

MINUTES OF THE SPECIAL MEETING OF THE

ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of meeting: The special meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, August 3, 1999, in House Committee Room 1, State Capitol, Des Moines, Iowa.

Members present: Representative Janet Metcalf, temporary chair; Senators Merlin E. Bartz, Patricia M. Harper, H. Kay Hedge, John P. Kibbie, and Sheldon Rittmer; Representatives Clyde Bradley, Danny Carroll, and Minnette Doderer. Representative Geri Huser was excused.

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

Convened •Chair Metcalf convened the meeting at 9:35 a.m.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Jake Wakefield, Robert L. Cox, John Whipple and Maury Wills represented the department.

ARC 9200A Proposed ch 47 establishes organic standards and a certification program.
•Wills responded to Metcalf that these rules are significantly different from previous rules. Five public hearings will be held. The department has mailed the proposed rules to organic producers and press releases to the media.

ARC 9202A Wakefield summarized public comments on proposed amendments to ch 68, dairy.
•At Bradley's request, Wakefield outlined the procedures followed when milk does not meet standards, including producer and industry field representative notification.

ARC 9096A No questions on 22.10 pertaining to apiary.

ARC 9161A Ch 49 pertains to bulk dry animal nutrients.
•Whipple explained to Carroll and Kibbie that owners of livestock may voluntarily be licensed and register the product with the department. Those purchasing the product must report to the department the tonnage and the acreage applied. Whipple clarified the difference between manipulated product registered under chapter 200 and bulk product under chapter 200A.

PUBLIC HEALTH DEPARTMENT Donald A. Flater, Jill France and Jennifer Hart represented the department.

ARC 9203A No action on amendments pertaining to nuclear pharmacists and nurse practitioners.

ARC 9222A Proposed ch 107 establishes a mutual consent voluntary adoption registry.
•In response to Doderer, France explained that prior to this time a court order was the only vehicle by which sealed vital records could be opened.

REVENUE AND FINANCE DEPARTMENT Carl Castelda, Harry Griger and Gene Eich represented the department.

ARC 9229A Proposed ch 70 pertains to replacement tax and statewide property tax.
•Castelda advised Carroll that the tax would be effective for the property tax assessment year beginning January 1, 1999, which is collected in September of 2000 and March of 2001. Utilities will receive notification by August 30, 2000.
•Responding to Bradley, Eich stated that the replacement tax is intended to be revenue-neutral and for three years local governments and school districts will receive the same amount that they had received under property tax. If the replacement tax generates less than the property tax, the utilities will be required to make up the difference.
•Castelda agreed to provide Metcalf a chart to illustrate implementation of the tax.

ARC 9228A No questions on amendment to 18.5 regarding sales tax obligation of independent contractors doing business with a governmental entity.

ARC 9191A Subrule 18.20(5) was amended to provide a sales tax exemption for charges paid to a provider for access to an on-line computer service. Castelda clarified for Royce that other communication services remain subject to tax.

ARC 9192A No action on inheritance tax amendments to chs 86 to 89.

INSPECTIONS AND APPEALS DEPARTMENT Rebecca Walsh, Judy Harrison and Sherry Hopkins represented the department.

ARC 9224A Proposed amendments to chs 30 to 32 and 43 implement the 1997 edition of the USDA Model Food Code.
•Metcalf was informed that 31.7(2)"a" refers to four communicable diseases specified in the Food Code which employees are required to report to managers. Metcalf questioned the use of the words "nonpotentially hazardous."
•Doderer also challenged the use of the word "nonpotentially" and suggested that the requirement for clean outer garments be extended to all garments.

Inspections and Appeals Department (continued)

•Bartz asked about applicability of the prohibition on food prepared in a private home to 4-H food stands at county fairs and was informed that food must be purchased from an approved source and prepared at an approved site and may not be cooked at a private home and brought to the fair for sale. There is an exemption in the Code for nonprofit or civic organizations at one-day events.

PROFESSIONAL LICENSURE DIVISION Marge Bledsoe represented the division.

ARC 9196A No questions on massage therapist administrative procedure amendments.
 ARC 9225A No action on amendments to physical and occupational therapy rules.
 ARC 9226A No questions on podiatry administrative procedure amendments.
 ARC 9199A No questions on psychology administrative procedure amendments.
 ARC 9197A No questions on respiratory care administrative procedure amendments.
 ARC 9195A No questions on athletic training examiners administrative procedure amendments.
 Motion Metcalf moved unanimous consent to lift the 70-day delay imposed at the July meeting on ARC 9102A concerning social work examiners.
 Motion passed The delay was lifted.

CIVIL RIGHTS COMMISSION Tim Cook represented the commission. Lorelei Brewick represented the Iowa Manufactured Homes Association.

ARC 9206A Amendments to ch 9 pertain to discovery orders in the investigation of alleged unfair discriminatory housing and real estate practices. After solicitation of comments from affected constituent groups, the commission received a suggestion from the legal counsel of the Iowa Manufactured Homes Association for the commission to advise parties of their rights when issuing discovery orders.
 •Cook told Metcalf that although the commission does not specify a requirement in the rules, the letter included with the notice of administrative closure will advise parties of their rights. Royce suggested the commission commence a rule making to include such a requirement; Cook agreed to comply with the suggestion.

ECONOMIC DEVELOPMENT DEPARTMENT Mary Lawyer, Roselyn Wazny, Nancy Landess, Mike Fastenau and Melanie Johnson represented the department.

ARC 9184A A proposed amendment to 11.3(10) would allow apprenticeship programs, in addition to postsecondary institutions, to receive funds in the certified school to career program.
 ARC 9183A Proposed ch 20 pertains to the accelerated career education program.
 •Lawyer reported to Bradley that although equipment is not included in the definition of infrastructure, the department is engaged in discussions with Master Builders Association regarding the installation of equipment.
 ARC 9179A No questions on ch 24 pertaining to the emergency shelter grants program.
 ARC 9181A No discussion on proposed ch 25 concerning the housing fund.
 ARC 9180A No action on ch 29 pertaining to the homeless shelter operation grants program.
 ARC 9186A The recreation, environment, art and cultural heritage initiative (REACH)—community attraction and tourism development program is established in ch 65. Landess set out the three components of the program and explained that the rules were published both under Notice of Intended Action and Filed Emergency because of the tremendous interest in the program and the number of projects ready to proceed during this construction season.
 •Metcalf inquired about the award made to Arnolds Park. Landess reported that the state invested \$1 million in an \$8 million project, the scope of which includes more than Arnolds Park.
 •Landess told Bartz that the department distributed 500 applications and, of the four applications which have been received, one has been funded, review of another has been completed and review of the other two is commencing. Applications are reviewed by staff on an ongoing basis with recommendation to the director, who makes the final decision.
 •Harper asked about the review process and was informed that the division of tourism is reviewing all applications in partnership with the division of business development and the community and rural development division.
 •Landess responded to Rittmer that the department recognizes that demand for funding will exceed the appropriation and that some projects may be funded with loans rather than grants.
 •Fastenau indicated to Metcalf that applications for most of the business finance programs are handled on an ongoing basis.
 ARC 9187A No questions on ch 72, marketing logo.

ENVIRONMENTAL PROTECTION COMMISSION Jim Humeston represented EPC.

ARC 9208A

Analysis requirements for methyl tertiary-butyl ether (MTBE) in soil and groundwater samples are established in 135.19.

•Bradley was informed that MTBE sampling has been added to the commission's ongoing sampling program at public water supplies that get their water from bedrock aquifers.

•In response to Hedge's inquiry about MTBE usage in Iowa, Humeston responded that it was initially used in the '70s and most suppliers have switched to ethanol. Although community remediation projects have indicated the presence of MTBE, the analytical method used could have resulted in false readings. Humeston added that EPA has issued a taste and odor advisory, but health effect information is not yet available.

LAW ENFORCEMENT ACADEMY Gene Shepard represented the academy.

ARC 9178A

Following discussion about the incorporation of an exception to a rule within the rule, no action was taken on proposed amendments to ch 2.

•Doderer voiced opposition to this individual exception to the residency requirement.

•Carroll, Kibbie and Hedge supported this provision which gives local law enforcement authorities discretion to make recommendations to the academy.

Committee Business

The minutes of the July meeting were approved.

The next meeting will be held September 15, 1999.

A videotape on use of aftermarket parts will be shown prior to the start of the September meeting.

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION Joann Callison represented the division.

ARC 9201A

No action on amendments to ch 6 pertaining to regional advisory boards.

WORKFORCE DEVELOPMENT DEPARTMENT

Joe Bervid and Dan Anderson represented the department. Larry Bryant, chief ALJ of the department of inspections and appeals, was also present.

ARC 9221A

Subrule 24.26(14), which would have allowed unemployment compensation for voluntary quits due to domestic violence at or near the workplace, was rescinded in response to the objection imposed by the ARRC.

ARC 9215A

According to the department's rules concerning contested case procedures, 26.2 to 26.17, cases in which the agency is a participant are being transferred to the division of administrative hearings of the department of inspections and appeals, whereas cases in which the agency is not a party will be retained.

Bryant, citing exemptions specified in 1998 Iowa Acts, chapter 1202, only for corrections department and workers' compensation hearings, opposed the rules and suggested transfer of the ALJs and support staff of the WDD appeals section to the department of inspections and appeals. Bryant asserted that the department of workforce development, although not necessarily a named party, is a party in interest in unemployment cases.

•Rittmer expressed the view that the governor's office needs to be involved in the resolution of this issue. Gentry concurred.

Motion to delay

Kibbie moved a 70-day delay be imposed on ARC 9215A.

Motion carried

The motion to delay ARC 9215A passed.

PERSONNEL DEPARTMENT Clint Davis represented the department.

ARC 9104A

No questions on proposed general amendments.

PUBLIC SAFETY DEPARTMENT

Mike Coveyou, Larry Mullen and Terry Hoil represented the department.

ARC 9218A

Amendments to ch 8 affect the Iowa sex offender registry.

•Coveyou responded to Bradley that when a risk assessment finds that the person presents an imminent threat to public safety, notification can proceed prior to the opportunity for appeal to the agency that conducted the risk assessment.

•Bartz was informed that a person remains on the registry for ten years.

ARC 9220A

Amendments to ch 11 pertain to mandatory photographing and fingerprinting of juveniles charged with offenses other than simple misdemeanors.

•Coveyou agreed with Carroll that 11.19(4)"c" should be clarified.

ARC 9216A

No questions on rescission of ch 21, state medical examiner, which is now under the department of public health.

INSURANCE DIVISION

Susan E. Voss represented the division and Merle Pederson represented Principal Financial Group.

ARC 9213A

No action on amendments pertaining to health insurance.

ARC 9204A

Proposed ch 43 is based on an NAIC model. Pederson explained that this chapter has been adopted in 25 states, and these reserve tables will be legally recognized by the IRS when one more state adopts the model.

AUGUST 3, 1999

EDUCATIONAL EXAMINERS BOARD Anne Kruse represented the board.

- ARC 9223A Due to numerous comments in opposition to the rules, Notice pertaining to the associate counselor license is terminated and counselor competencies established by the board in agreement with practitioners will be proposed.
- ARC 9205A No questions on the two-year counseling exchange license, 14.26 to 14.34.
- ARC 9162A Proposed ch 21 pertaining to authorization of behind-the-wheel driving instructors is the result of a cooperative effort with the department of transportation.
- Committee business** Royce reported on the recommendation of the governor's regulatory process, rulemaking and rules review team concerning adoption of a rule which would give agencies authority to grant discretionary waivers when an individual can show that the rule would impose an unreasonable burden, the waiver would be in the public benefit and no one's legal rights would be adversely affected. The rule would also require agencies to grant a waiver when an individual can show that no purpose of the rule would be served. In general, the state bar association supports such a rule and the attorney general's office opposes it. Gentry reported that most of the concerns raised so far pertain to the mandatory waiver.
- Metcalf provided some background on previous attempts to impose uniform waiver provisions.
 - Gentry concurred with Hedge that many agencies already provide waivers, but stressed that uniformity is an issue.
 - Rittmer voiced concern that waivers could be granted unfairly.
 - Metcalf expressed concern about any measure that would circumvent a co-equal branch of government and the role of the ARRC.

EDUCATION DEPARTMENT Bob Wills, Sandra Renegar and Ann McCarthy represented the department. Linda Goeldner represented the Iowa School Nurses Association.

- ARC 9212A Amendments to ch 12, concerning accreditation standards, are adopted.
- In response to Kibbie, Wills stated that districts are required to report progress on annual goals to the school district advisory committee. Reports do not need to be made concerning subgroups of fewer than ten because of the unreliability of statistical information and the difficulty of protecting the identity of individuals in such small groups.
 - Doderer raised a concern about varying methods of administering the Iowa Test of Basic Skills. Wills emphasized that the instructions regarding administration of the test are very specific and teachers are encouraged to make accommodations.
- Goeldner repeated the concerns of the Iowa School Nurses Association.
- Bartz expressed discomfort about references to socio-economic status in the rules. McCarthy responded that, under the federal Title I program, the department is required to report test scores according to gender, race, students with disability, and socio-economic status.

ARC 9130A Standards for practitioner preparation programs are proposed in ch 79.

TREASURER OF STATE No representative appeared for review of ARC 9210A.

Adjourn The meeting was adjourned at 3:15 p.m.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair Janet Metcalf