



Iowa General Assembly

2015 Committee Briefings

Legislative Services Agency – Legal Services Division <https://www.legis.iowa.gov/committees/committee?endYear=2014&groupID=705>

ADMINISTRATIVE RULES REVIEW COMMITTEE

Meeting Dates: [June 9, 2015](#) | [July 14, 2015](#) | [August 11, 2015](#) | [September 8, 2015](#) | [October 13, 2015](#)
[November 10, 2015](#) | [December 8, 2015](#)

Purpose. This compilation of briefings on legislative interim committee meetings and other meetings and topics of interest to the Iowa General Assembly, written by the Legal Services Division staff of the nonpartisan Legislative Services Agency, describes committee activities or topics. The briefings were originally distributed in the Iowa Legislative Interim Calendar and Briefing. Official minutes, reports, and other detailed information concerning the committee or topic addressed by a briefing can be obtained from the committee's Internet page listed above, from the Iowa General Assembly's Internet page at <https://www.legis.iowa.gov/>, or from the agency connected with the meeting or topic described.

ADMINISTRATIVE RULES REVIEW COMMITTEE

June 9, 2015

Chairperson: Representative Dawn Pettengill

Vice Chairperson: Senator Wally Horn

EMERGENCY RULE FILING REVIEWS. Iowa Code section 17A.4(3) provides that an agency can adopt a rule without notice only with specific statutory authority or with prior approval by the Administrative Rules Review Committee. Under this procedure, the committee reviews requests by agencies to adopt rules filed without notice at its monthly meeting or at special meetings if necessary. The committee will approve such filings if the committee finds good cause that notice and public participation would be unnecessary, impracticable, or contrary to the public interest.

The committee considered one filing:

- **Workers' Compensation Division—2015 Payroll Tax Tables, Chapter 7. EMERGENCY FILING APPROVED BY COMMITTEE.**

IOWA PUBLIC INFORMATION BOARD, *Open Records, 05/27/15 IAB, ARC 2010C, NOTICE.*

Background. This rulemaking provides several changes to rules of the Iowa Public Information Board (IPIB) relating to open meetings. The amendments change the rules regarding where and when notice of a meeting must be posted and the reasons for going into a closed session.

Commentary. The Executive Director of IPIB commented that this will be the first of a series of rulemakings regarding open meetings. He noted a desire to clarify several recurring issues, including whether original notice covers all subsequent changes to the time or location of a meeting, and whether the 24-hour notice requirement is continuous or a portion of that time is sufficient. He also indicated that some of these concerns may need to be addressed by the General Assembly in the future.

A representative of the Iowa Hospital Association (IHA) stated that IHA, half of whose members are public hospitals subject to the purview of open meetings laws, would like to see a pause in the rules so that the General Assembly may address the issues. The IHA representative noted, particularly, concern regarding rules governing closed meetings and when meetings must be open to the public. IPIB's Executive Director responded by noting that IPIB seeks input from and will work with any and all interested parties to address concerns as IPIB continues to make changes to its rules.

Action. No action taken.

CORRECTIONS DEPARTMENT, *Iowa Prison Industries, 05/13/15 IAB, ARC 1990C, NOTICE.*

Background. This rulemaking provides for a variety of changes to rules for Iowa Prison Industries (IPI), including matters such as addresses, hours of operation, and location of product catalogs. The amendments also provide that products may be sold to contractors when the products will be sold to a public entity, adopt by reference the provisions of Department of Administrative Services rules dealing with procurement of goods and services, and replace the term "prevailing wage" with "wage range." The amendments define "wage range" as the 10th percentile and 90th percentile wages.

Commentary. Representatives from IPI made a presentation describing the various services IPI offers and how they are carried out and explained the rulemaking. The representatives stated that the change from “prevailing wage” to “wage range” will be nonsubstantive because IPI has always determined wages based on wage range data from Iowa Workforce Development (IWD), not based on a prevailing wage. The representatives stated that neither the amount of wages paid nor the data used to determine those amounts will be affected; this change only codifies current practice. A representative from IWD concurred with that explanation. He stated that prevailing wage data is determined by the U.S. Department of Labor, not IWD; that IWD does not independently generate prevailing wage data for Iowa; that IWD has instead been providing IPI with wage range data; and that this change would conform with IWD’s own rules on this subject. In response to questions from committee members, the IWD representative acknowledged that federal prevailing wage data is available online and could be accessed by IWD.

Committee members questioned how IPI ensures that it is not competing with private sector workers for jobs, and the IPI representatives explained a process for ensuring that IPI workers only take jobs for which other workers are not available. It was noted that this process does not account for the differences in employment benefits available to private sector workers and prisoners, respectively. Committee members also questioned IPI’s statutory authority to provide for work covered by this rulemaking. IPI representatives described their statutory authority, which they stated was sufficient.

Public comment was heard from a representative of Iowa businesses in opposition to the proposed provision permitting IPI to sell products to private contractors when the products purchased will be used by a public entity. The representative stated that the provision would cause inappropriate competition with the private sector. The representative questioned IPI’s statutory authority for such sales and stated that the jobs impact statement for the rulemaking, which indicated that the rulemaking would have no impact on jobs, is not accurate.

Public comment was also heard from representatives of construction and mechanical contractor unions, who stated their initial concerns that the rulemaking would lead to inappropriate competition with their members were alleviated after further discussions with IPI.

The IPI representatives stated that they will have further discussions with affected stakeholders and that the notice will likely be revised before it is adopted and filed. Committee members stated that this rulemaking will be placed on the July ARRC agenda for further review.

Action. No action taken. Further review at the July meeting.

Next Meeting. The next committee meeting will be held in Statehouse Room 22, on Tuesday, July 14, 2015, beginning at 9:00 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354.

Internet Page: <https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=705>

ADMINISTRATIVE RULES REVIEW COMMITTEE

July 14, 2015

Chairperson: Representative Dawn Pettengill

Vice Chairperson: Senator Wally Horn

EMERGENCY RULE FILING REVIEWS. Iowa Code section 17A.4(3) provides that an agency can adopt a rule without notice only with specific statutory authority or with prior approval by the Administrative Rules Review Committee. Under this procedure, the committee reviews requests by agencies to adopt rules filed without notice at its monthly meeting or at special meetings if necessary. The committee will approve such filings if the committee finds good cause that notice and public participation would be unnecessary, impracticable, or contrary to the public interest.

The committee considered one filing:

• **Corrections Department—Iowa Prison Industries. EMERGENCY FILING APPROVED BY COMMITTEE.**

IOWA DENTAL BOARD, *Expanded Dental Assistant Functions*, 06/10/15 IAB, ARC 2028C, FILED.

Background. This rulemaking increases the number of functions dental assistants may perform. The Iowa Dental Board (IDB) organized a committee composed of a variety of dental professionals to consider these changes beginning in 2012. The committee met five times. IDB received 18 written comments and made multiple changes from the noticed rule.

Commentary. IDB’s executive director characterized the 18 written comments as generally supportive and highlighted three changes made in response to certain concerns. IDB decreased the number of years of experience required to perform certain functions from three to one, altered the wording of one specific function, and eliminated a requirement

that dentists report a certain event if a dental assistant has already reported it.

IDB also considered setting a limit on the number of dental assistants an individual dentist can supervise. There is currently no limit and no change was made, citing a consensus that there is no current harm to the public. The executive director noted that dental assistants will need to receive additional training in order to perform their newly expanded duties.

One committee member inquired whether a dentist could engage in telemedicine to examine patients remotely. The executive director stated that IDB does not currently have any rules regarding telehealth but is working on the issue at this time. IDB has not received any public comments regarding dental telehealth as of the meeting.

Action. No action taken.

CORRECTIONS DEPARTMENT, Iowa Prison Industries, 05/13/15 IAB, ARC 1990C, NOTICE, HELD OVER FROM JUNE.

Background. This rulemaking provides for a variety of changes to rules for Iowa Prison Industries, including matters such as addresses, hours of operation, and location of product catalogs. The amendments also provide that products may be sold to contractors when the products will be sold to a public entity, adopt by reference the provisions of Department of Administrative Services rules dealing with procurement of goods and services, and replace the term “prevailing wage” with “wage range.” The amendments define “wage range” as the 10th percentile and 90th percentile wages.

At the committee’s June meeting, further review of these noticed rules was scheduled for the committee’s July meeting. Since then, the department made revisions to the noticed rules based on feedback from the public and adopted them. The adopted and filed rules have been published in the 7/8/15 Administrative Bulletin.

Commentary. Department representatives explained that an error occurred in the department’s rulemaking process. The document that the department submitted for publication in the 7/8/15 Administrative Bulletin did not contain the final rules adopted by the Iowa Prison Industries Advisory Board. The document published as ARC 2056C in the 7/8/15 Administrative Bulletin was not correct; it did not reflect what was adopted by the board. The representatives handed out copies of the document that the board actually adopted but did not submit for publication. The representatives stated that the department intended to correct the error soon.

Committee members questioned how the error occurred and how it could be corrected. Committee members also questioned whether the public had been given adequate input into the rulemaking process and whether the department has statutory authority for the changes proposed in this rulemaking. Committee members urged the department to restart the rulemaking process.

After further discussion on how the matter could be resolved, the committee voted to authorize the department to adopt emergency rules that would rescind the erroneous rules published in the 7/8/15 Administrative Bulletin before they would become effective and return the department’s rules to the text that was in place before the current rulemaking process started. The representatives agreed to restart the rulemaking process with a new notice of intended action once the emergency rules become effective.

Action. Emergency rulemaking authorized. The erroneous adopted and filed rules published in the 7/8/15 Administrative Bulletin will be rescinded. The rulemaking process will start over with a new notice of intended action.

Next Meeting. The next committee meeting will be held in Statehouse Room 103 (**NOTE ROOM CHANGE**), on Tuesday, August 11, 2015, beginning at 9:00 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354.

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ADMINISTRATIVE RULES REVIEW COMMITTEE

August 11, 2015

Chairperson: Representative Dawn Pettengill

Vice-Chairperson: Senator Wally Horn

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT, Storage and Handling of Anhydrous Ammonia, 07/22/15 IAB, ARC 2059C, ADOPTED.

Background. This rulemaking adopts the newest national standards for the safety and handling of anhydrous ammonia, with some exceptions.

Commentary. Department representatives explained the rule and the national standard it incorporates. They noted that a delay of the rule is being sought because it would have the effect of prohibiting the addition of oxygen to an

anhydrous ammonia tank. The addition of oxygen is part of certain anhydrous ammonia technology manufactured and used in Iowa, which would no longer be allowed under the rule. The representatives stated that the department believes this practice is unsafe because it can lead to cracking on the inside of a tank, which may cause an explosion. They stated that multiple states have banned the practice, and the federal Environmental Protection Agency, the federal Department of Transportation, and one insurance company have expressed concern about the practice.

Public comment was heard from representatives of Quality Plus Manufacturing (QPM), a manufacturer of agricultural equipment. The representatives explained that subrule 5.10.3 of the national standard would prohibit the use of QPM's Flow Assist technology, which includes the addition of oxygen to an anhydrous ammonia tank. They discussed their technology and the history of their company. The QPM representatives disputed the department's contention that their technology is unsafe, stating that it has been thoroughly tested and studied and that no safety problems have occurred. They stated that no other state has adopted subrule 5.10.3 of the national standard. They also noted that the department had previously determined that their technology was illegal, and the Attorney General ultimately disagreed.

Public comment was also heard from an individual who works with pressure vessels such as the technology in question, including providing inspections and training. He stated that the technology is unsafe and would not be approved by the federal Environmental Protection Agency if audited. He stated that individuals who use the technology are not always properly trained.

Committee members had many questions regarding the Flow Assist technology, including how it was developed, how it works, its safety record, possible alternatives, and how the rule will affect it. Committee members expressed uncertainty regarding the complex technical details of the technology. The department and QPM repeatedly disagreed about the safety of the technology.

Action. A motion for a session delay passed by a seven-to-three vote (seven votes required to pass).

ENVIRONMENTAL PROTECTION COMMISSION, *Topsoil Preservation at Construction Sites*, 07/08/15 IAB, ARC 2054C, ADOPTED.

Background. This rulemaking amends National Pollutant Discharge Elimination System General Permit No. 2, which relates to the discharge of stormwater from construction sites. In October 2012, the Environmental Protection Commission (EPC) adopted a rule requiring developers to leave construction sites with at least four inches of topsoil, as long as at least four inches of topsoil existed prior to the development of the property. This rulemaking eliminates the specific depth required and instead requires developers to, "unless infeasible, preserve topsoil."

Commentary. The EPC pursued this rulemaking upon the recommendation of a group of stakeholders tasked with reviewing the rule by Governor Branstad in Executive Order 80. The stakeholder group consisted of seven total members: four representatives of the construction industry, one from a landscaping company, one from an environmental organization, and one EPC member. Representatives from the Department of Natural Resources (DNR), which oversees the EPC, acknowledged the stakeholder group and this rulemaking were initiated in response to complaints from the construction industry.

The EPC held three public meetings and received over 700 comments in response to the rule. DNR representatives acknowledged the comments in opposition to this rulemaking outnumbered those in favor by a factor of ten to one. They stated that the DNR has done no cost-benefit analysis of this rule change, asserting such an undertaking would be infeasible. They also stated that the language being adopted by this rulemaking is nearly identical to language enforced by the federal Environmental Protection Agency.

Two homeowners from a neighborhood in Waukee, Iowa attended the meeting to speak against the rule change. They were followed by another individual and representatives from the Iowa Chapter of the Sierra Club, 1000 Friends of Iowa, and the Iowa Environmental Council. The opposition comments generally claimed that the rulemaking would increase water runoff, causing environmental problems, and would be difficult to implement and enforce.

The chairperson of the stakeholder group, a representative of the Home Builders Association of Greater Des Moines, spoke in support of the rulemaking. He was also involved when the EPC adopted the four-inch requirement. He testified that the initial projection for costs borne by developers due to the four-inch requirement was between \$300 and \$500 per home. Instead, developers have incurred costs of close to \$5,000 per home.

Action. A motion for a session delay failed by a five-to-three vote (seven votes required to pass). A subsequent motion for a general referral passed by a vote of eight to one.

Next Meeting. The next committee meeting will be held in Statehouse Room 116, on Tuesday, September 8, 2015, beginning at 9:00 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354.

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ADMINISTRATIVE RULES REVIEW COMMITTEE

September 8, 2015

Chairperson: Representative Dawn Pettengill

Vice Chairperson: Senator Wally Horn

EDUCATIONAL EXAMINERS BOARD, *Licensure Fees—\$4 Increase*, 09/02/15 IAB, ARC 2131C, NOTICE.

Background. This rulemaking increases all board licensure fees by \$4. The board anticipates increased expenses that will exceed existing revenue in future fiscal years if its revenues are not increased. 2015 Iowa Acts, HF 658 transferred \$600,000 from the board to the Department of Education, leaving the board with a cash balance of approximately \$550,000 to start fiscal year 2016.

Commentary. Department representatives explained that this fee increase is necessary to ensure the board has sufficient funds in the coming years after the transfer of funds from the board in the 2015 Legislative Session. They noted that this is the board's first fee increase since 2005 and that 25 percent of the fees collected go to the state's general fund, not the board. They stated that the increase is the minimum amount the board believes is possible to avoid deficit spending and that the board would be taking measures to conserve money.

In response to a committee member's question, the representatives explained that the board has largely avoided deficit spending, which requires the board to tap into its reserve funds, in recent years. They stated that the board is willing to tap into its reserve funds if necessary. In response to another question, they explained that without this fee increase, the board would have to cut staff, which would result in diminished services and increased response times from the board.

Committee members questioned whether it was appropriate for the board to increase fees instead of tapping into its reserves and whether a change should be made legislatively to allow the board to retain all the fees it collects.

Action. No action taken.

IOWA FINANCE AUTHORITY, *Title Guarantee Division*, 09/02/15 IAB, ARC 2128C, NOTICE.

Background. This rulemaking strikes and rewrites the authority's rules for its Title Guarantee Division. The division's rules are reorganized, updated, and aligned with statutory authority and current practice. The process for obtaining a title plant waiver is revised.

Commentary. Committee members had several questions regarding changes made to the language in the division's previous rules. Questions included whether the definition of "person," which includes an individual or legal entity such as a corporation, is too broad in the context of describing an abstractor, and whether the definition of "hardship," which must be more than minimal, is appropriate. Authority representatives responded that a broad definition of person is necessary to account for entities other than individuals involved in abstracting and that the definition of hardship complies with a ruling by the Iowa Supreme Court.

Public comment was heard from a representative of the real estate title industry who stated that some stakeholders question the authority's response to the Iowa Supreme Court and would prefer more specificity in the division's rules.

Action. No action taken.

LABOR SERVICES DIVISION, *Elevators—Child Safety Guards*, 04/29/15 IAB, ARC 1972C, SPECIAL REVIEW.

Background. This rulemaking by the Elevator Safety Board requires that safety devices be installed in residential elevators that are installed in public buildings. The board states that about 200 residential elevators operating in public buildings in Iowa will be affected. Elevators built to the residential code are not allowed in buildings under the board's jurisdiction, but were allowed under prior law. This rulemaking was prompted by a study about children being trapped and seriously injured due to hazardous elevator doors. The board has waived the fee for an alteration permit required to comply with this rulemaking.

The rulemaking took effect on June 3, 2015.

Commentary. Committee members stated that 80 percent of churches with elevators have the older, residential elevators that are affected by this rule. Legislators have received complaints from affected churches that have found compliance to be difficult. Committee members also stated that the costs of compliance were proving to be higher than stated previously by the board and that the products necessary for compliance are not readily available. They asked the division's representative how these concerns could be resolved.

The division's representative stated that the board is willing to work with those adversely impacted by the rulemaking to resolve their concerns and wanted to hear feedback from them. She explained that affected persons can seek an extension or a variance, or appeal the board's inspection report. She also noted that the board would be meeting the next day and stated that she would raise these concerns with the board.

Action. No action taken.

NATURAL RESOURCE COMMISSION, *Common Snipe, Virginia Rail and Sora, Woodcock, Ruffed Grouse and Dove Hunting—Possession Limits*, 08/05/15 IAB, ARC 2087C, ADOPTED.

Background. This rulemaking revises the possession limits for common snipe, Virginia rail and sora, woodcock, ruffed grouse, and doves for the 2015-2016 hunting season. The new rules comply with the 2015-2016 regulations by the federal Department of Natural Resources.

Commentary. Commission representatives responded to a question discussed when this rulemaking was under notice regarding the commission's authority to authorize a hunting season for Eurasian collared-doves in addition to mourning doves. Hunting mourning doves was statutorily authorized in 2011. The representatives had stated in the past that Eurasian collared-doves can be hard for hunters to distinguish from mourning doves.

The representatives explained that the commission's existing statutory authority, including an inclusive reference to the Columbidae bird family, which includes Eurasian collared-doves, allows the commission to authorize the hunting of such doves. Committee members questioned whether it was appropriate for the commission to authorize the hunting of both mourning doves and Eurasian collared-doves subsequent to legislation that only authorized the former. Committee members also questioned the impact of the commission's rules on rock doves and pigeons and the differences between the two.

Public comments were heard in opposition to the hunting of Eurasian collared-doves. The commenters asserted that the commission did not have the authority to authorize the hunting of Eurasian collared-doves and that the commission had not been responsive or forthcoming to the committee. Public comments were also heard from hunters and conservationists who supported the commission's position on hunting Eurasian collared-doves.

Action. No action taken.

INSURANCE DIVISION, *Regulation of Securities Offerings and Those Who Engage in the Securities Business*, 08/05/15 IAB, ARC 2079C, NOTICE.

Background. This rulemaking makes various changes to the division's rules relating to the terms and conditions under which broker-dealers, investment advisors, and securities offerings operate. The changes include requiring that certain documents be filed electronically, changing fees for certain filings, and clarifying certain travel reimbursement guidelines. The changes also include a requirement that every investment advisor doing business in Iowa create and implement written procedures to address business continuity and succession planning related to possible instances of disruptions or cessation of business activities.

Commentary. Discussion centered on the requirements relating to business continuity and succession planning by an investment advisor. Committee members questioned why the requirements were included in this rulemaking when the requirements were not part of 2015 Iowa Acts, HF 632, which the rulemaking implements. A division representative agreed that the requirements were not included in HF 632 and stated that the division never meant to imply that it was included. He explained that the requirements were based on the North American Securities Administrators Association's Investment Adviser Model Rule and Guidance for Business Continuity and Succession Planning under the Uniform Securities Acts of 1956 and 2002.

Committee members questioned why these requirements needed to be implemented by July 1, 2016, as provided in the rulemaking. The representative explained that the implementation date chosen by the division was not based on any particular requirement from elsewhere. Committee members asked what the penalty for noncompliance with these requirements would be. The representative stated that the division would ask the person to comply. Committee members questioned whether these requirements could have a negative impact on customers in some instances, whether implementing these requirements is necessary at this time, and whether it is appropriate to include these requirements in a rulemaking otherwise intended to implement legislation. Public comment was heard from a representative of a national insurance trade organization who stated that the organization would be willing to work on a legislative solution to this issue in the next legislative session.

The division subsequently communicated to the committee that the requirements relating to business continuity and succession planning by investment advisor would be removed from the rulemaking.

Action. No action taken.

HUMAN SERVICES DEPARTMENT, *Intellectual Disability Waiver Services Cost-savings Initiative*, 08/05/15 IAB, ARC 2097C, NOTICE.

Background. This rulemaking implements a cost-savings initiative for the Medicaid program. The rulemaking would cap the monthly cost of all intellectual disability (ID) waiver services provided to a member (other than home and vehicle modifications) at the maximum monthly cost of services in an intermediate care facility for persons with intellectual disabilities.

The rulemaking will require an amendment to the ID waiver approved application from the Centers for Medicare and Medicaid Services. The department will be scheduling public hearings on the rulemaking.

Commentary. The department's representative explained the rulemaking. The representative stated that the savings achieved by the rulemaking would be about \$2 million annually. She stated that most people affected by the rulemaking would be transferred to the new Managed Care Initiative, which would govern their service costs once it begins in 2016. The representative stated that certain people in the fee-for-service population would not be transferred and would

continue to be affected by the rulemaking. The representative further stated that the department has received over 300 comments opposing the rulemaking, and that public hearings on the rulemaking had been requested and would be held in October.

Action. A motion to suspend further action relating to the notice for 70 days passed 10-0 (seven votes required to pass).

Next Meeting. The next committee meeting will be held in Room 116, Statehouse, on Tuesday, October 13, 2015, beginning at 9:00 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354.

Internet Page: <https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=705>

ADMINISTRATIVE RULES REVIEW COMMITTEE

October 13, 2015

Chairperson: Representative Dawn Pettengill

Vice Chairperson: Senator Wally Horn

COLLEGE STUDENT AID COMMISSION, *Approval of Postsecondary Schools—Interstate Reciprocity Agreement—Registration, 09/16/15 IAB, ARC 2143C, NOTICE.*

Background. These proposed amendments implement 2015 Iowa Acts, SF 501 and 2014 Iowa Acts, SF 2271 by establishing policies that schools must follow in order to participate in an interstate reciprocity agreement under which the commission is an approved participant under Iowa Code chapter 261G.

The amendments also update policies for schools that must register with the commission under Iowa Code chapter 261B.

Commentary. A commission representative explained that these rules implement the state's participation in the State Authorization Reciprocity Agreement (SARA), which is a process administered by regional education compacts by which participating states regulate postsecondary distance-education courses and programs on a uniform basis using a reciprocity process. Participation by states is voluntary. SARA is administered in Iowa by the commission. The representative stated that this rulemaking will have broad applicability to postsecondary schools in Iowa because any such school may offer programming across state lines and because the federal Department of Education has expressed concern about states carving out some schools from participation. She also stated that the commission has received several public comments on the rulemaking and will revise it based on that feedback.

Committee members questioned whether the commission had sought adequate input from regents institutions and community colleges and urged the commission to work with those schools more closely as it moves forward on this rulemaking.

Public comment was heard from a representative of community colleges urging that changes be made to the rulemaking. He stated that the commission is not required under SARA to provide the broad level of regulation of Iowa postsecondary schools provided in the rulemaking. He also stated that the rulemaking oversteps the commission's statutory authority, and that existing accreditation by the Higher Learning Commission and the state Department of Education is sufficient under SARA. He additionally stated that all of the stakeholders involved in the legislation relating to SARA should be involved in the rulemaking process as well. The commission representative responded that the commission will seek to determine if existing accreditation requirements are sufficient under SARA.

Public comment was heard in support of the rulemaking by a representative from Des Moines University who stated that with minor changes, the rulemaking as currently drafted is appropriate. She stated that the rulemaking will provide strong consumer protections for students and that the inclusion of such protections was necessary to secure the support of the Attorney General's Office for the legislation enacting Iowa's participation in SARA.

Action. No action taken.

VOTER REGISTRATION COMMISSION, *Online Voter Registration, 09/30/15 IAB, ARC 2160C, NOTICE.*

Background. This rulemaking allows electronic signatures already held by the Iowa Department of Transportation (DOT) to be used for online voter registration conducted through the DOT's website. Online voter registration applicants who do not select a party affiliation at the time of registration but had previously selected an affiliation will be assigned that same affiliation, while those who had no previous affiliation will be marked as "no party."

Commentary. A member of the committee asked the Voter Registration Commission (VRC) representative whether there is any notice provided when an individual ineligible to vote attempts to register. The representative testified that the process screens for individuals such as felons or those with citizenship issues and notifies them that they cannot

vote. The committee member expressed concern that no current Iowa law prevents individuals from registering to vote even if they are ineligible to vote.

A representative of the American Civil Liberties Union of Iowa (ACLU) expressed overall support for the rule but urged the VRC to consider a few changes. The ACLU representative suggested the VRC should also register people who do not hold a DOT-issued identification card. Such a system, according to the ACLU representative, would require some technological modification but is feasible and has been implemented by other states, such as Minnesota. The ACLU representative also recommended that the VRC's website comply with the Americans with Disabilities Act so individuals with disabilities could take advantage of the online voter registration process.

Action. No action taken.

REVENUE DEPARTMENT, *Qualification for Manufacturing Exemption, 09/30/15 IAB, ARC 2178C, NOTICE.*

Background. This rulemaking amends rules relating to the manufacturing sale and use tax exemptions found in Iowa Code sections 423.3(47) and 423.3(48) and to the definitions of several applicable terms, including but not limited to definitions for tax-exempt "computers," "machinery," "equipment," "replacement parts," and "materials used to construct or self-construct computers, machinery, or equipment." The rulemaking also amends rules on the treatment of these tax-exempt items as they relate to the taxation of construction activities under Iowa Code sections 423.2(1)(b) and 423.2(1)(c). Under the department's current rules, many of these items could be considered real property and taxed as building materials when purchased in furtherance of a construction contract, thereby making them ineligible for the manufacturing sales and use tax exemption. The proposed amendments eliminate this distinction and provide that the items will be eligible for the manufacturing sales and use tax exemption.

The proposed changes are prospective and will only apply to sales occurring as part of a contract entered into on or after January 1, 2016.

Commentary. The department estimates that the rulemaking would annually reduce revenue in the state's General Fund by approximately \$40 million, as well as Secure an Advanced Vision for Education (SAVE) revenue by approximately \$6 million and Local Option Sales Tax revenue by approximately \$5 million. A fiscal analyst from the Legislative Services Agency (LSA) Fiscal Division stated during the fiscal review portion of the meeting that he did not have sufficient data to verify the department's fiscal estimate for the rulemaking. Committee members urged the department to work with the LSA Fiscal Division in order to provide an accurate fiscal analysis of the rulemaking when it is reviewed upon adoption.

A department representative stated that the manufacturing sales tax exemptions at issue were enacted in 1998, are now part of the state's implementation of the streamlined sales and use tax, have been under review by the department for years, and were the subject of a recent petition for rulemaking received by the department. The department did not adopt the language proposed in the petition. The representative stated that the rulemaking provides definitions for terms that are undefined in statute and clarifies matters that account for 15 percent of current tax protests filed with the department.

Committee members asked that the department hold a public hearing on this rulemaking, and the representative agreed to this. Committee members asked that the department change the applicability date of the rulemaking from January 1, 2016, to July 1, 2016, and she agreed to this as well.

Committee members asked the representative why the committee had not been made aware of the petition for rulemaking received on this subject, and she explained that she had not been aware that such notification was expected. Committee members asked about the source of the definitions proposed in the rulemaking, and the representative explained that courts have urged the use of plain language when defining terms and that the fundamental parts of the definitions used in the rulemaking are based on dictionary definitions. Committee members asked when the relevant rules had last been amended, and she stated that they have not been significantly changed since originally adopted in 1998. In response to additional questions from committee members, the representative explained that the rulemaking would affect manufacturers of all sizes, that the 15 percent of tax protests affected amount to about 150 current protests, and that she could not quantify the costs of such protests either for the department or the protestors. Committee members asked why the director of the department was not present at the meeting, and were told that the director was traveling for a previously scheduled commitment. Committee members asked whether the department could raise taxes by rule in the future based on the precedent of this rulemaking, and the representative stated that such proposals would need to be evaluated on a case-by-case basis.

Some committee members questioned whether the department has the authority to propose this rulemaking and contended that establishing tax policy is the role of the General Assembly, not the department. Other committee members stated that they believed the department has the authority to propose this rulemaking.

The committee heard extensive public comment supporting and opposing the rulemaking.

Those supporting the rulemaking, including representatives of business, manufacturers, taxpayers, and the Economic Development Authority, generally stated that the rulemaking would provide needed clarity on this exemption for manufacturers and that compliance with the current rules for the exemption is difficult and costly, which is why it has led to so many tax protests. They further stated that the rulemaking would reduce compliance costs for manufacturers,

enforcement costs for the department, and prices for consumers and would make Iowa's tax climate more competitive nationally.

Those opposing the rulemaking, including a state senator, representatives of schools, and private citizens, generally stated that the significant decrease in state revenue that would result from the rulemaking is not good fiscal policy in light of the state's ongoing budget commitments, the recently low level of state funding allocated for schools, and the uncertainty surrounding the final cost of the rulemaking. They stated that the rulemaking will have a negative impact on schools due to lost SAVE revenues. They also stated that making such a significant change in tax policy by rule is unprecedented, is beyond the statutory authority of the department, violates constitutional checks and balances between the executive and legislative branches, and is inappropriate in light of the longstanding nature of the existing policy and the prior failure of legislation on this subject to pass the General Assembly.

Action. A motion for the committee to object to the rulemaking failed by a five-to-five vote.

Next Meeting. The next committee meeting will be held in Statehouse Room 116, on Tuesday, November 10, 2015, beginning at 9:00 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Jack Ewing, Legal Services, (515) 281-6048; Tim Reilly, Legal Services, (515) 725-7354.

Internet Site: <https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=705>

ADMINISTRATIVE RULES REVIEW COMMITTEE

November 10, 2015

Chairperson: Representative Dawn Pettengill

Vice Chairperson: Senator Wally Horn

INSPECTIONS AND APPEALS DEPARTMENT, *General Provisions for Elder Group Homes, Assisted Living Programs, and Adult Day Services, 10/14/15 IAB, ARC 2200C, NOTICE.*

Background. This rulemaking comes after a comprehensive five-year review of the Department of Inspections and Appeals (DIA) administrative rules, resulting in amendments to three chapters. The rulemaking amends rules regarding the submission of blueprints and delayed-egress specialized locking systems. It rescinds rules regarding minimum square footage of common space in new or remodeled buildings and minimum square footage of operable windows in sleeping rooms. The rulemaking amends several definitions, adds a definition of "restraints," and adds a rule stating tenants have a right to be free from restraints. It also makes changes to rules regarding administration of medication, provision of dependent adult abuse training, requirements for dementia-specific programs, involuntary transfers from an assisted living program, updating service plans, nurse review, and policies and procedures related to head injuries and certain sexual relationships.

Commentary. Ms. Susan Cameron, a representative for the Iowa Health Care Association and Iowa Center for Assisted Living, spoke about concerns with two provisions of this rulemaking. First, she suggested that the revised definition of "restraints" should be clarified to exempt "adaptive clothing" from its meaning. Ms. Cameron shared pictures of garments that are considered "adaptive clothing" with the committee and explained that they can be used to protect a tenant's dignity and prevent or delay a tenant's placement in a higher level of care. She provided one example of a resident in a dementia care facility who would remove clothes and urinate throughout the facility. The resident's family requested he wear adaptive clothing and the issue ceased.

Secondly, Ms. Cameron expressed concern about requiring all facilities to have an awake staff member at all times. She stated a preference for the current rule which requires an awake staff 24 hours every day for dementia programs but allows non dementia facilities to make a decision as to whether they will require a staff member to be awake at all times. She mentioned that, in general, all facilities currently have someone awake, but "a few small rural facilities have trouble" with staffing at that level. Several committee members expressed concerns with any facility not having an awake staff member. Ms. Cameron mentioned that at present, facilities make families of residents aware of their staffing levels, including whether they have someone awake at all times.

A committee member asked DIA representative Mr. Dave Werning why the revised "restraints" definition will capture adaptive clothing. Mr. Werning stated that it is a tenant-right issue and that such clothing restricts the resident's freedom of movement. When a committee member opined that the shirt in the photograph did not look particularly restrictive, Mr. Werning stated that it is restrictive in the sense that the tenant could not remove it on his or her own. When asked whether DIA is receptive to the concerns raised, Mr. Werning stated the agency's director is aware of the concern but no decision had been made about changing the rule as written at that time.

Action. No action taken.

RACING AND GAMING COMMISSION, *Iowa Greyhound Pari-Mutuel Racing Fund, 10/14/15 IAB, ARC 2198C,*

FILED.

Background. This rulemaking creates a new rule regarding distributions and allocations of funds in the Iowa greyhound pari-mutuel racing fund, created in Iowa Code section 99D.9B. The Racing and Gaming Commission (RGC) received 11 written comments and heard 11 oral comments at its July 29, 2015, public hearing regarding the rule. Several changes were made to the rule to reflect the comments received, including implementing a \$1 million ceiling for distributions to any individual. RGC published a revised version of the rule on August 14. Further comments were received about the revised rule, most of which opposed the cap on per-person distributions. RGC further delayed the rulemaking to consider all comments and ultimately made more changes.

The adopted version of the rule sets the percentage of the fund to be distributed based on past racing performances at 70 percent, while qualifying greyhound industry participants will receive 30 percent regardless of purse winnings. Distributions will be made to breeders who whelped and raised the greyhound for the first six months of the dog's life in Iowa. The cap on a hardship case was increased to \$100,000. Language regarding the application process was removed from the rule. The cap on individual distribution recipients was raised to \$3 million, though RGC could reconsider that cap given certain circumstances.

Commentary. Committee inquiry included whether the wording of the rule is tight enough to properly define dogs or kennels based in Iowa, whether this will include dogs that ran at the Council Bluffs racetrack and are no longer racing or any dog that raced in Iowa, and why there should be an individual cap if the intent is to distribute all the money in the fund. RGC representative Mr. Brian Ohorilko replied that the cap was implemented because the majority of interested people wanted one.

Further, RGC was asked whether they have an idea of who will be impacted by the cap. Mr. Ohorilko stated the cap was first set at \$1 million but was raised after receiving comments. About two dozen breeders would have been affected by the \$1 million cap, whereas about five will be now.

Action. No action taken.

ENVIRONMENTAL PROTECTION COMMISSION, *Application Fees for Construction and Operation of Air Pollution Emitting Equipment; Fees for Asbestos Notifications, 10/28/15 IAB, ARC 2222C, NOTICE.*

Background. This rulemaking amends existing rules to establish application fees for construction and operation of air pollution emitting equipment and fees for asbestos notifications. The rules adjust various fees related to applications and permits. The Environmental Protection Commission (EPC) anticipates the amended rules will improve response time for air quality construction permit applications and issuance rates for Title V operating permits. The proposed changes will apply to industries when adding new or modifying existing equipment that emits regulated air pollutants and to industries required to obtain a Title V operating permit.

EPC representative Mr. Jim McGraw noted that EPC plans to file this rule under the "emergency" procedures after notice, making it effective January 15, 2016.

Commentary. Ms. Nicole Crain, on behalf of the Iowa Association of Business and Industry (ABI), noted that this rulemaking is a substantial change to how fees have been collected by EPC. Ms. Crain emphasized that there is a great importance to getting this process correct, which is likely why the rulemaking process for these rules took longer than EPC had anticipated. Ms. Crain noted that some of ABI's member businesses would benefit from flat fee rates while others would prefer an hourly fee approach. The "bottom line" is that businesses will be paying more under these amended rules. Ms. Crain also voiced a concern for funding sustainability regarding Title V, because as companies pollute less, funding will decrease. She added that while this rulemaking may not be perfect, it is a move in the right direction.

Committee discussion included whether this rulemaking makes the regulatory process more complicated, thus making it more expensive. Ms. Crain replied that may not necessarily be the case. Currently, smaller companies often hire consultants to help them manage the regulatory requirements or assist with the permit-writing process. Mr. McGraw added that costs typically increase by about 1.9 percent per year, and that these amended rules will shift the burden from larger companies who simply pollute more to those who require EPC's services.

Action. No action taken.

EDUCATION DEPARTMENT, *Intensive Summer Literacy Programs, 10/14/15 IAB, ARC 2186C, NOTICE.*

Background. This proposed rule establishes criteria and guidelines for implementation of intensive summer literacy programs by school districts as required by Iowa Code section 279.68. The criteria and guidelines are based on the work and recommendations of a task team convened by the Iowa Reading Research Center established pursuant to Iowa Code section 256.9(53)(c). The rule includes criteria for instructional practices or programs, instructor qualifications, instruction time, class and group size, student attendance, program evaluation, successful program completion, and program leadership and administration. The rules will begin to apply in the 2016-2017 school year and the summer thereafter.

Commentary. Department representative Mr. Phil Wise and other department representatives explained that these proposed rules implement the intensive summer literacy programs that were part of the third grade retention initiative

enacted in 2012 Iowa Acts, SF 2284. The representatives explained the process by which the criteria in the rules were developed and summarized the extensive public comments received by the department. Some of the comments specifically opposed third grade retention, others argued that the criteria are too onerous, and still others argued that the criteria should be made more rigorous, with particular attention paid to responding to students with dyslexia. The representatives noted that the third grade retention requirement could only be eliminated by statute, not by rule.

In response to questions from committee members, the representatives explained that the rule's 90 percent attendance requirement is based on attendance levels typical across Iowa, that districts will have discretion as to how to allocate the required 75 hours over the summer, that the third grade retention requirement will not apply to students who move to Iowa after the third grade, that students who complete a program will continue to receive assistance going forward, that a student can leave a program early once proficiency is demonstrated, and that no online-only options are currently available for these programs, although some include online components. Committee members also questioned whether the attendance requirements could lead to litigation by retained students and urged the department to consider a waiver process for school districts for which the 15-student class size requirement may be a burden.

Public comment was heard from Ms. Katie Greving on behalf of the Iowa chapter of Decoding Dyslexia. She shared information about dyslexia and argued that the six specific programs currently approved by the department for use by schools are not age appropriate for third graders and are not effective in responding to dyslexia. She also sought additional training requirements for the program teachers and more specific program requirements.

Public comment was also heard from Ms. Margaret Buckton on behalf of the Urban Education Network of Iowa and Rural School Advocates of Iowa. She expressed concern that the cumulative effect of all of the criteria set out in the rule is to create a standard that no program can actually meet. She suggested that the criteria could be changed to goals instead of requirements. She also stated that rural school districts could face particular burdens in implementing these programs due to the costs of transporting students and the class size requirement. She also hoped that districts' categorical funding could be used for the costs of compliance with this rule.

Department representatives stated that this notice would not be adopted at the Board of Education's November 18 meeting to allow time for further work on it and that the department will be approving additional programs for use by schools beyond the six previously discussed.

Action. No action taken.

EDUCATION DEPARTMENT, *Smarter Balanced Assessments*, 10/14/15 IAB, ARC 2185C, NOTICE.

Background. This proposed rule provides that at least one of the districtwide assessments used to measure student progress in core academic indicators in reading and math shall be the assessment developed by the Smarter Balanced Assessment Consortium (SBAC). The rule provides that the department shall select a statewide vendor to administer SBAC through a request-for-proposals process.

Iowa Code section 256.7(21)(b)(3) required the director of the department to establish an assessment task force to review and make recommendations for a statewide assessment of student progress on core academic indicators. Such an assessment is required pursuant to Iowa Code section 256.7(21)(b)(2). On December 31, 2014, the task force recommended the assessment developed by SBAC, which was one of two finalists along with the Next Generation Iowa Assessments:

<https://www.educateiowa.gov/sites/files/ed/documents/2014-12-31AssessmentTaskForceReport.pdf>

The rule requires the task force to review SBAC administration and make a further recommendation pursuant to Iowa Code section 256.7(21)(b)(3) on or before June 30, 2020.

The SBAC assessment will be used starting with the 2016-2017 school year.

Commentary. Mr. Wise explained the legislative history behind this proposed rule as well as the work by the department's assessment task force that selected the SBAC assessment.

Committee members questioned whether the department has the statutory authority under Iowa Code section 256.7(21)(b) to select a new assessment without prior legislative approval, and Mr. Wise responded that the department had concluded that, when the statute is examined as a whole, the department does have such authority. Mr. Wise stated that the chairs of the Senate and House Education Committees agreed with that conclusion and that the department had waited two years before selecting an assessment to allow the General Assembly time to take further action on this matter.

Committee members asked what specific academic standards would be assessed, and Mr. Wise explained that the assessment would cover the Iowa core standards adopted by the department, not the national common core standards, although the terminology used in statute is not always consistent.

Committee members asked if schools will be able to meet the technological requirements of the assessments, which include computer adaptive components, and Mr. Wise explained that the department has been conducting pilot assessments and working with districts to ensure they will be ready to administer the assessments. He also noted that there will be a paper version of the assessments for the first three years.

Additional discussion included new academic standards for science for the 2016-2017 school year currently being

worked on by the same task force; the membership of the SBAC, which Iowa withdrew from in 2014; student privacy, which Mr. Wise said is carefully protected; the costs of the assessments, which will be borne by school districts; and the department's ability to tailor the assessments to Iowa's academic standards by omitting questions.

Mr. Wise also noted that anyone can take a practice test online: <http://www.smarterbalanced.org/practice-test/>

The committee heard public comments from representatives of the Iowa Association of School Boards, members of the assessment task force, and others in support of the rules. Ms. Buckton, speaking on behalf of the Urban Education Network of Iowa and Rural School Advocates of Iowa, expressed support for the rules, but also expressed concern about the ability of some schools to meet the technological requirements of the assessments, noting that the paper version of the assessments would not include the computer adaptive component. She also expressed her hope that adequate funding would be provided for schools to administer these assessments, so that the new testing requirements do not become an unfunded mandate on school districts. She additionally noted that the increased rigor of the SBAC assessments might cause a decrease in student scores.

Action. No action taken.

Next Meeting. The next committee meeting will be held in Statehouse Room 116, on Tuesday, December 8, 2015, beginning at 9:00 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Jack Ewing, Legal Services, (515) 281-6048; Tim Reilly, Legal Services, (515) 725-7354.

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ADMINISTRATIVE RULES REVIEW COMMITTEE

December 8, 2015

Chairperson: Representative Dawn Pettengill

Vice Chairperson: Senator Wally Horn

EDUCATIONAL EXAMINERS BOARD, *Licensure Fees—Increase, 11/11/15 IAB, ARC 2229C, ADOPTED.*

Background. This rulemaking increases all board licensure fees by \$4. The board anticipates increased expenses that will exceed existing revenue in future fiscal years if its revenues are not increased. 2015 Iowa Acts, HF 658 transferred \$600,000 from the board to the Department of Education (DE).

Commentary. D.T. Magee, Executive Director, Iowa Board of Educational Examiners, and Ms. Darcy Hathaway, Attorney, Iowa Board of Educational Examiners, described the recent history of the board's funding. They explained that the recent transfer of \$600,000 away from the board is the third time in recent years that such a transfer has occurred. The transfers totaled about \$8 million, or four years of board funding. The board does not have a surplus with which to make up this loss of funds as it has for past transfers. The representatives discussed the various services the board provides and stated that the board will need to either raise fees or cut services to maintain sustainable funding levels. They explained that a fee increase of this amount will allow the board to maintain sustainable funding levels without seeking an appropriation from the General Assembly in the near future. They noted that pursuant to Iowa Code section 272.10(2), the board is required to deposit 25 percent of its fees in the General Fund, retaining only 75 percent.

In response to questions from committee members, the representatives explained the board's various expenses such as fingerprinting and new information technology, measures the board has taken to reduce costs including reduced hours of operation, and the board's annual cycle of fee receipts.

Committee members questioned whether it is appropriate for the board to respond to its current funding shortfall through such a fee increase, whether the board could further reduce expenses, and whether statutory language requiring the board to deposit 25 percent of fees collected in the General Fund should be modified through legislative action.

Action. A motion for a session delay passed on a nine-to-zero vote (seven votes required to pass).

NATURAL RESOURCE COMMISSION, *Deer Hunting, 571-106.7(6) and 571-106.9, SPECIAL REVIEW.*

Background. A committee member received concerns from a nonmember legislator, Representative Greg Heartsill, regarding two of the Natural Resource Commission's (NRC) rules related to deer hunting. The committee member requested NRC representatives attend the meeting to address the issues. The rules relate to permitted methods of taking deer and the use of transportation tags.

Commentary. The NRC was represented by Conservation and Recreation Division Administrator Ms. Kelley Myers, Conservation Officer Mr. Jeff Swearingen, and Wildlife Bureau Chief Mr. Dale Garner. Ms. Myers explained that rule 106.7(6) prohibits the use of certain devices to attract an animal, including bait and domestic animals. Currently, 22 states prohibit baiting, including Iowa. Ms. Myers explained that the goal of the rule is to preserve the tradition and

legacy of hunting and the spirit of fair chase, and that the use of bait is generally considered unethical. Ms. Myers also noted that NRC is concerned about the spread of disease. Nevertheless, incidents of baiting have increased in the state. Ms. Myers pointed out that NRC cannot prohibit retail stores from selling bait.

Representative Heartsill spoke about the lack of distance limitations or acceptable times for using or removing bait and asked NRC that such measures be considered. He noted that one concern with the use of salt or mineral blocks is that trace minerals can remain in soil for a substantial period of time after a block is removed from the land and a landowner can be cited if those minerals are found by a Department of Natural Resources (DNR) conservation officer. Representative Heartsill also expressed concerns with DNR's civil forfeiture authority.

A committee member asked whether the use of scent is also illegal. Mr. Garner stated that scents are legal and that bait is something consumable. He added that some local governments have made the use of scents illegal. The committee member suggested NRC clarify the definition of bait as used in the rule, including appropriate times for feeding wildlife. Mr. Garner responded that presently, there are no time restrictions for feeding wildlife. He added that several years ago, he and the state veterinarian testified that feeding wildlife should be illegal, primarily out of concern for disease transmission.

Ms. Myers explained that rule 106.9 regarding transportation tags is taken almost verbatim from the related statute. She cited the rule as a valuable anti-poaching tool for NRC and DNR. She explained that the intention of the rule is to ensure that within a reasonable amount of time and before a deer is moved, the deer be tagged.

A committee member asked what regulatory authority NRC or DNR has if a person is moving part or all of a deer with no expectation of preserving or consuming the animal. Mr. Swearingen stated that the intention of DNR is to properly remove a killed animal from a field. Historically, removal of dead deer has been done for consumption and to prevent the wasting of a deer carcass. The committee member asked whether a person needs to tag an animal that has already begun decomposing or if only a rack or skeleton is remaining. Mr. Swearingen stated that if a person is unsure, he or she can call a local conservation officer who can issue a salvage tag. A salvage tag is not necessary for a shed antler.

A committee member asked whether DNR has consistent expectations for how long an animal can remain in a field and how that impacts what tag should be issued. Mr. Swearingen responded that there are no specific written guidelines, but DNR trains all conservation officers to ensure they make consistent determinations. The committee member suggested NRC consider adopting more specific written guidelines to provide further consistency across the state.

Representative Heartsill reiterated the committee member's concerns with the lack of consistent guidelines. He also expressed concern with the spirit of the rule relating to how far a hunter can move a carcass before being required to tag it, citing instances where it may be difficult to properly tag a carcass before moving it out of a precarious location.

Action. No action taken. The committee chair suggested to Representative Heartsill that he submit a bill during the upcoming legislative session to address his concerns.

REVENUE DEPARTMENT, *Qualification for Manufacturing Exemption*, 11/11/15 IAB, ARC 2239C, AMENDED NOTICE.

Background. This rulemaking amends rules relating to the manufacturing sale and use tax exemptions found in Iowa Code sections 423.3(47) and 423.3(48) and to the definitions of several applicable terms, including but not limited to definitions for tax-exempt "computers," "machinery," "equipment," "replacement parts," and "materials used to construct or self-construct computers, machinery, or equipment." The rulemaking also amends rules on the treatment of these tax-exempt items as they relate to the taxation of construction activities under Iowa Code sections 423.2(1)(b) and 423.2(1)(c). Under the department's current rules, many of these items could be considered real property and taxed as building materials when purchased in furtherance of a construction contract, thereby making them ineligible for the manufacturing sales and use tax exemption. The proposed amendments eliminate this distinction and provide that the items will be eligible for the manufacturing sales and use tax exemption.

This amended notice revises the applicability date of this rulemaking. The rulemaking is prospective and will only apply to sales occurring as part of a contract entered into on or after July 1, 2016. The applicability date in the previous notice of intended action was January 1, 2016.

Commentary. Ms. Victoria Daniels, Division Administrator Policy and Comments, Iowa Department of Revenue, explained that since the committee first reviewed this rulemaking in October, the department has received additional public comments supporting and opposing the rulemaking, has had discussions with the Flood Mitigation Board and affected communities regarding possible fiscal impacts on the state's sales tax-funded Flood Mitigation Program, has worked with the Legislative Service Agency's Fiscal Services Division to develop further fiscal analysis of this rulemaking, and will have an updated fiscal analysis ready when this rulemaking is adopted.

Ms. Daniels answered various questions from committee members regarding how the department conducted its fiscal analysis of this rulemaking. She also stated that the fiscal impact of this rulemaking on river communities through the Flood Mitigation Program could not yet be determined.

Some committee members asserted that the department overstepped its statutory authority by making such significant tax policy by rule. They asserted that such tax policy decisions should be made by the General Assembly. Ms. Daniels

responded that because the General Assembly did not define certain statutory terms relating to the sales tax exemption at issue, it is the role of the department to define those terms by rule, which is what this rulemaking does. She explained that this rulemaking strikes the department's prior rules relating to that exemption, including certain rule-based terms not used in statute, and provides definitions for those undefined statutory terms.

Public comment was heard from representatives of Cargill, the Iowa Taxpayers Association, John Deere, and the Association of Business and Industry in support of this rulemaking. Commenters generally stated that this rulemaking will provide clarity to the department's rules for this exemption, that the department's existing rules for the exemption are difficult to comply with, that the rulemaking represents good tax policy, and that the rulemaking will have positive economic effects.

Action. A motion for the committee to object to the rulemaking failed by a five-to-five vote.

HUMAN SERVICES DEPARTMENT, *Medicaid Managed Care*, 11/11/15 IAB, ARC 2241C and 2242C, NOTICE.

Background. These proposed rules implement managed care for Iowa's Medicaid program pursuant to 2015 Iowa Acts, SF 505. Under these rules, HAWK-I members, Iowa Health and Wellness members, and the majority of Medicaid members will have their services coordinated through a managed care organization (MCO).

The rules include requirements for managed care organizations to participate in a contract with the department, enrollment and disenrollment procedures, identification of covered services, access to services and consumer choice of providers, the member appeal and grievance process, record management and documentation, claims payment, quality assurance and program integrity, removal of existing language made obsolete by managed care, and other matters.

The department plans to implement managed care beginning January 1, 2016. The department will file these rules Emergency After Notice in order to meet the January 1, 2016, implementation date.

Commentary. The department was represented by Ms. Mikke Stier, Division Administrator, Iowa Medicaid Enterprise, Ms. Nancy Freudenberg, Compliance Officer, Appeals Section, and Deb Johnson, Bureau of Long Term Care.

Committee members asked for an explanation of the Governor's recent announcement of a grace period for Medicaid providers to contract with MCOs. The representatives explained that providers will be given an additional 90 days, until April 1, 2016, before being subject to a 10 percent reimbursement rate reduction for not contracting with an MCO.

Committee members asked what will happen if the federal Centers for Medicare and Medicaid Services do not approve the state's managed care proposal before the program's intended January 1, 2016, start date. The representatives explained that the state's Medicaid program would continue using its current fee-for-service model.

Committee members asked whether procedures for matters such as incident reports, billing, and internal review of MCO decisions would be uniform across all four MCOs. The representatives explained that each MCO would have its own procedures.

Committee members asked if a patient who disagrees with an MCO's determination as to whether a procedure is medically necessary would be able to appeal that decision to the department, and the representatives stated that a patient would be able to do so. The representatives also explained that a patient can continue to receive a treatment for which an MCO has denied authorization pending an appeal, but would need to repay the cost of such treatment if the appeal is lost.

Committee members asked what information they could provide to constituents who have questions about managed care. The representatives explained that in addition to the department's call center, for which staffing has been increased, and website, the department has had many community meetings across the state and will set up more. Committee members asked that the department provide them with additional information that they could share with constituents, and the representatives agreed.

Committee members asked what a patient should do if their current providers have not contracted with an MCO. The representatives explained that a patient can continue to see their current providers without penalty, regardless of whether the providers have contracted with an MCO, for a period of time that varies depending on the services received, that a patient will be automatically enrolled with an MCO if the patient takes no action, and that there is a process to change MCOs or providers. The representatives also noted that MCOs are required to offer contracts to all providers and that a patient's provider not having a contract with the patient's MCO would constitute good cause to move to another MCO.

Additional discussion included the estate recovery process, safeguards against MCO conflicts of interest, cost savings associated with pharmacy services, whether managed care would include pharmacy benefit managers, medical necessity criteria, and figures for how many providers there are in Iowa and how many providers have contracted with each MCO. Committee members asked that the committee be provided with updates on how many providers have signed up with each MCO, and the representatives agreed.

Public comment was heard from representatives of the Iowa Association of Community Providers, the Iowa Hospital Association, the Iowa Health Care Association, and AARP urging that various changes be made to the language of the proposed rules. Commenters were generally supportive of the new 90-day grace period for providers to contract with an MCO.

Action. A motion for the committee to suspend further action relating to ARC 2241C for 70 days failed by a five-to-five vote (seven votes required to pass).

Next meeting: Statehouse Room 116, on Friday, January 8, 2015, beginning at 9:00 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Jack Ewing, Legal Services, (515) 281-6048; Tim Reilly, Legal Services, (515) 725-7354.

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