

**MINUTES OF THE MAY 2018 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Tuesday, May 8, 2018, in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Senator Mark Chelgren, Chair, and Representative Dawn Pettengill, Vice Chair; Senators Jim Carlin, Mark Costello, Wally Horn, and Pam Jochum; Representatives Megan Jones, Amy Nielsen, Rick Olson, and Guy Vander Linden were present.
- Also present: Jack Ewing and Amber Shanahan-Fricke, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Colin Smith, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.
- Convened Sen. Chelgren convened the meeting at 9 a.m.
- Fiscal overview** Christin Mechler presented the LSA fiscal report.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg and Wendy Rickman represented the department.
- Special Review A special review of ch 200, specifically about adoption by grandparents, which had been requested by Sen. Mark Segebart, was postponed.
Ms. Rickman stated that in advance of the meeting, Sen. Segebart had submitted a series of questions to the department, the responses to which will constitute a request for information, and that the department will provide the responses to Sen. Segebart and to the committee.
- ARC 3732C No questions on proposed amendments to 24.4 pertaining to documentation of mental health, intellectual disability and developmental disability services.
- ARC 3760C No questions on proposed amendments to 75.23(3) and 75.24(3)“b”(1), (2) and (4) regarding changes in the statewide average private-pay cost of nursing facility services and average charges and the maximum rate for institutional care.
- ARC 3761C A proposed amendment to 75.24(3)“b”(3) pertains to a decrease in the statewide average charge for care in a mental health institute.
In response to a question from Sen. Chelgren, Ms. Freudenberg explained that the decrease resulted from lower rates of mental health institutes.
- SOIL CONSERVATION AND WATER QUALITY DIVISION** Margaret Thomson represented the division.
- ARC 3730C No questions on proposed amendments to ch 30 and the rescission of chs 101 to 107 pertaining to the closure of agricultural drainage wells and to the watershed improvement review board.
- CHIEF INFORMATION OFFICER, OFFICE OF THE** Matt Behrens represented OCIO. Other interested parties included Caitlin Jarzen on behalf of the Iowa Communications Alliance.
- ARC 3728C Proposed ch 22 pertains to the broadband grants program.
Reps. Vander Linden, Pettengill and Nielsen expressed concern about the limited exception for broadband infrastructure installed outside of a targeted service area, reimbursements related to that process, and whether the agency’s budget resources rather than grant funds would be used for the administration of the program. The committee members stated the expectation that the filed rules will comport with statute, including changes to 22.4(5) and 22.6(3) and greater detail to clarify the appropriate use of grant funds.
Ms. Jarzen stated her understanding that the comments by the Alliance would be incorporated into the notice of funding availability (NOFA) but expressed concern about the ambiguity of 22.3 relating to the contents of the NOFA, which is not required to contain specific information. The Alliance addressed additional concerns in its public comments to OCIO, which Ms. Jarzen distributed to the committee.
In response, Mr. Behrens agreed that the language of the rule should comport with statute, that more detailed information about administrative costs would be provided, and that the requirements in the NOFA would be clarified.

CREDIT UNION DIVISION Jessica Pollmeier represented the division.

- ARC 3734C No action on amendments to chs 12 and 17 concerning board elections and charitable donation accounts.
- In response to questions from Reps. Pettengill and Nielsen and Sen. Chelgren, Ms. Pollmeier stated that 17.21 provides a director, officer or employee with overdraft protection formerly available only to members; that the availability of electronic voting for up to two days prior to any meeting where voting will occur allows greater opportunity for members to vote; and that amendments to 17.14 for state-chartered credit unions reflect recent changes made to permissible investments for federal credit unions with respect to charitable donation accounts and bank notes, pursuant to Iowa Code sections 533.301(5)“j” and 533.301(26), respectively.

INSURANCE DIVISION Jonathan Swaim represented the division.

- ARC 3741C No action on amendments to ch 50 regarding an investment adviser’s business and continuity succession plan, merger and acquisition brokers, intrastate crowdfunding offerings, the securities industry essentials exam and the electronic filing depository system.

UTILITIES DIVISION Matt Oetker and Cecil Wright represented the division.

- ARC 3726C Proposed amendments to ch 20 pertain to electric utility services.
- In response to an inquiry from Sen. Chelgren regarding evolving technology, specifically, smart meters, Mr. Wright explained that the amendments are not specific to the subject but that the informal complaint proceedings currently in process are intended to address customers’ concerns about smart meters. Sen. Chelgren asked that the criteria for a meter upgrade and an opt-out option be considered in reference to 20.6(8), comprehensive meter upgrade programs.
- ARC 3751C No action on amendments to ch 24 concerning the generation of certificate dockets and to notice requirements related to any potential request for the power of eminent domain.
- ARC 3752C No questions on proposed amendments to ch 38 regarding local exchange competition.
- ARC 3753C No questions on proposed amendments to ch 39 concerning universal service.

EDUCATION DEPARTMENT Nicole Proesch, Erica Cook and Thomas Mayes represented the department.

- ARC 3765C No action on 12.11 pertaining to high-quality standards for computer science, which apply to school districts and accredited nonpublic schools that receive funds from the computer science professional development incentive fund (fund) pursuant to Iowa Code section 284.6A.
- In response to questions from Rep. Nielsen and Sen. Chelgren, Ms. Cook explained that the academic standards for computer science coursework will be finalized in June. She noted that the standards were chosen by a standards review team that included representation by the private sector and by educators, who will continue to keep the standards up to date with the advancement of technology. Ms. Cook also explained that the content of the courses will be determined by local school districts and that the requirements of 12.11 pertain only to schools that pursue grants from the fund for the purpose of professional development activities and tuition reimbursement for teachers. Ms. Cook stated that the department is pursuing federal grants and that, through the local grant applications, the department intends to encourage local school districts to pursue partnerships with technology companies. In response to an inquiry from Rep. Olson, Ms. Proesch agreed to provide information from the educational examiners board regarding the status of the computer science teaching endorsement.
- Sen. Chelgren encouraged the department to take the initiative in preparing students for the ever-changing technology that will be available. Rep. Olson expressed the hope that the department would lead in ensuring that students receive computer science education at the elementary, middle school and high school levels.
- ARC 3767C No action on amendments to ch 64 regarding child development grants and the child development coordinating council.
- ARC 3766C No action on amendments to 41.102(1) and 41.160 pertaining to special education, specifically, regular high school diplomas and assessments.

Education Department (continued)

Mr. Mayes explained that the amendments to the rules are required based on the amendments to the federal Individuals with Disabilities Education Act (IDEA) that were made by the Every Student Succeeds Act (ESSA), effective June 30, 2017. He stated that the amendments to the rules revise the definition of “regular high school diploma” to clarify that a regular high school diploma must be fully aligned to state-required standards and that the amendments to the rules set forth the requirement that all students with disabilities participate in statewide and districtwide assessments, including providing children who have significant intellectual disabilities with alternate assessments that are aligned to alternate academic achievement standards. Mr. Mayes added that a regular high school diploma is a key to employability and that a regular high school diploma terminates a child’s eligibility for special education.

Mr. Mayes summarized public comments, many of which requested guidance for decision making; noted that the department has limited authority to alter the requirements; and explained that the department has partnered with advocacy groups to create tools to assist school districts in decision making that is youth-centered, not adult-centered, to determine whether students have attained the state graduation requirements. Mr. Mayes stated that graduation decisions always rest with the local school district, not with the department.

In response to questions from Sen. Chelgren and Rep. Pettengill, Mr. Mayes explained that the federal government has enforced the standards when other states have not complied with the law and that graduation decisions are made at the local school district level based on the student’s meeting state requirements which consist of a given number of courses in specific subject areas.

COLLEGE STUDENT AID COMMISSION Todd Brown represented the commission.

ARC 3699C

At the April 6, 2018, meeting, the committee voted to impose a 70-day delay on ARC 3699C (IAB 3/28/18) based on the following concerns: the amendment to the introductory paragraph of 1.2(3) could allow the commission to hold an unlimited number of meetings annually and the amendment to 1.2(3)“c” in regard to “no” votes could appear to presume that a member assents in a vote if the member does not affirm that the member assents. Mr. Brown sought a recommendation from the committee and assured the committee that the commission’s intention was to hold not more than eight regular meetings annually and that the stipulations about “no” votes were intended to apply only to roll call votes.

Prior to the May meeting, Mr. Brown provided to the committee by email two proposed revisions of the language in 1.2(3) to address the committee’s stated concerns. Committee members expressed support for the first proposed revision, which limits to eight the number of in-person meetings annually without any exceptions and removes the language regarding presumed assent to votes by commission members.

In enumerating the committee’s procedural options, Mr. Ewing explained that emergency rule making to adopt the first proposed revision would ensure that the revision would become effective before the delayed amendments in ARC 3699C become effective.

Motion to approve

Rep. Pettengill moved approval of emergency rule making to adopt the language of the first proposed revision as provided by the commission.

Motion carried

The motion carried on a unanimous voice vote.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department.

ARC 3737C

No action on amendments to 57.1 and 57.6 pertaining to residential care facilities for persons with an intellectual disability.

ARC 3738C

No action on amendments to 57.1 and 57.33(8) regarding the prohibition of mechanical restraints in residential care facilities.

ARC 3739C

No action on ch 62, residential care facilities for persons with mental illness.

ARC 3740C

No action on ch 63, residential care facility—three- to five-bed specialized license.

ARC 3768C

No action on amendments to 1.3 and 30.1 and to the rescission of ch 25 regarding the Iowa targeted small business certification program and the administration division of the department.

ARC 3769C

No action on 1.4 pertaining to the investigations division.

ENVIRONMENTAL PROTECTION COMMISSION Diane Moles, Jon Tack and Leslie Goldsmith represented the commission.

ARC 3735C No action on amendments to chs 40 to 44, 81 and 83 regarding water supply.

ARC 3736C No action on amendments to 111.4 and 111.6 to 111.8 pertaining to annual reports of solid waste environmental management systems.

NATURAL RESOURCE COMMISSION Chris Ensminger and Tyler Harms represented the commission.

ARC 3729C Proposed amendments to chs 98 and 99 pertain to wild turkey spring and fall hunting.

In response to a question from Sen. Chelgren, Mr. Ensminger explained that the amendments reflect changes in the materials and sizes of shotgun shot on the current market.

ARC 3731C Proposed amendments to chs 94 and 106 regard deer hunting by residents and nonresidents.

Mr. Harms summarized the amendments, noting in particular the amendment that imposes a limit of six cartridges that may be loaded for shotguns, straight wall cartridge rifles and handguns and the amendment that removes handguns as a method of take from the late muzzleloader season.

Mr. Harms reported that a number of public comments asserted that the six-cartridge limit was unreasonable, a view based on the hunters' assumption that permitted firearms would be limited to those holding six or fewer cartridges, whereas the intention of the amendment, he explained, is to limit the number of cartridges that may be loaded at one time. Because of this confusion, Mr. Harms stated that he will propose that the commission not adopt this amendment.

Sen. Chelgren questioned the authority for and the purpose of the six-cartridge limit; how the limit would change hunter behavior; the reason for conforming Iowa's regulations to those of other states in the Midwest; and the reason for stipulating prohibited firearms instead of stipulating permitted firearms. Mr. Harms stated that the department has the authority to promulgate rules regarding methods of take, such as the six-cartridge limit; that the amendment is intended to increase hunter safety, to reduce the chance of unnecessarily wounding deer and to accommodate persons who want to hunt with a revolver-style pistol; that the limit would make the rules in Iowa consistent with those of most other states in the Midwest; and that the amendments would add language to define what is an allowable handgun. Rep. Olson expressed concern that the calibers of some firearms appear to be brand names, and Sen. Chelgren suggested that the type of firearm, not the brand, be regulated.

PUBLIC HEALTH DEPARTMENT Susan Dixon represented the department.

ARC 3745C No action on amendments to ch 3 pertaining to newborn testing for congenital cytomegalovirus (cCMV).

In response to a question from Rep. Jones, Ms. Dixon stated that 3.2“2,” related to the purpose for ch 3, mirrors the statute. In response to a question from Rep. Pettengill, Ms. Dixon stated that the department files a copy of the written refusal by a parent who objects to cCMV testing.

Ms. Dixon agreed to follow up on a request by Sen. Chelgren to verify that 3.2“2” mirrors the statute, and at the request of Rep. Pettengill, Ms. Dixon will verify that the department's retention of a copy of the written refusal is statutory.

ARC 3746C No action on amendments to chs 37 to 41 and 45 pertaining to radiation.

ARC 3747C Amendments to ch 80 pertain to funding of local public health services.

Rep. Pettengill expressed concern regarding the removal from 80.3(5)“a”(2) of a bachelor's degree in several fields, such as social work and education, for current and prospective home care aide services coordinators. Sen. Chelgren asked whether a waiver might be granted for persons in the eliminated fields. Rep. Jones shared the same concerns and also questioned whether, in 8.2, the definition of “essential public health services” should include the department's “diagnosing and investigating health problems” and “assuring a competent public health and personal health care workforce” and questioned the language in 80.6(1) regarding the stated purpose of essential public health service funds.

Though Ms. Dixon stated that persons qualified in the fields being eliminated would be grandfathered in and, in accordance with ch 178, they could request a waiver, Rep. Jones noted that the rule does not mention grandfathering or waivers.

Public Health Department (continued)

Motion to delay Rep. Jones moved a session delay on ARC 3747C.

Motion carried The motion carried on a unanimous voice vote.

ARC 3748C No action on ch 146, stroke care reporting.

In response to a question from Rep. Jones, Ms. Dixon stated that no funding was associated with the stroke care reporting. Rep. Pettengill stated that the rules align with 2017 Iowa Acts, House File 548 [Iowa Code section 135.191], except perhaps for 146.6, regarding penalties and enforcement, which Rep. Pettengill termed punitive. Ms. Dixon explained that reporting under ch 146 is required only by centers designated as certified stroke care centers and agreed to provide the committee with clarification of the alignment of 146.6 with statute.

Sen. Chelgren requested that to align the rules with statute, the department in general provide greater specificity in rules.

PROFESSIONAL LICENSURE DIVISION Tony Alden, Susan Reynolds and Judy Manning represented the division.

ARC 3744C No action on amendments to chs 280 to 283 pertaining to licensure, continuing education, practice, and discipline of social workers.

ARC 3754C Proposed amendments to chs 43 and 45 concern the practice and discipline of chiropractic physicians.

Rep. Pettengill suggested that the language of 45.2(34) be clarified to make more specific the action by licensees that prompted the addition of this ground for discipline. Sen. Chelgren requested that the board review 45.2(28)“e” and “f” to compare the parameters of a chiropractic physician licensee-client relationship with those of other professions and to clarify the language to ensure that a chiropractic physician licensee would not be disciplined as a result of unclear rules. In response to a question from Rep. Jones, Ms. Reynolds stated that proposed rules related to a reduction in continuing education hours for chiropractic physicians are in process and soon to be submitted for publication in a separate rule making.

ARC 3762C No questions on proposed amendments to chs 200, 203 and 206 pertaining to the licensure and continuing education of physical therapists and physical therapist assistants and occupational therapists and occupational therapy assistants.

PHARMACY BOARD Sue Mears represented the board.

ARC 3743C No action on proposed 10.38(3) and 37.4(9) and amendments to 37.3(3) regarding cannabidiol investigational products and the Iowa prescription monitoring program.

ARC 3758C No questions on proposed 10.39(2)“an” concerning temporary scheduling of fentanyl-related products as Schedule I controlled substances.

ARC 3764C No questions on proposed amendments to 18.3(4), 22.1(3) and 22.5(5) pertaining to the substitution of interchangeable biological products and to labeling requirements.

PUBLIC SAFETY DEPARTMENT Barb Edmondson represented the department.

ARC 3733C No action on amendments to 502.1(3), 551.2 and 552.1 regarding electricians and electrical contractors; and electrical inspections.

REVENUE DEPARTMENT Tim Reilly represented the department.

ARC 3724C No questions on proposed amendments to 12.19, 42.53, 52.46 and 58.23 pertaining to sales and use tax ineligible for refund and to the workforce housing tax incentives program.

ARC 3725C No questions on proposed amendments to 72.1(1) and 72.3 regarding the preliminary education requirements for the assessor and deputy assessor examinations.

ARC 3749C No action on amendments to 41.5(3) and 42.52 concerning an adoption expense deduction and tax credit.

ARC 3750C No action on amendments to chs 103 to 105 regarding hotel and motel tax imposed by a land use district.

ARC 3771C No action on amendments to 71.20(4) and 71.21(8) pertaining to grounds for protest of property tax assessments.

ARC 3770C No action on 40.82, first-time homebuyer savings accounts.

In response to a question from Rep. Nielsen, Mr. Reilly clarified that a holder of a first-time homebuyer savings account must be an individual or a married couple.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA Mark Johnson represented the commission.

ARC 3723C The proposed amendment to 7.1 pertains to state communications related to authorized use and users.

In response to a question from Sen. Chelgren, Mr. Johnson verified that the definition of “state communications” in the rule mirrors that of the statute, which also does not include Iowa public radio or Iowa public television.

WORKFORCE DEVELOPMENT DEPARTMENT David Steen represented the department.

ARC 3772C No action on the rescission of 22.9(3) pertaining to employer registration penalties.

TRANSPORTATION DEPARTMENT Tim McClung and Stuart Anderson represented the department.

ARC 3755C No questions on proposed amendments to chs 700, 710 and 715 to 717 concerning correction of citations related to aeronautics and aviation vertical infrastructure.

ARC 3756C Proposed amendments to chs 800, 810 and 813 pertain to railroad transportation and safety.

In response to a question from Sen. Chelgren, Mr. Anderson clarified that the cars under discussion are passenger vehicles used to transport railroad crews on roads to the point of a crew shift change, that the services are provided through third-party companies hired by the railroad and that these cars are not regulated by federal standards because of the size and number of passengers.

ARC 3757C No questions on proposed amendments to chs 802 regarding notification of railroad accidents/incidents.

ARC 3759C No questions on proposed amendments to ch 822 concerning the railroad revolving loan and grant fund program.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

ARC 3727C No questions on proposed amendments to chs 66 to 73 regarding conveyances.

ARC 3742C No action on amendments to chs 71 to 73 pertaining to wind tower lifts, wind turbine tower elevators and updates of references to ASME codes.

Committee business The minutes of the April 6, 2018, meeting were approved.

The next meeting was scheduled for Tuesday, June 12, 2018, at 9 a.m.

Mr. Ewing recognized Ms. Hoff, noting that this is her final meeting.

Adjourned The meeting was adjourned at 12:35 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Mark Chelgren

Vice Chair Dawn Pettengill