

**MINUTES OF THE OCTOBER 2015 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, October 13, 2015, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Representative Dawn Pettengill, Chair, and Senator Wally Horn, Vice Chair; Senators Mark Chelgren, Mark Costello, Thomas Courtney, and Pam Jochum; Representatives Lisa Heddens, Megan Jones [by teleconference], Rick Olson, and Guy Vander Linden were present.
- Also present: Jack Ewing and Tim Reilly, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Ted Stopulos, Legislative Liaison, Office of the Governor; fiscal staff; caucus staff; and other interested parties.
- Convened Rep. Pettengill convened the meeting at 9:07 a.m.
- Fiscal overview** Tim Crellin presented the LSA fiscal report. Also representing the LSA fiscal services division were fiscal analysts Jess Benson and Jeff Robinson, who responded to questions from committee members.
- Regarding ARC 2147C: Mr. Benson will follow up to verify the number of families affected by and the estimated cost per fiscal year related to the FIP hardship exemption.
- Regarding ARC 2168C: Mr. Benson stated that the \$2.8 million in savings to the state in 2016 would recur and be built into the base budget for subsequent years.
- Regarding ARC 2178C: Mr. Robinson stated that the fiscal services division has had neither sufficient data nor time to verify the estimated reduction in revenue cited in the fiscal impact statement provided by the department of revenue, including approximate reductions in general fund revenue of \$40 million, in the secure an advanced vision for education (SAVE) funds of \$6 million, and in local option sales tax (LOST) of \$5 million. He explained that more information is needed about the assumptions underlying the extrapolation of survey responses from manufacturers and about the difference between the list of supplies in the survey and the list in the rule. Mr. Robinson stated that the division will work with the department to provide an accurate fiscal analysis when the filed rule making is reviewed. He confirmed that school districts will receive all of the revenue generated from SAVE but, as a result of the amendments, less revenue will be generated.
- Sen. Chelgren requested that fiscal reports indicate whether savings or costs will be time-limited or will increase or decrease over time.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg represented the department. Other interested parties included Kelsey Clark of the Iowa Behavioral Health Association.
- ARC 2164C No action on amendments to chs 24, 25, 78, 79, 83, 88 and 90 pertaining to an update of references, codes and diagnoses related to medical resource manuals.
- ARC 2147C Proposed amendments to ch 41, related to the family investment program (FIP) hardship exemption, concern the removal of an exclusion for families with qualified children and a nonqualified alien adult member.
- In response to inquiries from Rep. Pettengill and Sen. Courtney, Ms. Freudenberg explained that the nonqualified alien adult member who has a green card is legally present in the United States but is not eligible for FIP assistance. The amendments, however, allow a family that includes an adult who is a nonqualified alien to apply for and receive FIP assistance for more than 60 months for the family’s children who are U.S. citizens or qualified aliens if the family meets hardship criteria and all other FIP eligibility criteria. Ms. Freudenberg stated that the Polk County District Court found that the department had violated the constitutional rights of U.S. citizen children whose parents are nonqualified aliens by denying, because the parents are nonqualified aliens, a hardship application for the household to receive FIP for more than 60 months for these U.S. citizen children. Ms. Freudenberg explained that the U.S. citizen children of nonqualified alien parents meet the hardship criteria because they cannot be penalized as ineligible for further assistance due to the ineligibility of nonqualified alien parents.

Human Services Department (continued)

- ARC 2165C No action on amendments to 77.22 and 80.2 pertaining to claim forms and to provider participation requirements for psychologists. Ms. Freudenberg reported that the issue related to credentialing has been resolved.
- ARC 2166C No action on 78.55 regarding services rendered via telehealth under the Medicaid program.
Ms. Clark commended the legislature for enacting 2015 Iowa Acts, Senate File 346, and the department for promulgating this rule. In response to an inquiry from Ms. Clark, Ms. Freudenberg explained that since all provider types are included in the coverage information in ch 78, the provider types need not be listed in 78.55.
- ARC 2167C No action on 79.1(5)“g”(5) concerning the threshold for combined claims for inpatient hospital readmissions.
- ARC 2168C No action on amendments to ch 83 regarding the supports intensity scale (SIS) assessment related to intellectual disability waiver services. In response to an inquiry from Sen. Jochum, Ms. Freudenberg will verify whether Telligen, Inc. is the contractor for SIS assessments.
- ARC 2169C No action on amendments to chs 109 and 170 pertaining to changes in allowable exemptions for child care program licensure.

ADMINISTRATIVE SERVICES DEPARTMENT Caleb Hunter represented the department.

- ARC 2145C Proposed amendments to chs 41, 42, 54, 56, 64, 117 and 119 pertain to clarifications and updates related to travel, employment examinations and applicant lists, education financial assistance, and procurements. In response to an inquiry from Rep. Pettengill, Mr. Hunter stated that one public comment from a ride-sharing service about the travel procedure will be given consideration.
- ARC 2144C No questions on proposed ch 121, contract compliance.

COLLEGE STUDENT AID COMMISSION Julie Leeper represented the commission. Other interested parties included Bruce McKee on behalf of the Iowa community colleges and Sue Huppert on behalf of Des Moines University.

- ARC 2143C Proposed amendments to ch 21, related to approval of postsecondary schools, concern the interstate reciprocity agreement and registration. Ms. Leeper summarized the requirements for the state’s participation in the State Authorization Reciprocity Agreement (SARA) and described the process by which participating states uniformly regulate postsecondary distance-education courses by reciprocity. Ms. Leeper stated that the commission will revise the rules based on public comment.
- In response to inquiries from Rep. Vander Linden and Sen. Costello, Ms. Leeper explained that the proposed amendments provide that the community colleges, which are accredited by the Iowa department of education and the Higher Education Commission, must also meet the requirements of the U.S. Department of Education program integrity rules. She stated, however, that to avoid duplicative requirements, the commission would verify that accreditation by the Iowa department of education meets the requirements of the federal program integrity rules.
- Mr. McKee commended the legislation authorizing Iowa colleges to participate in SARA. However, he stated that the commission has exceeded its authority by establishing itself as an accrediting agency and that the rules are burdensome and beyond the scope and oversight required by SARA. He suggested that the stakeholders involved with the legislation also be involved in crafting appropriate revisions to the amendments. Ms. Huppert expressed support for the current rule making, which addresses online learning through the state’s participation in SARA. She explained that inclusion of the federal program integrity rules, encouraged by the attorney general’s office during the legislative process, is intended to afford consumer protection for students.
- At the request of Rep. Pettengill, Ms. Leeper will provide the committee with information to verify whether the definition of “school” is the same as that found in other commission rules. Rep. Jones stated that there has been a considerable lack of stakeholder input on the amendments and encouraged the commission to seek input from community colleges and regents universities, which are the institutions responsible for implementing the amendments.

DENTAL BOARD Jill Stuecker represented the board.

ARC 2141C No action on amendments to 10.3 and 10.5 pertaining to authorized practice, expanded function procedures, and education and training for dental hygienists and to an update of the bureau name. In response to an inquiry from Sen. Horn, Ms. Stuecker stated that the dean and others from the dental school at the University of Iowa were involved in the development of and support the expanded function procedures.

ENVIRONMENTAL PROTECTION COMMISSION Tom Anderson represented the commission.

ARC 2140C No questions on proposed ch 209 pertaining to landfill alternatives financial assistance programs. In response to an inquiry from Sen. Horn regarding assistance for former landfills, Mr. Anderson stated that the cornerstone of the solid waste alternatives program is the diversion of solid waste from current sanitary landfills.

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

ARC 2154C No questions on proposed amendments to ch 10 regarding the wireless NG911 implementation and operations plan.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department.

ARC 2171C No questions on proposed amendments to ch 31 pertaining to updates of CFR references related to food processing plants, egg products processing plants, and pork products prepared at retail.

ARC 2157C No action on amendments to 51.50 pertaining to minimum construction standards for hospitals and off-site premises. In response to an inquiry from Sen. Horn, Mr. Werning stated that there is no rule regarding the required longevity of a newly constructed hospital but that the remodeling of an existing hospital would require compliance with current building code standards.

ARC 2158C No action on amendments to ch 56 regarding contested cases, fines, and citations related to health care facilities.

ARC 2162C No questions on proposed 57.11(7) regarding implementation of orders for medications and treatments by qualified personnel in residential care facilities.

ARC 2142C No action on amendments to 67.14 pertaining to informal conferences and contested case hearings related to elder group homes, assisted living programs, and adult day services.

INSURANCE DIVISION Tom O'Meara, Rosanne Mead and Gary Marquett represented the division.

ARC 2174C Proposed amendments to 10.51 to 10.60 pertain to limited licenses for motor vehicle rental companies and counter employees and for persons who sell portable electronics insurance. In response to an inquiry from Sen. Chelgren, Mr. O'Meara explained that the amendments apply to the sale of insurance, not to the sale of warranties.

ARC 2173C No questions on a proposed amendment to ch 15, the rescission of chs 100 to 105 and the adoption of ch 100 regarding sales of cemetery merchandise, funeral merchandise and funeral services.

ARC 2175C No action on amendments to ch 50 relating to regulation of securities offerings and those who engage in the securities business. Mr. Marquett explained that in response to comments from the committee at the September meeting, the proposed provisions regarding business continuity and succession planning had not been adopted. Rep. Pettengill thanked the division for considering the committee's comments.

ARC 2172C Proposed 50.90 pertains to an intrastate crowdfunding exemption. In response to an inquiry from Sen. Chelgren, Mr. Marquett elaborated on the application of the provisions of the rule, including small business, community and public interest fund raising.

IOWA PUBLIC INFORMATION BOARD Charlie Smithson represented the board.

ARC 2139C No action on amendments to 2.2 to 2.4 pertaining to the complaint investigation and resolution process.

ARC 2159C No questions on proposed 8.2, closed session.

ARC 2138C No action on ch 9, waivers or variances from administrative rules.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

ARC 2136C No action on an amendment to 26.1 pertaining to the adoption by reference of federal occupational safety and health standards related to confined spaces in the construction industry.

ARC 2163C Proposed amendments to 71.9(6) pertain to alteration permits for elevators. Sen. Courtney inquired about the number of elevator accidents in the past five years. In response, Ms. Uehling stated that under the provisions of Iowa Code chapter 89A, the division addresses approximately two accidents per month that are related to escalators, not elevators, and to the users of escalators, not to the operation of the escalators.

PUBLIC HEALTH DEPARTMENT Kala Shipley and Melissa Bird represented the department.

ARC 2148C No questions on proposed amendments to ch 15 clarifying the use of residential swimming pools for commercial purposes and correcting an existing underwater lighting requirement.

ARC 2155C Proposed amendments to ch 95 concern fees, access, searches and issuance of certified copies, and confidentiality related to vital records. Rep. Jones inquired about the definition of “administrative copies,” the workload of county registrars related to public searches of vital records, the requirement that a requester pay for a certified notification of record search, and the time frame and reasons for a registrar’s refusal of an affidavit of non-receipt. In response, Ms. Bird explained the purpose for administrative copies, which are certified or noncertified copies intended only for administrative use; the statutory basis for open county public records, i.e., Iowa Code chapter 22; the purpose for which a person requests notification of a record search, e.g., verification of single status; and the purpose for the issuance of an affidavit of non-receipt, e.g., fraud prevention. Rep. Jones suggested that a definition of “administrative copies” be added to 95.1; that in 95.9(5), a statement that the person requested the notification of record search be added; and that in 95.9(6), the time frames be clarified and reasons for refusal of an affidavit of non-receipt be specified.

ARC 2156C No questions on proposed amendments to ch 97 pertaining to an electronic statewide vital records system for the registration of deaths.

ARC 2179C No action on amendments to 108.3 and 108.4 concerning the medical residency training state matching grants program.

ARC 2150C No questions on a proposed amendment to 131.3(3)“b” pertaining to the adoption by reference of the April 2015 edition of scope of practice for Iowa EMS providers.

ARC 2149C No questions on a proposed amendment to 132.2(4)“b” regarding the adoption by reference of the April 2015 edition of scope of practice for Iowa EMS providers.

ARC 2177C No questions on proposed amendments to ch 203 concerning the rescission of excluded and unused standards related to the certificate of need review process for new or changed institutional health service.

PUBLIC SAFETY DEPARTMENT Barb Edmondson represented the department.

ARC 2170C Proposed ch 87 pertains to the wireless communications service provider database. In response to an inquiry from Rep. Pettengill, Ms. Edmondson stated that the proposed rules do not directly overlap with those of the homeland security and emergency management department and are within the scope of the public safety department’s duties.

VOTER REGISTRATION COMMISSION Carol Olson and Eric Gookin represented the commission. Other interested parties included Dane Schumann on behalf of ACLU of Iowa.

ARC 2160C Proposed amendments to chs 2, 8 and 11 pertain to online voter registration. Ms. Olson introduced the rule making, and Mr. Gookin summarized the amendments. In response to an inquiry from Sen. Chelgren, Mr. Gookin stated that the department of transportation (DOT) online voter registration system will not register an applicant whose responses indicate a felony conviction without the restoration of voting rights or an applicant who is not a citizen. Ms. Olson elaborated by stating that the DOT system, with citizenship records in place, will provide the applicant an opportunity to decline to continue the registration process and, if the applicant wishes to continue the process, the system will advise the applicant to register in person at the voter registrar’s office or register using a paper copy.

Voter Registration Commission (continued)

Ms. Olson stated that the system would respond in the same manner if the applicant terminated the registration process.

Mr. Schumann stated that the amendments are a good first step to expand access to the ballot box. However, he explained that the commission has the authority to develop an electronic stand-alone registration system for persons who do not have DOT-issued driver's licenses or nonoperator identification cards and noted that such a system is available in Minnesota. He stated that the key to this system is an electronic signature, the requirements for which the commission has the authority to set forth in rule. He stated that the electronic stand-alone registration system would also accommodate voter registration for persons with disabilities who may not have DOT-issued driver's licenses or nonoperator identification cards.

In response to an inquiry from Sen. Chelgren, Mr. Schumann stated that because an electronic signature is a legal signature, an applicant would commit perjury in attesting to a false or misleading statement with the applicant's electronic signature. Sen. Chelgren explained that no Iowa law prohibits a person from registering to vote even if the person is ineligible to vote. He suggested that the commission work on clarification of this issue, which may be confusing to the public.

CORRECTIONS DEPARTMENT Michael Savala and Dan Clark represented the department.

ARC 2161C Proposed amendments to ch 37 concern Iowa state industries. In response to an inquiry from Sen. Chelgren, Mr. Clark stated that Iowa state industries is exempt from paying sales tax on manufacturing and production processes.

REVENUE DEPARTMENT Victoria Daniels represented the department. Other interested parties included Jennifer King of the Iowa Taxpayers Association, Mike Ralston of the Iowa Association of Business and Industry, Tim Whipple of the Economic Development Authority, John Stineman of the Iowa Chamber Alliance, Diane Hudson of Rockwell Collins, Michael Rubino of John Deere, Sen. Joe Bolkcom, Robert Olson on behalf of the Clarion-Goldfield-Dows Community School District and of Rural School Advocates of Iowa (RSAI), Tom Narak of the School Administrators of Iowa, John Chalstrom of the Sioux City Community School District, Denny Wulf of the Norwalk Community School District, Lance Ridgely of the East Union Community School District, Peter Fisher of the Iowa Policy Project, James Larew, Jon Neiderbach, and Margaret Buckton on behalf of the Urban Education Network (UEN) and of RSAI.

ARC 2146C No action on amendments to 71.1(5) pertaining to dual classification related to multiresidential real estate assessments.

ARC 2178C Proposed amendments to chs 15, 18, 219 and 230 pertain to qualification for a manufacturing exemption. Ms. Daniels stated that the rule making proposes to amend rules regarding the manufacturing sales and use tax exemptions set forth in Iowa Code section 423.3(47), which have been in place since 1998, and to adopt definitions of terms related to the tax exemptions. Ms. Daniels stated that the rule making does not introduce concepts that do not currently exist in the statute but instead defines previously undefined terms contained in the statute, including "computers," "machinery," "equipment," "replacement part," and "materials used to construct or self-construct computers, machinery, and equipment." In effect, under current department rules, many items that might ordinarily be considered machinery and equipment are considered to be real property, are taxed as building materials related to construction contracts, and are therefore ineligible for the manufacturing machinery and equipment exemption. To the extent permitted by Iowa Code section 423.3(47), the rule making proposes to implement rules that allow the items to be eligible for the manufacturing sales and use tax exemption.

Ms. Daniels remarked that the rule making completes the consolidation and coordination of various manufacturing rules based on the streamlined sales and use tax Act enacted in 2003 and explained that the rule making provides much needed guidance that a department committee has developed over a decade. Ms. Daniels stated that the department was petitioned by the Iowa Taxpayers Association to review this sales tax exemption but did not adopt the language suggested by the petition. In addition, she noted that the rules were reviewed pursuant to Iowa Code chapter 17A, which requires agency review of rules at least every five years.

Revenue Department (continued)

Finally, she explained that the sales tax exemption and related issues represent 15 percent of tax protests submitted to the department. Ms. Daniels noted that the rules address issues that are the source of these protests and stated that, to date, the department has received 25 public comments, all of which pertain to funding for education, rather than to the tax exemptions.

At the request of Rep. Pettengill, Ms. Daniels stated that the department would agree to hold a public hearing on the rule making and would agree to change the effective date from January 1, 2016, which is stated in the proposed amendments, to July 1, 2016; thus, the amendments would apply to contracts entered into on and after July 1, 2016. Rep. Pettengill stated that this change would address education funding-related opposition to the rule making and allow the legislature time to make adjustments to the anticipated reduction in revenue.

Committee members inquired about the petition for rule making; the rule-making process, including the source for the definitions; the department director's absence from the meeting; the facts related to tax protests; and department authority to write tax policy.

In response, Ms. Daniels stated that she was not aware of the department's obligation to notify the committee about the receipt of a petition for rule making. She explained that the courts have advised the use of plain language and that the definitions in the rule making are based on dictionary definitions. She explained that the director was traveling for a previously scheduled business commitment. Ms. Daniels stated that the rule making would affect manufacturers of all sizes, that 15 percent of all tax protests have resulted in approximately 150 protests related to the manufacturing sales and use tax exemption, and that the exact cost of these protests to the department or to taxpayers is unknown. Ms. Daniels stated that the department is within its authority to promulgate rules to provide regulatory guidance.

Some committee members expressed the view that the department has the authority to propose the changes set forth in the amendments. Rep. Pettengill stated that opposition to the rule making because of decreased revenue for the SAVE and LOST funds for schools had been answered by the department's agreement to change the effective date to July 1, 2016. Rep. Vander Linden concurred and stated that the change of effective date eliminates objections to the rule making and will afford the legislature time to examine tax policy. Other committee members questioned whether the department has the authority to propose the changes set forth in these amendments. Sen. Jochum asserted that the legislative branch, not the executive branch, has the authority to establish tax policy. She pointed out that in 2013, the department submitted legislation to address the same issues, an action indicative of department recognition of the legislature's prerogative to establish tax policy. Sen. Jochum concluded that this rule making is an attempt to write tax policy by rule rather than through the legislative process. Sen. Courtney concurred and questioned whether the department is setting a precedent for the future by establishing policy through the rule-making process. In response, Ms. Daniels stated that future proposals would require case-by-case analysis.

The committee heard public comment in support of and opposed to the rule making.

Ms. King expressed support for the amendments, including agreement with the more specific definition of "replacement part" requested in the petition for rule making. She explained that the changes reduce confusion about taxable items and provide more definitive guidelines to manufacturers. Mr. Ralston stated that the rule making is sound tax policy, aligns the rules with the statute, and reduces compliance time and expenses to manufacturers and the state. Mr. Whipple expressed support for the rule making, noting the importance of clear tax law and clear treatment of manufacturing and equipment exemptions in recruiting new manufacturers to the state. Mr. Stineman, in expressing support for the rule making, stated that it addresses the need of manufacturers for fair, reasonable and accurate tax law. Ms. Hudson expressed support for the rule making, which sets forth a clear, common definition of "replacement part" and stated that the rule making will marginally impact the total annual sales taxes paid by her company but will more significantly impact the soft costs incurred by the company's tax department in complying with the statute and the existing rules.

Revenue Department (continued)

Mr. Rubino stated that the rule making will simplify the application of the tax code, reduce costs for manufacturers of all sizes, and assist the state overall to be more competitive in manufacturing as well as reduce the number of appeals to the department and positively impact Iowa consumers of manufactured products.

Sen. Bolkcom asserted that the rule making changes tax policy by rule, exemplifies executive branch overreach that sets an undesirable precedent, and violates the constitutional checks and balances between the executive and legislative branches. Mr. Olson objected to executive branch action to make tax policy and explained that the rule making lowers the tax base for SAVE funds for schools and redirects general fund moneys ear-marked for schools, resulting in unpredictability in funding and the need to raise property taxes through debt service levies. Mr. Narak discussed school funding and asserted that decisions regarding statewide tax policy are best left to the legislature. Mr. Chalstrom described 15 years of progress in renovations of 17 buildings made possible with SAVE dollars and explained that without or with diminished revenues from the SAVE dollars, his school district will need to rely on property taxes through bond referendums or increased physical plant and equipment levy (PPEL) funds. Mr. Wulf expressed concern regarding the loss of SAVE funds statewide for construction and technology and the resulting increase in local property taxes and requested that the equity enabled by SAVE funds be preserved. Mr. Ridgely stated that the reduction in SAVE funds would further strain general fund dollars for his district, which is experiencing declining enrollment and a concurrent decline in state aid and reduction in general fund dollars. Mr. Fisher explained that the state cannot afford the tax reduction allowed by this rule making and asserted that Iowa business taxes are already competitive, that state and local taxes have little effect on business location decisions, and that the tax reduction will not be subject to evaluation or accountability and will continue to erode public investments in education. Mr. Larew stated that the core legal issue is whether the legislature has clearly delegated to the department the authority to interpret the definitions and precise terms of Iowa Code section 423.3(47) or whether the legislature has reserved for itself the power over tax policy, which, in this case, relates to 1 of 95 sales tax exemptions specified in Iowa Code section 423.3. Mr. Neiderbach urged the committee to delay action on the rule making, expressed surprise that the administrative rules coordinator allowed the rule to be submitted in light of the uncertainty about the actual cost, and stated that the proposed amendments should have an ascertainable cost. Ms. Buckton stated that the July 1, 2016, effective date may not be late enough should the legislative session be extended and requested that the jobs impact statement reflect an examination of job creation in the public sector. In addition, she explained that Iowa Code section 423.3 sets forth exemptions from the subchapter (as determined by the legislature, not as otherwise stated in rule).

Motion to object Sen. Jochum moved an objection to ARC 2178C.

Motion failed On a roll call vote of 5 to 5, the motion failed.

Committee business The minutes of the September 8, 2015, meeting were approved.

The next meeting was scheduled for Tuesday, November 10, 2015, at 9 a.m.

Rep. Vander Linden requested, and Sen. Courtney concurred, that at least two teleconference devices be secured; otherwise, the committee should reconsider allowing the conduct of business by telephone. Mr. Ewing will research options to address the issue.

Adjourned The meeting was adjourned at 1:30 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Dawn Pettengill

Vice Chair Wally Horn