

MINUTES OF THE REGULAR MEETING OF THE

ADMINISTRATIVE RULES REVIEW COMMITTEE

- Date of meeting:** The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, September 9, and Wednesday, September 10, 2003, in Room 116, State Capitol, Des Moines, Iowa.
- Members present:** Representative George Eichhorn, Chair, and Senator Jeff Angelo, Vice Chair; Senators Michael Connolly, John P. Kibbie, Paul McKinley, and Donald Redfern; Representatives Danny Carroll, Marcella Frevert, David Heaton, and Mark Kuhn.
- Also present:** Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Betty Snuggs, Assistant; Kristen Hardt, Administrative Rules Coordinator's Office; fiscal staff, caucus staff and other interested parties.
- Convened** Chair Eichhorn convened the meeting at 9:45 a.m.
- EDUCATION DEPARTMENT** Carol Greta, Judy Jeffrey and Laurie Phelan represented the department. Other interested parties included Brad Manard, Superintendent of Solon Community Schools, Margaret Buckton of the Iowa Association of School Boards, Rod Montang of Eagle Grove Community School District, Sue Atkinson of Iowalive, and Paul Rasmussen of Spook Cove and Campground.
- Special review** Chapter 68, which pertains to Iowa public charter schools, will be adopted and filed emergency because applications are due October 1. The department intends to post application guidelines on the department's Web site and hold informational meetings on the ICN. A federal grant of approximately \$5 million has been approved for public charter schools in Iowa.
- Special review** Iowa law requires school districts to hold a public hearing to determine the start of the school year and specifies that the starting date shall be after Labor Day unless September 1 falls on Sunday, which would allow the districts to begin the week before, or unless the department grants a waiver. Districts have requested early starts to the school year in order to allow for staff professional development days to be interspersed throughout the school year; to complete semester exams before the Christmas break; and to account for the effect of daylight savings time on student learning. The department honors local decisions and grants all waiver requests. While supporting professional development and teacher conferences, Heaton voiced concern about lost instructional hours. Angelo stated that the department's policy of granting all waiver requests does not comply with the legislature's decision to retain the statutory mandatory start date. Connolly maintained that waivers are legal and the department and school districts should be commended for using legal options available to them. McKinley pointed out that the stated purpose of the waiver is to protect students from "significant negative educational impact," yet the department has no standards for what constitutes significant negative educational impact and has no records to determine the effect of lost instructional hours. Eichhorn, troubled by the department's automatic granting of waivers, added that the department needs to exercise the responsibility delegated by the legislature. Kuhn and Frevert spoke in favor of local control. Kibbie indicated that the legislature has required air conditioning for all community college buildings and needs to address air conditioning K-12 schools.
- Manard reported that the student assessment calendar influences the start date, as do family vacations and schedules of colleges and universities. Manard asked the legislature to consider air-conditioning and school infrastructure equity issues. Buckton provided materials, including a summary of reasons districts have given for requesting waivers, factors contributing to student success and community expectations. In addition, Buckton expressed appreciation for infrastructure equity funding. Montang distributed a summary of comments collected from other superintendents and emphasized the importance of local control. Atkinson distributed written comments and voiced her concerns about the quality of education in Iowa, the public's access to information, and the department's lack of accountability and failure to recognize international standards. Rasmussen stated that early start dates have an adverse effect on tourism.
- MEDICAL EXAMINERS BOARD** Ann Mowery represented the board. Karla Fultz McHenry represented the Iowa Medical Society, and Libby Coyte represented the Iowa Physician Assistants Society.
- ARC 2707B** No action on proposed amendments to ch 13 concerning standards of practice and principles of professional ethics. McHenry reported that the Iowa Medical Society's written comments presented at the public hearing will be forwarded to committee members. Eichhorn questioned use of the words "in general" in 13.20(1)"d."
- ARC 2704B** No action on proposed amendments to ch 14 concerning the physician health committee.
- ARC 2706B** No questions on termination of amendments pertaining to physician supervision of a physician assistant.

Medical Examiners Board (continued)

ARC 2705B Proposed amendments to ch 21 relate to physician supervision of a physician assistant. Mowery reported that as a result of comments received from physician assistants, the board has removed language regarding physician eligibility and has revised provisions relating to federal facilities and emergency or disaster situations; but that PAs remain concerned about language regarding grounds for discipline. Eichhorn suggested that the disciplinary rule may discourage physicians from supervising a physician assistant. Concerned that issues have not been resolved, Carroll expressed disappointment in the lack of professional communication between the board of medical examiners and the physician assistants society. Coyte stated that PAs do not believe subrules 21.4(1) to 21.4(4) are necessary and added that she is optimistic that agreement can be reached. Mowery stated that the board will consider all comments received, but noted that the board of medical examiners is the only entity with authority to discipline physicians.

ADMINISTRATIVE SERVICES DEPARTMENT Carol Stratemeyer and Kenneth Paulsen represented the department.

ARC 2708B Proposed ch 105 pertains to purchasing. McKinley questioned the sole discretion of the department in the determination of "fair and reasonable price" and "responsible bidder" and requested copies of the department's written correspondence with the attorney general's office on these rules. Paulsen advised Heaton that the department has no authority for oversight of charter agencies. Heaton requested information about janitorial products used in state buildings and why Iowa Prison Industries products are not purchased. Eichhorn expressed concern about the invitation to prequalify and the department's limiting bids to prequalified bidders and challenged the appealability of decisions that are in the "department's sole discretion." Connolly suggested that criteria for prequalification be included in the rules.

ARC 2635B No action on ch 10 concerning customer councils. Discussion related to fairness to private sector providers, rates for utility services, and the role of customer councils.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION Ron Koontz represented the commission.

ARC 2697B Proposed amendments to ch 5 are intended to parallel the purchasing rules of the department of administrative services. McKinley suggested that a requirement for the commission to contact at least three prospective bidders be included in 5.2(2)"a."

UTILITIES DIVISION David Lynch represented the division. Serge Garrison represented the Iowa Rural Water Association.

ARC 2724B No questions on provisions for second payment agreements for gas and electric customers, as requested by the consumer advocate.

ARC 2681B No questions on amendments to chs 19 and 20 regarding customer rights and remedies to avoid disconnection. Lynch reported that the consumer advocate asked for a concise statement of reasons for and against the adoption of one sentence relating to reconnection of service, and the board has issued that statement.

ARC 2725B No action on amendments to chs 19 and 20 regarding the temperature trigger for cold weather protections as requested by the Iowa community action association.

ARC 2680B No action on proposed 22.14(2)"d" pertaining to intrastate access charges.

ARC 2506B Garrison asked for an additional month for small utilities and the utilities board to reach an agreement regarding insurance requirements currently under session delay.

PUBLIC HEALTH DEPARTMENT Tonya Diehn, Ray Jones, Marnell Kretschmer, Barb Nervig and Dean Austin represented the department. Other interested parties included Denise Hill of the Iowa Medical Society, Ken Kunsman and David Oxley of OraSure Technologies, Marty Ryan of the Iowa Civil Liberties Union, Jan Laue of the Iowa Federation of Labor, and Joseph Watson of a laboratory located in Marion, Iowa.

ARC 2683B No actions on proposed amendments to ch 4 relating to newborn metabolic screening.

ARC 2684B Proposed amendments to ch 7 pertain to immunization of persons attending elementary or secondary schools or licensed care centers. Kretschmer reported receiving comments about the religious exemption.

ARC 2652B Varicella vaccine was added by emergency amendment to the list of required immunizations.

ARC 2682B Ch 142 pertains to out-of-hospital do-not-resuscitate orders. Jones outlined changes from the Notice. Concerns about who may revoke a DNR order involve the role of a person with durable power of attorney for medical decisions who may not be listed on the form.

Motion Carroll made a motion to refer the rules to the attorney general to determine whether statutes are in conflict.

Motion carried The motion carried.

Public Health Department (continued)

Special review

Nervig reported that after the July ARRC meeting, the department began a review of scientific information in the field of drug testing and is assembling a group of interested parties which will meet in October. Nervig noted that the federal government has drafted guidelines on this subject, and the department will be reviewing those guidelines once they are published. Austin agreed to report on the department's scientific findings at the October meeting.

Ryan expressed the viewpoint that the department lacks statutory authority to conduct saliva testing, but agreed with proponents that the saliva test is less intrusive than urine testing. Laue requested a careful examination of the science and accuracy of saliva testing. Oxley and Kunsmen confirmed that the department is examining data and expressed confidence in OraSure's FDA-approved product. Watson commented that the purpose of the testing and the window of detection need to be considered in determining which body substance to test.

ECONOMIC DEVELOPMENT DEPARTMENT Paul Stueckradt, Amy Johnson, Ken Boyd, and Allen Williams represented the department.

ARC 2674B Proposed amendments to ch 57 expand components of the value-added agricultural products and processes financial assistance program. There was discussion about the need to clarify the definition of producer-owned and what constitutes an equity interest. Kuhn suggested that solar energy be included with wind energy in the definition of alternative energy. Kibbie commented on the need to encourage production and use of ethanol. Eichhorn emphasized that no area of the state should be excluded from the program on the basis of wages paid in the area.

ARC 2675B Proposed amendments to ch 58 pertain to the new jobs and income program. Johnson advised Frevert that the statute requires significant job creation and investment, so these projects are generally not intended for small businesses. Boyd confirmed that employee stock ownership programs could probably be included in 58.7(1)"d." McKinley requested a list of projects funded in the past couple of years.

ARC 2685B No action on ch 62 pertaining to the cogeneration pilot program.

ARC 2676B Proposed ch 64 concerns the new capital investment program. Johnson reported that commenters have suggested that the definition of capital investment be expanded and that employee benefits be an evaluation criterion rather than an eligibility requirement. McKinley asked the department to consider whether application approval should be a board decision.

GROW IOWA VALUES BOARD Holmes Foster, Mary Chapman, and Melanie Johnson represented the board. Brian Gentry was present via telephone. Jan Laue represented the Iowa Federation of Labor.

ARC 2698B Foster advised Angelo that a formula for allocations has not yet been developed and Johnson clarified that staff of IDED will be present at all meetings to assist the board in administering the program. McKinley made suggestions regarding the definition of business, including nonprofits that create private-sector jobs; number of program goals to be met; land use issues; number of votes required for projects; review of applications by the due diligence committee; authority to call meetings; flexibility rather than sector targeting; giving preference to projects that best meet the goals of the program rather than those that most need the assistance; and limiting participation to Iowa colleges and universities. Frevert and Connolly commended the progress of the board and department. Foster assured Eichhorn that smaller communities will not be excluded. Laue commented that Iowa ranks 38th in the country in term of wages; and that, especially in small communities and rural areas, wages need to be raised.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Ann Marie Brick represented the department. Several ARNPs, including Sheryl Puderbaugh, Cheryll Jones, Carey Ann Ryan, and Susan Rowley, were present.

ARC 2654B No questions on amendments to the rent subsidy program, ch 53.

ARC 2657B No questions on 65.37(4) concerning food stamp eligibility for aliens.

ARC 2699B No action on proposed assessment of premiums for coverage under the Medicaid for employed people with disabilities group.

ARC 2700B No questions on proposed amendments to ch 79 concerning payments to hospitals from the graduate medical education and disproportionate share fund.

ARC 2701B Freudenberg outlined proposed amendments to the adoption subsidy program which include shifting child care costs to the subsidized child care program. The department anticipates a net savings of \$433,000.

ARC 2656B No questions on amendments to ch 176 regarding dependent adult abuse.

ARC 2655B No questions on amendments to ch 202 concerning voluntary foster care placements.

Human Services Department (continued)

ARC 2583B

Freudenberg reported that these amendments allow ARNPs to serve as MediPASS patient managers. After meeting with the Iowa Nurses Association, the department agreed to strike the word "independent." Freudenberg distributed materials to illustrate areas of practice for physicians and ARNPs that qualify as patient managers. Further, the department has agreed to accept ARNP categories as licensed by the board of nursing and will amend rules accordingly. Freudenberg reported on the numbers of ARNPs and certified nurse-midwives currently registered with John Deere Health Plan, Iowa Health Solutions and Coventry. The department has advised its fiscal agent regarding billing practices. Brick expressed the belief that improved communication between the department and nurses is overcoming mistrust that has previously existed. Puderbaugh presented a review of House File 479, Iowa law and court findings. Puderbaugh estimated that assignment of the 1,352 Iowa ARNPs by all plans could result in a savings to the state of \$48 million. ARNPs requested emergency rule making to include all categories of ARNPs licensed by the board of nursing since it would be in the public interest to avoid the possibility of Medicaid fraud. Brick advised Connolly that the state would not be liable for physicians who sign false billings.

Jones expressed optimism about conversations with the department that have taken place. Frevert asked that the department report on progress at next month's meeting.

VETERANS AFFAIRS COMMISSION Byron Coughlan, Arlene Kremer-Bell, and Mike Croskey represented the Iowa veterans home.

Special review

Coughlan apologized for not following rule-making protocol and indicated that the Iowa veteran's home is prepared to absorb the \$250,000 loss. The commission intends to proceed with an emergency rule making to be effective upon filing and retroactively applicable. Eichhorn cautioned against any future irregularities in rule-making procedures. Coughlan advised Carroll that annual expenditures at the Iowa veterans home are in the neighborhood of \$56 million, about 23 percent of which comes from state appropriations.

Committee business

Carroll moved approval of the August minutes. The motion carried.

Connolly asked that special reviews be limited and scheduled for the end of the day. Royce reviewed past practice. The chair offered to confer with the vice chair and propose some guidelines.

The committee recessed at 6 p.m.

Wednesday, September 10, 2003

Chair Eichhorn convened the meeting at 8:30 a.m.

Members present:

Representative George Eichhorn, Chair, and Senator Jeff Angelo, Vice Chair; Senators John P. Kibbie, Paul McKinley, and Donald Redfern; Representatives Danny Carroll, Marcella Frevert, and Mark Kuhn. Representative David Heaton and Senator Michael Connolly were not present.

REAL ESTATE COMMISSION Bill Schroeder, James O'Neill and Pam Griebel represented the commission.

ARC 2673B

The proposed amendment to 9.1 reduces license fees. The proposed amendment will result in a loss to the general fund of \$111,000; to the University of Northern Iowa of \$41,000; and to the real estate education director of \$18,000. Members voiced their feelings about this proposed amendment and strongly suggested that the commission terminate the rule making.

ARC 2739B

No action on termination of proposed amendments to ch 13 regarding trust accounts.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Ron Rowland, Maury Wills, and Dr. John Schlitz represented the department.

ARC 2709B

No questions on proposed amendments to ch 47, Iowa organic program.

ARC 2693B

No action on 60.4, registration of exhibitions involving poultry.

ARC 2694B

No action on proposed amendments to ch 64 pertaining to low pathogen avian influenza.

Special review

Regulation of whitetail deer hunting preserves was shifted from the department of natural resources to the department of agriculture and land stewardship. Revenue from registration of preserves is intended to fund the CWD monitoring and surveillance program. Emergency rules include the following fees which will be applicable in April when licenses are renewed: \$1000 for whitetail deer hunting preserves, \$100 for farm deer breeders, and \$100 for participation in the CWD program. Carroll questioned the inclusion of the fees in the emergency rules.

TRANSPORTATION DEPARTMENT Mary Christy, Dave Widick, Sharon Anderson, Karen Grothe, Tom Sever and Valerie Hunter represented the department. Charlie Smithson of the ethics and campaign disclosure board was also present.

ARC 2688B Proposed ch 28 pertains to the Iowa transportation map. The chair of the house ethics committee asked that the department work with the ethics board to develop rules to provide clarity about distribution of the map. Two and one-half million maps are printed each year at a cost of approximately ten cents per map; the maps are intended to be distributed free of charge. Christy reported that suggestions from the ethics and campaign disclosure board will be included in the final rules.

ARC 2662B No questions on proposed ch 115 concerning utility accommodation.

ARC 2689B No questions on proposed 500.24 regarding electronic information.

ARC 2690B Sever outlined proposed amendments to ch 520 relating to motor carriers. Carroll requested information on waivers for insulin-dependent drivers.

ENVIRONMENTAL PROTECTION COMMISSION Jim McGraw, Reza Khosravi, and Mel Pins represented the commission. Eldon McAfee represented the Iowa Pork Producers Association and the Iowa Poultry Association.

ARC 2736B No questions on amendments to ch 22 regarding exemptions for certain equipment.

ARC 2716B The proposed amendment to ch 65 pertains to concrete standards for formed manure storage structures. Khosravi distributed copies of photographs of cracked and damaged concrete manure storage structures. The proposed subrule establishes standards for dry and nondry manure storage as well as sites located on karst terrain. Kuhn encouraged the commission to develop stricter standards and require monitoring wells in karst areas, and to consider adopting backfill requirements and requiring soil boring to be refilled. Kibbie asked that the commission continue to investigate alternatives to rebar while developing strong regulations that err on the side of safety. Carroll expressed an interest in knowing how storage structure standards compare with municipal waste facility standards. Eichhorn expressed a concern that the rules do not promote use of new technologies and may be costly to affected individuals. McAfee voiced concern about costs and requested provisions for fiber mesh and other technologies. Frevert urged parties that oppose the rules to offer alternative solutions that will ensure drinking water safety. Khosravi agreed to advise the committee about how many facilities were represented in the 14 photos distributed and what percentage of facilities are in similar condition.

ARC 2717B No questions on proposed amendments to update ch 117, waste tire management rules.

NATURAL RESOURCE COMMISSION Steve Derman, Todd Bogenschutz, Kevin Szcodronski, and Don Bonneau represented the commission.

ARC 2728B No questions on proposed 15.1(1) concerning bait dealer licenses.

ARC 2727B No questions on amendments to ch 51 regarding use of decoys and blinds on pools 16, 17, and 18 of the Mississippi River.

ARC 2735B No questions on addition of the ritz unit at Clear Lake State Park to the after-hours fishing list.

ARC 2733B No action on proposed removal of bobcat from the list of threatened species.

ARC 2730B No questions on proposed amendments to fishing regulations, ch 81.

ARC 2731B No questions on proposed amendments related to shovelnose sturgeon and silver carp.

ARC 2729B No questions on proposed 87.2 concerning taking of mussels.

ARC 2726B No questions on amendments to ch 91 regarding waterfowl and coot hunting seasons.

ARC 2732B No questions on proposed 94.8(2) concerning antlerless-only deer licenses for nonresidents.

ARC 2734B No questions on proposed 98.2(1)"b" pertaining to legal weapon for bow hunting.

PHARMACY EXAMINERS BOARD Lloyd Jessen and Terry Witkowski represented the board.

ARC 2651B No questions on amendments to ch 2 pertaining to licensing.

ARC 2647B No questions on proposed 3.28(2) concerning confidentiality of patient information.

ARC 2650B No action on amendments to ch 6 pertaining to prescriptions.

ARC 2646B No action on proposed 6.10(1)"g" concerning labeling of generic drugs.

ARC 2645B No questions on proposed amendments to ch 8 pertaining to patient information.

ARC 2644B Proposed amendments to ch 20 specify labeling requirements for compounded products. Jessen reported that the board is working with concerned parties to resolve questions.

ARC 2649B No questions on the amendment to ch 22 to include normal saline for irrigation in the emergency drug supply for home health agencies or hospices.

ARC 2648B No questions on amendment of ch 36 regarding grounds for discipline.

PROFESSIONAL LICENSURE DIVISION Ella Mae Baird and Pierce Wilson represented the division. Libby Coyte represented the Iowa Physician Assistants Society.

ARC 2703B No questions on proposed amendments to rules governing barbers.
ARC 2721B No questions on cosmetology amendments.
ARC 2722B No questions on amendments pertaining to hearing aid dispensers.
ARC 2672B No questions on proposed amendments to podiatry rules.
ARC 2723B No questions on amendment of rules governing social workers.
ARC 2720B No questions on amendments to rules for speech pathologists and audiologists.
ARC 2687B No questions on rules governing physician assistants. Coyte commended the process.

INSPECTIONS AND APPEALS DEPARTMENT David Werning and Dean Lerner represented the department.

ARC 2642B No questions on amendments pertaining to hospitals, ch 51.
ARC 2643B No action on proposed updating of cross-references in ch 51.
ARC 2641B Amendments to chs 58, 60, and 61 prevent facilities from placing restrictions on packaging of medications dispensed by the VA and provide for the use of surge protectors. Lerner agreed to consult the fire marshal and advise McKinley as to why drop cords and extension cords are not allowed.

IOWA FINANCE AUTHORITY Loyd Ogle and Donna Davis represented the authority.

ARC 2718B No questions on proposed amendments to ch 1.
ARC 2719B Amendments to ch 12 adopt the 2004 QAP for low-income housing tax credits. Eichhorn voiced concern about the \$4500 fee charged all applicants and IFA's commissioning of market studies. Davis responded that IFA believes that market studies will be more objective and of higher quality under these rules.

Motion to delay Eichhorn moved a session delay on 5.7 of the 2004 qualified allocation plan. Discussion related to the effect a delay would have on current applications, alternatives to a session delay, the potential for developers to influence outcomes of market studies, and the possibility of using the certification process to control the quality of market studies.

Motion failed The motion did not pass.

Motion to refer Kibbie moved a referral to the general assembly.

Motion carried The motion carried. Market study and fee provisions are referred to the general assembly.

REVENUE DEPARTMENT David Casey represented the department.

ARC 2711B No questions on proposed amendments concerning first-year depreciation allowance and research activities credit.

ARC 2710B No questions on proposed amendments regarding the ethanol-blended gasoline tax credit.

ARC 2686B No questions on amendments to ch 85 concerning tobacco product manufacturers' obligations and procedures in accordance with the master settlement agreement.

WORKFORCE DEVELOPMENT DEPARTMENT Joe Bervid represented the department.

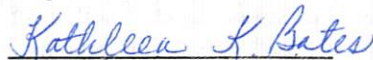
ARC 2671B No questions on amendments to ch 24 concerning claims and benefits.

ARC 2696B No questions on proposed amendments to chs 25 and 42 regarding benefit payment control and public records and fair information practices.


Committee business The next meeting was scheduled for Monday, October 13, 2003.


Adjourned The meeting was adjourned at 12:02 p.m.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair George Eichhorn


Vice Chair Jeff Angelo