

**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 on Tuesday, September 10, 1996, in Room 22, State Capitol, Des Moines, Iowa.

Members present: Senator Berl E. Priebe and Representative Janet Metcalf, Cochair; Senators H. Kay Hedge, John P. Kibbie, William Palmer, and Sheldon Rittmer; Representatives Minnette Doderer, Roger Halvorson, and Keith Weigel.

Excused: Representative Horace Daggett

Also present: Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Acting Administrative Code Editor and Maxine Mann; Paula Dierenfeld, Administrative Rules Coordinator; caucus staff and other interested parties.

Convened: Cochair Metcalf convened the meeting at 10 a.m.

**HUMAN SERVICES DEPARTMENT** represented by Mary Ann Walker, Debbie Johnson, Ruth Schanke, Brian Laatsch Marno Cook, Eric Sage and Rosemary Norlin

ARC 6633A Brian Laatsch represented DHS regarding child support collections, proposed amendments to ch 93.

- David A. Ster of Cedar Rapids, Iowa, appeared before the committee to protest DHS policy of reporting to credit agencies those who owe over \$1,000. In his case, a judge ruled retroactive support which amounted to \$4,000. At the time his support was up to date and he was making a plan for the additional support. The department does not have rules governing "instant debt" such as this.
- Laatsch responded that DHS had to comply with an order from the district court.
- Kibbie asked if the statute would have to be changed to authorize a payment plan and if the department was bound by statute to report amounts over \$1,000. DHS responded that they are bound by federal regulations to report amounts over \$1,000.
- Weigel inquired about the period of delinquency which is reflected in the credit report; Laatsch stated that only the amount of delinquency is reported, not the length of the period of delinquency.
- Doderer asked if the federal regulations had to be adopted.
- Metcalf asked the department to return next month with more information on this situation, and Kibbie requested that they bring the applicable federal regulations and state statutes.

ARC 6634A No questions concerning the Notice for ch 53 and 83.72, rent subsidy program.

ARC 6649A No questions concerning proposed 75.17, verification of pregnancy.

ARC 6635A Certification of HCBS MR waiver program providers of supported community living, respite and supported employment services, proposed amendments to 77.37.

- Kibbie inquired about any changes regarding providers and administrative tasks. Debbie Johnson and Ruth Schanke responded on behalf of the department, giving examples of typical providers and showing that there would actually be fewer administrative tasks for providers since there would be interviews, as opposed to paper reviews, and, for providers doing a good job, review would be every three years rather than annually.

ARC 6664A No questions on proposed 98.22, 98.23, 98.42 regarding notice of income withholding

ARC 6663A Support establishment and adjustment services, Notice for ch 99—no questions.

ARC 6636A No questions regarding dependent adult abuse, proposed amendments to ch 176.

Special Review of child abuse registry: Marno Cook represented the Department of Human Services.

- Hedge asked if, in light of changes in the rules, people currently listed on the registry would be reviewed to determine if they should remain on the registry. Cook requested legislation regarding this issue as this program applies to only 19 counties as a pilot area.
- Doderer was informed that a person remains on the registry for ten years.
- David Bullis of Iowans for Family Rights protested the adversarial approach of DHS, particularly in regard to people who have been accused but never adjudicated.
- John Harvey of VOCAL, Inc. distributed a booklet entitled "DHS Helping or Hurting our Children?" and objected to the attitude of DHS to hundreds of Iowa families. He wants DHS to review each case each year so that the registry will reflect only the most serious cases. He wants DHS to listen to the courts and the legislature, and to abide by the level system. Harvey questioned the department's retention of rejected reports.

- Joy Brown of Mason City related her situation in which she feels she has lost all possibility for employment due to an unfair listing on the registry and the impossibility of having her case reviewed and her name removed. In response DHS agreed that her case has merit, but after the 6-month window for appeal has elapsed, there is no mechanism for reconsideration.

- Marie Scherbaum told of her situation and requested expungement provisions.

- Donna Rasmusson of Iowa Families for Family Rights urged better training for investigators.

- Priebe inquired about the training provided, and Cook responded that experience in prior social service positions is required before someone is hired to make assessments and investigations. Kibbie reported that many existing social workers may not have had any training.

- Rittmer asked who actually made the decision about placement on the registry, and DHS responded that it was the investigator and supervisor.

- David Ster listed shortcomings in the investigation of his situation. He distributed a three-page statement for the committee.

- Metcalf asked the department to visit with the people who had appeared before the committee and to see if there was anything that could be done to help them.

Motion to refer

Priebe made a motion to refer the matter to the general assembly. Motion passed.

- Hedge requested that Joe Royce look into how much can be solved by rules and report back at the next meeting.

#### **PHARMACY EXAMINERS BOARD** represented by Terry Witkowski

ARC 6656A Handling of controlled substances, 1.1(3).

- Witkowski responded to Priebe about the board's authority to add these practitioners.

ARC 6657A No question regarding college graduate certification, 2.8.

ARC 6658A No question about certification of licensure examination scores at no charge, 3.3.

ARC 6659A No question regarding pharmacist-intern registration, proposed amendments to ch 4

ARC 6660A Emergency department drug dispensing records, proposed amendments to ch 7.

- Clarification that these amendments do not apply to nursing homes and county homes.

ARC 6661A No discussion on practice of pharmacy, proposed amendments to ch 8.

ARC 6655A Impaired practitioner review committee, 9.30—no questions.

ARC 6662A Compounding practices, ch 20 proposed amendments.

- Priebe questioned the effect on confidentiality of including the quantity of ingredients. Witkowski replied that these requirements have long been in existence since the pharmacist has to account for inventory. This record is internal to pharmacy, not available to the public.

#### **EDUCATION DEPARTMENT** represented by Ann Molis

ARC 6684A Notification of civil action filed in federal court, proposed 41.124.

- Priebe asked Joe Royce to research whether the department can require that it be notified.

ARC 6685A No question regarding proposed rescission of ch 96 on asbestos removal training course.

#### **COLLEGE STUDENT AID COMMISSION** represented by Laurie Wolfe

ARC 6670A No question concerning federal consolidation loan, 10.2(1).

ARC 6669A No question on the Iowa tuition grant program, 12.1(3), 12.2(4).

#### **ETHICS AND CAMPAIGN DISCLOSURE BOARD** represented by Kay Williams and Lynette Donner

ARC 6686A There was no discussion regarding information to be included on the initial report, proposed 4.9.

ARC 6687A Lobbyist compensation reporting, proposed 13.10.

- Halvorson inquired about what is done with the information. Williams replied that it is not published, but it is on file and available to the public.

**ENVIRONMENTAL PROTECTION COMMISSION** represented by Ubbo Agena

ARC 6644A

Termination of notice to amend 65.18(1) regarding manure management plans at animal-feeding operations.

- Priebe opposed the termination because of the difference in requirements for new and expanding facilities.

- Weigel inquired about the review of manure management plans that are submitted and learned that although they are not being reviewed, civil penalties could be imposed if the plans aren't followed. Because of that and the lack of an adjacency requirement, Weigel wanted to go on record as opposed to the termination.

- Halvorson expressed concern that existing manure management plans aren't being reviewed. He further asked about the public response to the proposed amendment and was told that there were only five responses, all opposed to the amendment.

- Kibbie stated that the legislation covered only amounts over 625,000 and that it was intended that rules were to deal with cases under that limit.

- Rittmer asked if the commission were in full agreement with the termination; Agena replied that he didn't think so.

Motion to object      Priebe moved to object to the Termination of Notice to amend 65.18(1). Motion carried.

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT**

Special review of meat inspection, ch 76.

Ron Rowland and Mike Mamminga represented the Department of Agriculture and Land Stewardship. Leonard Upton and Jeff Kirmsee from the USDA were also present.

- Metcalf asked for an outline of the problem. The review was requested after a complaint was filed against Seaton's Cash and Carry Market of Iowa City. Because Seaton's does more than 25% of its business in sales to commercial establishments, they fall under USDA inspection. USDA sets these limits, and the department has adopted them as the standard. The department issued an order in March requesting records of Seaton's sales. Seaton's has not responded. It has been reported that neither they nor the owner of the building can afford to make the necessary improvements to meet federal inspection standards.

- Doderer reported that a legal authority in the area does not believe that Seaton's comes under the department's definition of a retail establishment. Seaton's is one of three remaining small groceries in the area that formerly had 37 non-chain groceries. They buy only USDA inspected meat and the establishment serves the neighborhood by delivering groceries to the elderly. She urged that they be exempted from federal inspection.

- Mamminga responded that any meat-cutting operation must be inspected, unless exempted. Seaton's cannot be granted an exemption just because we like them; the same exemption would have to be granted to other retailers.

- Pat Meade, past county supervisor, spoke in favor of the Seatons and urged that the rules not be enforced.

- Clarisse Watt, owner of the building, spoke in favor of the Seatons, who have operated the business for 3 or 4 generations and have invested their life savings in it.

- Priebe asked the USDA representatives why they considered meat sold to an individual any different from meat sold to a commercial establishment. They responded that even though the meat may have been federally inspected when it was purchased, after repackaging it no longer bears the proof of inspection. Any time meat is chopped, ground or repackaged, it must be reinspected. Priebe further inquired about whether this issue has come up anywhere else and if there are any plans to do anything about it.

- Hedge asked about the possibility of petitioning the federal government for a change in the rules, and Kibbie asked about the procedure for such a petition. The response was that anyone can petition for a change in the rules, and USDA would consider the petition on its merits.

- Doderer pointed out that the Seaton market has been operating since the 1950s and asked if they couldn't have "grandfather" status.

- Metcalf requested a response from Mr. Cochran on this situation.

Recess

The committee recessed at 12:55 p.m. and reconvened at 1:45 p.m.

**REVENUE AND FINANCE DEPARTMENT** represented by Carl Castelda

- ARC 6638A Individual, corporate and franchise tax, noncontroversial proposed amendments.
- Rittmer posed several questions regarding applicability of Item 10 to incorporated farms with out-of-state sales. Castelda replied that this would impact any Iowa-domiciled corporation. Farm corporations cannot be treated any differently.
- ARC 6637A Capital gain deduction for installment sales, 40.38(1).
- Rittmer sought clarification on how Iowa's rules differ from federal.
  - Halvorson inquired about the requirement for ten years of "material participation" in a farm to qualify for the capital gains exemption of \$17,500 per year and whether cash renting a farm could disqualify some farmers from the benefit of the exemption. There is a lot of misunderstanding about these requirements.
- ARC 6639A No question on proposed motor fuel amendments to chs 67 to 69, 81 and 82.

**LAW ENFORCEMENT ACADEMY** represented by Gene Shepherd and Arlen Ciechanowski from the Law Enforcement Academy and Tom Lilliquist, Sheriff of Winnebago County.

- ARC 6564A Carried over from the August meeting, rules 2.3 and 2.4 are being Filed Emergency After Notice, to become effective September 1, 1996, following discussion with Priebe, Metcalf and Royce.
- Doderer inquired about the elimination of the warning and asked what procedures for shooting were being taught. Ciechanowski clarified that the warning shot was no longer required, but that the verbal warning is still given. In addition, some 50 hours are devoted to judgmental shooting.
  - Hedge asked about a letter he received that indicated that the rules review committee had declined to approve rules, thereby delaying their implementation. He clarified that the committee does not "approve" rules. Shepherd took responsibility for the word choice, and agreed that it was not correct.

**TRANSPORTATION DEPARTMENT** represented by Steve Westvold, Tom Cackler, Susan Albright, and Lance Stumbo

- ARC 6665A Logo signing amendments to ch 118 increase the number of lodging and camping signs displayed and increase fees.
- ARC 6666A Tourist-oriented directional signing amendments to ch 119 relax provisions and increase fees.
- Doug Struyk of the Iowa Horticultural Society opposed the doubling of fees and requested financial justification for the increases, determination of whether TODS fees are kept separate or lumped in with all other signage, and clarification of ownership of the sign.
  - Jack Miller of the Iowa Christmas Tree Growers Association also objected to the doubling of fees for his signs and spoke to the importance of trees.
  - The department explained that since individuals cannot put up and maintain their own signs, the TODS and logo programs exist so that small businesses can have signs out there. The legislature does not appropriate money for the programs; the fees from these programs and billboards and private directional signs support the programs. Weigel suggested that the fees might even be higher if they were fairly apportioned among the programs.
  - In response to Metcalf, Westvold reported that the federal money for these programs dried up in 1980. Because we wanted to take advantage of the funds made available in 1965, we have put ourselves in a situation that is more restrictive than states that are not Bonus states.
  - Kibbie inquired about fees for billboard advertising outside the right-of-way, which is set by statute at \$100 initial fee and \$15 annual renewal.
  - Priebe asked what would happen if we were to get out of the federal program. Westvold replied that if the federal highway administration would allow us to get out of the agreement, we would probably have to repay the moneys.
  - Marva McCarty of the Iowa Fruit and Vegetable Growers Association stated that fruit and vegetable growers would prefer for their signs to advertise the products available. She further inquired about whether small businesses were covering the costs for nonprofit entities.
- Motion to refer Priebe moved to refer the matter to the General Assembly. Motion carried.
- Rittmer asked about a Welcome Center at the rest stop for Highways 214 and 105 and I-35. Tom Cackler, director of project development, said there is a cooperative arrangement between the DOT and the private sector as an alternative to maintaining the rest area.

**UTILITIES DIVISION** represented by Gary Stump and Diane Munns

- ARC 6653A Principal office records and personnel proposed amendments to 18.2, 32.10.  
•Kibbie sought clarification about which utilities were regulated by these amendments.
- ARC 6651A Procedures for mediation, arbitration and review of agreements, amending 22.22, 38.1(2), and 38.7. (See also Notice ARC 6652A)  
•Weigel raised a question about conflicts between the federal regulations and H.F. 518. Munns responded that parts are in conflict, but a lot can be harmonized. Iowa, along with some other states, is suing the FCC because the federal government is imposing standards which are within the state's jurisdiction.

**SOIL CONSERVATION DIVISION** represented by Ken Tow

- ARC 6628A No questions on the Iowa financial incentive program for soil erosion control, 10.41.
- ARC 6632A Coal mining amendments to ch 40. Tow clarified the definition of "mined area" in response to Priebe.

**INSURANCE DIVISION** represented by Tom Alberts and Jerry Wickersham

- ARC 6629A Securities—offers on the Internet, 50.13.  
•In response to the question of charges, Alberts explained that the user pays for the Internet, the division cannot charge fees.
- ARC 6631A No questions on ch 71 small group health benefit plans (mental health and substance abuse treatment).

**LABOR SERVICES DIVISION** represented by Walter Johnson and Kathleen Uehling

- ARC 6646A Professional shoot fighting, ch 101. These rules were published both under notice and filed emergency in order to have rules in place to govern an event in Davenport. (See also Notice ARC 6645A)  
•Palmer questioned the authority of the division to regulate shoot fighting, since the Code specifies only wrestling and boxing and sparring contests. Doderer requested definition of shoot fighting and sparring contests. Johnson reported that other events, such as ultimate fighting, may be scheduled in the state unless they are prohibited by statute or rule.
- ARC 6625A Construction contractor registration amendments to ch 150 were put out for comment before being submitted as a Notice of Intended Action. Contractors do receive a notice approximately 60 days before their registration expires. This notification is not required; it's for the convenience of the division. Johnson further stated that these amendments would not be adopted until the time that the division completes its transfer in compliance with the department's name change.

**INSPECTIONS AND APPEALS DEPARTMENT** represented by Mary Oliver

- ARC 6618A Health care facilities. No questions on proposed amendments to chs 61, 63, 64, 65.

**PERSONNEL DEPARTMENT** represented by Greg Cusack, Jennifer Dixon and Kelly Lovell.

- ARC 6647A IPERS—division of benefits pursuant to marital property order. (See also Notice ARC 6648A)  
•In response to Weigel's inquiry, the department explained that these amendments bring us into conformance with ERISA. In the past, there was no mechanism to attach for a spouse. Lump-sum distributions are available to the spouse only if the member elects the lump-sum option.

**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD** represented by Pat Rounds

- ARC 6671A Amendment to 10.3(8), regarding financial hardship and waiver of premium.  
•In response to Metcalf's inquiry about the state's ability to recoup costs, Rounds stated that the state could get a lien on the property.

**ATTORNEY GENERAL** represented by Bill Brauch

- ARC 6689A No question on public records and fair information proposed amendments to 2.14, concerning child support recovery. Consumer credit code complaints are not confidential; investigations are confidential.
- ARC 6690A No question on the proposed ch 24, professional commercial fund-raisers. Regarding child support noncompliance, the attorney general can deny registration, but cannot revoke it.
- ARC 6691A Notice to amend ch 25. Sanctions for child support compliance are not now applicable since all current registered campground operators are corporations, rather than individuals.

**NATURAL RESOURCE COMMISSION** represented by Steve Dermand, Pete Hamlin, Marion Conover, Mike Carrier and Richard Bishop

- ARC 6674A Steve Dermand explained the proposed game breeder rules, ch 13. See also ARC 6675A which terminates a previously proposed chapter on this subject.
- In response to Royce, Dermand explained that farm deer have been dropped from this Notice since the Department of Agriculture and Land Stewardship has rules on the subject. Another difference from the previous Notice is the addition of federal review, the U.S. Fish and Wildlife Service's zoning of areas for decoying and baiting.
- ARC 6681A Transportation tags for military personnel, 15.10—no comments.
- ARC 6683A Water recreation cost-share, amendments to ch 30—no comments.
- ARC 6676A Proposed 40.45, 40.46 regarding a no-wake boating speed on Cedar Lake and Carter Lake.
- Metcalf pointed out that since the hearing was held in Des Moines rather than the affected areas, it might have been good to use the ICN.
  - Hedge wanted to know what was behind the Nashua request. Dermand replied that it was a swimming area.
- ARC 6682A No question on 51.5 regarding the use of blinds and decoys.
- ARC 6678A No discussion regarding Viking Lake Recreation Area wildlife refuge, 52.1(1).
- ARC 6673A Amendments to ch 61 concerning state parks and recreation areas.
- Priebe pointed out that his constituents were displeased with the \$3 increase for equestrians. In light of donated materials and labor, he wondered why all park users didn't have to pay the \$3 increase.
- Motion to object Priebe moved objection to the \$3 increase for equestrians. Motion failed.
- ARC 6679A Antlerless deer hunt at Scott County Park and Viking Lake recreation Area, amendments to chs 61 and 105. Bishop reported good representation at the hearing from agriculture and the parks. The cost of the license has not been an issue. Deer season will be more liberal in 1997 in an effort to control the deer population.
- ARC 6677A Fishing, proposed amendment to 81.2(5), regarding catch and release of brown trout from French Creek and use of artificial lures.
- ARC 6680A Waterfowl, amendment to 91.5(1), increases bag limit to 2 redheads. Bishop also reported that a Filed Emergency After Notice amendment in the September 11, 1996, IAB (ARC 6720A) adds a youth duck hunting day pursuant to the U.S. Fish and Wildlife Service. Other groups, such as pheasant hunters, might also request youth hunting days since the commission has turned down such requests in the past.

**ENVIRONMENTAL PROTECTION COMMISSION** represented by Anne Preziosi

- ARC 6643A Proposed amendments to 22.300 regarding record-keeping requirements, application deadlines, and the deletion of the two-digit Standard Industrial Classification Code in the operating permit by rule for small sources in response to concerns from small business.

Committee Business:

- Motion (minutes) Priebe moved approval of the minutes. Halvorson seconded. Motion passed.
- Motion (objection) Weigel moved removing the objection to 761—119.4 as the rule has been amended. Motion passed.
- Metcalf announced that Representative Daggett had been released from the hospital.
  - Future meetings were set for October 8 and 9 and November 12 and 13.
  - October reviews were requested by Doderer (auto dealer rules) and Weigel (prison industries).
- Adjournment The meeting was adjourned at 4:05 p.m.

Respectfully submitted,

  
Kathleen K. Bates

APPROVED:

  
Representative Janet Metcalf