

**MINUTES OF THE JANUARY 2002 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: The regular meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, January 8, 2002, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Senator Merlin E. Bartz, Chair; Senators Patricia Harper, JoAnn Johnson, John P. Kibbie, and Sheldon Rittmer; Representatives Danny Carroll, Janet Metcalf, and Paul Scherrman. Representatives Clyde Bradley and Marcella Frevert were excused.

Also present: Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Teresa VanderLinden, Assistant; Brian Gentry, Administrative Rules Coordinator; caucus staff and other interested persons.

Convened Chair Bartz convened the meeting at 9 a.m.

REVENUE AND FINANCE DEPARTMENT Carl Castelda represented the department. Castelda introduced David Casey and Jerri DeVries who will represent the department after Castelda's retirement.

ARC 1216B No questions on 10.2(21), which specifies the interest rate for calendar year 2002.

ARC 1170B No questions on proposed amendments relating to exemptions from sales tax.

ARC 1169B No questions on proposed 26.81 concerning bundled service contracts.

ARC 1214B No action on proposed amendments to ch 42 pertaining to investment tax credit refunds.

ARC 1215B No action on 42.16 and 52.19 relating to tax credits for ethanol-blended gasoline.

ARC 1213B No questions on amendments to ch 52 concerning investment tax credits.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Mary Ellen Imlau and Ruth Schanke represented the department.

ARC 1155B Amendments to chs 1 and 3 implement the department's new field operations service delivery structure. Imlau reported that boundaries and county alignments are still being determined and circulated a map illustrating changes that have been made since publication of the notice. Kibbie noted that counties have expressed concerns about closure of offices in facilities that may be owned by the counties or may be subject to long-term lease. Imlau advised Metcalf that the department is attempting to balance population and distance considerations.

ARC 1204B No action on proposed revision of ch 24 regarding accreditation of providers of services to persons with mental illness, mental retardation, and developmental disabilities.

ARC 1157B No action on the amendment to 25.13(2)"j."

ARC 1158B Amendments to ch 25 relate to risk pool funding. In response to a question about funding of the account, Harper stated that the fund is sustained through repayments made by counties.

ARC 1159B Amendments to chs 41, 46 and 93 pertain to the hardship exemption for the five-year limit on assistance. Imlau reported that the criteria for granting the exemption remain the same as proposed, but the department has modified procedures due to lack of sufficient staff to conduct team meetings.

ARC 1202B Proposed amendments to ch 65 provide for mailing of food stamps to families eligible for expedited benefits.

ARC 1198B No questions on proposed technical corrections to ch 75 pertaining to the health insurance premium payment program.

ARC 1161B No questions on amendments to ch 77 relating to independent laboratories.

ARC 1162B No questions on cross-reference correction in 77.40.

ARC 1163B Imlau pointed out two corrective changes to prior authorization criteria for psychostimulants and other drugs.

ARC 1199B No questions on proposed preamble to interstate compact on juveniles.

ARC 1200B No action on proposed amendments relating to juvenile court-directed services.

ARC 1164B No questions on amendments to ch 152 concerning RTSS contracting.

ARC 1203B No questions on the proposed rescission of ch 153, division III.

ARC 1165B No questions on the 4.3 percent reduction in state payment program provider rates.

ARC 1201B No questions on the proposed rescission of chs 171, 172, 174, 206 and 207.

Committee business Kibbie moved approval of the minutes of the December 2001 meeting. The motion carried.

The February meeting was scheduled for 8 a.m. Friday, February 8. Bartz requested that the meeting begin on Thursday afternoon if possible.

Royce distributed a letter from Ducks Unlimited regarding the requirement to print the price on the raffle tickets. Gentry indicated that the department of inspections and appeals will be able to resolve the concern raised in the letter.

Metcalf requested progress reports on waivers and Executive Order 8 reviews. Gentry stated that reviews have been completed, and only two agency reports are still outstanding. Gentry offered to provide a more complete report at the February meeting. Royce added that waiver reports covering the period from September 2001 will soon be available. Gentry reported being in contact with the alcoholic beverages commission regarding the committee's request for a regulatory analysis of the proposed dramshop rules.

ECONOMIC DEVELOPMENT DEPARTMENT Rose Wazny represented the department.

ARC 1195B Amendments to ch 25 pertain to the housing fund. Wazny outlined changes from the notice as a result of comments received from the public.

ARC 1193B No action on amendments to ch 41 relating to the community development fund.

EDUCATIONAL EXAMINERS BOARD Anne Kruse and Chris Scase represented the board.

ARC 1183B No questions on amendments to ch 11 relating to an extension of time for initiation of appeal or review of decisions.

ARC 1182B Rules 11.35 and 11.36 provide procedures for denial of licensure application and appeal of decision. Kruse commented that approximately 10 applications are denied each year.

ARC 1185B Criteria for licensee discipline or licensure denial based on a criminal conviction or founded report of child abuse are amended. The department has also prefiled a bill to make two conflicting statutes compatible by amending the statute enacted later. Bartz expressed concern that the prefiled bill gives the impression that the board may grant a license to someone convicted of child abuse. Discussion took place about the merits of discretion and prohibition.

Motion to delay Rittmer moved a session delay be imposed on ARC 1185B.

Motion carried The motion to delay 12.2(1)"e" and 12.2(2) until adjournment of the legislative session passed.

ARC 1181B No action on proposed 14.101(3) regarding temporary licensure.

ARC 1184B No questions on 14.113 pertaining to master educator's license.

EDUCATION DEPARTMENT Ann McCarthy, Kathy McKee and Tony Heiting represented the department.

ARC 1194B Amendments are proposed to allow greater flexibility in ch 68, which governs the conservation education program. Royce noted that while the rules are fairly general, the guidelines are specific. Royce recommended that the guidelines be adopted by reference in the rules.

ELDER AFFAIRS DEPARTMENT Joel Wulf represented the department.

ARC 1180B Wulf reported that these proposed amendments to the assisted living program rules will be terminated and renoticed based on public comments received.

INSURANCE DIVISION Roseanne Mead, Jim Thornton, and Susan Voss represented the department.

ARC 1188B No question on amendments to ch 37, Medicare supplement standards.

ARC 1210B No action on ch 48 relating to viatical and life settlements.

ARC 1189B No questions on 76.1 to 76.9 regarding external review.

ARC 1135B No action on disclosure of nonpublic personal health information, which was carried over from the December meeting. Voss reported that these rules are very similar to those implemented by the Department of Health and Human Services to go into effect in 2003.

ENVIRONMENTAL PROTECTION COMMISSION Lavoy Haage, Jon Tack, and Anne Preziosi represented the commission. Other interested parties included Bob Ellis, Greg O'Leary and Bob Rosencrants of Alter Trading Corporation; Cynthia Turkle of Turkle-Clark Environmental Consulting; Julius A. Moor of Moor's Salvage and Recovery, Inc.; Joe Robertson of Marshall County Solid Waste Management Company; Mike Niles of Scientific Recycling; Vladimir Bydzovsky of J.R.'s Appliances; Floyd Pelkey of Bluestem Solid Waste Agency; Jennifer Ryan of East Central Iowa Council of Governments; Hal Morton of Des Moines County Regional Solid Waste Commission; Scott Smith of Boone County; Mike Paine of Metro Waste Authority; Mike Potash of Sioux City Compressed Steel; and Mike Triplett of the Association of Business and Industry.

Environmental Protection Commission (continued)

ARC 1191B

Ch 109 pertains to special waste authorizations. Under the new rules, landfill operators will submit a report to the department specifying how special waste will be handled. As a result of the hearing, language from the present rule regarding infectious waste will be incorporated and provisions regarding material safety data sheets and petroleum contaminated soil will be clarified. Bartz and Metcalf indicated a desire to see the rescinded rule in addition to the new chapter.

ARC 1190B

Ch 118 relates to discarded appliance demanufacturing. Tack reported that an advisory committee of landfill operators, scrap dealers, and appliance demanufacturers was instrumental in the drafting of the rules. A regulatory analysis has been completed, no comments were received and the rules have been adopted. An emergency amendment has been drafted to address a concern raised subsequent to the adoption of the rules.

Ellis distributed written comments and voiced concern about costs and the impact the rules will have on Iowa businesses. Ellis asserted that the rules exceed EPA requirements.

Turkle stated that the rules implement federal requirements and indicated that most of the provisions are already in the current rules.

Triplett expressed concern about the effect of the rules on Iowa recyclers and scrap processors.

Niles, Bydzovsky, Ryan, Paine, Moor, Robertson, Morton, and Smith expressed strong support for the final rules as necessary to protect the people, air, soil and waters of Iowa. Most indicated they are already in compliance with the rules.

Tack stated that most recyclers charge a fee because the cost of compliance currently exceeds the value of the scrap metal and speculated that processors that do not charge a fee do not properly demanufacture appliances in compliance with the rules. Carroll expressed a concern about liability of landfill operators that would turn appliances over to processors that do not charge a fee. Carroll also questioned whether Sioux City is in compliance with federal requirements regarding removal of PCBs and mercury. Kibbie encouraged parties to work out differences and come to a point of agreement.

Motion to delay--

Carroll moved a 70-day delay be imposed on ch 118.

Motion carried

The motion carried. The delayed rules will appear on the March agenda.

ARC 1192B

No action on amendments relating to open burning variance and construction permits.

LABOR SERVICES DIVISION

Keri Kelsey and Dennis Wilson represented the division. Other interested parties included Melissa O'Rourke and Jeff Rehder of Peace Lutheran Church in rural Sioux Center, Iowa; Representative Alons; Jeff Schumacher of Schumacher Elevator Company; and Gregg Rogers of Elevator Industry Work Preservation Fund.

Special review

Bradley requested a review of 72.19 regarding limited use/limited application elevators. Kelsey gave an overview of the history of the rule; requirements in other states; and differences between residential elevators, limited use/limited application (LULA) elevators, and commercial elevators. Kelsey stated that if churches had already purchased a residential elevator or could show undue hardship, the department would grant them a waiver.

O'Rourke related the experience of Peace Lutheran Church in its renovation project. The church had decided to replace its chair lift with an elevator and selected the type of elevator used by other churches in the area. When the church building committee became aware of the rule change, they requested a waiver due to the increased cost of installing a LULA elevator. A hearing was held, and the waiver was eventually denied.

Rehder stated that Representative Alons advised the church building committee to bring their concerns to the ARRC. Bartz requested a copy of the request for a waiver and the letter of denial. Johnson asked that copies of all correspondence with the department be included.

Kelsey reported that adoption by reference of the 2000 elevator code and the LULA standard was published under Notice of Intended Action October 18, 2000; the rule was adopted February 13, 2001, and became effective April 11, 2001. Gentry concurred with Bartz's recommendation that small rural churches could petition the department for a rule change.

Rogers reported that ASME codes do not allow for installation of residential elevators in churches and only five states have not adopted ASME codes. Schumacher reported that LULA elevators are safer and more usable than residential-type elevators.

PUBLIC HEALTH DEPARTMENT

Barb Nervig, Sherry Frizell, and Cortland Lohff represented the department

ARC 1178B

No questions on amendments to ch 1 which incorporate a comment from the Iowa Medical Society.

ARC 1179B

No questions on amendment of the reportable disease listing in subrule 1.3(1).

Public Health Department (continued)

ARC 1176B No questions on maternal death rules which incorporate a change suggested by the committee.

ARC 1174B No questions on amendments to ch 126 relating to the state medical examiner.

ARC 1177B Ch 127 pertains to county medical examiners. Frizell outlined the following changes from the Notice: The weight of a fetus unattended by a physician was changed to 350 grams in accordance with national standards of reporting; snowmobiles were added to the types of accidental deaths for which an autopsy is recommended; paragraph 127.7(2)"d" and a definition of medical care provider were added. Frizell will refer to Dr. Gooden the question raised by Bartz about whether autopsy would be recommended in the case of boat and jet ski accidents.

ARC 1173B No questions on correction of address in 174.5.

STATE PUBLIC DEFENDER Mark Smith and Tom Becker represented the department.

ARC 1209B No action on proposed amendments to chs 1, 2, 4, 6, 7, and 10 to 13.

PERSONNEL DEPARTMENT Michael Prey represented the department.

ARC 1167B No action on the 2002 retirement incentive.

PUBLIC SAFETY DEPARTMENT Mike Coveyou and Jen Worthington represented the department.

ARC 0566B At the request of the department, amendments relating to fire safety in bed and breakfast inns were placed under session delay in June 2001. Coveyou detailed how issues have been worked out for new and existing facilities and reported that no adverse reaction has been received. The department did not approved the request for solid fuel burning fireplaces in sleeping rooms and upheld the requirement for two exits at each level. Coveyou clarified that bed and breakfast homes with four or fewer sleeping rooms are not subject to these rules. Coveyou asked that the session delay be lifted, effective February 1, when amendments to be published January 23, 2002, become effective. Metcalf requested that the department follow up with an additional contact to the parties that raised the initial concerns. The session delay remains in place since no motion was made to lift the delay.

GENERAL SERVICES DEPARTMENT Mike Coveyou, Doug Mollenhaur and Dennis Merritt represented the department of public safety. Carol Stratemeyer and Patti Schroeder represented the department of general services. Laverne Schroeder was also present.

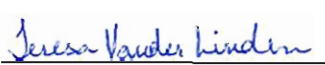
Special review Coveyou distributed proposed language regarding weapons on the Capitol complex. Coveyou pointed out that definitions of "dangerous weapon" and "offensive weapon" were taken from the Code of Iowa; and "members of the public" does not apply to employees or officials of the government. There was considerable discussion about building access and security; the effect of the rules on employees, lobbyists, school groups and others visiting the Capitol; and the possibility of accommodating briefcases and laptop computers that may need to be left in the building. Questions were also raised about the effect of the rules on others in buildings in which state offices are leased. Johnson requested that security have the ability to search any suspicious or unattended bag, not just those left overnight. Coveyou offered assurance that a Notice of Intended Action would follow the emergency filing, and public comments received would be taken into consideration prior to adoption of the final rules.

Schroeder voiced concerns about the effect of the rules on leased spaces and limiting applicability of the rules to members of the public. Johnson asked that the emergency rule be limited to the Capitol complex, not including leased space.


Adjourn The meeting was adjourned at 3:25 p.m.

Respectfully submitted,


Kathleen K. Bates


Teresa VanderLinden

APPROVED:


Chair Merlin E. Bartz