

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Thursday, June 11, 2009
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Tom Fischer, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Tom Fischer, John M. Andrist, Layton W. Freborg, Jerry Klein, Tracy Potter; Representatives Randy Boehning, Duane DeKrey, David Drovdal, Rod Froelich, Kim Koppelman, Blair Thoreson, Dwight Wrangham

Members absent: Representatives Chuck Damschen, Mary Ekstrom, Chris Griffin, Jon Nelson, Louise Potter

Others present: See [Appendix A](#)

It was moved by Representative DeKrey, seconded by Representative Thoreson, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

AGRICULTURE COMMISSIONER

Chairman Fischer called on Mr. Wayne Carlson, Program Manager, Livestock Services, Department of Agriculture, for testimony ([Appendix B](#)) relating to July 2009 rules of the Agriculture Commissioner.

Senator Klein said the state has experienced a loss of dairy producers and asked whether the dairy rules being adopted will put dairy farmers out of business. Mr. Carlson said it is true that the state has lost dairy producers recently, but he said the expectation of the department is that these rules will get some operators to improve their operations to avoid getting shut down.

Representative DeKrey asked whether the department still does a somatic cell count for dairy operations. Mr. Carlson said the department does monthly sampling and somatic cell count, bacteria count, and other testing.

Representative DeKrey said the state is trying to get more people into dairy production and he shares Senator Klein's concern about more restrictive regulations putting dairy producers out of business. Mr. Carlson said the department appreciates that concern and does not believe the rules will have that effect. He said there were no objections received by the department during the rulemaking process.

Senator Andrist asked if dairy producers must be licensed. Mr. Carlson said producers must be licensed. Senator Andrist asked whether truckdrivers hauling dairy products must be licensed. Mr. Carlson said drivers must be licensed. Senator Andrist asked whether these licensing requirements are imposed by rules of the Agriculture Commissioner or state

statutes. Mr. Carlson said licensing requirements are imposed by state statutes and federal law. Senator Andrist asked whether the Agriculture Commissioner has reviewed the rules since taking office. Mr. Carlson said he has discussed the rules with the Agriculture Commissioner and the commissioner did not express any significant concerns.

Representative Froelich said he discussed the dairy rules with Mr. Nathan Boehm, Chairman, State Board of Animal Health, and dairy producer, and Mr. Boehm said the rules have been in process for several years and he believes the rules are acceptable and needed to meet federal standards.

Senator Andrist asked whether these rules will increase the workload for the Agriculture Department. Mr. Carlson said the rules should actually make inspections easier to administer.

Senator Potter asked several questions regarding the safety to consumers of raw milk cheese. Mr. Carlson said sale of raw milk cheese is not allowed by law and most recalls nationwide regarding dairy products have been for products with unpasteurized milk. He said the United States Department of Agriculture standards require pasteurization of milk for use in cheese.

Senator Klein asked why it was necessary to adopt federal standards on meat inspection. Mr. Carlson said the rules in place were effective through an earlier date and the federal standards have been updated. He said it is necessary to adopt the federal standards effective July 1, 2009, so the state standards are equivalent to current federal standards.

Committee counsel asked whether state enforcement of meat inspection rules is dependent on the contents of rules adopted by the state. Mr. Carlson said that is correct and the Agriculture Department may only enforce state rules that have been adopted by the Agriculture Commissioner. He said the Agriculture Department cannot enforce federal rules so it is necessary to update state rules.

DEPARTMENT OF FINANCIAL INSTITUTIONS

Chairman Fischer called on Mr. Timothy Karsky, Commissioner, Department of Financial Institutions, for testimony ([Appendix C](#)) relating to July 2009 rules of the department.

Mr. Karsky said the rules are primarily related to loan production offices and deposit production offices.

He said a loan production office is essentially a bank branch limited to loan-related activities and which is not a full-service location. He said the rules on loan production offices mirror the latest policies of the Comptroller of the Currency. He said deposit production offices are allowed by the rules of the Comptroller of the Currency, which means deposit production offices are allowed for national banks but not state-chartered banks. He said adoption of these rules by the state will allow state-chartered banks to establish deposit production offices.

STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Chairman Fischer called on Mr. Clifford Keller, Executive Secretary, State Board of Registration for Professional Engineers and Land Surveyors, for testimony ([Appendix D](#)) relating to July 2009 rules of the board.

After reviewing his testimony, Mr. Keller said setting of monuments for surveys of easements will no longer be necessary unless the easement duration is five years or more. He said this rule change will nearly eliminate the requirement for a survey in acquisition of easements. He said the regulatory analysis attached to his testimony indicates that the rule change could result in saved survey costs of thousands of dollars per mile of easement on a single project.

Representative DeKrey asked whether the existing rules allow surveyors to use common sense on when markers are required. Mr. Keller said these rules would not alter the current situation regarding surveys when property is sold. Mr. Lyle Kirmis, legal counsel for the board and special assistant Attorney General, said existing law and rules would require a surveyor to set markers for boundaries of property transferred unless the job is so simple that a surveyor would not be required.

DEPARTMENT OF TRANSPORTATION

Chairman Fischer called on Ms. Linda Butts, Deputy Director, Driver and Vehicle Services Division, Department of Transportation, for testimony ([Appendix E](#)) relating to July 2009 rules of the department.

Senator Klein asked whether the penalties provided by these rules are now consistent with federal provisions. Ms. Butts said the amended rules are consistent with federal provisions.

Senator Potter asked when an out-of-service order is used. Ms. Butts said if alcohol is detected for a driver or equipment violations are found, an out-of-service order will be entered.

INSURANCE COMMISSIONER

Chairman Fischer called on Ms. Melissa Hauer, General Counsel, Insurance Department, for

testimony ([Appendix F](#)) relating to July 2009 rules of the Insurance Commissioner.

Ms. Hauer said the rules relate to Medicare supplement insurance policies. She said these rules are required by federal law and without these rules changes, the state will not be allowed to regulate Medicare supplement insurance. She said the rules changes are based on National Association of Insurance Commissioners (NAIC) model regulations. She said the Insurance Commissioner accepted suggestions offered from some commenters and adjusted rules accordingly.

Representative Froelich asked how the rules can be required by federal law and adjusted after comments without violating the federal requirements. Ms. Hauer said under the NAIC model there are some optional rules provisions allowing a choice of complying provisions. She said in some instances, commenters suggested the option not chosen by the department and the department made the suggested changes.

Representative Koppelman said federal requirements are in place that allow the Insurance Commissioner options in adoption of complying rules. He said the committee does not have information on what choices were available and why the choices made were chosen. Ms. Hauer said a summary could be provided of the options that were available and the options that were chosen.

Senator Potter said some of the plans authorized by previous law would be eliminated by the federal and state rules changes and asked whether new products will be available. Ms. Hauer said new products will be available and requested Mr. Michael Fix, director of Life and Health Insurance and actuary for the Insurance Department, to provide information on the changes. Mr. Fix said Plans H, I, J, and high-deductible Plan J are eliminated. He said prescription drug benefits were removed from these plans. He said Plan E is also being eliminated because after changes it ended up being the same as Plan D. Senator Potter asked if the rules cover how companies will be allowed to approach customers with new plans to replace plans being eliminated. Mr. Fix said the rules do cover those situations.

STATE DEPARTMENT OF HEALTH

Chairman Fischer called on Ms. Bridget Weidner, Hospital Program Manager, Division of Health Facilities, State Department of Health, for testimony ([Appendix G](#)) relating to July 2009 Medical Records Services rules of the department.

COMMITTEE DISCUSSION

Senator Andrist said the committee should hold over consideration of the Agriculture Commissioner's dairy rules to determine whether the new Agriculture Commissioner has had time to review those rules and whether the commissioner supports them. He said information also should be obtained on the individuals

involved in the dairy industry subject to licensing requirements, with information on whether the licensing requirements are imposed by state or federal law or by administrative rules. **It was moved by Senator Andrist, seconded by Senator Potter, and carried on a roll call vote that the dairy rules of the Agriculture Commissioner be carried over for consideration at the next meeting.** Senators Fischer, Andrist, Freborg, Klein, and Potter and Representatives Boehning, DeKrey, Drovdal, Koppelman, Thoreson, and Wrangham voted "aye." Representative Froelich voted "nay."

It was moved by Representative DeKrey, seconded by Representative Koppelman, and carried on a voice vote that the meeting be adjourned. Chairman Fischer adjourned the meeting at 12:00 noon.

John Walstad
Code Revisor

ATTACH:7