

# 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, June 8, 1999, in House Committee Room 1, State Capitol, Des Moines, Iowa.

**Members present:** Senator H. Kay Hedge, chair; Senators Merlin E. Bartz, Patricia M. Harper, John P. Kibbie, and Sheldon Rittmer; Representatives Danny Carroll, Geri Huser and Janet Metcalf. Representative Minnette Doderer was excused.

**Also present:** Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Teresa Vander Linden, assistant; Brian Gentry, Administrative Rules Coordinator; caucus staff and other interested persons.

**Convened** •Hedge convened the meeting at 9:32 a.m.

**Committee business** Bartz moved that Representative Metcalf be designated temporary chair of the committee. Kibbie seconded the motion. The motion carried.

**Metcalf in chair** Metcalf commended Senator Hedge for his service as chairperson.

**LOTTERY DIVISION** Kenneth Brickman and Libby Nelson represented the Lottery. Ned Chiodo and Larry Pope of PRI, Brice Oakley of Avenson and Oakley, and David Lewis, president of the National Association of Lottery Purchasers (NALP), were also present.

**ARC 9014A** Brickman summarized the amendments which allow winners to elect a cash payment for prizes paid over a period of ten years or more. Ninety-six Iowa winners will have the opportunity to elect the cash-out option. The lottery will advise winners that they also have the option of assignment to brokers.

- Kibbie asked the board to respond to comments made by NALP in opposition to the amendments. Nelson addressed each of the seven concerns received from NALP published in the 5/19/99 IAB. Nelson stressed that the lottery encourages winners to seek legal and financial advice, but does not itself offer financial advice to winners.
- Rittmer clarified that winners still have the option of dealing with asset purchasers even during the 18-month window of opportunity for the state.

Oakley introduced Lewis, who further explained the seven concerns of NALP.

**Motion to delay** Bartz moved imposition of a 15-day delay to afford more time for consideration of judicial review and additional safeguards and to reach compromise with NALP.

- Lewis confirmed for Metcalf that NALP representatives have met with the lottery and that some NALP suggestions were accepted by the lottery. Nelson indicated that the lottery does not need further discussions with NALP.
- At the request of Carroll, Royce indicated that he is of the opinion that the lottery has statutory authority to adopt the amendments.
- When Huser asked about the possibility of lawsuits against the state, Nelson reported that the methodology by which Kentucky calculated the cash value of the prize was challenged but that the situation in Iowa is different in that the winner does not have to accept the offer from the state.

**Motion failed** The motion to delay failed on a vote of 4 to 4.

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT** Ron Rowland and John Schiltz represented the department.

**ARC 9076A** Proposed amendments to ch 64 pertain to pseudorabies in swine.

- Kibbie was informed that all swine within one and one-half miles of an infected herd will need to be vaccinated. Although pseudorabies may infect other species, there is approved vaccine only for swine.

**CIVIL RIGHTS COMMISSION** Tim Cook represented the commission.

**ARC 9017A** Rules 9.2 to 9.28, based on the Iowa Rules of Civil Procedure, pertain to ordering discovery in the investigation of alleged housing discrimination.

- In response to Metcalf's inquiry about why rules are being adopted at this time, Cook stated that a lack of cooperation on the part of respondents has resulted in the need for procedures for ordering discovery.

Observing that the rules are rather complicated, Royce wondered if respondents would need legal representation.

- Metcalf encouraged the commission to consider input from the affected community prior to adoption of these rules.

**HUMAN SERVICES DEPARTMENT** Mary Ann Walker, Patti Ernst-Becker, Terri Pollard, Janet Shoeman and Joe Mahrenholz represented the department. Brice Oakley of Avenson and Oakley, Denise Hill of the Iowa Medical Society and Cal Hultman, representing pharmaceutical research and manufacturers of America, were also present.

**ARC 8947A** No questions on ch 7 concerning contested case procedures.

**ARC 8932A** No questions on the rescission of five obsolete chapters.

**ARC 8948A** No questions on addition of post-FIP initiative to the pilot diversion program.

**ARC 9067A** No action on proposed amendments to the food stamp program, ch 65.

Human Services Department (continued)

ARC 8946A	No questions on income guidelines for emergency food assistance, 73.4(3)"d"(2).
ARC 8949A	No questions on 75.1, medically needy program.
ARC 9069A	No questions on SSI-related Medicaid, 75.13(2) and 75.23(5)"d."
ARC 9055A	No questions on proposed amendments updating form names and numbers.
ARC 8990A	No action on proposed amendments to ch 79.
ARC 8950A	No questions on cost-outlier payment.
ARC 8937A	No questions on term of office for medical assistance advisory council officers.
ARC 8936A	A public hearing will be scheduled on Medicaid payment to nursing facilities, 81.22(2). •In response to Bartz, Walker estimated the cost to the state would be \$182,000.
ARC 9068A	No action on proposed 89.5 and 89.7 relating to debts due from transfer of assets. Walker reported that in the past fiscal year the department recouped \$64,000 and so far this fiscal year collections total \$79,678. Over \$4 million is being investigated.
ARC 8994A	No questions on proposed amendments to ch 95 pertaining to child support collections.
ARC 9070A	CRSU requires verification of emancipation. •Bartz was informed that verification forms are sent by regular mail to both custodial and noncustodial parents; and because the department relies on information received from parents, a second request may be sent if verification is not returned.
ARC 8951A	Amendments to ch 99 permit the department to use wage information to determine the support obligation when the occupation of the parent is known. Walker provided examples to illustrate the difference between using state median income and CRSU median income or wage information for known occupations.
ARC 8952A	No questions on amendments to prohibit licensure of foster parents or approval of adoptive parents with specific felony convictions.
ARC 8953A	Amendments to ch 175 pertain to child abuse assessment.
Motion re Objection	Bartz moved lifting the objection since the definition of "harm" is rescinded.
Motion carried	The objection is lifted.
ARC 8931A	Amendments to ch 184 establish the personal assistance pilot program for persons with disabilities in Scott, Muscatine and Clinton counties. •Huser asked the definition of a pilot program. Royce responded that while there's no actual definition, pilot programs are regional and without permanency. Shoeman reported that the council that oversees the program does not recommend the program be expanded until the waiver program is available statewide. Most of the program participants have incomes low enough to access other programs.
Motion to refer	Huser moved referral of the personal assistance pilot program to the general assembly.
Motion carried	The motion to refer ch 184, division II, passed.
ARC 9054A	No questions on proposed amendments to ch 185 pertaining to behavioral health care therapy and skill development services.
Emergency adoptions	Emergency adoptions authorized by the legislature were presented to the ARRC prior to their adoption. Eight rule makings came before the committee. Oakley, Hultman and Hill opposed the planned emergency adoption of the amendments to 78.1(2)"a"(3) and 78.28(1)"d" and asked the committee to delay the effective date. Oakley urged an economic impact statement be required as well. Hultman expressed concern that there was no opportunity for input from patient groups and drug manufacturers. Hill urged the committee to impose a delay in order to allow time for the drug utilization review committee to consider practitioner comments solicited by the Iowa Medical Society. •Mahrenholz concurred with Metcalf that emergency amendment of drugs requiring prior authorization is somewhat irregular. Discussion ensued about whether the committee could impose a delay on a rule that has not yet been adopted.
Motion to delay	•Kibbie recommended that review of rules not take place before their adoption. Kibbie moved a 70-day delay on 78.1(2)"a"(3) and 78.28(1)"d." •Rittmer questioned the appropriateness of delaying a rule when the legislature mandated emergency adoption. Noting that the legislation changed from its original "may" to "shall," Royce said that the department has a legal obligation to adopt on an emergency basis, but the statute also specifies that the rules cannot become effective until after review by the ARRC. •Harper asked Royce to explain options available to the committee. •Carroll gave the opinion that a delay would be in direct opposition to the legislation.
Motion failed	Walker pointed out that a simultaneous notice provides for public comment. The motion to delay 78.1(2)"a"(3) and 78.28(1)"d" for 70 days failed.

**DENTAL EXAMINERS BOARD** Connie Price represented the board. Brice Oakley represented dental hygienists.

ARC 8996A Proposed amendments to 29.6 would allow dental hygienists under direct supervision to assist with monitoring of nitrous oxide inhalation analgesia.

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF** Rose Wazny and Melanie Johnson represented the department.

ARC 8985A No questions on 23.14 and 23.15 concerning the disaster recovery fund.

ARC 8984A No questions on 28.9(3) pertaining to record keeping and retention.

ARC 8983A No questions on amendments to ch 53 concerning the CEBA venture component.

ARC 8986A No questions on administrative procedures adopted in chs 101 to 103.

**EDUCATION DEPARTMENT** Robert Wills, Judy Jeffrey, Sue McCurdy, Marcia Sandvold and Ann McCarthy represented the department. Also present were Deb Bahe, Lynn Boes and Kathy Deibert of the School Nurses Association.

ARC 9062A No questions on proposed ch 63 concerning educational programs and services for pupils in juvenile homes.

ARC 8896A Proposed amendments to ch 12 pertain to general accreditation standards.

•In response to Hedge, Wills confirmed that decisions about guidance counselors and media specialists will be local issues and stressed that the department does not advocate elimination of these areas.

•Huser challenged the results of the economic impact statement. Jeffrey explained that local districts have options that will not increase their costs. Wills added that resources available to local districts include the technical assistance manual, department staff and AEA staff. Royce, McCarthy and Jeffrey concurred that it is not yet known what options local districts will elect regarding multiple assessments, but additional expenses will not be incurred unless a district chooses assessments that are not already in place.

Deibert, Boes and Bahe advocated for school health services and expressed their concerns about the proposed rules which no longer require such services. Wills emphasized that the Code requires health services for special education students only. A change in the statute would be required for the department to require health services.

**PUBLIC SAFETY DEPARTMENT** Mike Coveyou, Jen Worthington and Jeff Farrell represented the department. Paul McLaughlin of the Iowa Association of Realtors was also present.

Special review The review was requested by the Iowa Association of Realtors. Subrule 5.807(6) requires hard-wired, as opposed to battery-powered, smoke alarms in new construction. McLaughlin questioned the authority of the department to require one kind of smoke alarm when the Code definition includes both battery-powered and hard-wired. Farrell responded that while the statute broadly defines smoke detectors, the fire marshal is given authority to decide what type of smoke detector is acceptable. Direct-wired detectors are more reliable and afford greater safety; a battery backup allows for operation in times of power failure.

•Carroll was advised that compliant smoke detectors are needed for homeowners to qualify for the homestead exemption.

•Huser maintained that the requirement should be included in city codes because builders may not be aware of the rule and may be held liable for fire damage in construction not in compliance.

Motion to refer Hedge moved to refer 5.807(6) to the general assembly.

Motion carried The motion passed.

**ENVIRONMENTAL PROTECTION COMMISSION** Mike Murphy and Joe Griffin represented the commission.

ARC 9037A No questions on proposed 64.6(6) and 64.15(2) concerning wastewater construction and operation permits.

**NATURAL RESOURCE COMMISSION** Daryl Howell represented the commission.

ARC 9084A Proposed 77.2(1) includes the Topeka shiner on the list of endangered fish in response to the recent federal listing of the species.

•Bartz asserted that during the legislative session the commission indicated that the species would not be included on the endangered fish list. Howell responded that although there may be some "lag time," a federal listing automatically results in inclusion on the state's list; and because of its federal listing, the species is protected in Iowa even before it appears on the state list.

•Kibbie stated that hearings should have been held in the affected areas of the state.

**PERSONNEL DEPARTMENT** Kelly Lovell and Greg Cusack represented the department.

ARC 9012A No questions on IPERS amendments which were previously emergency adopted.

**RACING AND GAMING COMMISSION** Karyl Jones represented the commission.

ARC 8957A No questions on amendments to 4.4(5), 13.25(2), and 26.17(7).

ARC 8959A Proposed ch 9 will govern harness racing.

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

- ARC 9066A No questions on proposed 18.5.
- ARC 8930A Inheritance tax amendments are a result of the department's periodic review of rules. Castelda reported that the probate committee of the bar association called attention to recent legislation not reflected in the proposed amendments. Unaffected rules will be adopted and those identified by the probate committee will be withdrawn from the rule making.
- Hedge asked why safe deposit boxes will not be inventoried. Castelda explained that when the Iowa Bankers Association indicated that it was a hardship on banks to drill the box and inventory the items and deal with bereaved persons, the general assembly changed the requirement.
- ARC 9025A Rules 150.10 to 150.16 pertain to offset of debts owed state agencies. Notice requirements were revised so the department will provide notice only when a state agency certifies a name and there is a match on the computer.

**UTILITIES DIVISION** Cindy Dilly represented the division.

- ARC 9028A No questions on amendments to ch 1 updating the division's organization.
- ARC 9027A No questions on proposed amendments pertaining to electric and pipeline procedures.

**WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION** John Bargman and Tony Dietsch represented the division.

- ARC 9005A Proposed 6.1 to 6.11 pertain to regional advisory boards.
- Bargman clarified for Carroll that the, "chief elected official" refers to a board composed of county supervisors and city officials. Carroll pointed out inconsistencies in the use of the term.
- ARC 9007A No questions on ch 9, the labor-management cooperation program.

**Committee business**

- Minutes The minutes were approved.
- Royce's computer Kibbie moved the committee approve upgrading Royce's computer equipment. The motion carried.
- Meeting dates Meetings will be held July 13 and 14 and August 3 and 4. Metcalf alerted the committee to House Republican Caucus meetings scheduled for October 12 and 13, so a different ARRC meeting date might be considered for October.
- Requested report Metcalf requested Royce and Gentry report in July about the regulatory process, rule making and rules review team, particularly a recommendation to the governor pertaining to waiver provisions.
- July agenda Metcalf encouraged the committee to notify Royce if any "No Rep" rules need to be added to the July agenda.

**WORKFORCE DEVELOPMENT DEPARTMENT** Pat Sampson and Joe Bervid represented WDD.

- ARC 9009A No questions on amendments to chs 1 and 2 pertaining to organizational structure.
- ARC 9063A No questions on administrative procedures, 43.5 and 44.1 to 44.12.

**INSURANCE DIVISION** Craig Goetsch represented the division.

- ARC 9023A This will appear on the July agenda.
- ARC 8955A Amendments to ch 50 pertain to regulation of investment advisor representatives. Goetsch summarized comments received and resulting changes from the notice.
- Huser was informed that both federal and state regulations apply to E-trade stocks. The Electronic Commerce Security Act governs commercial transactions. Goetsch recommended that customers check on licensure and disciplinary history.
- Adjourn The meeting was adjourned at 2:55 p.m.

Respectfully submitted,

Kathleen K. Bates

APPROVED:

  
Temporary Chair Janet Metcalf