

**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, May 14, 1996, in Room 22, State Capitol, Des Moines, Iowa.

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

Also present:        Joseph A. Royce, Legal Counsel; Kathleen Bates, Acting Administrative Code Editor; Kimberly McKnight and Cathy Kelly, Administrative Assistants; Caucus staff and other interested persons.

Convened:           Co-chair Metcalf convened the meeting at 10 a.m.

**HUMAN  
SERVICES**

Mary Ann Walker, Gary Gesaman and Jo Ann Kazor represented the Department and Paul DeBoer, Iowa Advisory Council on Brain Injuries (Department of Public Health) was present for the following:

**HUMAN SERVICES DEPARTMENT[441]**

Food stamp program disqualifications, 65.46, 65.145, Filed ARC 6345A..... 4/10/96

HCBS waiver for persons with brain injury, 77.39, 78.43, 79.1(2), 79.1(17), 83.81 to 83.91,  
    Notice ARC 6370A..... 4/24/96

Elderly waiver program, 78.37, 78.37(8), 83.22(1)"b," 83.23(3)"c," 83.27,  
    Notice ARC 6371A..... 4/24/96

Mental health access plan, 88.61, 88.62(1), 88.62(1)"a," 88.62(1)"b"(8), 88.62(2),  
88.62(3)"c"(1) to (8), 88.62(3)"d," 88.62(4), 88.62(4)"a" to "f," 88.63(2), 88.63(4),  
88.63(5), 88.64(1)"a" and "c," 88.65(1), 88.65(2)"a," 88.65(2)"a"(6) and (13), 88.65(2)"b,"  
88.65(2)"b"(2), 88.65(2)"c," 88.65(3) to 88.65(5), 88.66, 88.67(1), 88.67(3), 88.67(3)"a,"  
88.67(4), 88.67(4)"b," 88.67(5), 88.68(1), 88.68(3) to 88.68(6), 88.69(1), 88.69(1)"a,"  
88.69(2), 88.69(3), 88.69(3)"b" and "d," 88.69(4), 88.69(4)"a," 88.69(5), 88.70 to 88.73,  
    Notice ARC 6372A..... 4/24/96

Child-placing agencies — ethnic, racial and cultural considerations, 108.7(5), 108.9(7),  
    Notice ARC 6373A..... 4/24/96

In-home health program, 177.3, 177.4(1)"d," 177.4(9)"c," Filed ARC 6344A..... 4/10/96

65.46 and 65.145    In response to Daggett, Walker stated the new rules in Chapter 65 pertaining to disqualifications by anyone accused and convicted of an intentional food stamp program violation were required by the federal government.

77.39 et al.        Walker noted the Department developed a new HCBS waiver for persons with brain injuries who had been residing in a medical institution for a minimum of 30 days. She added there were approximately 350 persons with primary diagnoses of brain injuries currently in Iowa medical facilities.

                      Rittmer asked if this was a mandatory requirement for counties and Walker replied it was optional.

78.37 et al.        Walker stated amendments to Chapter 78 and Chapter 83 added an additional 11 counties to the elderly waiver program but after these rules were Noticed, the Department of Elder Affairs wanted to withdraw the counties of O'Brien and Osceola because of insufficient funding. Upon adoption of the rules, those counties would be omitted.

DHS (Cont.)

Kibbie asked where the lack of funding occurred. Walker responded the General Assembly issued an appropriation to the Department of Elder Affairs to fund the case management for this program. This appropriation was not sufficient to fund the entire program and counties would gradually be added as larger appropriations were received.

Kibbie understood it was anticipated nine counties would be added. Walker replied the money was appropriated to AEA regions and those regions decided, based upon how ready the different counties were, which county would be funded. Gesaman added the new fiscal year would begin in July, at which time Elder Affairs would have additional appropriations. Kibbie understood that O'Brien and Osceola counties would receive funding at that time.

Walker stated the rules were changed by the Department so people who were ineligible for the elderly waiver because of funding restrictions could access the ill and handicapped waiver.

In response to Daggett, Gesaman stated the waivers were administratively labor intensive in terms of keeping necessary records available for the federal government. The Department hoped the waiver requirement would be lifted from the Medicaid reform and the state could administer these programs as necessary.

88.61 et al.

Responding to Weigel, Walker stated the amendments to Chapter 88 covered provider dispute resolution, but dispute resolution concerning emergencies and immediate attention would be covered under another appeal procedure.

108.7(5) and 108.9(7) No questions on 108.7(5) or 108.9(7).

177.3 et al.

No questions on 177.3 et al.

**INSURANCE**

Susan Voss represented the Division for the following:

**INSURANCE DIVISION[191]**

COMMERCE DEPARTMENT[181]"umbrella"

Small group health benefit plans — lifetime maximum mental health and substance abuse

treatment coverage, ch 71 matrix, footnote (3), Notice ARC 6374A ..... 4/24/96

Ch 71

Voss stated that following a study, the Division concluded it would be cost effective to increase the minimum amounts under the standard small groups health plan from \$10,000 to \$50,000. The Division received letters from various mental health providers supporting the change to \$50,000.

Priebe asked what the costs would be. Voss replied that standard coverage increased by \$4.05 per month and the HMO coverage increased \$2.01 totaling \$7.65 for the indemnity plan and \$6.31 for the HMO plan per month per member.

Palmer asked if the study had been conducted by an in-house actuary. Voss replied it was completed by the outside firm of Milliman & Robertson and the Division sent a report to the General Assembly on January 19 with a copy of the study.

Doderer asked and was told by Voss the insurance would pay for in-patient counseling services and prescriptions. Doderer stated \$50,000 would not last long. She asked about the current rates and Voss answered the standard plan was \$3.60 for indemnity and \$4.30 for the HMO.

Kibbie understood that if the amount was increased to \$100,000 the cost would be approximately 80 cents more per month.

**INSURANCE (Cont.)** Priebe stated these figures did not sound realistic. Halvorson felt this was not enough money to cover exposure in a high-cost area and stated that when this was before the legislature, much higher numbers were discussed.

**Motion** Priebe made a motion to request an economic impact statement, followed by Doderer's request that the motion be by unanimous consent. There were no objections.

Palmer believed there was justification for the higher limits but there could be a problem with availability.

Weigel asked if this plan paid 100 percent and Voss replied it did not but rather was an 80/20 plan.

**Motion carried** The motion for the economic impact statement carried by unanimous consent.

Doderer asked about the history of the \$10,000 limit and how many people bought into this plan. Voss replied there were very few groups on the basic plan and that the standard plan had the \$10,000 substance abuse and mental health. Doderer asked for data on how many groups were covered and Voss agreed to supply this information.

**PUBLIC HEALTH** Carolyn Adams, Marge Bledsoe, Carolyn Jacobson, Tina Patterson, Don Flater and Jack Kelly represented the Department for the following:

**PUBLIC HEALTH DEPARTMENT[641]**

Reportable diseases, 1.2, Filed ARC 6347A..... 4/10/96  
 Radiation, 38.8(1), 38.8(2), 38.8(2)"c," 41.1(3)"a," 41.1(3)"a"(1), Filed ARC 6348A..... 4/10/96  
 Iowa child death review team, ch 90, Filed ARC 6346A ..... 4/10/96  
 Impaired practitioner review committee, ch 193, Notice ARC 6351A..... 4/10/96  
 Immunization of persons attending elementary or secondary schools or licensed child-care centers,  
 7.4(1) to 7.4(5), 7.4(6)"c," Notice ARC 6331A..... 3/27/96

1.2 No questions on 1.2.

38.8(1) et al. No questions on 38.8(1) et al.

Ch 90 Metcalf referred to rule 90.4(135) and stated she did not see a section on what constituted a quorum of the child death review team. Royce stated that unless otherwise provided for by law, a quorum was always a majority of the group. Adams indicated the Department changed the chapter relative to advisory groups to provide for a definition of a quorum.

Ch 193 Metcalf asked how the new chapter on impaired practitioner committee interacted with the other departments. Bledsoe stated the Department intended to adopt this rule and have the 18 Boards subsequently adopt the rule by reference.

7.4(1) et al. In response to Daggett's question concerning immunization, Adams stated the Department received no negative comments.

**ETHICS** Kay Williams represented the Board for the following:

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]**

Corrective and nonsubstantive amendments, 4.1(1) to 4.1(3), 4.1(5), 4.2, 4.5(4), 4.5(7), 4.8 to 4.10,  
 4.13(1)"g," 4.20, 4.21, 4.29, 4.30(1), 4.32, 4.33, 6.1, 6.4, 6.5, 13.2, Notice ARC 6385A..... 4/24/96  
 Contributions by minors, 4.7, Notice ARC 6384A..... 4/24/96  
 Contribution in the name of another person, 4.18, Notice ARC 6383A..... 4/24/96

4.1(1) et al. No questions on 4.1(1) et al.

ETHICS (Cont.) 4.7 No questions on 4.7.

4.18 Williams noted that rule 4.18(56) eliminated some restrictions on contributions from trusts.

In response to Daggett, Williams stated trusts provided certain tax benefits.

Priebe in Chair.

**AGRICULTURE** Ron Rowland and Walter Felker represented the Department for the following:

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Importation, intrastate movement and exhibition of "farm deer," 64.34(8), 64.44, 65.12,

Notice ARC 6369A..... 4/24/96

64.34(8) et al. Priebe asked if elk were included in the amendments to Chapter 64 and Chapter 65 covering intrastate movement and livestock testing under this rule. Felker replied that elk, fallow deer and red deer, among others, were included in the farm deer definition but not white tail deer.

Felker replied to Daggett that domesticated herds in other states were under regulations similar to these, and he added there had been instances of Brucellosis occurring in some of those elk herds.

Metcalf in Chair.

**SOIL** Kenneth Tow represented the Division for the following and there were no questions:

**SOIL CONSERVATION DIVISION[27]**

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

Coal mining, 40.3, 40.4(9), 40.31(14), 40.32, 40.51(7), 40.63(2), 40.74(3), 40.75(2),

Notice ARC 6376A..... 4/24/96

Priebe in Chair.

**NATURAL RESOURCE** Terry Little, Mike Carrier and Al Farris represented the Commission for the following:

**NATURAL RESOURCE COMMISSION[571]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Wildlife refuges, Little River Recreation Area, 52.1(2)"a," Notice ARC 6362A..... 4/10/96

Falconry, 102.2(1), Notice ARC 6361A..... 4/10/96

Boating regulations on Lake Macbride, ch 45, Special Review.....IAC

52.1(2)"a" Kibbie inquired if the wildlife refuges in paragraph 52.1(2)"a" were solely state-owned property. Little replied this was a County Conservation Board area. Little noted there were several ways that refuges could be established but this rule covered only public land closing the water area primarily to any intrusion. He added this was done at the request of local hunters.

102.2(1) No questions on 102.2(1).

Metcalf in Chair

Special Review Royce explained this special review resulted from an Iowa City editorial which stated that boating on Lake Macbride was restricted at all times to 10 horsepower motors.

- DNR (Cont.) Doderer and the *Iowa City Press-Citizen* called the Commission and received different interpretations concerning the restriction.
- Farris referred to 462A.31 and stated it appeared that at both Big Creek and Lake Macbride only a 10 horsepower motor at no-wake speed could be used between Memorial Day and Labor Day; at other times any size motor at a no-wake speed could be used. The Commission did not enforce the statute in this manner. Doderer argued that the statute should state what was enforced. Farris explained that twenty years ago a person could use up to a 10 horsepower motor at any speed and the Commission had continued to enforce the law in this manner.
- Halvorson stated it appeared that enforcement could be challenged and believed the Code should be referred to for enforcement authority. Priebe concurred.
- Motion to Refer Halvorson made a motion to refer this issue to the Speaker of the House and President of the Senate.
- Doderer asked if it would be more appropriate to obtain a statement from the Commission on exact enforcement procedures used as compared to what was contained in the Code. Carrier pointed out that because the Commission was more liberal in its enforcement, tickets were generally not issued.
- Motion Deferred Halvorson deferred his motion for referral until the June meeting, at which time Farris would report to the Committee on the Commission's enforcement procedures at Lake Macbride.
- Kibbie noted that several bills concerning Lake Macbride had come before the legislature in the session just ended. Doderer added the Senate and the House had different versions of how the statute was being enforced.
- Minutes Priebe made a motion to approve the April 26, 1996, minutes as submitted and the motion carried.
- EPC Darrell McAllister represented the Commission for the following:
- ENVIRONMENTAL PROTECTION COMMISSION[567]**  
 NATURAL RESOURCES DEPARTMENT[561]"umbrella"  
 Laboratory certification for analyses of public water supplies, underground storage tank program, wastewater, groundwater and sewage sludge, 40.1, 40.6, 41.4(1)"g"(2), 41.7(1)"e," 41.7(2)"e," 41.7(3)"e," 41.7(4)"e," 41.11(1)"d"(2), ch 42 rescinded, 43.5(4)"a," 63.1(1), 63.1(2)"b"(3), 63.1(4), ch 63 Table VII rescinded, ch 83, Filed ARC 6363A ..... 4/10/96
- 40.1 et al. McAllister stated these rules required wastewater facilities to use a certified laboratory to do analysis. The rules were more stringent in that those laboratories would be visited and certified on a two-year basis. Priebe asked what the additional cost would be. McAllister replied that a large wastewater treatment plant doing a lot of analysis would have an increase of approximately 25 cents per person which would be \$12,000 to \$20,000. Priebe believed the state law would be more costly than what the federal government required.
- Hedge inquired about the costs to a town of 600 people, but McAllister was uncertain what those costs would be.
- Impact Request Hedge moved to request an economic impact statement. There were no objections.
- Motion to Delay Priebe made a motion for a 70-day delay on Item 14 to allow time for the economic impact statement to be completed. The motion carried.

EPC (Cont.)

Kibbie asked if fee increases were included in the rules when they were under Notice. McAllister replied they were, but some modification had occurred.

Kibbie asked who would pay the fees in the underground storage tank program. McAllister said the responsibility would be with the laboratories that were certified and was viewed as a cost of doing business. Kibbie wondered if these rules would create a fee increase for monitoring of wells. McAllister responded the underground storage tank certification requirements had been in place for approximately one year and most laboratories did not expect to increase fees.

June Agenda

Metcalf requested this issue be put on the June agenda.

McAllister pointed out that the Commission stated if a laboratory was previously certified in one program, a reduced fee rather than a duplicate fee would be applied toward certification in another program.

Rittmer asked how the Commission arrived at these fees. McAllister replied these were based on what it took to administer the programs, have someone visit the laboratories, review the performance evaluation samples that the laboratories did and look at the applications.

Rittmer asked if the Commission would certify the cities that were doing this testing. McAllister responded the requirement was not that all laboratories would be certified but that a wastewater treatment facility would need to use a certified laboratory for its analysis. The Commission estimated that 200 laboratories would seek certification under the wastewater program. Of the nearly 1600 facilities that held permits, approximately 900 of these were municipal permits. McAllister believed smaller laboratories would become certified while the larger and medium city laboratories would not.

**INSPECTIONS**

Rebecca Walsh and Nancy Ruzicka represented the Department for the following and there were no questions:

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

Surgical services in hospitals, 51.26, Filed ARC 6350A ..... 4/10/96

**MEDICAL EXAMINERS**

Ann Martino was present from the Board and Virgil Deering, Gary Ellis, Larry DeCook and other interested persons, Iowa Optometric Association; Bob Sharp, Board of Optometry; Steven Jacobs and Rich Paul, Iowa Academy of Ophthalmology; John W. Olds, Medicare; Keith Luchtel, Becky Roorda and Paul Bishop, Iowa Medical Society; and John Nassif, Tobin Eye Institute; were also present for the following:

**MEDICAL EXAMINERS BOARD[653]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Licensure requirements, 11.2(2)"f," 11.3(1)"c," 11.3(1)"c"(1), 11.4(3)"d"(1) and (2), 11.5(1)"c,"

11.6(2)"b," 11.6(2)"b"(1), 11.6(3)"c"(1), 11.7(2)"b," 11.7(2)"b"(1), 11.11(1) to 11.11(3),

11.32(1)"c," 11.33, Notice ARC 6377A ..... 4/24/96

Standards of practice — surgical care, 13.2, Filed ARC 6358A ..... 4/10/96

11.2(2)"f" et al.

No questions on 11.2(2)"f" et al.

13.2

Martino iterated for the Committee what the Board perceived as three interrelated problems. First, the Board had received numerous inquiries from licensees asking for guidance as to what type of services could be provided and under what circumstances. The second problem addressed preoperative, operative and postoperative care of ophthalmology surgery patients. The third issue dealt with the increased number of cases involving itinerant surgery and the concomitant problems.

MEDICAL  
EXAMINERS  
(Cont.)

Martino stated these rules essentially incorporated what was the prevailing standard of care for surgery and reflected the position of the American College of Surgeons, the Iowa Academy of Surgeons and the peer reviewers who worked for the Board.

Palmer wondered if the state currently had the ability to sanction practitioners who were involved in gross negligence. Martino stated that proving gross negligence at an administrative proceeding was a very difficult thing to do, as well as being expensive and a time consuming process. If these rules were Filed, she believed they would serve as a deterrent.

Halvorson asked about the Medicaid or Medicare rules on postoperative fees. Martino replied that HCFA had established a 90-day global billing period for postoperative care for ophthalmological surgery, heart surgery and neurosurgery. It was unrelated to the actual quality of care that was provided to a patient and unrelated to the clinical decision making of a particular surgeon in providing this care. The dispute between the optometrists and the ophthalmologists had to do with the delegation of care during the postoperative period. The Board felt strongly that ophthalmologists were obligated to provide the same level of postoperative care as any other type of surgery.

Halvorson said it appeared the federal rules which allowed 20 percent of the total billing for the surgery to be associated with postoperative care caused some of this problem. Martino agreed. She added the federal rules were originally intended to allow for the delegation of postoperative care to other equivalently trained physicians rather than to other health care practitioners.

Sharp referred to a copy of his statement distributed to the ARRC and stated the Board of Optometry Examiners felt these rules were not in the best interest of the public. The Optometry Examiners requested that the Committee postpone these rules until the end of the next legislative session.

Olds, the Medicare Medical Director and a past member of the Iowa Board of Medical Examiners, referred to a copy of his remarks which was in support of the board and which was distributed to the Committee.

Halvorson asked if the federal rules dealt with all surgery in the same manner as eye care regarding percentage of the total for postoperative care. Olds replied the federal rules involved all surgery but different amounts of time were allotted for postoperative care.

Rittmer asked how often the typical cataract surgery patient returned for postsurgical care. Olds believed it should be one check within the first week, preferably the first day, two weeks thereafter and possible not at all after that point.

Rittmer asked if the ophthalmologist would perform any additional surgeries should they prove necessary. Olds replied it was the ophthalmologist who was ultimately responsible for making that decision.

In response to Doderer, Olds stated that most data from the study was based upon information obtained in 1993 and 1994 and some from 1995. Doderer asked if Olds had done any study on the referrals. Olds replied only the claims data had been studied.

Nassif stated his group participated in comanagement with optometrists. He noted these rules contravened the rules of the Academy of Ophthalmology, the national governing board for ophthalmology, and the code of ethics which allowed optometrists and ophthalmologists to work together. Since there were not



MEDICAL  
EXAMINERS  
(Cont.)

ophthalmologists in every location in Iowa, most patients received care by optometric practitioners.

Rittmer asked whether an optometrist who found a problem following surgery performed by the ophthalmologist, could refer the patient back to the ophthalmologist. Nassif stated this was correct unless there was some other field of medicine that was handling it.

Kibbie understood Nassif wanted more flexibility in these rules and Nassif agreed.

Doderer asked if most referrals were from optometrists and Jacobs, an ophthalmologist, replied he believe it was over 50 percent.

In response to Daggett, Nassif stated HCFA designated 80 percent of the fee to the surgeon and 20 percent for postoperative care.

Kibbie asked if the surgeon performed up to one week of the postoperative care and the optometrist did the remainder whether the 20 percent was split accordingly. Nassif replied this was correct. An HCFA rule stated a surgical procedure could cost no more when the care was provided by two practitioners as when provided by one.

Jacobs presented a map of ophthalmology offices with satellite offices to point out that rural accessibility was available, a point disputed by Priebe.

Martino interjected that a provision in the rules allowed patients to see a local practitioner under circumstances in which problems were encountered and the patients could not get to the ophthalmologist or the surgeon or the latter were unwilling to travel.

DeCook stated the study Olds referred to was interpreted in two different manners—one by the American Academy of Ophthalmology and one by the American Optometric Association. He believed these rules lent support to the medical board in the pending lawsuit.

Martino stated the majority of the Board of Medical Examiners was unaware of this lawsuit, the rules were cleared by the antitrust division of the Office of the Attorney General, and the Board had subjected them to independent reviews. These rules were consistent with prevailing standards adopted nationally. Priebe stated the Committee had never acted on an issue that was before the courts. Jacobs interjected he was a defendant in this lawsuit and there had been a preliminary court decision upholding the doctrine which allowed state societies to ask medical boards for guidance on these issues in a written document and the legal issue actually had nothing to do with the rules.

Jacobs stated he endorsed this rule as it affirmed the role of all surgeons to supervise postsurgical care to patients and precluded offering any financial inducements for referrals.

Roorda reminded the Committee that these rules do not relate just to ophthalmologists and optometrists but did reflect the standard of care for all surgeons in delegating postoperative care. She added the Iowa Medical Society supported these rules. Responding to Daggett, Roorda replied surgery performed in another state would be governed by that state's laws.

DeCook asked if this rule would prohibit postoperative care by a cardiologist if the surgery was done by a cardiovascular surgeon. Martino replied it would have to be provided by an appropriately trained physician.



# **MEDICAL EXAMINERS (Cont.)**

Doderer evinced concern that out-of-state ophthalmologists came into Iowa to perform surgery and left the same day. DeCook replied there was a letter on file in which the Board of Medical Examiners agreed that any complaints against optometrists be referred to the Optometry Board for disciplinary action. Martino stated the Board had received several complaints which involved bad outcomes related to this particular relationship or negligent delegation of postoperative care. The Board was looking at this issue and the peer review process was involved.

Weigel referred to Olds' remarks and noted Iowa did not state that optometrists could do postoperative work but rather listed things that could be done. The full decision was left to the ophthalmologist to delegate all, part, or none of the postoperative care to an optometrist.

Weigel asked if optometrists and ophthalmologists could be included separately in this rule. Martino indicated a language change would compromise the principles the Board was trying to set forth and make an exception for one group of practitioners largely for financial reasons and not for health care reasons.

**Session Delay** Priebe made a motion to delay these rules until the end of the next legislative session.

**Substitute Motion** Kibbie made a substitute motion for a 70-day delay to allow additional time to rewrite these rules. Discussion ensued.

**Motion Carried** The motion for the 70-day delay carried on a vote of nine in favor and one opposed, thus rendering the previous motion out of order.

**Recess** The Committee was recessed at 1:25 p.m. and reconvened at 2:15 p.m.

**PUBLIC SAFETY** Michael Coveyou, rules coordinator, and Tim McDonald, Assistant Director of DCI, represented the Department for the following and there were no questions:

## **PUBLIC SAFETY DEPARTMENT[661]**

Fee for criminal history records, 11.15, Filed Emergency After Notice ARC 6364A..... 4/10/96

# **UTILITIES**

Allan Kniep, Bill Smith, Vicki Place and Edmund Schlak were present from the Division, and Gary Stewart, Office of Consumer Advocate, and Larry Toll and Diane Kolmer from US West were present for the following:

## **UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181]"umbrella"

Foreign acquisitions, 32.2(4), Notice ARC 6378A..... 4/24/96

Local exchange competition, ch 38, Filed ARC 6379A..... 4/24/96

Compensation for termination of telecommunications services, 38.6, Notice ARC 6380A..... 4/24/96

**32.2(4)** Place said Consumer Advocate filed a statement agreeing with the concept of subrule 32.2(4). In answer to Kibbie, Place stated the Board spent administrative time on the type of acquisitions that had little if any impact on the state.

**Ch 38** Kniep stated the unbundling rules in Chapter 38 allowed a new competitor to buy certain services it needed from the incumbent company to provide service to its customers. Number portability allowed a customer to switch to a competitor without changing the telephone number. Cost methodology attempted to establish the proper relationship between the price that a company charged for services and the costs of providing the service.

Toll stated US West objected to subrules 38.5(2) and 38.5(3) and made a filing with the Board. Subsequently, MCI filed in support of US West's motion and AT&T recently supported the MCI filing. Problems were perceived with the cost

UTILITIES (Cont.) standards in these two areas. Toll added that US West, MCI and AT&T proposed elimination of the words "of an allocation" in subrule 38.5(3).

Halvorson asked if these proposals had been taken to the Board for consideration and was informed by Toll the Board currently had taken no action on the proposals.

Kniep stated the Board strongly objected to any delay on these rules and was required by statute to initiate this rule making by September 1995. He stated there was nothing in US West's amendment that had not been considered fully and rejected by the Board during the rule-making process.

Toll stated that a delay was also not in US West's best interests.

Stewart stated the imputation rule the Board adopted would not work without the language US West wanted deleted. Stewart urged the Committee to allow these rules to go into effect.

38.6 Because the Board made a change of policy during the rule making, rule 38.6(476) was renoticed to allow additional comments. No questions on this rule.

DOT Will Zitterich represented the Department for the following:

**TRANSPORTATION DEPARTMENT[761]**

Promotion of Iowa agricultural products at rest areas, ch 106, Notice ARC 6354A ..... 4/10/96

Ch 106 Zitterich stated these rules were drafted in conjunction with the Iowa Department of Economic Development and the Iowa Department for the Blind.

Priebe referred to subrule 106.6(2) and asked why only one sponsor was permitted at the promotion site. He indicated his concern with this section and Zitterich noted this portion would be rewritten so the number of sponsors at a site would not be limited.

Hedge believed notification of a limited access to water and electricity should be included in this rule since some sponsors might not have the need for those services. Weigel raised the issue of a cutoff limit for participating groups.

Priebe asked if the restriction on donations in paragraph 106.6(3)"b" was in the statute. Zitterich responded that it was not. He stated the Department viewed this as a promotional activity rather than a fundraising activity. Priebe agreed but believed an offered donation should be permitted.

Hedge asked if one commodity could sign up every rest stop for a weekend and turn down additional promotions. Zitterich stated under Department rules a promotion was not selected until 60 days in advance, thereby preventing a monopoly.

Metcalf favored the restriction of donations.

**INDUSTRIAL SERVICES**

Clair Cramer and Iris Post represented the Division for the following and there were no questions:

**INDUSTRIAL SERVICES DIVISION[343]**

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

Expense for use of private auto for medical treatment or examination for a work-related injury, 8.1,

Filed ARC 6368A ..... 4/24/96

**LABOR  
SERVICES**

Walter Johnson was present from the Division and Russ Luckritz, Clinton Fire Department, Robert Hamilton, Sioux City Fire Department, Dennis Duggan, Waterloo Fire Rescue, Andrew J. Rocca, Iowa City Fire Department, Roger Duello, Iowa Firemens Association, Matt Woody, Des Moines Fire Department, and other interested persons were present for the following:

**LABOR SERVICES DIVISION[347]**

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

IOSHA rules, special review .....IAC

**Special Review**

Johnson anticipated that the task force to review the issues of firefighters and OSHA's jurisdiction and internal policies would meet prior to July 1.

Hedge asked if other states had fines levied in emergency situations and Johnson replied it had occurred in New York.

Metcalf requested a report to the Committee when these meetings were underway.

Hamilton stated a number of issues went beyond what was brought before the Committee in January, some of which were contrary to nationally recognized fire protection standards. He would welcome the attendance of one or more representatives from the Committee at the meetings. Daggett volunteered to attend.

Duello and Luckritz reiterated the need for a written policy to clarify NFPA standards and OSHA rules. Priebe asked if recommendations in writing had been made from the fire departments.

Rocca pointed out that employees could complain to OSHA and within a brief period of time the initial inspections and, if necessary, cites to the departments could be made. Conversely, if a fire chief asked for a rules interpretation, it could take months. He also noted the need for clear direction on these issues.

Metcalf asked if there were guidelines indicating how the state should interpret federal rules. Royce replied that Iowa adopted the federal standards by reference. He believed Iowa had some authority in terms of interpretation of federal standards on a case-by-case basis.

Metcalf stressed the importance of the involvement in the meeting of all those people concerned. In response to Metcalf, Dierenfeld stated the governor had appointed a group to work on regulatory reform. She was uncertain whether federal government rules would be reviewed but would make that determination and apprise the Committee.

Hamilton pointed out that every situation faced by a firefighter was different and, although all were concerned with worker safety, circumstances did not always permit compliance and common sense needed to prevail.

**ENGINEERING**

Pat Peters and Dwayne Garber represented the Board and David Scott represented the Iowa Engineering Society for the following:

**ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]**

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Practice of engineering, board consideration of petition for declaratory ruling, 1.1(3), 1.2(3),

Filed ARC 6241A, 70-day delay, Item 1 ..... 2/14/96**1.1(3) and 1.2(3)**

Royce noted the Board and representatives from the underground storage tank group met and worked out a compromise.

**ENGINEERING (Cont.)**

**Motion** Priebe made a motion to lift the 70-day delay and the motion carried.

**REVENUE**

Carl Castelda, Administrator of the Compliance Division, represented the Department for the following:

**REVENUE AND FINANCE DEPARTMENT[701]**

Protests, corporation and franchise tax, 7.8(3), 52.1(5)"a" to "e," 56.6(4), 56.6(5), 59.28(2)"o,"

61.6(4), 61.6(5), Filed ARC 6357A ..... 4/10/96

Taxable and exempt sales — garment hangers, 18.7, 18.7(4), Notice ARC 6356A ..... 4/10/96

7.8(3) et al.

Kibbie referred to subrule 52.1(5) and asked if the starting point for computing Iowa tax on built-in gains was the same as the federal government. Castelda explained that for federal purposes various types of gains and losses are taken, a particular tax computation is done, and the tax combined. For state purposes, the Department required the gains and losses combined first and then the special capital gains exclusion amounts used.

Halvorson asked if the issue on Iowa capital gains exemption regarding whether it was a cumulative or an annual installment sale had been resolved. Castelda replied this matter was brought to the attention of the general assembly but no bill had been introduced. The Department would follow the district court decision which declared the gain was recognized in the year the installment was made. The \$17,500 maximum exclusion could be taken each year rather than once.

18.7 and 18.7(4)

Castelda stated that rule 18.7 had been amended to exempt garment hangers from tax and qualify as part of the packaging exemption for various items that facilitated the transportation of goods. In response to Rittmer, Castelda stated the issue had arisen following an audit of a large retail establishment in which hangers leaving the store had been initially declared taxable. Castelda estimated the revenue amount ranged from \$12,000 to \$17,000 and up.

**CORRECTIONS**

Fred Scaletta and Gene Gardner represented the Department for the following:

**CORRECTIONS DEPARTMENT[201]**

Jail facilities, 50.1, 50.2(4), 50.4(1), 50.4(2), 50.5(4), 50.5(5), 50.5(5)"f," 50.5(6)"b," 50.5(6)"c"(3), 50.6(1)"b," 50.6(2) to 50.6(4), 50.6(6), 50.6(7)"b" to "d," 50.6(10), 50.7(2) to 50.7(4), 50.7(8) to 50.7(12), 50.8(2)"d" to "g," 50.8(4), 50.8(5), 50.8(8), 50.8(9), 50.9(1) to 50.9(3), 50.9(5) to 50.9(8), 50.9(10), 50.9(11), 50.10(1)"d," "e," and "g," 50.11(1)"e," 50.11(3), 50.13, 50.13(2)"a"(2) and (3), 50.13(2)"e," 50.14(1), 50.15, 50.15(6)"b" and "c," 50.15(8), 50.15(9)"e," 50.16(2), 50.16(6), 50.16(8), 50.17(4), 50.18, 50.19(1)"a," 50.19(2), 50.19(3), 50.21(3), 50.21(5), 50.21(6), 50.22(9), 50.22(10), 50.22(14)"c," 50.23, 50.24, 50.24(3) to 50.24(7), 50.25(1)"d," 50.25(2)"b," 50.25(3), 50.25(11), Notice ARC 6360A ..... 4/10/96

Temporary holding facilities, 51.2(1), 51.2(2), 51.3(4), 51.4(2)"b," 51.4(5), 51.4(7), 51.4(10), 51.5(2), 51.5(5), 51.5(6), 51.6, 51.6(3), 51.7(3), 51.7(5) to 51.7(8), 51.7(10), 51.8(1), 51.9(1)"g," 51.9(2), 51.11, 51.11(1)"b"(2), 51.11(2)"a"(2), 51.12(1)"a" and "b," 51.13, 51.13(4), 51.13(6)"c," 51.18(3), 51.20, Notice ARC 6359A ..... 4/10/96

50.1 et al.;  
51.2(1) et al.

Scaletta stated controversy existed in Chapter 50 and Chapter 51 concerning a 911 operator supervising inmates. It brought into question, in the case of multiple emergencies, which would take precedence, as well as the sensitivity of the issue and possible financial impact. The director requested the Department study this particular section of the rules with a committee organized to develop a questionnaire and a survey to determine how this could be implemented as simply and cost-effectively as possible. This part would be deleted when the rule was readied for adoption.

Kibbie was concerned with the costs of these rules and Scaletta replied he would provide an impact statement.

**CORRECTIONS (Cont.)****Economic Impact**

Kibbie asked the record to show unanimous consent for an economic impact statement on this rule on any changes involving money and how it would affect local governments. There were no objections to the request for an economic impact statement and it was ordered to be completed.

Gardner responded to Kibbie that generally the jails were allowed to use jailer/dispatchers as jailers. This was prohibited when it did not prove feasible due to the physical structure of the facility. Gardner was uncertain how many jails would be impacted.

Gardner stated the Department had not increased square footage requirements. Scaletta pointed out that every jail currently complied with the square footage, but this would be more difficult for new jails. Gardner added that new facilities constructed would require a sink and commode for every six people.

Metcalf paraphrased Kibbie's request that the Department would not need to complete a full economic impact statement but Kibbie was interested in the cost estimate less staffing until such time as the rules came back. Kibbie agreed.

Royce stated that Chapter 25B of the Code specifically required that when a rule had an impact on local government of \$100,000 expenditures or more, there had to be a fiscal note accompanying the original notice. Royce stated it was fine at this point to have some cost estimates but anything with a more significant impact, such as the 911 personnel, would have to follow the Code requirements.

Hedge asked whether changes to new facilities being built resulted from the law that was changed or a federal mandate. Gardner replied that basically the changes resulted from a rewrite of existing rules.

Hedge asked about the addition of subrule 50.6(2) requiring fans and ice water to be made available when the temperature reached 85 degrees. Gardner replied this was new and was added because the American Corrections Association and a number of federal court decisions stated a certain amount of air ventilation was required. Many jails could not meet the requirement and this provided a less expensive compromise.

**COLLEGE AID**

Laurie Wolf was present from the Commission for the following:

**COLLEGE STUDENT AID COMMISSION[283]**

EDUCATION DEPARTMENT[281]"umbrella"

Federal family education loan programs, 10.1(1), 10.1(2), 10.2(1)"b"(4), 10.2(2),

Filed ARC 6367A..... 4/24/96

Consolidation loans, 10.2(1)"b"(7) and (8), Notice ARC 6365A..... 4/24/96

Osteopathic forgivable loan program, 30.1(8)"c," Filed ARC 6366A..... 4/24/96

10.1(1) et al.

Wolf stated subparagraph 10.2(1)"b"(7) was removed from the Adopted rules at the suggestion of the assistant attorney general who stated the language pertaining to federal rules on student loans was duplicative.

Wolf replied to Daggett that all changes had been received from the federal government as of April 1 but the Commission had received no new changes with the new appropriations bill.

10.2

No Committee action.

30.1(8)"c"

Metcalf asked Wolf to report to the ARRC within 6 months to one year concerning paragraph 30.1(8)"c," the osteopathic forgivable loan program, on the number of people who had requested this.

**NO REPS.**

No agency representative was requested to appear for the following:

**ARCHITECTURAL EXAMINING BOARD[193B]**

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Child support — certificates of noncompliance, 2.5, 5.23, 6.9(3), Filed **ARC 6382A** ..... 4/24/96

**LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]**

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Child support — certificates of noncompliance, 2.11, 4.11, 5.9(3), Filed **ARC 6381A** ..... 4/24/96

**PERSONNEL DEPARTMENT[581]**

Deferred compensation — mutual funds, 15.6, Filed Emergency **ARC 6349A** ..... 4/10/96

**REAL ESTATE COMMISSION[193E]**

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Child support — certificates of noncompliance, 2.18, 4.42, 5.18, Filed **ARC 6353A** ..... 4/10/96

Prelicense and continuing education, 3.1, 3.2(1), 3.2(4), 3.4(1), 3.4(1)"f" to "i," 3.4(2) to 3.4(6),

3.5"7" to "9," Notice **ARC 6352A** ..... 4/10/96

**SECRETARY OF STATE[721]**

Election forms and instructions, 21.2(2)"k," 21.2(3)"b," 21.20, 21.21, 21.301, 21.401, 21.500,

21.820(1)"d," Notice **ARC 6355A** ..... 4/10/96

Proposed constitutional amendment, 21.200(4), Notice **ARC 6221A**

Terminated **ARC 6375A** ..... 4/24/96

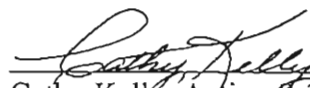
**Meeting Dates**

The following meeting dates were agreed to: June 11 and 12, July 9 and 10 and August 13 and 14.

**Adjourned**

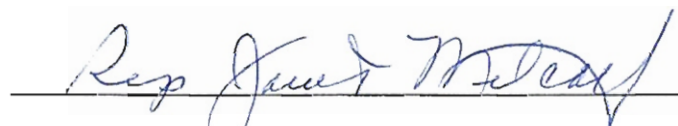
Metcalf adjourned the meeting at 3:40 p.m.

Respectfully submitted,



Cathy Kelly, Acting Secretary

Assisted by Kimberly McKnight

**APPROVED:**


Representative Janet Metcalf, Co-chair