

**MINUTES OF THE JUNE 2012 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, June 12, 2012, beginning 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 Merlin Bartz, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives David Heaton, Rick Olson, and Guy Vander Linden were present. Representative Jo Oldson was not present.
- Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Brenna Findley, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.
- Convened Sen. Horn convened the meeting at 9:05 a.m.
- Fiscal overview** Aaron Todd presented the LSA fiscal report.
- ATTORNEY GENERAL** Jessica Whitney represented the attorney general. Other interested parties included Jenny Tyler of Carney & Appleby, PLC, on behalf of Wells Fargo.
- ARC 0147C Proposed ch 37 pertains to required disclosures for philanthropic contributions made by certain student loan lenders to certain educational institutions.
- Rep. Pettengill expressed concern about quantifying desirability and scarcity as components of fair market value and about the delay in the promulgation of ch 37, which is intended to implement 2008 legislation. In response, Ms. Whitney stated that the language regarding desirability and scarcity was provided by a participant educational institution and that the rule making had been in process while the attorney general awaited responses from educational institutions.
- Ms. Tyler remarked that required lender disclosures would be difficult because the 84 Wells Fargo businesses lack a uniform tracking system and stated that the educational institutions, as creators of the preferred lender lists, would be in a better position to provide the required disclosures. In response, Ms. Whitney stated that the attorney general is considering on-demand disclosures rather than required disclosures by lenders.
- In response to Ms. Tyler and Ms. Whitney, Sen. Courtney expressed concern that the public would not know that requesting on-demand disclosures by a lender is an option and requested that a resolution regarding disclosures be found that protects the public. In response to a request by Sen. Bartz regarding the origin of the 2008 legislation, Ms. Tyler stated that the impetus for the state legislation was then-pending federal regulations requiring no disclosure. Ms. Tyler expressed appreciation for the willingness of the attorney general’s office to work with interested parties on the rules.
- DENTAL BOARD** Melanie Johnson represented the board.
- ARC 0128C No questions on proposed amendments to chs 10 to 15, 20, 22, 25, 29 and 51 regarding licensure, the online filing system, and fees.
- EDUCATION DEPARTMENT** Mike Cormack represented the department.
- ARC 0112C Proposed 81.7 pertains to school business official knowledge and skills standards and criteria. In response to an inquiry from Sen. Bartz, Mr. Cormack stated that a transitional period would be established during which authorizations of currently employed school business officials would be considered in a different manner from the authorizations of school business officials new to the field. Sen. Bartz noted that a waiver process is associated with this rule.
- ENVIRONMENTAL PROTECTION COMMISSION** Christine Paulson, Jon Tack, Chris Schwake and Joe Griffin represented the commission. Other interested parties included Kevin Condon on behalf of the Iowa Association of Business and Industry.
- ARC 0126C This Amended Notice of Intended Action extends to August 16, 2012, the public comment period regarding proposed ch 17, compliance and enforcement procedures. Ms. Paulson stated that an Amended Notice of Intended Action to be published in the 6/27/12 IAB will add three public hearings and will explain further how the department intends to implement the new chapter.

Environmental Protection Commission (continued)

In response to an inquiry from Rep. Pettengill, Ms. Paulson explained that the comment period was extended because of substantial attendance at the public hearing and extensive public comment. Ms. Paulson stated that comments in opposition expressed concern that the rules could weaken enforcement, particularly regarding animal feeding operations. In response to an inquiry from Ms. Findley, Ms. Paulson confirmed that the rules do not in any way loosen or make less restrictive the requirements for animal feeding operations.

Mr. Condon expressed support for the rules and stated that they inform the regulated community of compliance and enforcement procedures available to the department.

ARC 0121C

The amendments to 61.2(2)“g” pertain to water quality certification. Mr. Tack explained that the state certifies, through these amendments, that the permits meet the water quality standards of the state.

Discussion pertained to 61.2(2)“g”(9) regarding the prohibition of the use or operation of heavy equipment within a stream channel unless in-stream work is unavoidable. Mr. Tack explained that interested parties agreed to the language that allows in-stream work when it is unavoidable if the work is performed with minimum disturbance. Mr. Tack explained that this stipulation applies only to an activity that requires a permit from the Army Corps of Engineers and that the Corps will determine whether in-stream work is unavoidable.

ARC 0118C

Proposed amendments to 64.15 reissue General Permit Nos. 1, 2 and 3, which authorize the discharge of storm water. Mr. Griffin clarified for Sen. Bartz that existing topsoil may be used on site and confirmed that the amendments in Item 2 do not change the stipulation that no permit is required for sites of less than one acre.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION Mark Schouten represented the division.

ARC 0129C

No action on amendments to ch 7, which pertain to local emergency management. Mr. Schouten clarified for Rep. Heaton that the role of the emergency management administrator/coordinator is to coordinate the emergency response team, which includes local and county law enforcement and first responders. Rep. Pettengill confirmed for Rep. Heaton that law enforcement is an integral part of the emergency management team in an emergency/disaster situation.

TRANSPORTATION DEPARTMENT Andrew Lewis represented the department. Other interested parties included Susan Cameron on behalf of the Iowa Optometric Association.

ARC 0136C

No action on amendments to chs 400, 401, 405, 425, 431, 450, 511, 524 and 529 pertaining to vehicle title, registration and plates; dark window exemption; salvage; regular business hours; permitting; and adoption of federal motor carrier regulations.

Discussion focused on the state law that requires a minimum standard of transparency for the windshield and front side windows and allows tinted rear passenger and back windows and on safety and energy use issues related to this law.

In response to an inquiry from Sen. Courtney, Mr. Royce reported that the law reflects a compromise reached in 1983. Sen. Courtney expressed concern about the basis for the law and suggested that it be reexamined by the legislature.

Ms. Cameron stated that the Association requested that the rule no longer require optometrists to be the designated grantors of medical exemptions from the minimum standard of windshield transparency to persons with medical conditions that can be treated with eyewear.

INSPECTIONS AND APPEALS DEPARTMENT David Werning and Patrice Fagen represented the department.

ARC 0135C

No action on amendments to 51.50(1) regarding minimum construction standards for critical access hospitals. Ms. Fagen clarified for Sen. Horn the general difference between construction guidelines for critical access hospitals and those for acute care hospitals.

INSURANCE DIVISION Susan Voss represented the division. Other interested parties included Scott Sundstrom on behalf of the Federation of Iowa Insurers.

Insurance Division (continued)

ARC 0133C No action on amendments to ch 20 relating to certificates of insurance for commercial lending transactions.

Mr. Sundstrom expressed appreciation to Rep. Pettengill and to the division for negotiating with interested parties to reach a compromise on the rule making.

PROFESSIONAL LICENSURE DIVISION Judy Manning represented the division.

ARC 0134C Proposed amendments to ch 206 and 209 pertain to occupational therapists and occupational therapy assistants.

In response to an inquiry from Rep. Heaton, Ms. Manning stated that the amendments strengthen supervision of the occupational therapy assistant (OTA), and she clarified the relationship of the occupational therapist (OT) and the patient. In response to an inquiry from Rep. Pettengill, Ms. Manning stated that the amendments regarding the timely reevaluation of patients by OTs are based on complaints that OTAs have been providing services that only OTs should provide. In response to an inquiry from Sen. Kibbie, Ms. Manning stated that the term "crime" refers to a felony or a misdemeanor and explained the board's licensure procedures related to a crime.

NATURAL RESOURCE COMMISSION Diane Ford and Chuck Corell represented the commission.

ARC 0146C Proposed ch 56 relates to shooting sports program grants. Ms. Ford stated that the proposed rules create program grants for shooting range development and enhancement around the state.

In response to an inquiry from Sen. Bartz, Ms. Ford stated that 2012 Iowa Acts, Senate File 2283, provides the statutory authority to adopt the new chapter and that the funds will be available and applications will be due in September this year and in February in subsequent years. Ms. Ford clarified for Rep. Heaton that the shooting ranges must be public and have public access and that the activities will include trap and skeet shooting and sporting clays. In response to an inquiry from Sen. Seymour, Ms. Ford stated that all shooting ranges are outdoor ranges and that any legal firearm may be used on the shooting ranges except that for DNR education programs, only shotguns will be used.

PUBLIC SAFETY DEPARTMENT Mike Coveyou and Brian Young represented the department.

ARC 0120C Amendments to chs 502 and 552 pertain to reciprocal licensing of and failure to pay fees by licensees governed by the electrical examining board. In response to an inquiry from Sen. Courtney, Mr. Coveyou stated that a licensee's failure to pay fees on time is uncommon and that the imposition of a penalty for failure to pay fees on time removes the competitive advantage for licensees who attempt to avoid paying fees.

Committee members commended Mr. Coveyou, who will soon retire, for his service and in particular, his broad knowledge of subject matter and his well-prepared presentations.

REVENUE DEPARTMENT Jim McNulty and Victoria Daniels represented the department.

ARC 0145C The proposed rule making relates to practice and procedure before the department. In response to an inquiry from Sen. Bartz, Mr. McNulty stated that the department has not received any requests for a public hearing.

ARC 0124C Rule 151.9 relates to the subpoena of records from public or private utility companies with respect to an individual who has a debt or obligation placed with the centralized collection unit of the department. In response to an inquiry from Sen. Bartz, Ms. Daniels stated that initially only cell phone records will be subject to subpoena and confirmed that the information obtained by the department will not be shared with any other utility companies.

ARC 0119C Proposed amendments to 231.4 pertain to the taxability of sales of candy. Ms. Daniels stated that the amendments maintain the state's compliance with the Streamlined Sales and Use Tax Agreement (SSUTA) adopted under Iowa Code chapter 423. She stated that the amendments update and clarify what is and is not candy for purposes of taxation and set forth criteria that determine if a food item is candy.

Discussion pertained to further clarification of the definition of candy, taxation, and the state's compliance with the language of the SSUTA.

SECRETARY OF STATE Sarah Reisetter and Angela Davis represented the secretary of state.

ARC 0131C No questions on the termination of proposed amendments to chs 21, 22 and 28 pertaining to election forms and instructions, voting systems and voter registration files.

ARC 0130C No questions on the termination of proposed 21.33 regarding the redistricting special election blackout period.

ARC 0107C Amendments to ch 21 relate to election forms and instructions. Ms. Reisetter clarified for Sen. Bartz that an absentee ballot must be clearly postmarked no later than the day before election day.

ARC 0083C Proposed amendments to ch 42 pertain to athlete agent registration. Ms. Davis stated that the amendments to 42.1 update the rule to be consistent with statute and current practice.

In response to an inquiry from Sen. Courtney, Ms. Davis stated that the amendments clarify existing procedures and statutory fees. At the request of Sens. Kibbie and Courtney and Rep. Pettengill, Ms. Davis agreed to provide the committee with documentation of the amount of money, categorized by year, that has been collected under this rule.

ARC 0082C The amendment to 43.1 concerns the certificate of notarial acts denoted by an official stamp or seal of office. Sen. Bartz requested that double-barreling be considered.

ARC 0081C Proposed 43.7 concerns electronic communication with notarial officers by the secretary of state. In response to an inquiry from Sen. Horn, Ms. Davis stated that a notarial officer without access to e-mail will continue to receive paper notices and other communications.

ARC 0109C Rule 21.405 relates to special elections to fill a vacancy in the office of representative of Congress. Ms. Reisetter stated that the U.S. Department of Justice requires the state to demonstrate compliance with the federal statute by establishing deadlines in the event a special election occurs, but legislation to demonstrate compliance with the federal statute has not passed during the past two legislative sessions.

Sen. Bartz expressed concern about the conflict to which Ms. Reisetter alluded: the adopted rule is in compliance with federal statute, but the adopted rule is not in compliance with state statute, which has not been amended to reflect the federal requirements. In response to Mr. Royce’s inquiry regarding federal preemption, Ms. Reisetter stated that in the event of a special election, federal law would require state compliance even though state law is not in compliance with federal law. Ms. Reisetter pledged continued emphasis on the need to amend the state statute.

Motion to refer Following discussion, Sen. Bartz moved a general referral on ARC 0109C (21.405).

Motion carried On a voice vote of 8 to 0, the motion carried.

Mr. Royce explained that the rule will remain in effect while the general referral is made to the appropriate standing committees of the legislature.

STATE PUBLIC DEFENDER Mark Smith represented the state public defender.

ARC 0137C No action on amendments to 12.7, 12.10, 13.2(4) and 13.5 pertaining to indigent defense fund payments for certified shorthand reporters.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Jennifer Vermeer represented the department.

ARC 0132C No questions on proposed amendments to ch 7 relating to appeals, default decisions, and good cause.

ARC 0144C Proposed amendments to ch 78 pertain to coverage, age limit, reimbursement, and prior authorization for lenses and frames. In response to an inquiry from Rep. Heaton, Ms. Freudenberg explained that approval of individual exceptions to policy has led to amendments that reflect new policy.

ARC 0143C No questions on proposed amendments to ch 83 concerning Medicaid waiver services.

Human Services Department (continued)

Special Review The committee must annually review amendments to the Medicaid program before the amendments may become effective. The committee reviewed three rule makings that implement 2012 Iowa Acts, Senate File 2336, and pertain to the following topics, respectively:

1. Payment for various services;
2. Reimbursement for inpatient hospital care; and
3. Reimbursement for certain drugs.

Regarding topic #1, Ms. Freudenberg confirmed for Sen. Kibbie that the rules would be double-barreled and published July 11, 2012. In response to an inquiry from Sen. Bartz, Rep. Heaton stated that the rules reflect legislative intent. In response to an inquiry from Rep. Heaton regarding topic #2, Ms. Vermeer confirmed the intent of, and agreed to clarify further, the policy regarding reimbursement by Medicaid for inpatient hospital care if a patient is discharged and then readmitted for treatment of the same condition within seven days.

Committee business The minutes of the May 8, 2012, meeting were approved.

The next meeting was scheduled for Tuesday, July 10, 2012, at 9:30 a.m.

Ms. Hoff presented an inquiry about the possible editorial removal of an objection imposed in 1981 on Fair Board rule 371—4.8(173). After discussion regarding the objection and the recent amendments to this rule (ARC 0163C, IAB 6/13/12), the committee requested that Mr. Royce place discussion of the objection on the July agenda and ask the Fair Board to appear at the July meeting to discuss the objection.

Adjourned The meeting was adjourned at 2:10 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill