

MINUTES OF THE OCTOBER 2014 MEETING OF THE ADMINISTRATIVE RULES REVIEW COMMITTEE

Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on October 14, 2014, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.

Members present: Senator Wally Horn, Chair, and Representative Dawn Pettengill, Vice Chair; Senators Mark Chelgren, Thomas Courtney, Pam Jochum, and Roby Smith; Representatives Lisa Heddens, Jeff Smith, and Guy Vander Linden were present. Representative Rick Olson was not present.

Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Larry Johnson, Deputy Legal Counsel, Office of the Governor; fiscal staff; caucus staff; and other interested parties.

Convened Sen. Horn convened the meeting at 9:05 a.m.

Fiscal overview Adam Broich presented the LSA fiscal report.

SECRETARY OF STATE Sarah Reisetter represented the secretary of state.

ARC 1643C No questions on proposed amendments to 22.50(2)"c" and 22.264(2) pertaining to voting systems. Ms. Reisetter stated that because the rule making is a Notice of Intended Action, the amendments will have no effect on the November 4, 2014, general election.

Committee review of emergency rule making Ms. Reisetter requested that the committee approve the emergency adoption (i.e., Filed Without Notice) of amendments to ch 21 that update the implementation sentences throughout the chapter.

In response to an inquiry from Sen. Courtney, Mr. Royce explained that the grounds for this type of rule making are that public notice and participation are unnecessary. Sen. Courtney stated that there is no need for emergency rule making.

The committee took no action.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Wendy Rickman and Chad Dahm represented the department.

ARC 1638C No action on amendments to 77.39 regarding HCBS brain injury (BI) waiver training.

ARC 1657C No questions on proposed amendments to chs 107, 108 and 200 regarding criminal history and child abuse record checks, postplacement reports, and home studies related to adoption.

ARC 1636C Amendments to 110.5(1)"a" concern emergency contact records for child development homes.

Rep. Pettengill expressed concern regarding a deficiency rating imposed on a provider who does not fulfill the requirement to program all emergency numbers into the provider's mobile telephone and concern regarding privacy issues related to searches of mobile devices. In response, Ms. Rickman stated that the department would balance enforcement and privacy and would search only the mobile devices of providers who have repeatedly failed to meet the requirement. Rep. Smith and Rep. Vander Linden suggested a review and clarification of the paragraph. Ms. Rickman and Ms. Freudenberg agreed that the language required further review.

Motion to delay Rep. Pettengill moved a 70-day delay on 110.5(1)"a."

Motion carried On a voice vote of 9 to 0, the motion carried.

ARC 1637C No action on amendments to 110.6 pertaining to compliance checks for child development homes.

Special Review Rep. Pettengill stated that Rep. Vander Linden had requested a special review of 109.10(15) regarding emergency plans for child care centers. Rep. Vander Linden stated that 109.10(15) requires that emergency evacuation diagrams be posted in child care centers. He explained that some child care centers are located in elementary schools, which are prohibited by the department of education from posting emergency evacuation diagrams. Rep. Vander Linden requested that the departments of human services and education find a solution to this conflict to ensure compliance by child care centers and public schools.

Human Services Department (continued)

Ms. Rickman stated that the fire marshal advises the department on health and safety measures and that child care centers are required to have in place, to practice and to document an emergency plan, and to post an emergency evacuation diagram. She noted that during inspections, the department does not consider the absence of a posted diagram to be an actionable deficiency. Noting that 400 of 1400 child care centers are located in public school buildings, Ms. Rickman stated that the department will consult with the fire marshal, law enforcement and the department of education regarding a solution to the conflict between the rules of the human services and education departments. She added that the policies regarding the posting of emergency evacuation diagrams in other DHS facilities will also be reviewed. In response to an inquiry from Sen. Horn, Ms. Rickman explained the process for review of the policy by the fire marshal and stated that the time frame for finding a solution will be approximately three months and that she anticipates the removal of the requirement for posting the emergency evacuation diagrams although any decision would be dependent on the recommendations of the fire marshal. Rep. Vander Linden thanked the department and stated that the credibility of government is enhanced when departments work together to find solutions.

DENTAL BOARD Phil McCollum represented the board.

ARC 1658C No questions on proposed amendments to 29.4 and 29.5(1) regarding the administration of sedation and nitrous oxide inhalation analgesia.

ARC 1645C No questions on proposed ch 52, military service and veteran reciprocity.

ECONOMIC DEVELOPMENT AUTHORITY Jeremy Babcock, Nichole Hansen, Kristin Hanks and Tim Whipple represented the authority.

ARC 1626C Amendments to ch 31 pertain to economic development region initiatives. Rep. Pettengill questioned the change from "shall" to "may" in Items 2 and 12, noting that such usage was not reflected in statute and appears to imply that the program is discretionary rather than mandated. Rep. Smith inquired about the purpose for and the reasoning underlying the change. In response, Mr. Whipple stated that some of the regions requested the change from "shall" to "may" because funding is not allocated annually but instead biennially. He did not recall the purpose underlying the change. Rep. Smith stated and Sen. Courtney concurred that a delay would allow the authority time to explain the purpose and rationale for the change.

Motion to delay Rep. Smith moved a 70-day delay on ARC 1626C.

Motion carried On a voice vote of 9 to 0, the motion carried.

ARC 1628C No questions on the proposed adoption of ch 48 and amendments to chs 59, 68 and 173 to 175 concerning the workforce housing tax incentives program, high quality jobs program, and enterprise zone program and wage thresholds and local match.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department.

ARC 1650C No questions on proposed amendments to 51.18 and 51.41 related to hospital laboratory services and to employer verification of hospital employee records.

ARC 1649C No questions on proposed ch 57, residential care facilities.

ARC 1648C No questions on proposed amendments to chs 58 and 62 to 65 regarding involuntary discharge or transfer related to nursing, residential care and intermediate care facilities. In response to concerns expressed by Sen. Horn, Mr. Werning stated that in an ever-increasing variety of health care facilities and a generally changing health care environment, the department has strong rules regarding the rights and fair treatment of patients and residents.

PUBLIC EMPLOYMENT RELATIONS BOARD Ann Smisek and Diana Machir represented the board.

ARC 1642C No action on the rescission of 1.8 and the adoption of chs 13 and 14 regarding mediators and arbitrators.

NATURAL RESOURCE COMMISSION Jon Tack represented the commission.

ARC 1644C Proposed 40.60 pertains to zoning of the Mississippi River adjacent to the city of Clayton.

Discussion pertained to the 5-mile-per-hour speed versus a no-wake speed. Mr. Tack explained that a specific speed, unlike a judgment regarding the existence and size of a wake, is enforceable in court.

Natural Resource Commission (continued)

Sens. Horn and Chelgren expressed concern that a boater without a boat speedometer may not know the exact speed of the boat but could determine whether there is a wake. Mr. Tack agreed to forward to department staff a suggestion by Sen. Chelgren that in order to provide boaters more discretion, the rule allow either a no-wake speed or a speed limit. Sen. Courtney expressed concern about the fairness to boaters of exempting barge traffic from the speed limit.

ENVIRONMENTAL PROTECTION COMMISSION Director Chuck Gipp and Randy Clark represented the commission. Other interested parties included Barb Kalbach, Lee Barclay, Vern Tigges, Cherie Mortise, Brenda Brink, Jim Yungclas, Stephen Tuis, Shari Hawk, Larry Ginter, Joe Reuter, and Jess Mazour of Iowa Citizens for Community Improvement (ICCI); Neila Seaman of the Sierra Club; and Brad Wilson.

ARC 1627C

Amendments to chs 64 and 65 pertain to federal national pollutant discharge elimination system (NPDES) permits for animal feeding operations.

Mr. Clark stated that the rule making is necessary for two reasons. First, as provided in Iowa Code section 459.311(2), confinement feeding operations that are concentrated animal feeding operations or CAFOs, as defined in federal law, must comply with NPDES permit requirements pursuant to rules adopted by the commission, which rules can be no more stringent than the federal regulations. Second, a work plan agreement entered into on September 11, 2013, between the Environmental Protection Agency (EPA) and the department regarding the federal NPDES permit program in Iowa requires that the department recommend to the commission that the commission adopt by reference federal regulations to implement the NPDES permitting program for confinement CAFOs that discharge to waters of the United States. Mr. Clark stated that the EPA does not prohibit states that operate NPDES programs from having requirements more stringent than federal regulations but that Iowa law does not allow state requirements to be more stringent than federal regulations and still fully implement the federal program. Thus, the commission adopted the necessary federal regulations by reference so that the amendments are nothing more or nothing less than required. Mr. Clark stated that in addition to incorporating by reference all of the necessary federal permit regulations, the amendments incorporate by reference federal regulations regarding new application setback requirements for open feedlots and confinement operations that have NPDES permits, rescind outdated operation permit provisions, and clarify how basic NPDES permit requirements in ch 64 coincide with specific CAFO requirements in ch 65.

Mr. Clark reported that six public hearings were held across the state and that the department received hundreds of written comments, most of which were general and ranged from requests to make no changes to existing rules to requests for changes that exceed the scope of the proposed amendments. As a result of the comments, several minor changes were made to the amendments as published under Notice of Intended Action.

Committee members inquired about whether the federal regulations prevent the department's issuance of permits, when a permit is required, manure spills, inspections and water quality. In response, Mr. Clark explained that the issuance of an NPDES permit depends upon the size of the CAFO and the origin of the discharge; that NPDES permits for CAFOs can be issued when this rule making becomes effective; that less than 20 percent of inspections were completed during the first year of the five-year work plan; that NPDES permits may be issued to hog CAFOs based on the conditions of the permit; that permitted operations are required to monitor and report on their CAFOs and agree to federal fines for violations of the permit; and that the department has been enforcing requirements for operations and discharge.

Ms. Mazour expressed ICCI's opposition to the rules in a summary of the comments by ten members of ICCI who had also testified. ICCI believes that voluntary compliance by non-permitted facilities does not work, that the department has inadequately enforced the NPDES requirements, and that the rules are also inadequate and need to be strengthened.

Environmental Protection Commission (continued)

Ms. Mazour enumerated the changes that would strengthen the rules: increased inspections, including on-site inspections; greater penalties and fines for every manure spill; required NPDES permits for every facility; thorough inspections that find and fix problems; the availability of a user-friendly, comprehensive online database containing records of all inspections, permits, and manure spills; and a “three-strikes-and-you’re-out” provision for habitual violators. Ms. Mazour advocated for the amendment of the statutory requirement that the state rules be no more stringent than the federal regulations; asserted that the federal EPA standards were originally intended to be a floor, not a ceiling, for state standards; and that the department, under current law, can require a permit for discharging CAFOs.

Ms. Seaman, citing statistics related to four recent manure spills from dairies, stated that the rules are not sufficiently strong and offered to work with the appropriate body to change the rules. Mr. Wilson suggested that the environmental concerns be balanced with regulatory demands on farmers.

Director Gipp expressed support for the rule making. He explained that three environmental groups had petitioned EPA Region VII to assume authority over the entire NPDES program. Following a lengthy investigation by Region VII of the original petition, the department and EPA negotiated a work plan with input from all stakeholders, which was signed September 11, 2013. As part of the agreement, the department consented to the inspection of 8,000 facilities within five years. This process resulted in the addition of seven inspectors, and to ensure consistency in inspections statewide, new and current inspectors have received the same training. Mr. Gipp also explained how technology is used to conduct inspections off site. Mr. Clark explained the department’s process for enforcement. Mr. Gipp stated that the department is in contact with the attorney general’s office regarding the NPDES program and that the department refers cases to the attorney general for enforcement. Mr. Gipp emphasized that the rules provide the department with the authority to implement the work plan.

Sen. Chelgren offered to review material from Mr. Barclay regarding a change in the statute to allow state standards to exceed those of the federal regulations. Sen. Courtney agreed to assist Sen. Chelgren in reevaluating the practice of adopting state standards no more stringent than federal regulations.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT John Benson represented the department.

Committee review of emergency rule making Mr. Benson requested that the committee approve the emergency adoption of ch 15, mass notification and emergency messaging system. Mr. Benson explained that 2014 Iowa Acts, Senate File 2349, division VIII, grants the department authority to create a statewide system to alert the public with imminent emergency and public safety-related messaging. He described the development of the guidelines and other aspects of the system as set forth in ch 15. Mr. Benson offered to demonstrate the system to committee members and caucus staff at their convenience.

In response to inquiries by committee members, Mr. Benson stated that the finalizing of contract revocation language delayed the committee’s receipt of the rule making and confirmed that the rule making will be double-barreled. He also noted that Inspiron Logistics in Akron, Ohio, has been awarded the contract for the system. Sen. Chelgren requested that in the future, emergency filings be provided to the committee in sufficient time for a thorough review in advance of the committee meeting.

Motion to approve
Motion carried

Rep. Pettengill moved approval of the emergency rule making.
On a voice vote of 9 to 0, the motion carried.

PUBLIC HEALTH DEPARTMENT Barb Nervig represented the department.

ARC 1639C

No action on amendments to chs 38 to 41 and 45 concerning radiation. Ms. Nervig explained that the amendments maintain compatibility with the U.S. Nuclear Regulatory Commission (USNRC) regulations required pursuant to Iowa’s status as a USNRC agreement state. She reported that at the Organization of Agreement States conference in August, Iowa was recognized as the first state to adopt these regulations and was the only state to complete the rule-making process without being required to submit additional information or to respond to USNRC comments.

Public Health Department (continued)

- ARC 1640C No action on ch 154 pertaining to the medical cannabidiol Act registration card program.
- ARC 1656C No questions on proposed amendments to ch 176 regarding the second review process, public notice of available funds, appeals, and the time period for issuance of decision and order related to criteria for awards and grants.
- ARC 1646C No questions on proposed ch 196, military service and veteran reciprocity.
- ARC 1655C No questions on proposed amendments to ch 202 and the rescission of ch 204 pertaining to the certificate of need program and to uniform reporting requirements.

REAL ESTATE APPRAISER EXAMINING BOARD Chair Gene Nelsen and Pam Griebel represented the board.

- ARC 1631C Proposed amendments to chs 3 to 6 pertain to uniform appraisal standards and appraiser certification requirements. In response to questions from committee members, Mr. Nelsen explained that some assessors are qualified appraisers; that because 95 percent of transactions are federally related and require certification, most appraisers are certified; that a request for a second appraisal is not uncommon; and that there are guidelines for changes in value when a commercial building is sold. In addition, Ms. Griebel explained the educational qualifications for general and residential appraisers.
- ARC 1629C No questions on proposed amendments to chs 9, 11 and 15 regarding certification and registration renewal, reactivation and reinstatement, continuing education and supervisory appraiser qualifications.

ARCHITECTURAL EXAMINING BOARD Pam Griebel represented the board.

- ARC 1624C No action on amendments to ch 2 pertaining to registration and to renewal of certificates of registration.
- ARC 1625C No action on ch 3, continuing education.

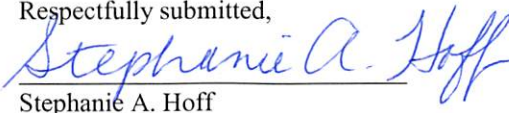
REVENUE DEPARTMENT Jim McNulty represented the department.

- ARC 1654C No questions on proposed amendments to chs 12, 42, 46, 52 and 58 pertaining to individual income, corporation income and franchise tax and to the workforce housing tax incentives program.
- ARC 1635C No questions on this Amended Notice of Intended Action to add a public hearing regarding proposed amendments to ch 75 related to the multiresidential property tax classification. Notice of Intended Action on the amendments was published as ARC 1593C, IAB 8/20/14.

Committee business The minutes of the September 9, 2014, meeting were approved as corrected. The next meeting was scheduled for Tuesday, November 18, 2014, at 9 a.m.

Adjourned The meeting was adjourned at 1:17 p.m.

Respectfully submitted,


Stephanie A. Hoff

APPROVED:


Chair Wally Horn


Vice Chair Dawn Pettengill