

**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 and Wednesday, July 9 and 10, 1996, in Room 22, State Capitol, Des Moines, Iowa.

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

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

Convened: •Cochair Metcalf convened the meeting at 10:08 a.m.

HUMAN SERVICES Mary Ann Walker, Gary Gesaman, Mary D. Roberts, Marcia J. Starda, Eric Sage, and Margaret Ward were present from the Department of Human Services.

ARC 6439A No questions concerning rule 441—54.1(249).

ARC 6460A Walker stated amendments to Chapter 79 updated the claim and cost report dates which coincided with the rebasing and recalibration. The report dates included information for the hospitals' 1995 fiscal year.

•In response to Daggett, Starda indicated the claim and cost report dates were updated on a regular basis.

ARC 6461A •Metcalf asked how Chapter 99 differed. Walker said these amendments permitted the establishment of paternity by an administrative order, which when filed was given the same credence as a district court order.

•Rittmer asked if the right to a court appeal from the administrative order existed and was told it did.

•Weigel inquired if there was a time frame in which the mother could seek to establish paternity. Walker was uncertain but would obtain that information.

•Hedge questioned the accuracy of a 95 percent probability of paternity determination factors. Royce noted 95 percent was considered the low end while DNA testing was 99 percent accurate.

•Rittmer asked and was told by Walker that a DNA test could be conducted once a blood test had been completed.

ARC 6462A Walker pointed out that under the amendment to rule 441—200.5(600) the Department could make an adoptive placement while parental rights termination was being appealed by a birth parent. She stated this permitted rapid placement of a child, thereby diminishing the time spent in foster care. It also could mean adoptive parents faced the risk of having the child returned to the birth parent.

•Kibbie expressed concern the new language would prolong the process and not provide a definite closure for those children being placed for adoption until an agreement was reached.

Dierenfeld noted a birth parent had the right to appeal an adoptive placement and that adoption could not be finalized until the appeal was concluded.

ARC 6459A Walker stated the amendments to Chapters 78, 79, and 83, when Noticed, had

proven controversial and were extensively revised. A total of 122 attended the public hearings and 30 written comments were received. Gesaman added the Department reassessed its position as a result of some of those comments, notably use of the the disability profile index assessment tool, from which the Department had "backed off." He said another area of concern was the addition of an hourly supported community living service rate when a daily or longer rate had not been established. Gesaman added the providers were concerned with this aspect although the counties were in support. A third concern centered around the ability of counties to establish slots.

•Daggett asked and was told a disparity does exist throughout the state of Iowa in the availability of services. He then inquired if these changes required considerable paperwork. Gesaman indicated a group of people was working to reduce this to a minimum and "streamline" the program.

•Kibbie pointed out the disparity in the number of slots per size of county. Gesaman stressed the number was determined by each county and the disparity would be addressed if the Department were to assign the slots. Kibbie then asked if out-of-state people were included within this and how the payment of services was handled. Gesaman responded that he was not aware of any, but the state would pay the nonfederal share if that person was a legal resident. Kibbie then inquired if 60 days constituted a legal requirement for residency. Gesaman stated there was no time limit, as long as it was the person's intent to reside in that county.

•Rittmer asked if any areas of major disagreement concerning these amendments remained and was told no by Gesaman. Walker added some displeasure with the rule did exist since there was no county uniformity.

ARC 6479A No questions concerning paragraph 83.22(1)"b."
 ARC 6478A No questions concerning Chapter 89.
 ARC 6481A No questions concerning paragraphs 93.23(3)"d," and 93.123(3)"d."
 ARC 6482A No questions regarding subrule 156.12(1).

ARC 6483A •Hedge inquired if the amendments to Chapter 175 would make any difference in those being placed on the registry if the child had received no injuries. Sage explained previously one-third of those reported were included on the registry and that number currently stood at 10 percent of those reported. He explained the four levels had created unnecessary overlay for the caseworkers to make a determination of child abuse and only significant cases of abuse would be placed on the registry. Hedge asked if a review could be conducted of those currently listed on the registry to determine if significant abuse had occurred. He raised the point of whether the rule change created an injustice to those persons and whether they should continue to be listed on the registry. Sage noted there are currently 70,000 on the registry and the task would be nearly impossible.

•Rittmer felt consideration should be given to a review of those included on the registry.

•Metcalf requested this be brought for special review before the Committee at either the August or September meeting.

ARC 6504A No questions concerning Chapters 52 and 177.
 ARC 6501A No questions concerning 78.1(2), paragraph "a," subparagraph (3), and 78.28(1), paragraph "d," subparagraph (1).
 ARC 6505A No questions concerning Chapters 78 and 83.
 ARC 6507A No questions concerning Chapters 79 and 81.
 ARC 6508A No questions concerning Chapter 88.
 ARC 6510A No questions concerning paragraphs 93.109(2) "h" and "i," and subrule 93.114(15).
 ARC 6524A No questions concerning subrules 108.7(5) and 108.9(7).

ARC 6512A •Walker explained the amendments to Chapters 130 and 170 updated the income guidelines

for child day care to be consistent with revised federal poverty income guidelines. Metcalf stated she was aware the funding level of four Polk County day care centers had been frozen at each of their entry levels.

•Hedge asked if this was unique to those facilities and was told it was not.

ARC 6514A

No questions concerning 150.3(5)“p”(2) to (4).

ARC 6502A

•Kibbie asked if the three new juvenile justice and delinquency programs in Chapter 151 were well-known throughout the state. Walker said the juvenile justice system had worked closely with the Department and the implementations were currently being used throughout the state.

ARC 6516A

No questions concerning Chapters 152 and 185.

ARC 6518A

No committee action concerning Chapters 156 and 185.

ARC 6520A

No questions concerning 156.6(1), 156.11(3), and 202.17.

ARC 6521A

No questions concerning Chapter 162.

ARC 6523A

No questions concerning Chapter 175.

S.F. 2442

Walker said the council would address the amendments concerning child care benefits on the following day and this would again be before the Committee in August.

AGRICULTURE

Daryl D. Frey, Robert L. Cox, and Dr. Walter Felker were present from the Agriculture and Land Stewardship Department for the following.

ARC 6438A

Frey stated that because of comments received concerning the exemption from the minimum \$250 pesticide registration fee for total annual sales of less than \$10,000 for nonagricultural use pesticide products manufactured in Iowa, the amendment to paragraph 45.3(3)“e,” would be withdrawn and any change should be made legislatively.

•Rittmer asked the potential dollar impact of this. Frey replied it was very limited at \$6,200, but it could become major if the exemption were expanded to cover additional pesticides as had been requested by those in opposition.

ARC 6484A

•Cox said the amendments to Chapter 22 clarified conditions under which honeybees were sold and transported to Iowa. Metcalf asked if the bee industry in Iowa was healthy, and Cox indicated both the industry and production were struggling due to parasitic mites that were nearly worldwide. He noted the situation was exacerbated since the mites were becoming resistant to insecticides.

•Hedge questioned whether European bees had developed an immunity and was told by Cox that they had not, although the Asian bee had originally been resistant to the mite. Hedge then inquired if the African bees were resistant and was told they might be. Cox added it appeared their movement northward from Mexico and Texas had been slowed.

•Daggett asked if a 90-day prior notice had to be given before honeybees were allowed to enter the state and was told yes.

ARC 6485A

No committee action concerning Chapters 64 and 65.

COLLEGE STUDENT AID

ARC 6486A

Laurie Wolf appeared on behalf of the Commission.

•Wolf said the amendments to subrules 12.1(3) and 12.2(4) allowed eligible students enrolled in institutionally defined accelerated academic programs at Iowa independent colleges to receive Iowa Tuition Grants for summer attendance. Metcalf asked if this could commence in 1997, but Wolf responded \$2,800 would not provide enough funding for tuition grants. The students would be appropriately counseled for 1997.

•In response to Kibbie, Wolf stated there was adequate funding for this program.

CREDIT UNION

ARC 6487A

Tom Sarvis appeared on behalf of the Credit Union Division, Libby Nelson was present from the Attorney General's office, Mike Whitmer appeared for the Iowa Bankers Association, Tom Sizer for the State Credit Union Review Board, and Mike Heller and Aimee L. Campine were present from the Iowa Credit Union League.

Sarvis stated the Iowa Credit League supported the amendments to the low-income designated credit union in Chapter 7, but the Iowa Banker's Association was in opposition. Sarvis pointed out the low-income groups generally were not served by regular banks.

•Halvorson asked how many credit unions would meet the designation of 50 percent low-income members. Sarvis indicated he was unsure.

•Daggett inquired what the criteria in rule 7.2 for the 80 percent of the average for all wage earners was based upon. Nelson stated it was based upon each credit union's field of membership and those members made less than 80 percent of the average for all wage earners or their annual income was at or below 80 percent of the median household income for the nation.

Whitmer delineated the areas of the Iowa Bankers Association concerns. These included allowing up to \$1.5 million of deposits from nonmembers with no assurance those funds would be used to benefit low-income members; broad expansion of credit union powers; inadequate provisions to ensure ongoing eligibility of the credit union; and receipt of secondary capital accounts.

When asked, Sarvis explained the federal law concept of secondary capital as subordinated capital available to pay debt.

•Responding to Daggett, Sarvis replied 14 states had low-income credit unions, although he was uncertain of the length of their existence, and 29 others were in the process of implementing low-income credit unions.

Heller pointed out these amendments provided guidance and cleared up ambiguities currently present. He felt this provided low-income people with the opportunity of becoming credit worthy and a means of getting off welfare.

•Weigel inquired if the loans were allocated to low-income people. Sarvis stated there was not necessarily a preference afforded to them. Weigel then expressed concern the secondary capital sounded similar to the savings and loan debacle. Sarvis refuted this.

Recess

The committee recessed at 12:10 p.m. and reconvened at 1:30 p.m.

PUBLIC HEALTH

ARC 6441A

Carolyn Adams, Michael Magnant, and Gary Larson appeared on behalf of the Department.

•The amendments to Chapter 7 pertaining to immunization practices standards prompted Metcalf to ask if the percentage of children being immunized had increased within the past two years. Adams noted it was a substantial increase.

ARC 6440A

No committee action concerning Chapter 25.

ARC 6465A

No questions concerning subrules 132.4(3) and (4).

UST

ARC 6444A

Pat Rounds appeared on behalf of the Board and Bob Galbraith was present from the Attorney General's office.

ARC 6470A

No questions concerning Chapter 6.

No questions concerning paragraph 10.1(2) "i."

ARC 6472A

•In response to Daggett, Rounds stated that subrule 10.3(8) provided a measure of relief for an underground storage tank owner financially unable to pay insurance premiums. Daggett then asked if the site could be cleaned up if the property was seized by the county for nonpayment of taxes. Rounds noted that if the person was unable to pay the insurance premiums, generally the taxes were also not paid, and it was possible the county could then begin cleanup.

•Hedge asked if 100 percent of the cleanup was paid for by the county or by the fund. Rounds stated the fund paid 100 percent payment and covered third-party costs, but not those of the current owners.

•Rittmer queried whether many unidentified underground storage sites existed and Rounds indicated that was probable.

ARC 6471A

No questions concerning paragraph 11.1(3)“l,” and subrule 11.1(5).

ARC 6443A

No questions concerning Chapter 15.

ARC 6445A

No questions concerning subrule 17.32(4).

EPC

Anne Preziosi, Jack Riessen, Catharine Fitzsimmons, Nancy S. Exline-Downing, and Joseph Obr, were present from the Department.

ARC 6494A

No questions concerning subrule 22.106(6).

ARC 6493A

No committee action on paragraph 23.2(3)“b.”

ARC 6496A

No committee action on subrule 61.2(5) and paragraph 61.3(5)“e.”

ARC 6495A

No questions concerning Chapter 103.

NATURAL RESOURCES

Steve Derrmand, Richard Bishop, and Darrell McAllister represented the Department on the following.

ARC 6454A

•Kibbie asked if 15.10 permitting transportation tags for active duty military personnel was applicable only to big game. Derrmand indicated that was correct and only one turkey and one deer could be tagged on an annual basis.

ARC 6456A

No committee action concerning Chapter 30.

ARC 6451A

No questions concerning subrule 37.13(1).

ARC 6450A

No questions concerning 40.26.

ARC 6449A

No questions concerning paragraph 45.4(3)“h.”

ARC 6457A

No questions concerning 51.5.

ARC 6453A

No committee action concerning Chapters 61 and 105.

ARC 6458A

No questions concerning subrule 91.5(1).

ARC 6448A

No questions concerning 99.5.

ARC 6452A

No committee action concerning Chapter 105.

ARC 6447A

No questions concerning Chapter 106.

ARC 6536A

No committee action concerning 14.1 and 14.3.

ARC 6537A

•In response to Daggett, Derrmand stated the upper area of Three Mile Lake would be designated a no wake area. Daggett noted the no wake zone was dependent upon the integrity of the boaters.

ARC 6540A

•Daggett asked if the amendments to subrule 52.1(1) would create problems for the landowners in the Viking Lake area. He stated he received complaints of numerous deer in that region. Bishop stated this should alleviate some of the deer population problems since certain areas of the refuge would be open to hunting and the deer would not be as apt to congregate there. He added hunting would be closed in the shelter areas where people might be located.

ARC 6542A

No questions concerning subrule 52.1(1).

ARC 6541A

No questions concerning paragraph 52.1(2)“a.”

ARC 6532A	No questions concerning the Notice of Termination on Chapter 61.
ARC 6533A	No questions concerning Chapter 61.
ARC 6534A	<ul style="list-style-type: none"> •Halvorson inquired why the bond was increased for timber buyers in the amendments to Chapter 72. He further questioned the amount of the increase. Bishop said this was done in an effort to eliminate poor timber buying practices. •In response to Daggett, Bishop noted the Forestry Division will provide a list of bonded timber buyers upon request.
ARC 6538A	No questions concerning subrule 102.2(1).
ARC 6539A	No questions concerning paragraph 105.4(5) "e."
ARC 6535A	No questions concerning Chapter 111.
Informal Economic Impact Statement	<p>McAllister presented a copy of an informal economic impact analysis pertaining to ARC 6363A. He stated this was a two-year \$131,400 administrative cost projection. These figures reflected a \$49,500 certification cost to cities, \$21,900 for industry, and \$60,000 for commercial laboratories. It was estimated that 100 to 150 municipal wastewater laboratories, 25 to 30 industrial laboratories, and 30 to 50 commercial laboratories would be certified.</p> <ul style="list-style-type: none"> •Responding to Hedge, McAllister stated the fees were lower for controlled discharge facilities where discharge occurred twice a year as opposed to the continuous discharge facilities. Those towns currently conducting analyses would not experience an increase in costs. •Kibbie asked whether municipalities and water processors were aware of this rule and was told they had been apprised and knew of the 70-day delay which had been imposed. •Metcalf noted the 70-day delay would run on July 24, at which time this rule becomes effective.
Minutes	<ul style="list-style-type: none"> •Kibbie moved the minutes be approved. Motion carried.
Committee Business	<ul style="list-style-type: none"> •Metcalf read a letter of commendation directed to Representative Daggett.
Recess	The meeting was recessed at 3:10 p.m. until 9 a.m. Wednesday, July 10, 1996.
RECONVENED	<ul style="list-style-type: none"> •Metcalf reconvened the meeting at 9 a.m. Senator Priebe and Representative Doderer were excused from the meeting.
<u>DOT</u>	Steve Westvold, Lance Stumbo, Sue Albright, and Will Zitterich were present from the Department.
ARC 6476A	<ul style="list-style-type: none"> •Metcalf inquired when the amendments to Chapter 106 would commence. Zitterich responded the promotion of Iowa agricultural products at rest areas was now in effect.
ARC 6477A	In remarks concerning Chapter 117, Westvold stated the Department will have information ready by December for submittal to the legislature for consideration of changes in the law pertaining to outdoor advertising.
ARC 6475A	No questions concerning 117.1.
ARC 6498A	<ul style="list-style-type: none"> •Halvorson pointed out amendments to Chapter 118 increased annual sign fees 100 percent and doubled the costs for small businesses. Westvold responded a \$100,000 deficit per year existed and with the elimination of federal funding, the program had to become self-supporting. Halvorson then inquired if this increase would control the deficit and was told the fees were set slightly above the cost level. Halvorson asked if the increase in the number of allowable signs

from four to six might distract motorists. Westvold said the traffic engineers had also expressed that concern but the consensus was reached that logos were based on being instantly recognizable.

ARC 6499A

- Metcalf asked why educational sites under tourist attractions had been deleted in Chapter 119. Westvold said it was a duplication of signing.

- Rittmer asked whether the installation of closed panels over directional signs for a seasonal site in subrule 119.6(5) could be considered on an individual basis. Westvold replied a site could be considered if there was a preference for signing other than during seasonal activity.

UTILITIES

ARC 6530A

Vicki Place and Don Judisch appeared on behalf of the Board.

- In discussing subrule 16.7(1), Weigel noted it was prohibited to include the cost of advertising in the utility rates and asked if the advertising rate could change. Place stated a change, which was not retroactive, could occur only when the Board acted on a proposed rate increase case.

- In response to Hedge, Place noted the statute requires a cost of advertising disclaimer be included.

- Judisch indicated to Rittmer that advertising could occur before the rate case came before the Board but not all ads were automatically approved.

REVENUE

ARC 6464A

Carl Castelda represented the Department for the following.

No questions concerning 18.7.

ARC 6488A

- Halvorson asked what exposure for retroactive refunds existed under subrule 40.38(1). Castelda responded it would be very difficult to ascertain because of the provision which permitted a maximum exclusion of \$17,500 per year for each of ten years on installment sales.

He would attempt to determine what the cost on installment sales would be.

- Hedge asked if there was an applicable statute of limitations and was told it was three years from the date the return was filed.

- In response to Metcalf, Castelda stated this was effective for both 1995 and 1996.

ARC 6529A

No committee action on Chapters 41 and 43.

GENERAL SERVICES

ARC 6526A

David Ancell was present from the Department for the following.

- Metcalf requested clarification of the definition of "handicapped person" in rule 401—4.1(18). Ancell responded that a person need only meet the requirements of one of the six listed categories to be considered handicapped.

PUBLIC SAFETY

ARC 6497A

Ray Marshall, Michael Coveyou, Tim McDonald, and Sam Knowles were present from the Department for the following.

No questions concerning Chapters 2, 5, and 25.

ARC 6544A

- In response to Hedge, McDonald stated the amendments to Chapter 11 concerning public access to criminal history records permitted an employer to check all employees' criminal history records with payment of the proper fee. He added there had been no complaints received concerning the increase in the fee from \$6 to \$13.

- Kibbie asked if the money must be obtained in advance of the check and what was considered acceptable tender. McDonald said cash or credit card was acceptable beforehand. Large requests by companies could be handled by prearranged billing.

•Hedge asked if a criminal check of the histories of day care employees was mandated and was told yes. McDonald added checks of parking center employees were optional.

**SOIL
CONSERVATION**

ARC 6489A

Kenneth Tow and Bill McGill were present from the Department.

•Responding to Kibbie, McGill pointed out appropriations in 10.41 did not cover washed-out areas of ground in those counties not given the disaster designation.

REGENTS

ARC 6468A

Richard Tiegs appeared on behalf of the Board and Dean Shoars appeared for UNI DPS.

•Kibbie requested clarification and Shoars said subrule 4.70(5) increased parking fees in excess of the \$100 limit per calendar year but would still remain below the cost of living.

**CULTURAL
AFFAIRS**

ARC 6528A

Mark Peitzman was present from the Department for the following.

•Metcalf asked how the information pertaining to the Iowa Community Cultural Grants Program in Chapter 6 had been disseminated. Peitzman replied participants were notified through the media, the *Iowa Arts News*, letters to those on the mailing list, and a notice included with each application packet. It was anticipated ICN would also be used.

•Halvorson called attention to complaints from smaller communities that grants were awarded to the same groups on successive years. Peitzman attributed this to volunteers from smaller community who perhaps were not as knowledgeable about the process. Peitzman stated grants were competitive and were "geared toward start-up entities."

•Kibbie evinced concern that funds had been transferred to make repairs at Terrace Hill. Peitzman said any funds not used for grants must revert to the general fund. He reiterated those funds could not be revolved. Kibbie expressed the opinion funds should revert to be used for grants.

•Metcalf agreed and said the issue of recapture of funds should be addressed.

REAL ESTATE

ARC 6531A

Marie Thayer from the Professional Licensing and Regulation Division and Susan Griffel from the Real Estate Commission were present for the following.

No committee action concerning Chapter 3.

Agenda

Royce inquired whether the Committee would want a presentation concerning the Administrative Procedures Act by the Iowa State Bar Association placed on a future agenda. Discussion ensued and a consensus reached that this item be slated at a date to be determined.

**RACING AND
GAMING**

ARC 6474A

Bev Zylstra and Karyl Jones appeared on behalf of the Commission.

•Hedge asked if subrule 10.6(2), paragraph "g," subparagraph (3) contained the same phenylbutazone tolerance level.

•Metcalf ascertained that the word "milliliter" had been used.

Zylstra answered that the tolerance level remained the same and pointed out that the word "millimeter" in 99D.25A would be corrected in a Code Editor's bill.

Recess

The Committee recessed at 10:25 a.m. and reconvened at 10:35 a.m.

LABOR

ARC 6455A

Walter Johnson from the Department appeared on behalf of the Division.

No committee action concerning Chapter 41 through 46, 48, and 49.

ENGINEERING

Marie Thayer from the Professional Licensing and Regulation Division and Pat Peters from the Engineering and Land Surveying Examining Board were present for the following.

ARC 6469A

•Hedge inquired if subrule 1.1(3) would increase the cost in remediating underground storage tank sites and was told no by Peters.

INSURANCE

Susan Voss and Anu Vaitheswaran from the Division, Scott Galenbeck from the Attorney General's office, Brice Oakley from MBC of Iowa, and Judy Dierenfeld from the Community Mental Health Centers Association were present for the following.

ARC 6374A

Voss pointed out the fiscal note showed the increase from \$10,000 to \$50,000 in the standard treatment coverage for behavioral health care accounted for 1 to 2 percent of the costs.

ARC 6442A

No questions concerning paragraph 37.15(3) "d."

ARC 6492A

No committee action concerning Chapter 46.

ARC 6480A

No committee action concerning 50.13.

ARC 6543A

No committee action concerning Chapter 14.


August Meeting

The August meeting was scheduled for August 13 and 14, 1996.

Adjourned

The meeting was adjourned at 12:00 p.m.

Respectfully submitted,


Cathy Kelly, Acting Secretary

APPROVED:


Representative Janet Metcalf, Cochair