

**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, May 12, 1998, in Room 118, State Capitol, Des Moines, Iowa.

**Members present:** Senator H. Kay Hedge, chair, and Representative Christopher Rants, vice chair; Senators Merlin E. Bartz, John P. Kibbie, William Palmer, and Sheldon Rittmer; Representatives Danny Carroll, Minnette Doderer, Janet Metcalf, and Keith Weigel.

**Also present:** Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor; Jackie Von Ekeren Romp, Administrative Rules Coordinator; caucus staff and other interested persons.

**Convened** •Chair Hedge convened the meeting at 9:34 a.m.

**HUMAN SERVICES DEPARTMENT** Mary Ann Walker represented the department.

ARC 7909A No questions on proposed amendments to ch 10 concerning IDAs.

ARC 7906A No questions on 75.27, AIDS/HIV settlement payments.

ARC 7905A No questions on 79.3 regarding provider documentation of services.

ARC 7904A No questions on 113.4(1) concerning emergency placements in foster homes.

**NATURAL RESOURCE COMMISSION** Steve Derman, Daryl Howell, John Pearson, and Allen Farris represented the commission. Jane Clark appeared on behalf of the Sierra Club. Marian Havlik represented Malacological Consultants. Kristie Hirschman represented the Office of Citizens' Aide/Ombudsman. Representative James Hahn of Muscatine and Representative Roger Thomas of Elkader were also present. Other interested parties included Virgil Wulf, John Wautalt, Chuck Lawson, Dan Dawes, and Butch Ballinger.

ARC 7934A No questions on 15.5(1) concerning crossbow use by temporarily impaired hunters.

ARC 7933A Proposed 38.6"11" provides for registration of used vessels not previously registered in Iowa.

•Doderer questioned the rationale for the requirement that a notarized affidavit be presented to the county recorder. Farris responded that county recorders asked for this to be included as a certification that the applicant attested to the truth of the statement of lawful ownership of the vessel.

ARC 7932A Amendments are proposed to bring ch 78 into conformance with federal requirements on the harvesting and sale of ginseng.

•Rittmer asked if an individual needs a permit to grow ginseng and about the uses of the product. Howell explained that, to coordinate with federal requirements, permits to grow ginseng are necessary; and they are available at no cost. Ginseng is used by the health food industry and exported to China.

•Bartz was informed that a distinguishable difference between the more valuable wild ginseng and the cultivated product appears in the shape of the roots. Approximately 1000 to 2000 pounds of wild ginseng is harvested each year; whereas less than 100 pounds of cultivated ginseng is harvested per year.

ARC 7935A Farris summarized the reasons for removing washboard mussels from the list of commercially available mussels in the Mississippi River. Farris emphasized that the department is not opposed to commercial utilization of the natural resources of the state, but is concerned about the status of the washboard mussel. Washboard density studies which include information collected from 1980 to 1997 by Wisconsin and Illinois indicate a decline in young washboard mussels in the Mississippi River. The decision to stop commercial harvest of washboard mussels in the Mississippi was made in light of the information available and the statutory duty of the department to preserve the natural resources of the state.

Hahn urged the committee to consider the results of the survey conducted by Malacological Consultants.

Havlik presented findings of a survey she conducted on the Mississippi in 1997 which indicate that Iowa has nearly 20,000 tons of legal-size mussels in its waters. Ballinger and Lawson voiced opposition to the amendment.

Thomas pointed out statutory mandates for the department to set aside aquatic habitats for endangered or threatened species; Farris responded that washboards do not fit into this category. Thomas objected to the department's acceptance of research from other states rather than conducting its own investigation.

Clark, representing the Sierra Club, approved of the department's decision affecting this species as the prudent course of action. With the closure of harvest in other states, Clark sees a potential for overharvesting in Iowa as well as possible laundering of mussels taken from closed beds in other states. Clark views closure as the responsible action since the prohibition can be lifted if scientific evidence indicates that it was the wrong decision; whereas, the resource may be depleted if harvesting continues.

Hirschman referenced a letter from the U.S. Fish and Wildlife Service which confirms Havlik's reputation and states that the numbers reported by Havlik indicate no need for closure.

•Farris assured Metcalf that monitoring will continue after closure and that commercial harvesting could again be reopened if a reasonable amount of scientific data supports it.

•Metcalf, noting that Havlik's findings account for legal-size washboards, asked if young mussels were also found. Havlik indicated that young washboards were found only near shore, not in the beds. Metcalf wondered if the proximity to shore might be an environment that is dangerous to the young. Havlik pointed out that although juveniles are hard to find, breeding is cyclical and seems to have spurts every 6 to 10 years.

•Bartz asked about the size range in the recruitment phase of the mussel. Havlik explained why her methodology classifies by age rather than size. Bartz observed that in the density chart distributed by the department, years of high numbers of mature mussels are not followed by years reflecting larger numbers of young.

Farris stated that reproductive success is not necessarily dependent upon the number of mature mussels. Farris added that the letter referred to by Hirschman was written by an employee of the Fish and Wildlife Service but does not represent an official position of the Fish and Wildlife Service.

•Weigel inquired about ages of mussels represented by periods designated as immature, mature sublegal, and mature legal size. Havlik responded that generally the immature stage might represent as much as eight years. Unharvested washboards could have a life span of 60 years; the oldest found in Havlik's study was 38 years. In response to Weigel's question about the apparent lack of correlation between the number of immature mussels and the number of mature mussels in subsequent years, Farris called attention to the fact that the graph represents percentages rather than number of mussels. Weigel voiced concern about possible overharvesting if Iowa is the only state not to ban harvest.

Havlik responded that actual effective dates of closure in the surrounding states are not known, and expressed a concern that if the commercial harvesters are not out on the waters, no one will be monitoring the effect of zebra mussels.

•In response to Carroll's request, Havlik explained how her research was conducted during the 13 weeks of the study. The age of mussels was determined by counting rings which can be observed after shells are scrubbed. When asked to comment on the Wisconsin study, Havlik said that the Wisconsin sampling was not from the center of the beds.

Farris countered that sampling from the center of the known beds and projecting the density from those numbers give a false picture and suggested that if the number of legal mussels were actually as high as Havlik's study indicated, the take by harvesters would have been higher.

•Royce summarized committee options at the request of Kibbie.

Motion to delay

•Bartz moved a session delay on ARC 7935A.

Motion carried

The motion to delay ARC 7935A until the end of the next session of the General Assembly passed.

**ENVIRONMENTAL PROTECTION COMMISSION** Anne Preziosi, Scott VanderHart, Diana Hanson, Brent Parker, and Joe Obr represented the commission. Gary Shawver represented Shawver Well Co. Inc. Kent Loney represented Victor Pipe & Steel.

ARC 7928A

•Bartz was informed that none of the standards adopted are more stringent than federal requirements.

ARC 7930A

No action on medical infectious waste incinerator and municipal waste combustor amendments to chs 22, 23, and 25.

ARC 7929A

Hanson reported that amendments pertaining to wells affect chs 49, 60, 64 and 69. Shawver supported the amendments with the exception of the casing grading standards. The former rules did not require grading to ASTM or API standards. Most water wells in Iowa use five- or six-inch casing, which is created to ASTM standards; his company uses a seven-inch casing, which is graded to API standards for oil fields, exceeding specifications for ASTM standards for nonpublic wells, but the casing is considered a second in that it does not meet oil field standards for length.

## Environmental Protection Commission(cont'd)

•Weigel was told that the commission is not aware of a problem with this seven-inch pipe used by Shawver, but the commission is reluctant to eliminate the grading standard on pipe as it is an industry-adopted standard. IPSCO is willing to stamp seven-inch pipe that does not meet API oil specifications for length but does meet ASTM standards. The commission suggests that manufacturers be encouraged to stamp API seconds that meet ASTM standards so that they can be used; if a sufficient quantity of stamped seconds is not available, a variance can be requested in individual cases.

•Bartz was informed that a variance would have to be requested for each individual well. Shawver averages 250 to 300 wells, about 75 percent of which use this pipe. Shawver stated that individual counties and boards of health are less likely to be willing to grant variances than the department.

Motion to delay

•Weigel moved that 49.9(1)"a" be delayed for 70 days.

Motion carried

The motion to delay passed.

•Hedge inquired about sandpoint wells and was informed that they may be drilled by a certified well driller or the owner of the well.

• At the request of Kibbie, Hanson outlined changes from the notice.

ARC 7931A

No questions on termination of notice to amend landfills.

**GENERAL SERVICES DEPARTMENT** David Ancell represented the department.

ARC 7963A

Ancell stated that minor changes to the parking rules would be forthcoming to further clarify the changes made in response to the comments received.

ARC 7962A

No questions on ch 10 inventory guidelines.

**SECRETARY OF STATE**

Carol Olson, Sandy Steinbach, and Lynette Donner represented the Secretary of State's office. School districts were represented by Ken Haynie, Laura Sands, Jane Hein, Jay Horstman and Gary Wegenke of Des Moines; Jim Matre of North Polk, and Galen Howsare of West Des Moines.

Special Review

An emergency rule making for elections for local sales and services tax for school infrastructure establishes procedures for elections to be held this year. The time frames mirror those for local option tax elections. A summary of issues not addressed by H.F. 2282, such as ballot language and apportionment of the costs of the election, was distributed for the committee's consideration.

•Rants offered the opinion that the issues are within the purview of the secretary of state.

Haynie stated that the school districts would like additional guidance, but feel that most issues can be resolved with cooperation at the local level among school boards, county supervisors, and county auditors.

•Following a discussion of several issues, Metcalf asked if there are significant impediments to holding elections this year. Haynie responded that there are plans for an election this year and cooperation is anticipated.

**EDUCATION DEPARTMENT** Ann Molis, Terry Voy, and Jim Tyson represented the department.

ARC 7941A

No questions on the rescission of ch 11, which was superceded by ch 12 in 1989.

ARC 7944A

No action on transportation of open-enrolled students, 17.9(1).

•Tyson responded to Doderer that if a student qualifies for transportation assistance, the resident district must determine how it will be provided.

ARC 7942A

No questions on school bus driver physicals, 43.15.

ARC 7943A

The child development coordinating council's proposed amendments to ch 64 pertain to reversion of unspent funds and subsequent deductions from grant awards.

•Molis told Kibbie that when the department is notified of unspent funds, the funds are reallocated to other programs.

•Hedge expressed concern that the amendments might encourage unnecessary spending. Molis stated that abuse is not likely, since less than \$10,000 has been reverted per district.

•Metcalf was advised that the reversions have occurred because of the timing of the grants and because the department had no recapture provisions.

•Weigel was informed that grants average \$60,000 to \$120,000, based on per-pupil amounts. Since the grants are competitive, Weigel asked about the prioritization of reallocations; Molis will find out.

**EMPLOYMENT APPEAL BOARD** Bill Whitten and Dick Ramsey represented the board.

ARC 7914A

No action on proposed amendments to chs 1 to 5, 7 and 9.

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA**

Kay Williams, K. Marie Thayer, and Lynette Donner represented the board.

ARC 7949A

No questions on 5.10 regarding provision of copies.

**INSPECTIONS AND APPEALS DEPARTMENT** Rebecca Walsh represented the department.

ARC 7956A No questions on amendments to ch 51.  
ARC 7954A No questions on proposed infection control amendments for care facilities.  
ARC 7955A No action on addition of violation classifications.

**INSURANCE DIVISION** Susan Voss and Dennis Britson represented the division.

ARC 7910A No questions on ch 1 amendments regarding change of address.  
ARC 7911A No action on 19.2 and 19.60, regarding establishment of a time limit for withdrawal of interest and the updating of the consumer price index adjustment.  
ARC 7957A Amendments incorporate "prudent layperson" standard for emergency services and federal provisions on mental health parity.  
•Metcalf inquired about access to the federal language.  
•Voss advised Weigel that the mental health parity provisions applied to large groups, 50 or more.  
ARC 7939A Disclosure of information about agreements between carriers and pharmaceutical companies regarding discounts, rebates, and drug formularies is proposed. The division expects the adopted rule to be changed in response to comments.  
ARC 7959A No questions on termination of the notice pertaining to Internet advertising.  
ARC 7912A The division has received positive responses from the industry regarding proposed licensing of service contract companies, 54.20.  
•Britson assured Weigel that the statute allows designation by rule.

**Committee business**

Minutes Hedge moved the minutes be approved. The motion carried.

June meeting The committee will meet Tuesday, June 9, 1998.

**PERSONNEL DEPARTMENT** Clint Davis and Gregg Schochenmaier represented the department. Peter Pashler, mediator of the agreement, was present. Brice Oakley represented Great West. Terry Hancock and Michael Donahoe of Equitable of Iowa and Rick Phillips of Phillips Corporate Consulting were present.

ARC 7961A No action on amendments to chs 4, 8 and 10.  
ARC 7940A The deferred compensation provisions for mutual funds have been adopted in order to have a plan in place so the program can operate. A vendors panel and the advisory panel will review the rules and work out amendments to incorporate agreed-upon terms which allow ten insurance companies to offer deferred compensation options to state employees.  
•Metcalf was informed that performance results and fee disclosures will be included in a language and format that allows for comparison and informed choice. Also, the insurance industry has offered to assist in the transition from the existing 35 companies that have been involved to the 10 that will be involved. Metcalf commended the department and the advisory panel for their response to the concerns raised when the emergency rules came before the committee.  
•Pashler told Carroll that Great West received \$200,000 for releasing the state from the contract. The state will be responsible for educational programs for employees. Great West's fees will remain the same for the time remaining on the contract.  
•Weigel was advised by Pashler that the 60 basis points will apply only to the money under Great West's management, including stable value and mutual funds. The plan document will address issues such as products available and plan administrator's ability to move assets. The attorney general has taken the stand that the employee must be involved in the decision to transfer assets. Weigel urged that details regarding flexibility and split contributions be very specific.  
•Rittmer commented that the chair of the task force was highly successful at getting people to come to agreement.  
•Palmer concurred with the attorney general that the deferred compensation contract is with the state of Iowa, not an insurance company, and that employees must be involved in any transfer of moneys.  
•Pashler responded to Rants that active participation was a criteria for selection because the decision was made to honor state employees' selection of financially sound companies as evidenced by existing contracts with state employees.  
Oakley stated that Great West has agreed to the principles of the agreement. Oakley addressed expenses which Great West has incurred and cannot recover and pointed out that in addition to the \$200,000, amounts of \$125,000 and \$40,000 have been appropriated for education in order to increase participation in the program. Oakley observed that employees have missed out on a rising market over the past eight months.  
Hancock and Phillips both expressed support of the agreement.

**REVENUE AND FINANCE DEPARTMENT** Carl Castelda represented the department.

- ARC 7946A No questions on proposed 26.45 regarding taxation of pest eradication in agricultural production.
- ARC 7945A No action on cleanup of income tax rules in chs 39, 40, 41, 43, and 46.  
•Castelda differentiated for Rittmer the filing requirements for sales and withholding taxes.

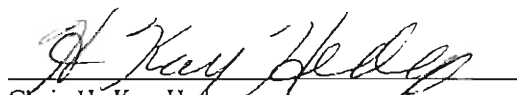
**PUBLIC HEALTH DEPARTMENT** Mike Marshall, Michael Magnant, Jayne Loos, Karen Fread, Gary Ireland and Jeanie Hudson represented the department.


- ARC 7924A No questions on ch 15 regarding swimming pools and spas.
- ARC 7923A No questions on radiation amendments.
- ARC 7917A Amendments to ch 41 pertain to mammography.  
•Weigel was informed that a quality control check is run each day of mammography machine use. An annual inspection by a physicist is also required.
- ARC 7922A No comments on ch 77 amendments regarding local boards of health.
- ARC 7960A No questions on proposed 90.10 and 90.11 pertaining to child death review teams.
- ARC 7919A No questions on EMS defibrillation, 132.1 and 132.16.
- ARC 7918A No questions on ch 139 amendments regarding law enforcement emergency defibrillation.
- ARC 7921A No questions on ch 178 regarding variances and waivers of the department's rules.
- ARC 7948A No questions on proposed 194.5 to 194.7 pertaining to scope of practice review committees.
- ARC 7920A No questions on 201.6(8) concerning prohibition of restrictions on communications.
- Adjourn The meeting was adjourned at 3:40 p.m.

Respectfully submitted,

  
Kathleen K. Bates

APPROVED:

  
Chair H. Kay Hodge

  
Vice chair Christopher Rants