

**MINUTES OF THE JULY 2016 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, July 12, 2016, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Senator Wally Horn, Chair, and Representative Dawn Pettengill, Vice Chair; Senators Mark Chelgren, Mark Costello, Thomas Courtney, and Pam Jochum; Representatives Lisa Heddens, Megan Jones, Rick Olson, and Guy Vander Linden were present.
- Also present: Jack Ewing and Tim Reilly, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Colin Smith, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.
- Convened Sen. Horn convened the meeting at 9:10 a.m.
- Fiscal overview** Adam Broich presented the LSA fiscal report.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

- ARC 2557C No action on amendments to 75.1(39)“b”(3) regarding premiums for applicants and recipients under the Medicaid for employed people with disabilities (MEPD) program.
- ARC 2555C No action on amendments to ch 170 pertaining to eligibility, certification, and payment to providers related to child care assistance. In response to an inquiry from Rep. Pettengill, Ms. Freudenberg stated that an asset test, which includes all assets, and the family resource/asset limit of \$1 million are required by the federal government and that because of the size of the family resource/asset limit, the council on human services expressed its concern in a letter to its federal delegation.
- ARC 2556C No action on amendments to 170.4(2)“a” concerning the child care assistance sliding fee schedule.

PAROLE BOARD Steven Clarke represented the board.

- ARC 2590C Proposed amendments to chs 9 and 11 pertain to certificates of employability, parole revocation hearings, and automatic revocation of parole for conviction of an aggravated misdemeanor.
- Discussion pertained to the use of videoconferences for parole revocation hearings and to certificates of employability, including prior practices, availability of staffing and funds, the types and effectiveness of apprenticeship programs, access to the life skills program, and overall goals to measure the success of the program.
- In response to questions from committee members, Mr. Clarke stated that videoconferences work well, noting that five districts conduct hearings exclusively by videoconference, which saves money because no travel is required. Regarding certificates of employability, Mr. Clarke explained that the previous application process was more subjective and more complex and that there had been no applicants but that, through collaboration, the staffs of the departments of corrections and workforce development and the parole board have created a more automatic application process for granting certificates of employability, via an improved computer system, after the parolee meets the requirements. Mr. Clarke stated that the certificate of employability will show that after receiving training, the parolee will be employable. Mr. Clarke added that the intention is to ease barriers to employment through the issuance of the certificate of employability upon release. Mr. Clarke named 16 apprenticeship programs, such as welder, electrician, housekeeper and plumber, and described the components of the National Career Readiness Certificate and the life skills program.
- Sens. Courtney and Jochum inquired about the success of the program overall and whether goals have been established for the program, e.g., a specific percentage of parolees projected to be back in the workforce by a specific time. Sen. Horn requested information regarding whether inmates pay for their education and health care. Mr. Clarke stated that the department of corrections, not the board, would have information about these topics and that he would provide the committee with the information.

Parole Board (continued)

Rep. Olson stated that due to funding issues, the timely availability of the life skills program is problematic. Sen. Chelgren expressed concern regarding a parolee's employment prospects should the parolee not be bondable. Rep. Jones expressed appreciation to the board for the reevaluation of the apprenticeship aspect of the program and for the board's effort in enabling the program to work.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Margaret Thomson and Matt Gronewald represented the department. Other interested parties included Kellie Paschke on behalf of the Petroleum Marketers and Convenience Stores of Iowa (PMCI), Bob Hemesath of the Iowa Corn Growers Association (ICGA), David Scott of the American Petroleum Institute (API), Grant Menke and Monte Shaw of the Iowa Renewable Fuels Association (IRFA), and James Pirolli on behalf of Kum & Go.

ARC 2577C

Amendments to chs 12 to 14 and 16 pertain to the renewable fuel infrastructure program. Mr. Gronewald summarized the main components of the rule making: a minimum size for renewable fuel pump labels, specifically, "American Ethanol"; the labeling or advertising of ethanol blended gasoline classified with an octane rating of 87 or higher as "super" or "plus" in compliance with the National Institute of Standards and Technology (NIST) Handbook 130; and the expansion of the renewable fuels infrastructure program for retail motor fuel sites, allowing funds to be used for the storing and dispensing of E-15.

Discussion primarily focused on whether there is a conflict between Federal Trade Commission (FTC) regulations and department rules related to renewable fuel pump labels and on related topics, including a minimum design size that could conceivably apply to any department-approved label; FTC label requirements; whether, in addition to the "American Ethanol" label, other optional labels had also been approved; retailer liability; penalties assessed to retailers for noncompliance; and the department's response to the committee's previously stated concerns.

Mr. Gronewald stated in response to the questions that the resized, modernized "American Ethanol" label, which will replace the "Cleaner Air for Iowa" label, is approved by the department, is the only label addressed in the amendments and is not in conflict with FTC regulations; that FTC regulations require the installation of the orange and black FTC label by July 14, 2016; and that copies of optional labels, which were obtained through a Freedom of Information Act records request and distributed to committee members, would be required to be in compliance with FTC regulations and department rules but are not addressed in the rule making. In addition, Ms. Thomson explained that the delayed effective date for certain provisions in the rule making is intended to address conflicts between FTC regulations and statute, described the certification by the FTC and related penalties imposed on retailers, and apologized for incomplete follow-up regarding committee concerns.

Committee members also discussed E-85, including FTC regulations and prospective 2017 legislation related to E-85; the authority of the fire marshal related to infrastructure grants; storage and blending of E-15 in non-summer months; decision making by the three-person renewable fuels and coproducts advisory committee; and the basis for the labeling of ethanol blended gasoline classified with an octane rating of 87 or higher as "super" or "plus."

Ms. Paschke expressed concern about a conflict between department rules and FTC regulations or state law or both related to the minimum label size, the storage and blending of E-15 in non-summer months, the labeling of E-85, and language for flex fuel labeling and the liability for retailers related to the labeling. Mr. Scott expressed concern about fines levied on retailers for noncompliance with label requirements. Mr. Hemesath, who stated that ICGA had requested the update of the ethanol label, expressed support for the rule making and expressed concern that a delay of the rule making would affect ICGA members' future planning and cause delays in infrastructure grant funding. Mr. Menke also expressed support for the rule making, noting the expansion of the infrastructure grants program and the use of "super" or "plus" to comply with the NIST handbook and to create continuity for consumers.

Agriculture and Land Stewardship Department (continued)

Mr. Shaw explained that E-85 is a marketing term and that the FTC does not have the authority to regulate a marketing term of a product unless the term is in conflict with FTC regulations and that the use of the “American Ethanol” label does not affect the responsibility of the retailer to use the correct FTC label. Mr. Pirolli illustrated with pictorial examples the use of the FTC and “American Ethanol” labels that are in compliance with state rules and FTC regulations and that, in his opinion, provide clear, consistent messaging to assist consumers and retailers.

Committee members expressed concern that without resolution of the conflict between FTC regulations and state rules and of the differences between the department and some stakeholders, consumers may be confused and retailers may be at risk. Committee members suggested that the imposition of a delay would allow time for resolution of conflicts and differences through direct communication by the department with the FTC, the state fire marshal, and the attorney general and with stakeholders.

Motion to delay	Rep. Pettengill moved a session delay on ARC 2577C.
Motion failed	On a roll call vote of four to six, the motion failed.
Motion to delay	Rep. Pettengill moved a 70-day delay on ARC 2577C.
Motion failed	On a roll call vote of five to five, the motion failed.
Motion to delay	Rep. Olson moved a session delay on Item 13 [85.48(13)].
Motion failed	On a roll call vote of five to five, the motion failed.
	[Note: The passage of either a session delay or a 70-day delay requires seven votes.]
ARC 2585C	No questions on proposed amendments to 41.12 pertaining to cottonseed product control.
ARC 2573C	No action on amendments to ch 50 concerning the women, infants, and children/farmers’ market nutrition program and the senior farmers’ market nutrition program.
ARC 2576C	No action on the rescission of ch 51, remediation of agrichemical sites.
ARC 2591C	No action on an amendment to 64.11 pertaining to a method for disposal of deceased animals affected by glanders.
	In response to a question from Rep. Pettengill, Ms. Thomson stated that according to two veterinarians with whom she consulted, the method of disposal, such as composting, would depend on the type of animal and would be determined at the time based on the best science available.
	At the conclusion of the review of all rule makings, Sen. Chelgren asserted that, in the future, the department should address the committee’s stated concerns regarding rule makings.

DENTAL BOARD Phil McCollum represented the board.

ARC 2592C	No action on 10.4(4) pertaining to students enrolled in dental hygiene programs.
ARC 2593C	No action on 20.17 concerning students enrolled in dental assisting programs.

COLLEGE STUDENT AID COMMISSION Julie Leeper represented the commission. Other interested parties included Dane Schumann on behalf of the Iowa Cosmetology School Association.

ARC 2582C	No questions on proposed amendments to 12.2(2) and 17.2 pertaining to the application deadline for the Iowa tuition grant program and updates to the barber and cosmetology arts and sciences tuition grant program.
ARC 2583C	No questions on proposed amendments to 20.1(6)“c” regarding credit award equivalence related to the Iowa national guard educational assistance program.
ARC 2580C	No action on amendments to ch 21 concerning approval of postsecondary schools related to the interstate reciprocity agreement and registration. Ms. Leeper reported that exemption applications from all of the community colleges have been approved and that the regents universities and 13 private colleges will also complete the process. Rep. Pettengill thanked Ms. Leeper and the commission for their work with the community colleges in refining the rules prior to adoption.
	Mr. Schumann stated that some terms, such as nonpublic school and for-profit school, are not defined and that some procedures are vague and requested that the rules be clarified in the future.

College Student Aid Commission (continued)

ARC 2581C No action on an amendment to 36.1(2) regarding eligibility for the Governor Terry E. Branstad Iowa state fair scholarship.

EDUCATIONAL EXAMINERS BOARD Darcy Hathaway and Joanne Tubbs represented the board. Other interested parties included Katie Greving on behalf of Decoding Dyslexia Iowa.

ARC 2584C No action on amendments to ch 13 pertaining to adding endorsements and to licensure of out-of-state applicants from non-Iowa institutions.

ARC 2586C No action on amendments to 13.28 pertaining to reading endorsements. Ms. Greving expressed support for the rules and thanked the board and the committee for listening to feedback and making changes in the rules that will lead to improvement in the preparation of reading teachers.

ARC 2587C No action on amendments to ch 20 pertaining to standard, master educator and administrator license renewal.

ARC 2588C No action on amendments to 22.1(2) concerning coaching authorizations. In response to a question from Rep. Jones, Ms. Hathaway confirmed that the amendments preclude high school students from being coaches.

EMPLOYMENT APPEAL BOARD Rick Autry represented the board.

ARC 2578C No questions on proposed amendments to 6.1 regarding peace officer and capitol security appeals.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department.

ARC 2560C No action on 58.19(1)“n”(8) and 58.24 pertaining to dietary services in nursing facilities.

ENVIRONMENTAL PROTECTION COMMISSION Jon Tack, Wendy Hieb and Julie Faas represented the commission. Other interested parties included Tim Whipple on behalf of the Iowa Association for Municipal Utilities (IAMU), Jessica Harder on behalf of the Iowa Association of Business and Industry (ABI), Dustin Miller of the Iowa League of Cities, Deborah Neustadt of the Sierra Club, Josh Mandelbaum on behalf of the Environmental Law and Policy Center, and Susan Heathcote of the Iowa Environmental Council.

ARC 2572C No action on amendments to ch 64 pertaining to NPDES General Permit No. 7 for the discharge of pesticides.

ARC 2571C No action on an amendment to 64.15(5) relating to NPDES General Permit No. 5 for wastewater discharges from mines and quarries.

ARC 2579C Proposed amendments to 61.2(2)“e,” 64.2(9)“a,” and 64.7(2)“f” pertain to the Iowa antidegradation implementation procedure. Mr. Tack explained that the impetus for the amendments was a petition for rule making by IAMU, the Iowa League of Cities, and ABI. He noted that these entities are seeking to ensure regulatory certainty about and clarity of the standard for conducting a cost-benefit analysis under the antidegradation implementation procedure. Mr. Tack described the process by which municipal and industrial permit applicants determine a water treatment alternative, when greater discharge into streams is necessary, by asking whether the alternative is technically feasible, economically efficient, and affordable. Mr. Tack explained the 115 percent rule of thumb, a flexible cost-benefit standard, by which the department determines whether a chosen alternative must be implemented. The petitioners, Mr. Tack continued, believe that in lieu of the current 115 percent rule of thumb, a 115 percent bright-line standard is needed in order that a direct-cost analysis be conducted to compare the environmental benefits to the cost of the project. Mr. Tack stated that the petitioners sought a revised standard after a court ruling against the department in its implementation of the current standard related to a project in Clarion, Iowa. Mr. Tack explained that the bright-line standard cedes the flexibility of the current rule of thumb for clarity. He requested that interested parties offer a methodology for a comparison of environmental benefits to costs. Mr. Tack stated that the department expects to make changes in the amendments based on comments received.

Environmental Protection Commission (continued)

Mr. Whipple expressed his unequivocal support for the rule making, noting the benefits of a cost-benefit analysis based on the proposed bright-line standard. Ms. Harder also expressed support for the rule making, noting that the amendments reestablish regulatory certainty for businesses and apply the standard that was understood to be in place prior to the court ruling. Mr. Miller also expressed support for the rule making and added that objective criteria are needed to make antidegradation policy workable for cities and that not applying the bright-line standard imperils the nutrient reduction strategy.

Ms. Neustadt, in expressing opposition to the rule making, asserted that the proposed changes remove the safety net provided by the antidegradation policy and reduce the policy to an equation that only considers costs. Mr. Mandelbaum expressed concern that the proposed changes undermine the existing rules, that further discussion and more stakeholder involvement are needed and that the bright-line standard may be inconsistent with federal regulations. Ms. Heathcote stated the belief that the current rules could be implemented if a methodology to be used by facilities were developed to perform a cost-benefit analysis. She added that the department should be directed to establish a stakeholder group for the purpose of resolving the issues while the current rules continue to be implemented as written.

In response to a question from Rep. Olson, Mr. Tack stated that environmental advocacy groups may be opposed to the rule making because they believe it will be detrimental to water quality. In response to an inquiry from Sen. Jochum, Mr. Tack stated that the current rules do not have guidance about monetizing environmental benefit. Mr. Tack, in response to a question from Sen. Chelgren, stated that there would be less likelihood of lawsuits against small cities as a result of the rule making.

In conclusion, Mr. Tack asserted that the state focuses on environmental protection through stream designations, through water quality criteria and through antidegradation policy and that the latter is not unfairly focused on cost.

NATURAL RESOURCE COMMISSION Paul Tauke and Alex Cross represented the commission.

ARC 2558C

Proposed amendments to 71.3 pertain to nursery stock prices.

In response to questions from Sen. Costello, Mr. Tauke stated that the higher prices are competitive with a majority of nurseries in the Midwest and are lower than those of all private and public nurseries, except for the state nursery of Missouri, which is subsidized by public funds. Mr. Tauke also stated that the higher prices will not decrease demand by repeat buyers, such as conservation and cost-share programs, and that the stock is of high quality, is reasonably priced and is shipped promptly.

ARC 2561C

No action on amendments to ch 15 regarding licenses, education and an apprentice designation related to hunting.

PROFESSIONAL LICENSURE DIVISION Tony Alden, Venus Vendoures Walsh and Judy Manning represented the division.

ARC 2596C

Proposed amendments to 5.17 pertain to license fees for polysomnographic technologists and respiratory care and polysomnography practitioners. In response to an inquiry from Rep. Pettengill, Mr. Alden provided a comparison between the existing and the proposed respiratory care license fees and explained that fees for license renewals are the source of a majority of the board's revenue.

ARC 2599C

No action on 60.5(6) regarding the oversight only by the medicine board of the practice of aesthetics by estheticians.

ARC 2600C

No action on amendments to chs 61 and 63 pertaining to licensure and sanitation of salons and schools of cosmetology.

ARC 2597C

No questions on proposed amendments to 361.1 to 361.4 and 362.2 regarding licensure and continuing education of sign language interpreters and transliterators.

TRANSPORTATION DEPARTMENT Robert Younie represented the department.

ARC 2570C

No action on 121.4(3) pertaining to sponsor compliance with nondiscrimination laws related to the adopt-a-highway program.

- UTILITIES DIVISION** Cecil Wright and Jennifer Johnson represented the division. Other interested parties included Mark Schuling of the office of consumer advocate and Kevin Condon on behalf of the Iowa Communications Alliance.
- ARC 2569C Proposed amendments to ch 22 pertain to telecommunications services. Ms. Johnson summarized the amendments and described the process by which input on the amendments was received from interested parties.
- In response to an inquiry from Sen. Chelgren, Mr. Wright stated that in this rule making, the board is attempting to fulfill the regulatory responsibility under the statute, specifically, without impeding advancing technology, to achieve a neutral regulatory application to varying technologies that provide local exchange services. Sen. Chelgren advocated for nominal regulations on VoIP services and for loosened regulations on traditional forms of communications services. Rep. Pettengill encouraged the board to consider public comment when finalizing the rules.
- Mr. Schuling expressed concern about and elaborated on three issues for ongoing discussion with the board: the deregulation of VoIP services, the elimination of the requirement for a printed telephone directory for all customers, and the elimination of metric standards for restoration of telephone service after a service interruption. Mr. Condon commended the board for modernizing the rules but suggested that regulation and deregulation be applied equally across the methods of service.
- PUBLIC HEALTH DEPARTMENT** Paul Watson, Kimberly Piper, Carmily Stone, Diane Williams and Stacey Hewitt represented the department.
- ARC 2568C The proposed amendments to 4.3, 4.7(6)“e,” and 4.11 that pertain to informed consent for storage and release of residual newborn screening specimens are being terminated. Ms. Piper explained that after reviewing the options for implementing policies and procedures for obtaining informed consent, the congenital and inherited disorders advisory committee (CIDAC) terminated the Notice and will no longer store and release residual newborn screening specimens for research.
- Rep. Jones thanked Ms. Piper and CIDAC for making this decision.
- ARC 2562C No action on amendments to ch 10 pertaining to the Iowa get screened colorectal cancer program.
- ARC 2563C No action on amendments to ch 24 regarding grants to counties for private well testing, reconstruction and plugging.
- Rep. Pettengill thanked the department for revising the language regarding actual costs.
- ARC 2564C No action on amendments to ch 114 regarding the preparedness advisory committee.
- ARC 2565C No action on amendments to ch 130 relating to the emergency medical services advisory council.
- ARC 2566C No action on ch 138, trauma system advisory council.
- ARC 2567C No action on ch 179 pertaining to collection of delinquent debts. In response to a question from Sen. Chelgren, Ms. Hewitt explained that the administrative services department required that the public health department have an appeals process in place but that the functionality of the debt collection process has not changed.
- VETERANS AFFAIRS, IOWA DEPARTMENT OF** Jodi Tymeson represented the department.
- ARC 2594C No questions on proposed amendments to ch 10, Iowa veterans home.
- Committee business** The minutes of the June 14, 2016, meeting were approved.
- The next meeting was scheduled for Friday, August 5, 2016, at 9 a.m.
- Mr. Ewing stated that pursuant to Iowa Code section 17A.7(2), by July 2017, agencies are to have conducted an ongoing and comprehensive review of their rules and provide a summary of the results to the administrative rules coordinator and to the committee. The committee discussed the format for the presentation of the review. At the August meeting, Mr. Ewing will provide a proposed format based on a suggested format by Sen. Jochum and input from other committee members.
- At the June meeting, the committee requested that Mr. Ewing and Mr. Reilly respond to two questions related to the adoption of joint rules for supervision of physician assistants by the board of medicine and by the board of physician assistants pursuant to 2015 Iowa Acts, Senate File 505, section 113.

Committee business (continued)

In a memo distributed to the committee in advance of the meeting, Mr. Ewing and Mr. Reilly addressed the following: (1) given that the board of medicine has recently adopted a rule relating to physician assistant supervision, does the legislation also require the board of physician assistants to adopt new or amended rules related to physician assistant supervision, and (2) how do current physician assistant rules regarding supervision of a physician assistant by a supervising physician compare to the rules that have been thus far jointly noticed by the board of physician assistants and adopted by the board of medicine. In response to the first question, Mr. Ewing concluded that the board of physician assistants does need to adopt new rules because the current rules do not satisfy the requirements of the legislation, noting that the legislation requires the board of physician assistants to conclude the rule-making process by adopting a joint rule. Mr. Reilly, in response to the second question, provided a comparison between current board of physician assistant supervision rules and those proposed by the board of physician assistants and those adopted by the board of medicine.

In response to a question from Sen. Chelgren, Mr. Ewing stated that the concept of joint rule making is not addressed in Iowa Code chapter 17A, remains undefined, and is dependent upon the agencies' mutual decision making based on the guidance provided in the statute. Thus, each statute that requires joint rule making would need to be considered by the affected agencies on a case-by-case basis to determine the rule-making actions to be undertaken. In response to an inquiry from Rep. Pettengill, Mr. Reilly stated that the provisions in the current rules of and the proposed supervision rules by the board of physician assistants and the adopted rules by the board of medicine are conceptually similar but that the proposed rules explain the requirements in a different way. Sen. Chelgren suggested that joint rule making be more clearly defined in statute to eliminate confusion in the future. The committee agreed that upon request, Mr. Ewing may distribute the memo to members of the public.

Adjourned

The meeting was adjourned at 2:35 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill