4)  
No discussion on ARC 5704C.

ARC 5705C (NOIA), Temporary Designation of Controlled Substances, Rule 10.39  
No discussion on ARC 5705C.

Emergency Filing, Approval Required: Vaccine Administration by Pharmacy Technicians, Rule 3.17

Committee members asked what type of training pharmacy technicians will receive in order to qualify to administer vaccines. Ms. Mears stated that technicians must successfully complete an American Council of Pharmaceutical Education-accredited training on vaccine administration. In addition, a licensed pharmacist must be on site if a technician is administering a vaccine. Members asked if technicians are also trained to draw the vaccine into the syringe. She confirmed that is correct.

**Emergency Rulemaking Authorized**

A motion to authorize the emergency rulemaking carried on a 10-0 roll call vote.

**WORKFORCE DEVELOPMENT DEPARTMENT**

Representing the agency: David Steen

ARC 5727C (AF), Contested Case Proceedings, Rules 26.8, 26.14

No discussion on ARC 5727C.

**PUBLIC SAFETY DEPARTMENT**

Representing the agency: Rebekah Cochran

ARC 5714C (AF), Responsibility for Installation of Light-Emitting Carbon Monoxide Alarm for Deaf or Hard-of-Hearing Tenant, Rule 211.20

No discussion on ARC 5714C.

ARC 5715C (AF), Sex Offender Registry—Continuous Sexual Abuse of a Child, Rules 83.2-83.4

No discussion on ARC 5715C.

ARC 5716C (AF), Statewide Sobriety and Drug Monitoring Program, Rule 159.12(1)

No discussion on ARC 5716C.

ARC 5723C (AF), Standards for Electrician and Electrical Contractor Licensing—Reciprocity, Disqualifying Convictions, Fee Structure, Military Spouses, Special Residential Electrician, Chs. 500, 502, 506

Committee members expressed concern that the General Assembly is sending electricians mixed messages regarding laws and regulations applicable to electricians.

No action taken on ARC 5723C.

ARC 5735C (NOIA), Firearm Training Organizations, Rules 91.1, 91.10

No discussion on ARC 5735C.

**REVENUE DEPARTMENT**

Representing the agency: Tim Reilly, Clara Wulfsen

ARC 5687C (NOIA), Data Center Businesses—Refund Requests, Rule 230.13(7)“d”

No discussion on ARC 5687C.

ARC 5688C (NOIA), Voluntary Disclosure Program—Excise Taxes, Fees, Rule 3.1(3)

No discussion on ARC 5688C.

ARC 5710C (NOIA), Motor Fuel and Undyed Special Fuel, Rules 68.2-68.5, 68.7(1), 68.8, 68.9, 68.13, 69.2

No discussion on ARC 5710C.

ARC 5712C (AF), 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 5712C.

ARC 5720C (ANOIA), Marketable Food Products for Human Consumption, Rule 230.2(1)

JD Davis, speaking on behalf of the Iowa Association of Business and Industry (ABI), stated that the department's definition of "marketable food products for human consumption" will result in an increased tax burden for certain food processors. Mr. Davis stated the ABI is continuing conversations with the department and hopes to have the issue resolved legislatively next session.

Mr. Tom Sands, speaking on behalf of the Iowa Taxpayer's Association (ITA), stated that the ITA is opposed to the rulemaking as it does not treat all manufacturers of marketable food products for human consumption the same. He noted that the ITA is drafting proposed legislation and will continue to work with the department toward legislation that provides more clarity. He expressed disappointment that the department is maintaining its position on the rulemaking.

No action taken on ARC 5720C.

ARC 5733C (AF), Interest Expense Deduction Adjustments, Rules 40.85, 53.29, 59.31

No discussion on ARC 5733C.

Emergency Filing, Approval Required: Taxation of COVID-19 Grants, Rules 40.86, 53.30, 59.32

**Emergency Rulemaking Authorized**

A motion to approve emergency rulemaking by the department carried on a 10-0 roll call vote.

**VETERINARY MEDICINE BOARD**

Representing the agency: Colin Tadlock

ARC 5726C (AF), Applicants With Work Experience in Jurisdictions Without Licensure Requirements, Rule 8.12

Mr. Preston Moore, representing the Humane Society of the United States and the Human Society Veterinary Medical Association, stated both organizations are in favor of the rulemaking.

Committee members asked what the difference is between a "registration" and a "license." Mr. Tadlock stated that veterinarians must be licensed by the board and veterinarian technicians must be registered with the board. Members asked if technicians can be disciplined by the board. He confirmed that is the case. Members asked why the term "license" is not used for both veterinarians and technicians. He stated there has been some discussion in that regard but the applicable statute requires that technicians be registered with the board.

No action taken on ARC 5726C.

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT**

Representing the agency: Colin Tadlock, Dr. Katie Rumsey, Alan Keller

ARC 5721C (AF), Waivers, Chs. 8, 90, 91

No discussion on ARC 5721C.

ARC 5743C (NOIA), Secondary Containment—Exemption for Soil Conditioners Consisting Entirely of Minimally Manipulated Manures, Rules 44.51, 44.56

Committee members asked what the rulemaking actually changes. Mr. Tadlock explained that it changes storage requirements by requiring containment built out of earth, concrete, or earth and concrete, for nonliquid fertilizers or soil conditioners, and it provides for alternative secondary containment similar to that for bulk dry nutrients. He further explained that soil conditioners consisting entirely of minimally manipulated manures are exempt if they are stored in a container, are stored in the field of application or adjacent fields of application for no more than six months, and are in compliance with the storage requirements for bulk dry animal nutrients. Members asked for the source of the crop yield information. Mr. Keller stated that the information is based on Iowa State University's production data, is currently used in calculations for Iowa Code chapter 200A, and is based on average yield and utilization. He explained that nonliquid fertilizers and soil conditioners are treated like other soil conditioners and fertilizers, none of which Iowa Code chapter 200A applies to. He further explained the rulemaking provides guidelines and that individuals will be subject to random inspections by the department, similar to random inspections of other soil conditioners and fertilizers. The rulemaking is limited to manipulated animal manure. The manipulation renders the manure more environmentally friendly, with less flies and runoff, and is an alternative to the process under Iowa Code chapter 200A. Members asked if the manure can be dried. Mr. Keller confirmed that the manure can be dried or dehydrated. He stated that the rulemaking applies primarily to poultry and cattle yards, and does not apply to manure that starts out as a liquid. Members requested that Mr. Tadlock reach out to individual members that still have questions on the specific application of the rulemaking.

Mr. Tom Buman, speaking for Ave Organics, stated that the rulemaking makes it easier for farmers to improve manure and make it more environmentally friendly. Ave Organics is working with a facility that has chicken manure. Ave Organics dries it to create pellets that have the same analysis as the raw poultry manure. He stated that Ave Organics would like users to be allowed to put the pellets into an Ag-Bag in the field before application, and noted that pellets reduce flies, reduce odor, and protect the environment from runoff. Members asked where the liquid and ammonia goes after it is removed from the raw poultry manure. He explained that it is put into liquid nitrate and is used as organic fertilizer for berries and other high value crops.

No action taken on ARC 5743C.

ARC 5713C (AF), Dog Daycare; Euthanasia Guidelines, Rules 67.1, 67.3, 67.4(3)“b,” 67.7, 67.8, 67.9(2)“b,” 67.16

Committee members expressed disappointment with the number of dogs being permitted to be held in a small space, and that only one individual is required to provide supervision. Members asked what the minimum age is for an individual to work at a dog daycare (daycare). Dr. Rumsey stated that the department does not have any rules related to the minimum age for workers at a daycare. She noted that one person is required to supervise up to 15 dogs, and two people are required for supervision of 16 to 30 dogs. Dr. Rumsey also noted that a daycare may have more individuals provide supervision if it chooses. Members stated that having two 14-year olds trying to control 15 dogs is less than ideal. Members stated that they understand that the department put significant effort into working with daycares; however, they felt that the daycare owners that appeared before the committee were less than honest in their communications.

Mr. Preston Moore, representing the Humane Society of the United States (HSUS) and the Humane Society Veterinary Medical Association (HSVMA), thanked the department and the committee for rulemaking related to breeders and to pet stores as it has improved animal welfare in the state. He also stated that the HSUS and the HSVMA support the updated euthanasia guidelines in the rulemaking currently before the committee.

Mr. Dane Schuman, on behalf of the Doggy Daycare Coalition, expressed approval of the rulemaking and thanked the department for making adjustments to the rulemaking as requested by the coalition.

No action taken on ARC 5713C.



## **NATURAL RESOURCE COMMISSION**

Representing the agency: Chris Ensminger, Tyler Harms, Sherry Arntzen

ARC 5681C (AF), Bobcat Seasonal Bag Limit of One—Addition of Delaware and Jones Counties, Rule 108.7

Mr. Preston Moore, representing the Humane Society of the United States (HSUS) and the Humane Society Veterinary Medical Association (HSVMA), stated that during a commission meeting a commissioner asked why opposition to the rulemaking from Dubuque County was different than that from Jones and Delaware counties. He noted that it was brought up that non-landowner opposition was the “non-hunting crowd.” He stated that HSUS does not take a position on hunting for sustenance; however, it does actively work to eliminate the most inhumane and unfair practices, including live pigeon shoots and other forms of staged hunting; the hunting of rare and endangered animals; and the use of lead ammunition. He emphasized that the HSUS is not anti-hunting, it is anti-cruelty. He noted that in 2019-2020, only 7 percent of Iowans held a hunting license, leaving 93 percent, like himself, who prefer to coexist with animals in their natural habitat. Mr. Moore stated that many Iowans would like to see access to the outdoors expanded for non-hunting and non-trapping purposes. He stated that the majority of bobcats in Iowa are killed in a cruel manner, and in 2019-2020, 770 bobcats were killed using some type of trap. He opined that stakeholders from throughout the state should work with the Department of Natural Resources and the legislature to develop access to the outdoors that appeals to the majority of Iowans, who do not hunt, and he recommended that the committee impose a session delay to allow that to occur.

No action taken on ARC 5681C.

ARC 5682C (AF), Deer Hunting by Residents, Rules 106.1, 106.2(5), 106.4(5), 106.6, 106.7(1)“a”(2)

No discussion on ARC 5682C.

ARC 5690C (NOIA), State Parks, Recreation Areas, and State Forest Camping, Rules 61.2-61.7, 61.14, 61.23 (1)

No discussion on ARC 5690C.

## **ENVIRONMENTAL PROTECTION COMMISSION**

Representing the agency: Christine Paulson, Roger Bruner, Theresa Stiner, Jonathan Garton

ARC 5676C (NOIA), Mercury-Added Switch Recovery From End-of-Life Vehicles, Ch. 215

No discussion on ARC 5676C.

ARC 5677C (NOIA), Dams; Water Storage Permitting, Chs. 50-52, 70-73

No discussion on ARC 5677C.

ARC 5679C (AF), Water Quality Certification, Rules 60.2, 61.2

No discussion on ARC 5679C.

ARC 5678C (NOIA), Air Quality, Rules 20.2, 22.100, 23.1, 25.1(9)

No discussion on ARC 5678C.

## **LABOR SERVICES DIVISION**

Representing the agency: Kathleen Uehling, Russ Perry

ARC 5674C (NOIA), Safety Rules for Amusement Rides, Amusement Devices, and Concession Booths, Rules 61.2, 61.6(2)“j,” 62.6, 62.7(3)

No discussion on ARC 5674C.

Emergency Filing, Approval Required: Federal Occupational Safety and Health Emergency Temporary Standard Related to COVID-19 in Healthcare Settings—Adoption by Reference, Rule 10.20

Committee members asked how the standard deviates from the status quo. Mr. Perry explained that it is a new standard and the closest pre-pandemic standard is for blood-borne pathogens. He stated that since the beginning of the pandemic, the Iowa Occupational Safety and Health Administration (OSHA)

has looked at employers' good-faith efforts to follow CDC guidelines. Under the new administration, President Biden tasked federal OSHA with reviewing and developing standards relating to COVID-19. The emergency temporary standard was published in the Federal Register on June 21, 2021. States are permitted to adopt the standard as written, or to adopt a state standard that is at least as stringent as the federal standard. Members asked what the biggest change is that the standard requires as compared to pre-pandemic requirements. He responded that each facility must develop a written COVID-19 plan that addresses access to the facility, the use of personal protective equipment (PPE), social distancing, and recordkeeping. Members asked if there are any material changes to employees' rights. He responded that employees maintain the same rights as those currently available under Iowa's whistleblower law. Members asked what restrictions are imposed on visitors to facilities. He explained that there are screenings and possible PPE requirements at points of entry and other areas of a facility. He noted the rulemaking does not apply to pharmacies unless the pharmacy is engaged in activity such as dispensing flu shots or conducting COVID-19 testing. Members asked if the rulemaking applies to pharmacies that are in retail locations, such as Hy-Vee. He responded only if the pharmacy is engaged in activities such as dispensing flu shots or conducting COVID-19 testing. Members asked if the standard contains protocols related to employees being required to comply with certain mandates in order to remain employed at a facility. Mr. Perry stated that any employee mandates are dictated by the employer and that OSHA is focused on mitigation of hazards.

#### **Emergency Rulemaking Authorized**

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

#### **REGENTS BOARD**

Representing the agency: Aimee Claeys, Kristin Bauer

ARC 5694C (NOIA), State Universities—Admission, Terminology, Domicile, Application Fees, Chs. 1, 2  
No discussion on ARC 5694C.

ARC 5696C (NOIA), Traffic and Parking at Universities, Ch. 4  
No discussion on ARC 5696C.

ARC 5698C (NOIA), Purchasing; Policies; Practices; Procedures, Ch. 8, 9  
Mr. Doug Struyk, on behalf of the Iowa Competitive Bidding Alliance, thanked the board, the Governor's office, and the committee for adopting changes requested by the Alliance to reflect that the rulemaking applies to purchasing outside of capital projects.  
No action taken on ARC 5698C.

ARC 5699C (NOIA), Terminology, Addresses, Meetings, Chalking, Rules 11.1, 12.3-12.10, 13.1, 13.10-13.15, 13.19, 14.1, 14.2, 16.1(1), 16.7  
Committee members asked for confirmation that Iowa State University's chalking policy will not be included in the rulemaking. Ms. Claeys confirmed that is correct.  
No action taken on ARC 5699C.

ARC 5700C (NOIA), Addresses; Waivers, Rules 18.4(3), 18.6, 18.7(2), 19.3(1), 19.5, 19.6(2), 19.18  
No discussion on ARC 5700C.

ARC 5697C (NOIA), Equal Employment Opportunity, Affirmative Action, and Targeted Small Business, Ch. 7  
No discussion on ARC 5697C.

ARC 5695C (NOIA), Merit System—Administration of Pay Plan, Probationary Period, Rules 3.14, 3.39, 3.85

Committee members expressed concern that the rulemaking provides for emergency payments when the General Assembly hears constant feedback about underfunding regents institutions (institutions) and tuition increases. Ms. Bauer stated that the emergency payments are in response to the extra hours and effort put in by custodial staff, food service workers, and other institution employees during the pandemic. The institutions want the ability to reward merit employees who go above and beyond in circumstances in which the Governor has declared a state of emergency at the institution. Members asked if the rulemaking is intended to increase professors' pay. Ms. Bauer confirmed that it only applies to merit staff. Members asked what qualifies as an emergency and provided severe weather events as an example. She responded that the Governor must declare that a state of emergency exists at an institution and staff must be involved in supporting the declared state of emergency to be eligible for an emergency payment. Ms. Claeys noted that all emergency payment requests go through the board.

No action taken on ARC 5695C.