

**MINUTES OF THE SEPTEMBER 2010 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, September 14, 2010, in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Representative Marcella Frevert, Chair, and Senator Wally Horn, Vice Chair; Senators Merlin Bartz, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives David Heaton, Tyler Olson, Nathan Reichert, and Linda Upmeyer were present.
- Also present: Joseph A. Royce and Michael Duster, Legal Counsel; Stephanie A. Hoff, Acting Administrative Code Editor; James Larew, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.
- Convened Rep. Frevert convened the meeting at 9:30 a.m.
- Fiscal overview** Sue Lerdal presented the LSA fiscal report.
- PHARMACY BOARD** Terry Witkowski represented the board. Other interested parties included David Adelman on behalf of the Iowa Pharmacy Technician Coalition.
- ARC 9009B Amendments to chs 3 and 5 relate to pharmacy technicians. Ms. Witkowski reported that, since the emergency filing, comments have been received regarding the duties of uncertified pharmacy technicians. The board has delayed the enforcement of the rule and has notified affected parties of a public hearing on November 1, 2010, to receive comments. Until the board receives comments and reconsiders the rule, uncertified pharmacy technicians may perform the duties stipulated in the rule as it appeared prior to the emergency rule making. Sen. Seymour commended the board for reconsidering the rule. Discussion pertained to the reason that affected parties were not aware of the changes in the rule regarding the duties of uncertified pharmacy technicians; the reason and statutory authority for filing emergency; the procedure to be followed for changing the rule; and the rationale for the changes in uncertified pharmacy technicians' duties.
- Mr. Adelman asserted that 2010 Iowa Acts, House File 2531, extended the deadline for national certification for pharmacy technicians to December 31, 2013, but did not authorize the board to limit the duties of uncertified pharmacy technicians. He added that the changes were not well publicized and requested that the committee object to the rule for the record and that the board withdraw the rules and rewrite them.
- Motion to object Rep. Olson moved an objection to 3.22(3) regarding uncertified pharmacy technicians on the grounds that it is beyond the authority delegated to the board.
- Motion carried On a unanimous voice vote, the motion carried.
- ARC 8989B Rule 10.38 pertains to temporary designation of controlled substances. The rule identifies synthetic cannabinoids and places them into Schedule I of the Iowa uniform controlled substances Act (CSA). Subsequent to the filing of this rule making, the board's authority to place these substances under CSA was questioned because the authorizing statute refers specifically to action already taken by the federal Drug Enforcement Agency (DEA). DEA, however, has not yet taken action on these products, and the board has in the meantime rescinded 10.38. Sen. Courtney commented that the emergency rule making was justified and inquired about the nature of the products. When asked by Sen. Seymour whether federal action is contemplated, Ms. Witkowski confirmed that DEA is in the process of taking action on these substances.
- ARC 9000B Ms. Witkowski stated that the board has the authority under the Iowa imitation controlled substances Act to designate imitation controlled substances. Thus, the board has adopted 10.41, which pertains to designation of synthetic cannabinoids as imitation controlled substances and restricts their sale, distribution and possession.
- Discussion pertained to the nature, marketing and sale of cannabinoids and the penalties for continuing to sell them; whether further legislation regarding these substances is needed; the enforcement of the rule, which is based on the possession of these substances by an individual; and the penalties for possession of these substances.

Pharmacy Board (cont'd)

Move to refer Rep. Reichert moved a general referral regarding whether synthetic cannabinoids should be legislatively classified as controlled substances subject to Iowa Code chapter 124.

Motion carried On a unanimous voice vote, the motion carried.

EDUCATION DEPARTMENT Carol Greta represented the department.

ARC 9013B No questions on 43.25, 43.34, or 43.38 regarding pupil transportation.

ARC 9014B Rules 68.1 to 68.7 and 68.11 to 68.15 pertain to public charter and innovation zone schools. Sen. Bartz questioned Item 11 regarding a misstatement of the statute in the rule.

ARC 9015B No questions on 83.2, teacher and administrator quality programs related to beginning administrators.

ARC 9016B Rule 97.2 pertains to supplementary weighting. Ms. Greta will provide clarification to the committee about Item 2 pertaining to ineligibility.

ARC 9017B No questions on amendments to ch 98 pertaining to financial management of categorical funding. Ms. Greta will forward to the committee correspondence with one commenter regarding matters of policy to be determined by the legislature in statute, not by the department in rule.

ENVIRONMENTAL PROTECTION COMMISSION Christine Paulson, Marnie Stein, Wayne Gieselman, Gene Tinker, Randy Clark and Lee Osborn represented the commission. Commission Chair Charlotte Hubbell was also present. Other interested parties included John Kallen on behalf of MidAmerican Energy, Julie Smith on behalf of the Iowa Association of Municipal Utilities, Terry Harrmann on behalf of Alliant Energy, Neila Seaman on behalf of the Iowa chapter of the Sierra Club, Natalie Snyders on behalf of Iowa Citizens for Community Improvement (Iowa CCI) and Iowa CCI members Garry Klicker, Jim Yungclas, Raymond Johnston, Jack Troeger, Kevin Shilling, Barb Kalbach, and Jim Walters.

ARC 8999B Amendments to chs 22 and 33 are intended to ensure that sources of greenhouse gas (GHG) emissions in Iowa are regulated in the same manner and at the same level as specified in new federal regulations for GHG emissions. The proposed rule making amends the state's Title V and PSD air quality rules for GHG emission regulation so that the state's rules will match the federal Tailoring Rule. Discussion pertained to the state's authority vs. EPA's authority for the stringency and administration of the rules, how other states are addressing the adoption of the federal regulations, a provision for automatic rescission if EPA vacates the rule, the types and numbers of and costs to affected facilities, and fees.

Mr. Kallen expressed support for the rules but requested an automatic rescission provision, establishment of what constitutes best available control technology (BACT), and clarification of language regarding emissions subject to regulation. Ms. Smith voiced support for the rules and appreciation for DNR's outreach but expressed concern about the application of emissions limits on small municipal utilities, how to make compliance easier for small sources, and the uncertainty created by pending litigation. Mr. Harrmann commended DNR's work with stakeholders and urged that the automatic rescission provision be included. Ms. Seaman expressed support for the rules.

Motion Sen. Kibbie moved an informal regulatory analysis on ARC 8999B.

Motion carried On a unanimous voice vote, the motion carried.

ARC 8998B Amendments to ch 65 pertain to animal feeding operations. Mr. Gieselman summarized the amendments, which reflect statutory requirements pertaining to open feedlot stockpiles, dry manure stockpiling, application of manure on snow-covered or frozen ground, and dry bedded confinement feeding operations.

Mr. Gieselman noted four issues and the action taken on each based on public comment: the definition of "residence," which has not been changed; the amount of time required for placement of tile sleeves (or covers) on surface intakes after liquid manure is first applied on frozen ground, which has been changed to not earlier than two weeks, as in statute; the definition of "common management," which has been changed to conform to statute; and the addition of language which provides that the department will accept insufficient manure storage capacity as a reason for emergency application during the winters of 2010-2011 through 2014-2015.

Environmental Protection Commission (cont'd)

Sen. Kibbie clarified that the five-year extension for establishment of sufficient manure storage capacity pertains to a small group of confinement dairy producers. Rep. Olson reviewed the chronology of legislation and rule making and examined whether allowing insufficient manure storage capacity as a reason for emergency manure application for five years is outside statutory authority. Rep. Heaton inquired about the enforcement authority of the department after it receives notification from a producer of the application of manure on frozen or snow-covered ground. Rep. Frevert explored the circumstances of the commission's vote to allow the five-year extension, encouraged citizen participation, and expressed confidence that the process of finding solutions will continue.

Ms. Snyders stated that the five-year exemption will allow producers to spread manure on frozen ground instead of planning for proper disposal of manure every year. Mr. Klicker asserted that spreading manure on frozen ground is a bad practice that affects water quality and that the five-year extension undermines the intention of the statute. Mr. Yungclas requested that the committee object to the portion of the rule that allows a five-year extension to operators to spread manure on frozen or snow-covered ground. Mr. Johnston asserted that a responsible operator would plan for manure storage. Mr. Troeger advocated for the preservation of Iowa's land and urged the committee to oppose the five-year extension. Mr. Shilling asserted that the bad practice of spreading manure on frozen ground will only be perpetuated as a result of the five-year extension. Ms. Kalbach summarized her written comments and requested that the committee object to 65.3(4)"c"(1). Mr. Walters expressed opposition to the five-year extension and encouraged the care of Iowa's land and waters.

ARC 9011B No action on amendments to ch 135, which revise the risk-based evaluation process for water lines; provide for "no action required" status when an institutional control is implemented and the stability of the contaminant plume at a low-risk LUST site is demonstrated; and allow for the department to require confirmation sampling.

NATURAL RESOURCE COMMISSION Tamara Mullen represented the commission.

Special Review At its June 8, 2010, meeting, the committee imposed a 70-day delay on ARC 8815B pertaining to amendments to ch 44 that require a permit and impose a \$25 fee for each special event held. The committee urged the commission to work with affected parties and to consider an option for a season application. Ms. Mullen reported that meetings were held with stakeholders, but no agreement could be reached. Through the emergency rule-making process, the commission will rescind the amendments to ch 44 and will adopt in lieu thereof ch 44 as it appeared prior to this rule making. The commission will at a later date resubmit special event rules.

PUBLIC HEALTH DEPARTMENT

ARC 8981B, ARC 8982B, ARC 8980B, and ARC 8983B were excused from review at this meeting.

PUBLIC SAFETY DEPARTMENT Mike Coveyou and Stuart Crine represented the department. Other interested parties included Michael Triplett on behalf of the Iowa Alliance of Surety Companies.

ARC 9032B Ch 276 pertains to the licensing of fire protection system installers and maintenance workers. Mr. Coveyou reported that public comment focused on the bonding and insurance requirements. Discussion pertained to the adequacy of liability insurance vs. surety bonds; bonding of certified contractors vs. bonding of employees of that contractor; the importance, costs and requirements of surety bonds; and the appropriateness and fairness of an individual bond.

Mr. Triplett contrasted liability insurance with surety bonds and asked that the committee delay the rule for 70 days.

Motion to delay
and to refer

Rep. Reichert moved a 70-day delay of 276.3(1) and a general referral of the need for surety bonds as part of the licensing requirements for licensees.

Motion carried

On a unanimous voice vote, the motion carried.

HUMAN SERVICES DEPARTMENT

ARC 8994B, ARC 9019B, ARC 8990B, ARC 8992B, ARC 9020B, ARC 8993B, ARC 8995B, ARC 9026B, and ARC 9027B were excused from review at this meeting.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT

ARC 9012B was excused from review at this meeting.

Committee business The minutes of the August 16, 2010, meeting were approved.
The next meeting was scheduled for Tuesday, October 12, 2010, at 9:30 a.m.
Rep. Upmeyer requested that a special review regarding required background checks for volunteers be placed on the agenda for the October meeting.

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

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Marcella Frevert

Vice Chair Wally Horn