

**MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Time of meeting:** The regular meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, November 9, 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, Minnette Doderer, and Geri Huser.
- 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 9:03 a.m.
- ATTORNEY GENERAL** David Ferree represented the attorney general.
- ARC 9409A** No action on ch 34 which sets out 12 rights of property owners whose property may be condemned.
- HUMAN SERVICES DEPARTMENT** Mary Ann Walker, Marie Theisen, Elaine Monaghan, Anita Smith, Nancy Thoma and Terri Pollard represented the department.
- ARC 9424A** No questions regarding proposed amendments to ch 1 pertaining to departmental organization.
- ARC 9381A** Proposed 75.1(39) would allow Medicaid coverage for eligible working individuals with disabilities.
•In response to Kibbie's inquiry, Monaghan estimated 100 individuals would be added by March 1, 2000, and 400 by FY 2001.
- ARC 9382A** No action on proposed amendment of 75.24(3)"b" concerning statewide average charges for nursing facility and PMIC care.
- ARC 9384A** Walker outlined changes made by DHS in order to obtain federal approval for the HCBS waiver, 77.41(3), 83.102, 83.107 and 83.110.
- ARC 9419A** Amendments to ch 86, HAWK-I program, are identical to the Notice. Walker reported that the department will initiate a rule making pertaining to allowance of depreciation as a cost of doing business.
•Smith explained to Bartz that a family may voluntarily exclude from Medicaid a child that has income which would disqualify the family.
•Bradley was informed that the department cannot require a social security number because the Title XXI legislation did not reference the section which requires a social security number. This creates a problem when the department makes a referral to the Medicaid program, which does require the number.
•Smith agreed to look into Huser's suggestion that the department ask for a waiver.
- ARC 9425A** Proposed 95.14 pertains to child support case closure.
•At the request of Doderer, Theisen agreed to clarify the language in the preamble.
- ARC 9385A** No questions on amendments to update form numbers and references in ch 150, purchase of service.
- ARC 9386A** No questions on proposed amendments to ch 185, rehabilitation treatment services.
- ARC 9238A** Due to a change in the statute, which was drafted by the department, employers are no longer required to report the date of withholding of child support payments. The session delay on 95.1 and 95.3 pertaining to date of collection was not lifted.
- EXECUTIVE ORDERS RELATING TO RULE MAKING** Royce summarized the four executive orders resulting from the recommendations of the regulatory review team.
•Metcalf reviewed the revisions to the administrative procedure Act that have been proposed in recent years, noting that the issue of waivers has been particularly contentious and that the executive order pertaining to waivers is more encompassing than provisions enacted by the legislature.
Gentry stated that the executive order upholds the view of the attorney general's office that agencies need to review their rules and determine where waiver provisions are appropriate. Further, agencies will be required to maintain a log of waivers requested and waivers granted.
•In response to Carroll's concern about the ability of agencies to accomplish the objectives of the executive orders within current budgets, Gentry stated that in March of 2000 agencies will be submitting their plans for implementation. Carroll asked that the March agenda include a review of those plans.
•Rittmer expressed concern about fairness in the granting of waivers.
•Hedge agreed with Bartz's observation that some people are more successful in accessing government and wondered if waivers would promote a need for legal advice and representation.

Executive Orders (continued)

- Kibbie suggested that a review of waivers granted might provide a mechanism for identifying rules that need to be revised.
- Huser was informed that no legislators or staffers from the House or Senate serve on the committee.
- Doderer requested a list of team members.

UTILITIES DIVISION Vicki Place and Don Stursma represented the board.

- ARC 9400A Proposed ch 9 pertains to restoration of agricultural lands during and after pipeline construction.
- Place responded to Bartz that even though the legislation exempted pipelines that have received Federal Energy Regulatory Commission authorization, they are generally in compliance with the rules.
 - Hedge inquired about abandoned easements and underground pipelines. Stursma responded that the law provides that an unused easement can revert to the landowner. The definition of construction includes removal of a pipeline, so the same restoration standards would apply; however, there is no requirement that pipelines be removed. Hedge stated that abandoned pipelines are often not marked.
 - Stursma informed Bradley that the county inspector is the enforcement agent for independent agreements worked out between the landowner and the pipeline company, and a dissatisfied landowner can contact the county inspector for remedial action or possibly civil action. Bradley asked the department to consider stating the landowner's rights specifically in the rules.

- ARC 9399A No questions on proposed amendments concerning payment agreements arranged by telephone and then mailed to the customer for signature.

VOTER REGISTRATION COMMISSION Bob Galbraith represented the commission.

- ARC 9431A The amendments relate to the statutory transfer of the voter registration program from the department of general services to the office of secretary of state.

WORKFORCE DEVELOPMENT DEPARTMENT Joe Bervid and Dan Anderson represented the department.

- ARC 9215A The 70-day delay on 26.2 to 26.17 concerning contested case proceedings has expired. ALJs handling unemployment hearings and related matters remain in DWD. Cases in which the department is a named party or a real party in interest are transferred, on a case-by-case basis, to the division of administrative hearings. To date, no positions have been transferred.

BLIND. DEPARTMENT FOR THE Karen Keninger represented the department.

- ARC 9428A No questions on proposed 10.8 pertaining to the dispute resolution process.

CIVIL RIGHTS COMMISSION Ron Pothast and Rick Autry represented the commission.

- ARC 9435A No action on proposed amendments to ch 9 pertaining to discovery procedures.

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

- ARC 9390A The amendment makes effective for this season a federal change which no longer requires postweld heat treatment of the entire anhydrous ammonia nurse tank.

- Whipple informed Bartz that this amendment allows more manufacturers to sell tanks in Iowa and allows a less expensive alternative when tanks need to be replaced.

- Wills told Kibbie that all dealer tanks and equipment are inspected annually.

- ARC 9389A Ch 47 pertains to organic certification.

- Rowland explained to Bartz that these rules are intended to be compatible with the national program which is being established. Wills added that all private and state programs will need to be accredited under the national program. Bartz asked the department to consider whether a definition for non-GMO might be necessary.

PUBLIC HEALTH DEPARTMENT Jennifer Hart and Mike Magnant represented the department. A concerned citizen, Jill Callahan Knoff, was also present.

- ARC 9412A The amendment to ch 15 requires soap at lavatories and showers in swimming pool facilities. Knoff stressed her concerns about disease and the need for soap.

- ARC 9415A No questions on amendments to the lead professional certification program.

- ARC 9417A No questions on proposed amendments to ch 70 pertaining to certification of lead inspector/risk assessor.

- ARC 9414A No action on amendments to 101.6 regarding transportation of dead human bodies.

- ARC 9410A No questions on ch 107, mutual consent voluntary adoption registry.

- ARC 9411A No questions on ch 138, trauma system evaluation quality improvement committee.

- ARC 9413A No questions on criteria for awards or grants, 176.2, 176.7.

- ARC 9418A No questions on amendments to ch 201 concerning organized delivery systems.

REVENUE AND FINANCE DEPARTMENT Carl Castelda represented the department.

- ARC 9433A No questions on proposed amendments to chs 5 and 6.
 ARC 9401A No questions on correction of references to conform with contested case rules.
 ARC 9432A No questions on 77.7 concerning pipeline valuation.
Committee business The minutes of the October meetings were approved.
 Meetings are scheduled for December 14 and January 4.

PUBLIC SAFETY DEPARTMENT Roy Marshall represented the department.

- ARC 9430A No action on amendment to conform 5.620(1) to the Code.
 ARC 9429A No action on requiring sprinklers in locked facilities.

EDUCATIONAL EXAMINERS BOARD Chris Scase and Gary Borlaug represented the board.

- ARC 9403A No questions on proposed ch 3 regarding declaratory orders.
 ARC 9404A No questions on proposed ch 4 pertaining to procedures for rule making.
 ARC 9405A No questions on proposed ch 11 concerning complaints, investigations and contested case hearings.
 ARC 9406A No questions on proposed amendments to ch 17 concerning renewal of licenses.
 ARC 9407A Borlaug reported that the amendments provide that any teacher or administrator that completes the 35 hours of DOT training can provide behind-the-wheel instruction. The department of transportation is in agreement with the board. Since driver education is widely taught in the summer, there is an ample supply of certified teachers to provide the instruction.

•Huser stated that it was not the understanding of the legislature that the instructor would have to be a certified teacher.

•Carroll concurred that the amendments exceed the intent of the legislature.

Motion to delay Doderer moved a 70-day delay be imposed on ch 21.

Substitute motion Kibbie asked to substitute a session delay.

Motion carried The substitute motion to delay ch 21 until the end of the next legislative session passed.

EDUCATION DEPARTMENT Ann McCarthy and Jim Clark represented the department.

- ARC 9376A No questions on proposed 26.2(2)"k," driver education final field test.
 ARC 9375A Clark detailed the department's efforts to inform the public and solicit comments on proposed special education rules, ch 41.
 •Clark responded to Carroll that the department does not believe the broadened definition of "other health-impairment" will increase the number of special education students in Iowa and added that not all students with disabilities require special education.
 Royce asked about expulsion limitations. Clark explained that students with disabilities can be expelled from school if it is determined that the behavior which caused the action was unrelated to the disability. If the behavior is attributable to the disability, the school must provide education in another setting.
 •Bradley reported that teachers have expressed widespread concern that mainstreaming of students with disabilities has resulted in teachers meeting the needs of one child to the exclusion of the others. Clark responded that teachers participate in the IEP process and need to raise those concerns to the IEP team.

ENVIRONMENTAL PROTECTION COMMISSION Jim Humeston and Elaine Douskey represented the commission.

- ARC 9434A Sampling for MTBE in soil and groundwater began July 1, 1999. Of the 374 sites submitting MTBE data, positive soil results were shown at 31 sites and positive groundwater results were found at 122 sites. Tap water and private wells were also sampled and no MTBE was reported.
 •Humeston reported to Bartz that when the first sample is negative, it is likely that subsequent samples will also be negative. Additionally, MTBE sampling may not be necessary at sites that have had recent diesel releases.

NATURAL RESOURCE COMMISSION Richard Bishop represented the commission.

- ARC 9378A No action on deer depredation permits, 106.11(4).
 ARC 9379A No questions on colony traps, 110.7.

EXECUTIVE COUNCIL Julie Pottorff represented the council.

- ARC 9438A Proposed ch 12 establishes procedures for disbursement of money from the civil reparations trust fund.

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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Lane Palmer and Allen Williams represented the department.

ARC 9395A No questions on CDBG contingency fund.

ARC 9394A No action on ch 25, housing fund. The Iowa Finance Authority portion for 2000 was withdrawn and will be refiled separately.

ARC 9396A No questions on ch 41, rural/community planning and development fund.

ARC 9397A No action on proposed amendments to ch 58, new jobs and income program.

ARC 9398A No action on proposed amendments to ch 59, enterprise zones.

ELDER AFFAIRS DEPARTMENT Beth Bahnson, Stephanie Laudner, and Greg Anliker represented the department.

ARC 9423A Proposed amendments to 27.2 pertain to assisted living program certification fees.

•Metcalf was informed that the fees specified in the rules represent an increase. Bahnson explained that fees are deposited into and expended from an account. The department is seeking a legislative change to provide for this account. Anliker indicated that the vast majority of assisted living facilities in the state have been informed of the fee increases through the Iowa Association for Health Care, the Iowa Assisted Living Association, and the Iowa Association for Homes and Services for the Aging.

•Kibbie reported that blueprint turn-around time has been a concern. Anliker responded that the fee increases will allow for additional staff and should reduce the turn-around time to less than three weeks.

TRANSPORTATION DEPARTMENT Craig O'Riley represented the department.

ARC 9427A No action on the proposed railroad revolving loan fund, which is intended to fund nontraditional rail purposes such as intermodal projects, highway-rail grade separations, rail improvements at grain elevators, track rehabilitation, crossing signals and surface projects. Projects that increase rail safety, efficiency and capacity will be considered. The loan program has a maximum term of 15 years and a flexible interest rate.

Adjourn The meeting was adjourned at 3:20 p.m.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair Janet Metcalf