MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting

The special meeting of the Administrative Rules Review Committee was held Friday, June 8 and Wednesday June 13, 1990, Committee Rooms 22 and 24 respectively, State Capitol, Des Moines, Iowa. This meeting was held in lieu of the statutory date of June 12, 1990.

Members Present

Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; Representatives David Schrader and Betty Jean Clark.

Staff present: Joseph A. Royce, Counsel; Phyllis Barry, Administrative Code Editor; Alice Gossett, Administrative Assistant. Also present: Paula Dierenfeld, Governor's Administrative Rules Coordinator; Evelyn Hawthorne, Democratic Caucus.

Special Review

Chairman Priebe convened the meeting at 9:55 a.m. and announced special review of 1990 Acts, HF 2552, relating to Aboveground Petroleum Storage Tanks. The final draft of the bill differed from the language that was proposed initially.

101.12

Roy Marshall, State Fire Marshal, said that it was his understanding the provision for aboveground tanks for service stations would be expanded to include unincorporated rural areas. However, Code Supplement section 101.12 was amended to read as follows:

101.12 ABOVEGROUND PETROLEUM TANKS AUTHORIZED.
Rules of the state fire marshal shall permit installation of aboveground petroleum storage tanks for retail motor vehicle fuel outlets ~~in cities of one thousand or less population~~ as permitted by the latest edition of the national fire protection association rule 30A, subject to the approval of the governing body of the local governmental subdivision with jurisdiction over the site of the outlet.

Marshall commented that the aboveground tank issue was a nationwide concern. The National Fire Protection Association (NFPA), in recognizing that, has drafted rules that will permit aboveground tanks when required distance factors are met. Marshall thought the NFPA standard would be adopted this year. It was noted that the bill deleted the statutory language, which covered cities of 1000 or less and substituted the latest edition of NFPA 30A. This prohibits the tanks in the smaller areas.

Priebe stressed the importance of allowing the aboveground tanks "to save some of the small towns." There was discussion as to the history of the House File and legislative

Special Review Contd.

intent with Marshall contending he did not see the final version until about ten days after the legislature adjourned.

Marshall wondered if the former language in section 101.12 could be followed in the event that the revisions were declared unconstitutional. Schrader recognized that adoption in the future was unconstitutional. However, he thought it was logical that the legislature attempted to pass a law that was constitutional. If the language were interpreted to mean the latest edition of the NFPA standards up until the time the bill was enacted, it would be within the Constitution.

Royce reasoned that no one reading Code section 101.12 would be given to understand that the edition adopted was only up to July 1, 1990. The revision did not contain a date certain and courts find this approach to be objectionable.

ARRC members expressed concern for older citizens in the small towns who will not have easy access to gasoline.

Ed Kistenmacher, Petroleum Marketers of Iowa, indicated that they were aware of NFPA 30A and wanted to support the fire fighters in their regulations on how a safe installation should be designed and constructed and they also wanted to overcome the objections from major Iowa cities. Petroleum Marketers had anticipated that the NFPA standard would be promptly adopted. Marshall agreed.

Clark could see no alternative other than legislative amendment next session. Priebe reiterated his concern for loss of business in small towns. Clark wondered about a mechanism or Executive Order to slow the process since legislative intent was not realized.

Dierenfeld informed Marshall that they had requested an Attorney General's opinion on the legislation. Priebe would rather take the chance that NFPA would adopt the standard as opposed to relying on an Attorney General's opinion.

Schrader and Marshall discussed existing 30A. Marshall clarified that it does not allow aboveground tanks except in very special circumstances. It was Kistenmacher's opinion that the toughest task faced by these operators was that every tank owner, must have $1 million dollars insurance on each tank by October 26, 1990. The 1990 legislation set an October 26, 1992, deadline to replace or renovate the tanks. Kistenmacher reasoned that tank insurance could be purchased for one year while operators wait for the rules to be adopted and promulgated by the state Fire Marshal.

Special Review Contd.

Tieden complained that too many people were receiving false information about removal deadlines. Kistenmacher admitted that this was definitely a problem and that they had hired someone to field these questions. All tank sites must be investigated by October 1, 1990.

It was noted that Kistenmacher had worked with Representative Hatch on the legislation. Royce agreed to obtain copies of the informal Attorney General's opinion when it is available. No Committee formal action.

HUMAN SERVICES

Chairman Priebe called on Human Services for the following:

HUMAN SERVICES DEPARTMENT[441]

Increase ADC schedule of basic needs and medically needy income levels, 41.8(2) charts, 86.12(1), Notice ARC 919A, also Filed Emergency ARC 918A 5/30/90
Refugee services program, ch 61 preamble, 61.1, 61.4, 61.7, 61.11(1)"g" and "h," 61.12(2), 61.14, Notice ARC 900A 5/30/90
Relief for needy Indians, 64.2(4), 64.2(9), Notice ARC 921A, also Filed Emergency ARC 920A 5/30/90
Medicaid — conditions of eligibility, 75.1(31), Notice ARC 871A 5/16/90
Medicaid patient management, 76.6(2), 78.3(12)"c," 79.1(5), 79.11(6), ch 88 preamble, 88.1, 88.3(1)"b," 88.4(4)"b," 88.21, 88.24(4)"b," 88.41 to 88.51, Special Review
Medicaid — screening centers, 77.16, 78.18(6), Notice ARC 872A 5/16/90
Nursing home reform provisions of OBRA '87, 78.3(6), 78.3(13), 78.3(14), 78.3(16), 78.12, 79.1(2), 79.1(9), 80.2(2)"u," ch 81 title, 81.1, 81.3, 81.4(3), 81.5, 81.5(3), 81.6(2), 81.6(11)"n," 81.6(12)"a"(2), 81.6(14), 81.6(16)"d" to "f," 81.6(17), 81.7, 81.8, 81.9(1)"f"(1), 81.10(1), 81.10(2), 81.10(4)"b," 81.10(6), 81.10(7), 81.13, 81.13(2) to 81.13(19), 81.14(1)"a," 81.16 to 81.19, Notice ARC 913A 5/30/90
Maternal health centers — reimbursement under the medical assistance program, 79.1(2), Filed Emergency ARC 917A 5/30/90
Limitation of payment for inpatient hospice care, 79.1(14)"e," Filed ARC 922A 5/30/90
Intermediate care facilities, 81.10(5), Notice ARC 388A Terminated ARC 867A 5/16/90
Reimbursement policies for psychiatric medical institutions for children, 85.8(2) to 85.8(5), Notice ARC 923A 5/30/90
Medically needy, 86.10(1), 86.10(2), Notice ARC 870A 5/16/90
Child care centers, family and group day care homes, 109.12, 110.1, 110.5(5)"b," Filed Emergency ARC 914A 5/30/90
Gamblers assistance program, amendments to ch 162, Notice ARC 735A Terminated ARC 902A 5/30/90

Appearing for the Department were: Mary Ann Walker, Vivian Thompson, Nanette Foster-Reilly, Lucinda Wonderlich, Gary Gesaman, Harold Poore, and Ronald J. Mahrenholz.

41.8(2)

Walker summarized amendments to 41.8(2), 86.12 and amendments to Chapter 61. No questions.

64.2

In review of amendments to 64.2, Walker said they apply only to Tama.

75.1(31)

There was brief review of 75.1(31). No action.

Medicaid Patient Management Chs 76, et al.

Foster-Reilly reported on amendments to 76.6(2) et al. governing implementation of the Medicaid patient management and Memorandum of Understanding which was agreed to by providers and the Departments of Human Services and Public Health when the rules were under 70-day delay. It was noted that the Legislative Oversight Committee had been appointed by the Legislative Council. Foster-Reilly indicated that assessments would be conducted and that the contracting process was moving forward. In addition to the agreement, the Department of Human Services decided to revise the Medipass brochure to include a section specifically addressing services for pregnant women. Recipients will be fully informed as to their options. Foster-Reilly cited the state austerity program as a deterrent to progress of the program.

Foster-Reilly recalled concerns by Maternal and Child Health Centers as to use of the term "screening center" or "screening services" to indicate health screening. The brochure will clarify that this screening is also known as "EPSDT services" or "child health center services." The Department has provided field training and managed

HUMAN SERVICES Contd.

health care is being discussed with recipients. Many physicians have forms in their offices so they can discuss the program with their patients. According to Foster-Reilly, Clinton and Wapello Counties were two removed from the pilot program due to lack of interest for physician participation. Dubuque and Woodbury Counties were also removed temporarily late last month since the Department did not feel comfortable with the number of available physicians. The remaining 7 counties where programs will be implemented, include: Black Hawk, Jackson, Linn, Muscatine, Polk, Pottawattamie and Scott. The first enrollment will be effective July 1, 1990.

No ARRC action.

Pavich in the Chair.

77.16

Walker explained that amendments to 77.16 and 78.18(6) require screening centers which are reimbursed from the Medicaid program to meet the Department of Public Health standards. Cerro Gordo, Hardin and Mahaska Counties participate in the program. Clark asked what criteria was followed to select these counties. Mahrenholz responded that they select both large and small counties. No further questions.

78.3(6)

Walker described amendments to 78.3(6) et al. as intended to implement the nursing home reform provisions of OBRA '87. The distinction between skilled nursing and intermediate care facilities will be eliminated and starting October 1, ICFs must meet current federal skilled nursing staff requirements.

In response to Tieden regarding the upfront adjustment, Gesaman explained that, effective July 1, they will readjust the 74th percentile based on cost reports on file at the end of June. They will also allow the facilities to present budgets based on anticipated annual cost to be effective October 1. That form has been distributed to the facilities. At the end of six months that budget will be adjusted based on the "natural cause experience versus the budgeted cost experience." Approximately $4 million is available to cover this October 1 adjustment.

Priebe in the Chair.

79.1(2)

According to Walker, the Health Department has supplied information necessary and Human Services has changed the basis of payment for maternal health centers from a perspective rate percent of visit to a reasonable cost per procedure. The amendments implement 1989 Iowa Acts, Chapter 318 and funding was included in the appropriations. The program will be assessed annually.

79.1(14)
81.10

No questions on 79.1(14)e or 81.10(5).

HUMAN SERVICES Contd.

85.8 — Walker stated that revision of rule 85.8 addresses the policy on reimbursement for psychiatric and medical institutions for children. Tieden questioned the 10-day limitation in 85.8(2)d and Walker said that the Department would pay for no more than 10 days for any continuous hospitalization.

86.10, 109.12, 110.1, 110.5 — No questions re 86.10 or amendments to 109.12 and Chapter 110.

Ch 162 — Walker told the Committee that their Council voted to reject expansion of the Gamblers Assistance Program at this time and the Notice was terminated. She advised that eleven providers serve 178 clients throughout the state. Total expenditures for fiscal year 1989 were $971,638; budget for fiscal year 1990 was $883,541 which averaged $60,000 per client. Walker added that $250,000 of that was outreach. Clark asked if treatment by those providers included alcoholics, gamblers, drug addicts, etc., similar to Forest City Hospital. In response to Clark, Walker said that most gambler services also work with alcoholics or drug addicts.

No formal action taken by the ARRC on Human Services rules.

INSURANCE DIVISION — Appearing on behalf of the Division for the following agenda were:

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181] "umbrella"

Unfair trade practices, 15.82 Notice ARC 640A Terminated. Notice ARC 881A	5/16/90
Surplus lines requirements — nonadmitted insurer. 21.5. amendments to ch 21, Notice ARC 879A	5/16/90
Credit life and credit accident and health insurance, ch 28, Notice ARC 564A Terminated, Notice ARC 883A	5/16/90
Third-party administrators, ch 58, Notice ARC 882A	5/16/90

Martin Francis, Fred Haskins and David Lyons.

Lyons presented renoticed 15.82 and pointed out that another hearing was scheduled. Basically, the rule was an outgrowth of the Carruthers Case which stated that certain actions of companies authorized to do business in Iowa, had run afoul of state provisions when they had differing requirements relative to the level of income of a consumer. No questions.

Ch 21 — Lyons summarized revised procedures for qualification as a nonadmitted insurer. No questions.

Ch 28 — Lyons reviewed a second revision of proposed Chapter 26 pertaining to credit life and credit accident and health which would implement 1990 legislation. The rules had not been updated for 17 years. There will be higher levels of minimum payment to be made by the companies and a number of consumer protections. Because of the impact of these rules, the Division met with consumer groups, the Association of Retired Persons, a number of industries, car dealers, credit life companies, and a number of other affected

INSURANCE DIVISION Contd.

parties within Iowa. A model Act by the National Association of Insurance Commissioners has been developed to fit Iowa's regulatory pattern.

Priebe noted that the rules did not contain citation to 1990 legislation and Lyons responded that Iowa generic statutes were amended.

Doyle asked if the rules would apply to credit card companies outside the state. Lyons said they would apply to all marketers of credit life or credit accident and health insurance to Iowa consumers.

Tieden and Lyons discussed loss ratios. Essentially, 1990 legislation provides the same loss ratio for credit life as it provides for accident and health. The Division will be required to monitor and adjust loss ratios as necessary to ensure that minimum standards are met.

Ch 58

Lyons described new Chapter 58, "Third Party Administrators," as noncontroversial addition to their regulatory pattern. It establishes procedural guidelines for persons wishing to apply to do business as a third-party administrator in Iowa. The only comments received on the proposed rules were favorable.

No Committee action.

ENVIRONMENTAL PROTECTION 100.2 et al.

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Composting facilities and yard waste disposal, 100.2, 104.1, 104.9(1)"b"(4), 104.10(4) to 104.10(12), ch 105, Notice ARC 888A 5/16/90
Sanitary landfills — operator certification, 100.2, 102.13 to 102.15, Notice ARC 889A 5/16/90
Waste oil, ch 119, Filed ARC 887A 5/16/90
Land application of wastes, 121.3(2), 121.3(3), Notice ARC 890A 5/16/90

Representing the Commission were: Robert Craggs, Morris Preston and Mark Landa. Landa and Preston were present to discuss proposed rules to implement the ban on land disposal of yard wastes beginning January 1, 1991. Priebe recalled a public hearing in Algona which was well attended. He was hopeful that modifications would be made as a result of comments.

105.3(1)

Landa advised Tieden that yard waste could not be incinerated as part of a sanitary disposal project. Tieden referred to 105.3(1) which prohibited "sharp particles" in compost and reasoned that explicit language was needed. Preston said that pieces of glass or metal, or hypodermic needles would fit the category of sharp particles. The Commission wants to provide some assurance that compost will not be hazardous to the public.

Preston recognized that it would take time to develop a composting program which covers every situation. The public had requested that requirements be set out in writing. The department will address problem areas with variances. Preston continued that it was pointed out at the hearing that the rules contain 16 specific conditions which exceed the number of available permits. The

ENVIRONMENTAL PROTECTION Contd.

Department felt that there was little opposition to a small facility handling yard waste in a fairly uncontrolled situation. However, everyone saw the need for a large facility to obtain a permit and meet specific requirements.

Priebe could foresee tremendous costs to small towns. He disagreed with the theory that compost should be turned every month--105.4(4). Priebe was hopeful that major modification would be made in the rules. He asked Department officials for a tape of the Algona hearing. Preston informed him that only the question and answer portion of the hearing was taped. Those attending the hearing felt more at ease with the recorder off. Priebe voiced his frustration since he thought the entire meeting was to be recorded. No formal ARRC action.

Chs 100, 102

No questions on amendments to 100.2, 102.13 to 102.15.

Ch 119

Craggs explained new Chapter 119 which regulated the collection and disposal of waste oil. He said that use of oil to control dust was regulated in separate rules. At the recommendation of Tieden, Craggs agreed to include the groundwater protection hotline telephone number--119.4(2)d.

121.3

No questions regarding amendments to 121.3.

AGRICULTURE AND LAND STEWARDSHIP

Representing the department for the following rules were: Arlo Hullinger, Daryl Frey, Charles Eckermann, John Whipple, and Ron Rowland.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
Dairy trade practices, ch 23, Notice ARC 899A 5/30/90
Storage and handling of anhydrous ammonia, 43.6, Notice ARC 901A 5/30/90
Notification requirements for pesticide application, 45.50(5) Special Review
Sorghum, ch 59, Notice ARC 878A 5/16/90

Ch 23

Hullinger told the Committee that Chapter 23 was essentially unchanged but was rearranged with three exceptions. New rule 23.8 requires distributors and processors, if they use coupons, to make them available within the pricing schedule. Rule 23.9 requires processors and distributors to obtain permits as required in Code Supplement section 192A.30. Rule 23.10 identifies the individual who is responsible for paying the fees.

43.6

Discussion of rule 43.6 which, according to Whipple, adopts the American National Standard for the safety requirements for storage and handling of anhydrous ammonia in Iowa.

There was ARRC consensus that the ANSI standard referenced in the first paragraph must have a date certain. No formal action.

45.50(5)

Chairman Priebe announced special review of subrule 45.50(5) with respect to notification requirements for pesticide application.

Royce stated that a number of aerial sprayers have contended that 24-hour notification before spraying was unworkable.

Sprayers cite climatic conditions as playing a role. These factors make it difficult to give a 24-hour notice.

Frey recalled that subrule 45.50(5) had been before the ARRC five times. He pointed out that Des Moines suggested a prenotification registry as an alternative to 24-hour advance notification. The Department concurred with that concept and drafted the rules accordingly. The city maintains the registry and notifies applicators of residents who do not want the spray. This approach should be relatively easy to implement in small towns.

Chairman Priebe recognized Rich Welter, mosquito spraying contractor, who has clients in several small Iowa towns. Welter had received training by the CBC in several states and had been in business 10 to 12 years. He declared that realistically drift cannot be avoided.

Frey was cognizant of a difficult problem but stressed that the Groundwater Protection Act requires this advance notification. Welter countered that when a farmer sprays a field, notification is not given. Eckermann interjected that by statute notification is limited to urban areas.

Frey spoke of a growing dispute in the Waterloo-Cedar Falls area where those citizens absolutely do not want pesticides sprayed anywhere near their property. The only thing that is appeasing them is the prenotification registry. Priebe wondered about eight-hour notification but Welter said that any notification creates a problem for the sprayers. Frey spoke of the very small percentage of the people who are extremely sensitive to pesticides. He reasoned that the public has a right to know when hazardous compounds are being sprayed in their area. The Department has been charged with regulating the industry to ensure protection for the public.

Doyle mentioned a constituent's complaint that notification of spraying signs were too small and difficult to read. Schrader opined that compromise as to size destroyed the effectiveness of the signs. Although he understood difficulties experienced by applicators, Schrader supported the 24-hour-notification for aerial and other types of spraying and supported the position taken by the Department.

Royce advised that the rule was lawful and legislation would be needed to change it.

Clark declared that the people will have to choose between pesticides and mosquitos.

Frey pointed out that the rule has not been in effect for a whole season as yet. He was confident that the Department would be monitoring the program very closely.

Schrader voiced his frustration that industry seemed willing to throw best management practices out the window so that more money could be made. He concluded the Department was acting within the statute and the ARRC had no prerogative. No further discussion.

Ch 59

Rowland reviewed proposed new Chapter 59 which will implement 1989 legislation limiting the conditions for selling a product identified as sorghum. Prior to the new statute, products were being identified as sorghum when in fact they contained very little, if any, juice from the sorghum plant. Rowland noted that L. J. Maasdam, a sorghum mill operator in the Pella area, along with the FDA worked to develop the rule.

Schrader introduced Maasdam as the major producer of sorghum in Iowa who exports this product across the country. Schrader cited a problem with false labeling which has hurt those people who sell this traditional, added value, Iowa product. Maasdam urged support of the proposed rule.

Recess

The meeting was recessed at 12:10 p.m.

Reconvened

Chairman Priebe reconvened the meeting at 1:35 p.m. and called up the Special Review of tinted glass in automobile windows. [Code §321.438(2)].

DOT Tinted Glass in Autos

TRANSPORTATION DEPARTMENT[761]
Tinted glass in automobiles, Special Review

Appearing for the Transportation Department were Dennis Ehlert, Gordon Sweitzer; appearing for the Iowa State Patrol were: Blaine Goff, Dewey Jontz and Ron Turner. Also appearing was William Angrick, Citizens' Aide. Others in attendance included Steve Eckhart, C & S Automotive with businesses in Des Moines and Cedar Rapids; David Urban, Secretary/Treasurer, Urban Window Tint, Sioux City; Dairl Bragg, representing Association of Industrial Metallizers, Coaters and Laminators (AIMCAL); Representative Florence Buhr; Laverne Schroeder, representing tinting industry; Nancy Stillons, Executive Secretary for Des Moines Neighbors; Lynne Stamus, representing Westchester Neighborhood; Neva Jorgensen, Inner-City of Des Moines; and approximately 50 other interested persons.

Priebe explained the function of the Administrative Rules Review Committee and emphasized that they cannot change the law. Captain Jontz demonstrated pieces of window glass plain and with tint. There was discussion of the History of section 321.438, which has been in the Iowa Code at least 30 years. In 1983, subsection 321.438(2) was enacted to read:

> *2. A person shall not operate on the highway a motor vehicle equipped with a front windshield, a side window to the immediate right or left of the driver, or a side-wing forward of and to the left or right of the driver which is excessively dark or reflective so that it is difficult for a person outside the motor vehicle to see into the motor vehicle through the windshield, window, or sidewing. The department shall adopt rules establishing a minimum measurable standard of transparency which shall apply to violations of this subsection.*

In 1984, the Transportation Department adopted the following rule to implement the statute:

> 820—[07,E]1.7(321) **Windshields, windows and sidewings.** No person shall operate upon a public highway a motor vehicle that has a front windshield, a front side window (a side window to the immediate right or left of the driver), or a front sidewing (a sidewing forward of and to the left or right of the driver) which is excessively dark or reflective.
>
> Excessively dark or reflective means that less than thirty percent of the available light is able to enter the vehicle through the front windshield, front side window, or front sidewing. This situation prevents a person outside the vehicle looking through the front windshield, front side window, or front sidewing from readily identifying the vehicle occupants from a distance of twenty-five feet during daylight hours.
>
> This rule is intended to implement Iowa Code section 321.438, as amended by 1983 Iowa Acts, Chapter 125, section 5.

There were several problems with that particular rule. First, it was in conflict with the federal standards which required that at least 70 percent of light on the outside of the window be able to pass through the glass into the interior of the vehicle. Secondly, it was very difficult to prove whether or not a person could be identified inside the vehicle.

In 1986, rule [07,E]1.7(321) was rescinded and Motor Vehicle Safety Standard 205 was adopted in rule 761 IAC 450.1. Excessively dark windows are still prohibited.

Jontz stated that the State Patrol organization had, for two years, supported a bill in the Iowa Legislature that prohibited any after-market film on windshield and side windows. The bill was patterned after California law but met with opposition and is no longer a viable proposal. Jontz continued that it was very apparent that disparity existed in interpretation of the current Code by their officers as well as by some prosecutors. When the patrol learned of the availability of light meters capable of accurately measuring opacity level of tinted windows, they presented a program to the County Attorneys in the fall of 1989.

The patrol was convinced that the law was valid and they wanted to begin with an educational approach on window tinting laws, for themselves, prosecutors and the public. There were to be news releases and opportunities to have windows checked free and clear of prosecution. This proposal was positively received by County Attorneys of the state.

Jontz spoke of safety factors: With a dark window, particularly on the driver's side, drivers lose eye-to-eye contact between motorists which is extremely important in making driver decisions in many situations, e.g., pedestrian-type intersections. There is an element of danger when an officer, approaching a vehicle, is prevented from observing activities of the vehicle occupants. Also, in traffic law enforcement it is extremely important to be able to identify the driver as operator of that vehicle.

Jontz called on Ron Turner for a slide presentation where they demonstrated in more detail problems with dark glass in motor vehicles.

Jontz said all of the enforcement officers have been instructed to use good judgment and approximately 3000 automobiles with after-market tinting have been checked and to the best of his knowledge not one passed. The darkest film encountered was 1 percent light transmission which was limousine black. Jontz reminded that transmission of the total package, not just the film, must be considered. He discussed the use of AS1 on a windshield, which means it has passed the American Standard Test Number 1 for windshields--laminated glass with plastic in between. The test includes tensile strength, breaking characteristics, and transmission level of that glass. AS2 on a side window indicates test for the shatter characteristics, strength and amount of light that can pass through. There must be an opacity level of 70 percent light transmission for either of the windows. In research, Jontz went to Iowa Glass Depot and observed that replacement glass for windshields and side windows consistently test in excess of the federal standards--71-72 percent. In conclusion, Jontz reiterated that as safety officials, they have a responsibility to enforce the law which they believe is valid. The Attorney General, County Attorneys, and the Federal Government concur.

Priebe had heard complaints of inconsistency in the application of the law. Some officers issued warnings, while others wrote tickets. He took the position that there should have been a 30- or 60-day warning period for everyone.

Goff responded that officer discretion prevails in the Iowa State Patrol under any circumstance.

Clark commented that she was not aware of any public education program and Jontz referenced a computerized service that taps into more than 160 media release points which include radio, television and newspapers. Jontz produced a copy of the press release that went out of headquarters. In addition, local press releases were made by the lieutenant or the district commander at the local facility. Clark expressed her concurrence with Priebe's suggestion for the 30- to 60-day warning period. Goff indicated that the majority of the citations issued were for windows that were nearly black.

Pavich asked if there were any statistics on accidents involving vehicles with tinted glass but Jontz knew of none.

Chairman Priebe announced that persons in the audience would be permitted time to comment on the issue. He then recognized Representative Buhr who was accompanied by several constituents. Buhr expressed their concern about the safety of peace officers as well as citizens.

Urban commented on his auto window tinting business which amounted to $100,000 annually. He also tints windows in homes and commercial buildings but had never supported limo tint. Urban emphasized the advantages of tinting as a way to cool cars, prevent glare, and the film also prevents breakage. He has had doctors' prescriptions for tinting on car windows. In 1983, Urban was advised by DOT that the law was 30 percent. He took the position that there was not adequate notice to business and the public of a change in enforcement. Urban continued that businesses such as his make their living in May through August and his business was down 70 percent.

Pavich in the Chair.

Eckhart, told the Committee that his company offers many after-market services for dealers, but tinting makes up a very large portion of the business with 12 to 15 employees. Eckhart was opposed to use of limo tint but believed there was a compromise available with the lighter tints. He emphasized that there was great demand for tinting. Eckhart urged cooperative effort for a resolution of the matter.

Priebe took the Chair.

Tieden was informed that National Standard 205 had been in effect for more than 25 years.

Eckhart told Doyle that most tints being applied today were less reflective than glass on the side windows of a Suburban or a Blazer. He estimated that Iowa has 200,000 to 300,000 vehicles with tinted glass.

Bragg spoke of the advantages of light film on auto windows. For the last six years he had been working with states in an attempt to develop uniform regulation of the tinting industry. Some 35 states have regulations which do not violate the federal law. Bragg referred to the recent Attorney General's opinion which was similar to one in North Carolina. He pointed out there was information available from National Highway Traffic Safety Administration (NHTSA) in terms of legal interpretations. He added that Federal Standard 205 regulates the manufacture of vehicles and their equipment. Bragg discussed exchange between North Carolina and NHTSA and the letter signed by Erica Jones, Chief Legal Counsel for NHTSA. Jones advised that no provision of the Federal Standard 205 prevents individual vehicle owners from adding tint to the windows on their vehicle that would be in compliance with state laws. The NHTSA legal counsel also addressed new vehicle prior to first sale. Bragg quoted from various portions of the NHTSA opinion and promised to make copies of his material available to the ARRC.

Bragg was optimistic about communication between industry and NHTSA in an attempt to close the gap of inequity. He planned to ask the Patrol to work with industry on a common goal for legislation next year.

In response to a question by Tieden, Bragg said that as an industry, they opposed dark film. As an ex-law enforcement person, Bragg could identify with their concerns.

Through neighborhood involvement Stillons had realized law enforcement personnel need everyone's support. It was Stillons' observation that essentially dark tinted windows belong to those who do not have the best interests of society in mind.

Angrick recalled a client who had been exposed to Agent Orange in Viet Nam and developed a serious metabolic condition. Doctors had advised the individual to stay out of sunlight. Angrick worked with the DOT and local Police Department and the client's car was equipped with dark tint. Angrick asked that rule making or possible legislation be considered to allow dark tint for certain medical conditions. For the safety of law enforcement personnel, he suggested an identifying decal for the vehicle.

Royce opined that DOT had power to issue waivers based on medical necessity. He thought there should be a rule to ensure equal enforcement.

Angrick reasoned that standards adopted by reference should be in a defined depository, perhaps in Administrative Rules Coordinator's office, for easy access to the general public.

Priebe called for discussion of Committee options.

Schrader expressed his dismay at the statement by Bragg, that the industry that manufacturers the material and the federal regulators are working on a resolution to the issue. He noted that many Iowans were concerned about this issue and would not want to relinquish their rights to resolve it by acceptable Iowa legislation and rules. Schrader recognized the two sides of the substantive issue of how much tinting should be allowed on windows. He emphasized that the ARRC has the responsbility to review rules--not to make them.

Schrader continued that this Committee could address the issue of whether the rule on the books [761 IAC 450.1] was arbitrary, capricious or unreasonable. Schrader referred to the decision by Judge Thomas Hornack in case of State of Iowa vs. Cynthia Marie Beckwith. Judge Hornack decided in that case, that the reference to a reference was unreasonable in that the average citizen could not follow the paper trail to find the law and then couldn't understand it. From his position, Schrader declined to make a

judgment as to whether the 70 percent light transmitted being enforced was appropriate. Instead, he thought the Committee should focus on the reasonableness of the existing rule.

Schroeder expressed willingness of the industry to work with the Department and patrol to reach a middle ground.

Jorgenson spoke of problems in the inner-city where she observes drug deals being made out of cars with dark tinted windows. She urged the Committee to uphold the existing law for the protection of everyone.

Clark had paid special attention to windshields as she drove to Des Moines and did not observe any excessively dark glass. She did not believe that industry was advocating dark tint.

Lori Renda, who had been in business three years, wanted to point out that 99 percent of her customers were respectable people who buy tint film to keep out the sun. Her firm has been applying 35 percent film which makes it about 28 percent light transmission. She had convinced many that darker film does not reduce more heat than the lighter tint.

Stamus suspected that dark tinted windows on cars in her neighborhood were used for illegal activity. She furnished the Committee with a written statement.

Urban thought that industry had a responsibility to contrc the amount of tint. If they are put out of business, tinted film will be purchased from mail order catalogs.

Doyle had been involved in the original drafting of the law and at that time there was no precedence regarding tinting. He advocated elimination of all around black limo glass. Dark glass in the back window allows no visibility to the police officer. Doyle emphasized that the ARRC could not change the law but could review the rule. He clarified that DOT, not Public Safety, has responsibility for promulgating the rules. Doyle opined that clearly the issue was one the legislature should address next year. Two points came to mind: Was the DOT rule adopted legally; should a legislative committee study the issue, with industry working with the Departments of Public Safety and Transportation to develop a reasonable standard?

Motion to Object

Doyle moved to object to 761 IAC 450.1 on the grounds that it was unreasonable.

Royce explained that essentially the issue brought forward in this objection was the fact that the standard is

published nowhere in the state of Iowa. It is a procedural objection noting that regulation, especially one involving a criminal penalty, should be readily available. The objection, in effect, flags the rule and in the event it would be challenged in Court the burden would be on the department to prove the validity of the rule--to prove that the adoption by reference was proper. Royce stressed that the objection does not impact the enforcement of the standard.

Jontz wondered about possible impact on the other federal motor vehicle standards, e.g., brakes, seat belts, defoggers, turn signals, light intensity, and high visibility brake lights.

Royce responded that objection was limited to the tinted glass standard. However, Jontz had made a good point, since the other regulations were adopted from the ANSI standards that are not published in Iowa.

Royce reiterated the need for a central depository for federal standards adopted by reference.

Clark reasoned that problem focused on the fact that rule 450.1 contained a double adoption by reference which makes it unique.

Motion Carried

Doyle's motion carried.

Royce agreed to draft an objection for the Committee's consideration on June 13, 1990.

Motion

Doyle moved that a copy of the motion to object be sent to the Legislative Council, which meets next week, requesting that an interim legislative committee be formed to study the problem of tinted windows in automobiles. Further, the study committee should review the various recommendations for acceptable tint and work with the Departments of Public Safety and Transportation and other interested parties to prepare a bill for the next General Assembly.

Priebe saw no problem with that approach. He recommended that the request include suggestion for hearings held throughout the state and that ARRC members from particular areas be involved.

Schrader commented that the motion would be asking the Council to create a committee and make a recommendation without prejudice to the ARRC.

Motion Carried

Doyle's motion carried unanimously.

Pavich suggested that the Department review their rules for double references.

In conclusion the Committee reiterated that the objection does not preclude the Department from enforcing the 30 percent factor.

The following was before the Committee as continued special review focused on the grants process.

EDUCATION DEPARTMENT[281]
Programs for at-risk early elementary students, ch 65, Special Review

Appearing for the Department of Education were: Kathy L. Collins, Legal Counsel; Susan Donielson, Carol Alexander Phillips, Susan Andersen and Gail Sullivan. Also present: Representative William Harbor; Senator Charles Bruner; Linda Devitt, Spencer Schools; Lisa Johnson, Essex; and Marilyn Burdick, People United for Rural Education, Malvern.

Priebe recognized Collins who addressed what she considered to be the two concerns about Chapter 65: (1) Was the Department incorrect or in violation of the law when they did not include in the rules the weighting given to schools with a high percentage of at-risk population? Collins stated that it was certainly not the Department's intent to deceive anyone and they would be willing to include that criteria through the amendment process. Collins referred to Royce's memo on the matter wherein he set out one piece of the legislation. [1989 Acts, Ch 135, §76d] It was her opinion that another provision in S.F. 223 [Code subsection at 256.9(37)] was even more pointed. The sentence reads: "Grants approved shall be for programs in schools with a high percentage of at-risk children."

Collins continued that during the public comment on these rules, there was a great deal of discussion about how that statutory preference could be effectuated. The Department's response through rule making was to repeat, in essence, in the eligibility criteria--the fact that preference would be given to schools with a high percentage of low income families. Federal government criteria identifies these students as those who are eligible for free or reduced price lunches. Collins interpreted the legislation as dictating the results. She stressed that there was no intent to discriminate against small schools. In fact, the department would have preferred to have some demographic breakdown in the criteria, to have geographically awarded some grants but believed they were giving effect to the legislative intent which was rather specific.

(2) The second issue raised was with respect to the appeal process. Collins mentioned grounds for appeal in the rules. Those who are currently eligible to appeal a decision of the department on the grant award are those rejected applicants and any individual who has already received a grant but may have it terminated for noncompliance or other reason.

Collins concurred with Royce that their criteria was insufficient with respect to those grant recipients who may be terminated in mid-grant period. According to Collins, they received 105 grant applications and only 16 were awarded.

The Department felt that if there were a flaw in the process legally or in a regulatory manner or a conflict of interest, they would willingly review those areas. Collins added that generally, an applicant for a grant has no property right. Royce agreed with Collins and commented that right to hearing attaches when there is protected property interest. Chapter 17A allows challenge of any agency action in court. However, the individual would not be automatically entitled to a due process hearing before the agency first.

Collins stated that they may provide for a reconsideration process in the rules for disappointed applicants and "beef up" the appeal process for anyone who is terminated during the term of the grant unilaterally, not by mutual agreement. Certainly, there is a due process right that attaches there.

In response to a question by Tieden, Royce said the statute provides that anyone who is aggrieved or adversely affected by an agency action, can go to court. If there is nothing specific in the statute, you then look at the Constitution to determine whether there is due process property that is being protected. He reasoned that with initial applications for grants, there probably was not.

Priebe reasoned that in most instances, a process and point system would be established. He attributed this omission to the General Assembly through lack of communication. It was his opinion that the At-Risk Program could not be identified as a true pilot project when a school with 1700 students was selected for a grant.

Donielson addressed the fact that the Department had made a concerted effort to follow the Act. They were sensitive to the fact that funds were limited and there were no caps. There were 105 requests for the $13 million appropriation and sixteen grants were made to 8 metropolitan areas. Understandably, many districts were unhappy about the process.

There was discussion with respect to the point weighting system which was devised after the rules were adopted and after the Requests for Proposals (RFPs) were mailed. It was noted that the maximum available points was 150 and 40 bonus points were awarded for the percentage of students enrolled in the free lunch program. Donielson distributed a sheet which explained the ranking scale. She said that they had no way of knowing how many points would be allowed until all applications were received. Priebe voiced opposition to making the percentages fit the applications. Collins defended the procedure which they followed by determing highs and lows from among the actual applicants.

Schrader was aware that this program as written favored the larger districts in the state but did not realize that it was to the point of exclusion of many smaller districts.

He considered 40 points less important than it had been. It was his belief that those who have good grant writers will be awarded the grants. In hindsight, Schrader thought the legislature should have adopted a schedule similar to the one for the REAP program for grants for cities where there was a size category.

Motion

Schrader moved that the ARRC refer the issue of the At-Risk Program to the Speaker of the House and President of the Senate to alert them of the need to expand the statute to allow categorization of participants in the grant program. This way potential grantees could compete within their individual categories for a share of the money.

Collins was supportive of this approach. Priebe also concurred.

Donielson reviewed a handout depicting districts, numbers of buildings funded, and percent of low income students. Priebe asked about impact on the program if buildings are not funded next year. Donielson reasoned that funding should continue in order to realize a difference since those high concentrations of low-income buildings have very strong needs.

There was lengthy discussion of district enrollment, building funding and the weighting system.

Chairman Priebe recognized Representative Harbor who introduced Lisa Johnson from Essex. Johnson had been involved as a volunteer in writing the grant that was submitted by the Essex district. From the outset, Johnson was skeptical about whether or not small schools had a chance. They were reassured that these schools would have consideration and some funding. She had no quarrel with more money to the urban schools. However, she was opposed to adding the 40 points after the fact. They were told only that scoring would be up to 150 points.

Clark was aware of the advantages for children in urban schools and she asked Donielson if the rules reflected this fact. Donielson said their request for the legislation was to provide that the grant applicants show parent involvement and an identity with community agencies. Clark suspected that rural schools without other agency involvement were in worse plight and that this should be taken into consideration if legislation were rewritten.

Priebe asked if there were an attempt made to verify the number of at-risk students reported and Donielson said they would have an opportunity to verify the numbers when the new count is taken this fall.

Senator Bruner declared that the legislature gave the Department of Education a Herculean task which they had handled as well as could be expected. He agreed there should be more readers of the grants and was hopeful for

legislation to enable a smoother operation of the program.

Clark was interested in what changes would be made by the Department. Collins said that extra weighting for high concentration could be accomplished as soon as August. With respect to Royce's suggestion to amend the process prior to next grants, Collins felt they needed some kind of directive. She emphasized that the Department was not in disagreement with the principles of the opposition. Finally, Collins expressed concern about exceeding the statute.

Discussion as to whether some type of cap should be required. Bruner opined that the original $60,000 cap was too low. Johnson pointed out that Waterloo had received nearly $350,000 for four grades in two buildings.

Department officials were willing to provide per pupil figures for each school that received the awards.

Harbor voiced concern about the procedure that seemed to be evolving. He urged caution and further study before changing the process without legislative action. Harbor thought that it was imperative to have better criteria. He recognized that the rural poor have too much pride to admit "At-Risk." He conceded that the General Assembly must assume blame for deficiency in the law.

Clark was of the opinion that criteria could be modified without additional legislation.

Schrader responded to Harbor's concern. He pointed out that the Department of Education adopted a program by relying on one paragraph in an appropriations bill. That provides them tremendous latitutde to develop that program and the function of the ARRC is to ensure that legislative intent is not exceeded. Schrader commented that it was not uncommon for changes to be made, sometimes major changes, but still keep rules within the scope of the legislation.

Schrader agreed that various types of programs should be developed in different districts. His district has one of the least numbers of at-risk in the category of free lunches. Nevertheless, they have over 9 percent cumulative dropout in their high school.

Ch 65

Refer to General Assembly

Schrader repeated his motion to refer the At-Risk Program, including the rules, to the Speaker of the House and President of the Senate.

Motion Passed

Motion passed.

Attention Page IAB

There was unanimous consent that Barry be allowed to include an Attention Page in the Iowa Administrative Bulletin to advise of recent changes in administrative procedures by Senate File 2280.

Recess — Chairman Priebe recessed the meeting at 5:15 p.m. to be reconvened Wednesday, June 13, 1990.

Reconvened — All Committee members and staff were present when Chairman Priebe reconvened the meeting at 9:50 a.m., June 13, 1990, and, as a special order of business, announced discussion of tinted automobile windows.

Priebe asked Royce to explain the objection which he had drafted to Iowa Department of Transportation rule 761 IAC 450.1. This rule had been reviewed at the June 8, 1990, ARRC meeting and the objection was voted on the basis that the rule was unreasonable. The Committee had contended that the rule was unreasonable in that it adopts by reference federal motor vehicle safety standards. Those standards, in turn, adopt by reference ANSI Standard 326.1(1983). The ANSI standard specifies an opacity level of 70 percent light transmission for certain vehicle windows. The standard is published in New York and not readily available to Iowa motorists.

Doyle recommended that the objection be expanded by adding after the words "readily available to Iowa motorists" the words "professional window tinters". In addition, he recommended that any additional rule making include a waiver provision that would allow persons to apply darker tint if the need were documented by a physician.

Priebe wondered about legislation similar to that regulating handicap parking. Light sensitive people could carry a doctor's certificate documenting need for the darker tint.

Doyle had no problem with that approach and was hopeful the Legislative Council would authorize some type of study to review the whole picture and propose revision to Iowa laws to be commensurate with other states.

Motion — Doyle moved that the additions be included in the objection. Motion carried. The following was drafted by Royce:

> At a meeting held on June 13, 1990, the Administrative Rules Review Committee voted to object to 761 IAC 450.1 on the grounds that it is unreasonable. This provision is a general adoption by reference of federal motor vehicle safety standards. The committee objection relates to only one specific portion of those standards; 49 CFR part 571.205 of those adopted federal standards which contains National Highway Traffic Standard 5.1.1, which in turn adopts by reference American National Standard Z26.1(1983). This "ANSI" standard specifies an opacity level of 70 percent light transmission for certain motor vehicle windows. It was the committee opinion that it was unreasonable to enforce this controversial standard without having it published in Iowa and readily available to Iowa motorists and professional window tinters.
>
> Iowa has limited the amount of tinting on automobile windows since 1983 when the legislature enacted Iowa Code subsection 321.438(2), which states:
>
> *2. A person shall not operate on the highway a motor vehicle equipped with a front windshield, a side window to the immediate right or left of the driver, or a side-wing forward of and to the left or right of the driver which is excessively dark*

or reflective so that it is difficult for a person outside the motor vehicle to see into the motor vehicle through the windshield, window, or sidewing. The department shall adopt rules establishing a minimum measurable standard of transparency which shall apply to violations of this subsection.

Pursuant to this mandate the Department of Transportation has adopted the federal standards by reference (see: 761 IAC 450.1). The federal provisions are contained in 49 CFR parts 501-590 (1987). The actual subject of this objection, "ANSI" standard Z26.1, was adopted by reference in 49 CFR 571.205.

The practical problem with this filing is a double adoption by reference. The Iowa rule adopts a federal rule by reference; which in turn adopts a non-governmental standard by reference. This raises the question of the adequacy of the publication of the standard. Professor Arthur Bonfield has stated in Bonfield, State Administrative Law, 390 (Little, Brown & Co. 1986):

> Publication of agency rules is important because it facilitates easy public access to them. That access allows affected parties to ascertain the contents of rules and to adjust their conduct accordingly. Limited availability of agency rules creates serious possibilities that individuals may be prosecuted for violating rules that were not only unknown to them, but that could not have been easily discovered...

The present situation is a "textbook example" of that problem. While the opacity standard has been lawfully adopted by reference, it is printed in an obscure handbook published in the state of New York. The Iowa rule does not refer specifically to tinted windows, and even though the regulation has been in effect since 1986, many members of motoring public and professional window tinters were not aware of its existence until concerted enforcement began in 1990. The Department of Transportation has taken some steps to make the federal standards available in Iowa. Copies of the standards, including the ANSI Z26.1 standard, are available from the department as provided in paragraph 761 IAC 450.1(7)"b". However, since that provision contains no reference to a window tinting standard, making a standard available to the public does little good if the public has no actual notice that a particular requirement exists.

The rule at issue itself has been specifically examined by a lower Iowa Court. In State v. Beckwith, case no. P 475308 (Assoc. D.C., 1987) an associate district court judge opined that Iowa Code section 321.438(2) was unconstitutional "as violating due process standards of specificity and notice." The committee is aware that a decision of a district associate court has no state-wide precedential value, but does feel that the holding of the case is well founded when it was stated:

> [T]his Court now holds that a statute with criminal penalties which delegates a standard to an administrative agency, which by reference then adopts a standard of another administrative agency, which itself adopts by reference a standard of an industry, which standard is not generally available to the community, in fact furnishes no standard at all for a due process evaluation.

The point both Bonfield and the associate district court make is that people are entitled to ready access to the regulations they must obey. This principle must be somewhat relaxed to allow for efficient program administration. Adopting materials by reference is essential to prevent the Iowa Administrative Code from becoming the size of the federal code. Generally adoption by reference presents no problem since these regulations tend to apply to narrow and specialized groups, such as engineers or home builders. These groups already have ready access to the adopted material. In other cases, such as seat belts in motor vehicles, the Code of Iowa itself adopts specific federal standards, which puts Iowans on legal notice that the cited federal standards are adopted as part of Iowa's Code.

In the present case, violation of the referenced standard is a public offense that will apply to thousands of motorists, virtually none of whom have direct access to the "ANSI" publication containing this standard. While the substance of the standard itself is lawful, it is also unreasonable to subject Iowans to a mandate which is buried away in an obscure New York publication, with only limited availability within the state. As a practical matter, it is unnecessary to burden the Iowa publication system by adding to the administrative code the entire bulk of the federal and ANSI

standards. For virtually all of these provisions the current system of adoption by reference, coupled with copies made available through the Department of Transportation, is sufficient. The tinting standard is somewhat unique in that large numbers of motorists have chosen to over-tint their windows, unaware that the standard existed. Since this regulation appears to have a larger impact on Iowa motorists than any other federal standard, the best solution at this time would be for the department to promulgate an amendment to 761 IAC 450 setting out the ANSI tinting requirement in the text of the rule.

The committee would also note that concerns have been expressed by persons suffering from severe light sensitive conditions that make heavily tinted windows essential for health reasons. The committee would request that any additional rule-making include a waiver provision that would allow persons to apply a darker tint on automobile windows if such a need is documented by a physician.

Motion — Doyle moved that the Committee pursue drafting an ARRC sponsored bill to permit, under Iowa Code section 321.438(2), an exemption to standards allowing persons to use darker tint if the need has been documented and prescribed by their doctors. Motion carried.

PUBLIC HEALTH — The following rules of the Public Health Department were before the Committee:

PUBLIC HEALTH DEPARTMENT[641]

Exemption of aerosols used in nuclear medicine, bankruptcy notification, 39.31(3)"b"(6) and (7), 39.48(5), 39.48(6), carried over from May meeting. Filed Emergency After Notice ARC 779A 4/4/90

Special supplemental food program for women, infants, and children (WIC), 73.2, 73.6(1)"a," 73.7(3) to 73.7(5), 73.8, 73.11(4), 73.11(6) to 73.11(9), 73.13(3), 73.18(2), 73.22, Filed ARC 939A 5/30/90

Office of rural health, ch 110. Filed ARC 893A 5/16/90

Emergency medical services training and equipment grants, ch 130 title, 130.1 to 130.8, 130.8(5) to 130.8(7), Notice ARC 896A 5/30/90

White flashing light authorization, ch 133. Notice ARC 905A 5/30/90

Standards for certificate of need review, 203.12(3), 203.12(6)"e," 203.13, rescind ch 200, Filed ARC 938A 5/30/90

Appearing for the Department were Carolyn Adams, Barb Nervig, Gary Ireland, Mike Guely and Don Flater.

Ch 39 — Flater reviewed the amendments to Chapter 39 and reported there were no negative comments from the Advisory Committee or the public hearing on the rules.

Doyle asked about penalty for failure to notify the agency following filing of bankruptcy. Flater said that it would be a simple misdemeanor.

Ch 73 — Ireland told the Committee that the adopted amendments to Chapter 73 were identical to the Notice. No comments were received. No Committee action.

Ch 110 — Adams presented Chapter 110 and pointed out that quorum provisions were revised to provide that a voting majority of the membership was required to take action. Priebe referred to 110.2(5) and asked if the Advisory Committee were evaluating the new rural delivery concept. Adams responded that an advisory rural health committee is in the process of review. They have recently published a Medicare report and are following up on many of the recommendations from the advisory task force. Adams provided the Committee with names of Advisory Committee.

Ch 130 — Guely explained amendments to Chapter 130. Copies of these rules had been mailed to all the EMS providers and

no written comments were received. Priebe asked if the first response service problem had been resolved and Guely answered in the affirmative.

Clark wondered why the need for an application process for EMS training grant would be eliminated. Guely stated that formulas determine the number each county will receive. Counties are required to account for funds used by reporting to the department. Equipment provisions are spelled out in the statute.

In response to a question by Tieden, Guely said that allocation goes to the county and they have discretion as to whether neighboring counties would be involved.

Ch 133

In review of Chapter 133, Guely said that legislation to authorize use of white flashing lights on personal and emergency vehicles was enacted primarily at the request of a number of volunteers throughout the state who wanted some form of signal to alert the public when they are on the way to the scene of an accident. The department will be developing white light authorization certificates to be issued to the volunteers. Certificates will be issued at the local level and a list of holders will be sent to the department.

At the suggestion of Priebe, Guely agreed to substitute "owner-operator" for "operator" in 133.2(3).

Doyle voiced opposition to the use of white lights since school buses also use them.

Schrader asked if an exemption could be included for school bus vehicles but Guely was hesitant to take such action. Guely did not anticipate any problems. No formal action by Committee.

Chs 200, 203

Nervig stated that most comments on the amendments to Chapters 200 and 203 came from hospitals, physicians and Blue Cross-Blue Shield. She summarized concerns regarding magnetic resonance imaging standards and positron emission tomography.

Clark expressed her support for repealing the certificate of need. No ARRC action.

MEDICAL EXAMINERS

Dennis Carr appeared for the following:

MEDICAL EXAMINERS BOARD[653]
PUBLIC HEALTH DEPARTMENT[641] "umbrella"
Licensure and disciplinary procedures for physicians practicing medicine and surgery, osteopathic medicine and surgery and osteopathy, 10.1, 11.1(1)"b" (2)"3," 11.1(2), 11.5(2)"b"(2), 11.6(2)"b"(2) and (3), 11.30, 11.30(4), 11.33"5," "11" and "16," 12.2"8" and "9," 12.4, 12.4(15), 12.4(16), 12.50(9), 12.50(26)"f"(9) and (10), Notice ARC 910A 5/30/90
Licensure requirements, standards of practice and professional ethics, 11.2(6), 13.1(3), 13.1(4), Filed ARC 911A 5/30/90

10.1 et al.

In discussion of amendments to 10.1 et al., Tieden asked how many licenses were suspended annually and Carr estimated 20 suspensions and 9 or 10 revocations. Authority for increasing the civil penalties from $1000 to $10,000 was contained in 1990 Acts, H.F.2518.

MEDICAL EXAMINERS Contd.

Carr summarized clarifying amendments to rules 11.2 and 13.1. No Committee action.

PROFESSIONAL LICENSURE

Appearing for the Division were: Kathy Williams, Barbara Charls and Carol Barnhill. The following agenda was considered:

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641] "umbrella"
Barber examiners, 20.5(1), 20.5(2); renumber 20.5(2) to 20.5(8) as 20.5(3) to 20.5(9), Notice ARC 933A 5/30/90
Dietetic examiners, 80.7(3), 80.7(4), 80.100(3), 80.107(1), 80.108, Filed ARC 935A 5/30/90
Optometry examiners, 180.14 to 180.18, Notice ARC 934A 5/30/90

20.5

Barnhill presented amendments to 20.5. Tieden and Priebe raised question as to new language in 20.5(1). Barnhill clarified that a student can attend barber school prior to earning a GED or tenth grade equivalency but cannot take the state examination until they have completed the tenth grade education or equivalent.

Ch 80, 180

No questions on amendments to Chapters 80 or 180.

ELDER AFFAIRS

Appearing for the Department of Elder Affairs were: Ron Beane and Lois Haecker. They reviewed the following:

ELDER AFFAIRS DEPARTMENT[321]
Long-term care coordinating unit case management projects for the frail elderly, 1.7, 15.2, 16.2(1), 16.4, ch 21, Filed ARC 875A 5/16/90
Food-handling procedures, inventory of foods, 6.8, 7.3(9)"b"(10), 7.3(16)"a," 7.3(19)"c" and "d," Filed ARC 874A 5/16/90

No questions on 1.7 et al.

Beane said that no changes were made following Notice of 6.8 et al. He summarized comments received on the rules.

Recess

The Committee was in recess for ten minutes.

Minutes

Pavich moved that minutes of the May ARRC meeting be approved as submitted. Motion carried.

JOB SERVICE

Appearing for the Division were: Joe Bervid, Legal Counsel, and William Yost, Chief, Bureau of Job Insurance, who presented the following:

JOB SERVICE DIVISION[345]
EMPLOYMENT SERVICES DEPARTMENT[341] "umbrella"
Employer records and reports, employer's contribution and charges, claims and benefits, benefit payment control, 2.15, 3.4, 4.19(2), 4.24(17), 4.29(1), 4.60(3)"a"(3), 5.16(1)"c," 5.16, Notice ARC 891A 5/16/90

Bervid described the "cleanup" amendments. Tieden was interested in any comments received and Bervid said they received a letter of inquiry from the Association of Business and Industry as to the basis for the backpay award changes and the plant closing provisions.

Doyle and Bervid discussed the unemployment rules regarding IBP in Sioux City and any provision for collection of benefit overpayments from other states.

REVENUE AND FINANCE

The Revenue and Finance Department agenda follows:

REVENUE AND FINANCE DEPARTMENT[701]
Practice and procedure before the department of revenue and finance, 7.1, 7.12, 7.13, 7.14(1), 7.14(1)"a," 7.14(2), 7.15, 7.17(1), 7.17(2)"b"(1), 7.17(2)"c"(4), 7.17(3)"b," 7.17(4), 7.17(5), 7.17(6). Notice ARC 930A 5/30/90
Casual sales exemption, 18.28(1). Filed ARC 885A 5/16/90
Exemption for property used in Iowa only in interstate commerce, 33.6. Filed ARC 929A 5/30/90
Assessor education program, title XVII, 122.1 to 122.4, 123.2, 123.3, 123.5 to 123.8, 124.1, 124.3 to 124.6, 125.1, 125.2. Notice ARC 884A 5/16/90
Insurance deductions, 206.2, 206.14. Filed ARC 886A 5/16/90

Carl Castelda, Deputy, Dennis Meredith and Bonnie Mackin were in attendance.

Castelda anticipated that revisions in Chapter 7 would benefit small business and individuals by reduced legal costs and a reduced backlog of cases.

18.28, 33.6

No questions regarding 18.28, 33.6 or 122.1 et al., 206.2, or 206.14.

LIVESTOCK HEALTH ADVISORY COUNCIL

Mark Truesdell appeared for the Council and presented their recommendations for the allocation of funds for fiscal year 1990-91. The money will be used in research into livestock diseases by Iowa State University. The proposal was published in 5/30/90 IAB as ARC915A. Truesdell pointed out that $25,000 was proposed for mysterious pig disease pursuant to 1990 legislation. Another proposal was to study swine drinking water quality on the cost and efficiency of swine production in Iowa.

It seemed more appropriate to Priebe for the water quality testing to be pursued by those performing groundwater research. He maintained that the Council appropriation was intended for immunization research. Priebe also questioned paragraph 18 which included $7752 for epidemiology of turkey loadout deaths which seemed irrelevant to development of serums or addressing a specific disease. Tieden concurred. Priebe continued that paragraphs 1 and 2 were similar and would provide $25,000 for Haemophilus somnus and Pasteurella multocida. He pointed out that immunomodulators was not a disease--paragraph 14, $17,335. Truesdell understood that but added that the allocation was intended for a general study about this immunity mechanism--a specific type of cell and how it can be controlled.

Brief discussion of the pseudo-rabies eradication program. No Committee action.

Pavich in the Chair.

SOIL CONSERVATION

Appearing for the Division were Jim Gulliford and Kenneth Tow. The following was before the Committee:

SOIL CONSERVATION DIVISION[27]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21] "umbrella"
Iowa financial incentives program for soil erosion control, 10.41, 10.51(1)"f," 10.53, 10.54(1), 10.60(1)"b," 10.60(4), 10.60(7). Notice ARC 936A 5/30/90
Water protection practices — water protection fund, 12.10, 12.51(1), 12.51(4), 12.84. Notice ARC 937A 5/30/90

SOIL CONSERVATION Contd.

Tow reviewed amendments to Chapter 10 and indicated that they would be emergency adopted following the June 20 hearing.

In response to Tieden, Gulliford said they set aside annually up to 5 percent of their cost share appropriation. They have never used that much since the law was enacted in the early 70's. Tow mentioned that Lyon County had passed an ordinance making excessive erosion and siltation in ditches a simple misdemeanor.

Priebe in the Chair.

Schrader expressed his disappointment that soil conservation compliance legislation was not adopted this year. To him, that approach would be much less controversial.

Ch 12

Tow stated that amendments to Chapter 12 apply to REAP practices. New funding was made available this year from CLEAN bill funds--approximately $6.8 million. Tow viewed one of the most significant changes as being the allocation formula for forestry practices which had been a first-come, first-served basis.

Ch 10

Priebe returned to Chapter 10 and raised question in 10.60(1) where the "fiscal years 1987 to 1989" had been stricken and "all fiscal years" substituted. He interpreted that language as an obligation to pay the dollar amount per acre specified, e.g. $10 for no tillage, ridge-till and strip-till. Royce suggested that rule could be prefaced with the words "Subject to the availability of appropriated funds."

Ch 12

Discussion returned to 12.51(4)e with respect to recall of unobligated funds at a certain period. Tow spoke of the advantage of an annual recall. General discussion of conservation funding.

Doyle asked about vetoes and Tow replied that they involved DNR dollars not soil conservation.

UTILITIES DIVISION

Appearing for the Utilities Division were: Vicki Place, Diane Munns, Allen Kniep. Also present was Jack Clark, Iowa Utility Association. The following agenda was considered:

UTILITIES DIVISION[199]
COMMERCE DEPARTMENT[181]"umbrella"
Alternate energy production, 15.1, 15.2, 15.4, 15.11 to 15.16, Notice ARC 325A Terminated ARC 941A 5/30/90
Reserve margins for natural gas utilities, 19.15, Filed ARC 940A 5/30/90
Directory assistance charging, 22.3(10)"b" and "c," Notice ARC 942A 5/30/90

Ch 15

No questions with respect to the termination of amendments to Chapter 15. New rules were in process to reflect 1990 legislation.

19.15

Munns explained new rule 19.15. Priebe raised question re 19.15(1) which will allow a natural gas utility to recover the cost of a reserve from their customers. He asked if the customer would get credit for interest.

UTILITIES DIVISION Contd.

Munns clarified that there was no reserve of money but the customers have the assurance of available gas at a locked in price.

Munns described "firm gas" as the gas contracted with the supplier on a daily basis. Through contractual arrangement, interruptible customers pay a lower rate and may have their supply curtailed or cut off. Most of these customers have alternatue sources.

The Utilities Board lacks jurisdiction to require interruptible customers to maintain a certain supply. No formal action on the rule by the ARRC.

22.3

Kniep explained proposed amendment to 22.3(10) which had been included in petition by the Iowa Telephone Association (ITA). The current allowance of two directory assistance calls without charge each month would be eliminated and hotels, motels and hospitals, would no longer be exempt from directory assistance charges. Kniep emphasized that the Board has not taken a position on the merits of the petition as yet.

Clark mentioned the problem of names being arbitrarily omitted by publishers of telephone directories. She reasoned that a charge for directory assistance should not be imposed until directories are accurate.

Schrader asked about the frequency of tariff requests by a regulated telephone company and Kniep estimated every three years for Bell whose directory assistance fee was recently increased to 40 cents.

Kniep pointed out that the current rule provides for two no-charge calls. In essense, customers who never use directory assistance will bear the costs of those customers who use it.

Schrader noted that ITA had cited five reasons for their request. He took exception to the first one that allowing two calls per month was counter to the objective of using the directory. Schrader took the position that two assists monthly was a fair approach.

Doyle asked about distribution of telephone books and Kniep advised that customers are entitled to directories at no cost. There is a charge to others. It was noted that libraries no longer receive complimentary copies. Priebe was critical of the proposal by the Board and declared that the issue belonged in the rate case.

In defense of the Utilities Division, Royce called attention to Code section 17A.7 which provides that anyone may file a petition for rule making and have that considered by the agency. The Division proposal will allow full public notice and participation.

Motion — Pavich moved that the ARRC go on record as being opposed to the proposed amendments to 22.3(10)b and c. Motion carried.

Recess and Reconvened — Chairman Priebe recessed the meeting at 12:15 p.m. and reconvened it at 1:05 p.m.

EDUCATION Special Review Ch 65 — Chairman Priebe announced continued special review of IAC 281 Chapter 65, pertaining to programs for at-risk early elementary students. Appearing for the Education Department were Kathy Collins, Legal Counsel, Teri Nordgaard, Susan Andersen, Carol Alexander Phillips. Also present: Representative William Harbor; Linda Devitt, Principal, Spencer Schools; Janet Kinney, Alden; and Lisa Johnson, Essex. See also page 4344.

Collins summarized a four-page memorandum which she circulated to the ARRC on the legal issue that she perceived as being before the Committee which was whether or not an objection should be imposed on Chapter 65. It was her understanding that the question was whether the noticed version of the rules sufficiently provided notice to the general public that criteria would be used based on low-income families and that extra weighting would be assigned to those. Collins recalled concern that the 40-point weighting system was devised after the rules were adopted and after the Requests for Proposals (RFPs) were mailed, but prior to grant application deadline and review by readers of the grants. She emphasized that the readers had nothing to do with the 40 points--that was done by staff.

Collins contended that whether or not the 40-point weighting system met the definition of a rule under 17A.3(2) would be one for a judge to decide. It was her opinion that authority to file an objection was limited to a finding that the rules were adopted arbitrarily, capriciously, unreasonably or were in excess of the statutory authority. The memo contained arguments that the rules were not arbitrary, etc. with the conclusion that an objection should not be filed.

At the end of her analysis, Collins complimented Lisa Johnson on her presentation on June 8 but pointed out that Johnson spoke on her own behalf. After speaking with Superintendent of the District, Collins learned that Essex Community School had no desire to pursue any remedies.

Collins distributed copies of Susan Donielson's computation of district cost per pupil and building cost per pupil of those 16 buildings that received grants.

Priebe did not disagree that the department was within their rights to use the 40-point weighting system. His argument was that the ARRC has always taken the position that a point system must be adopted through the rule making process.

EDUCATION
Special Review Contd.

Chairman Priebe recognized Johnson who disagreed with the Essex Superintendent regarding their number of at-risk children. She reiterated her frustration that the ranking points were not contained in the rules and opportunity for public comment on their impact was denied. In Johnson's opinion, had small districts been aware of these ranking points, most of them would not have spent exhaustive hours in preparing grant applications. She concluded that there appears to be a myriad of problems and discrepancies regarding both the process used and the figures reported in the allocation process.

Devitt, spoke in support of the position taken by Johnson. She stated that Spencer schools were never advised of the additional ranking. When they called the Department, the 30 percent figure was quoted. Devitt observed that only large metropolitan schools were awarded funds and she urged consideration of other means to determine the at-risk population.

Collins responded that the Noticed rule clearly stated that there would be a granting preference system based on low-income families. The weighting system devised for the grants was done objectively and with the sole purpose of following legislative intent.

With respect to the 30 percent, Collins said that percentage is identified by the federal government as the qualification level for students to receive Chapter 1 assistance--free and reduced price lunches.

In response to Tieden, Royce saw the question as being whether or not the 40-point bonus was objectionable under Code Chapter 17A. In his opinion, an objection could be based on the grounds that the 40-point bonus was beyond the authority of the agency. Royce recalled that the ARRC, when reviewing grant programs, has always insisted that criteria be set out in the rules to minimize the ability of favoritism. However, the Committee has never insisted that a point system actually be in place because the law does not require it. Royce based his argument on the fact that a rule is defined as "an agency statement of general applicability that implements, interprets or prescribes law or policy...." He then referred to rules of construction in sections 17A.1 and 17A.23. Royce concluded that Collins was correct in saying, there were no court cases to support this statement but it has been a consistent policy.

Collins was not aware of the Committee's policy on the point system. Royce saw that as a"flaw" in the system.

Schrader and Tieden agreed with Collins' explanation of the 40-point weighting system in her memo but thought the point criteria should have been published and included in the award process.

EDUCATION
Special Review Contd.

In terms of objection, Royce cautioned against use of "arbitrary" since the question was not whether the 40-point system was good, bad or indifferent but whether it was adopted through the rule making process.

Harbor reasoned that the rules were arbitrary because applicants were not informed of the point system.

Motion

Tieden moved to object to Chapter 65 of Education rules on the basis that the rules were beyond authority of the Department in that certain criteria were used to evaluate and rank applications without first adopting those criteria through the rule-making process.

Discussion followed with Royce explaining the impact of the objection.

Schrader disagreed with Royce's assessment and the objection based on the grounds that the Department exceeded its authority. He added that the Department clearly stated in the rules that they would make two decisions: Eligibility for awards and recipients of the grants. Schrader considered it unfortunate that those two decision-making elements were melded into one process.

Motion Failed

The Tieden motion to object showed 3 ayes, 2 nayes, 1 abstention. Chairman Priebe announced that the motion failed.

Collins indicated that provision relative to bonus points would be added to the rules.

NATURAL RESOURCE COMMISSION

Appearing for the Commission were Stephen Durmand and Richard Bishop. The following agenda was considered and there were no recommendations by the ARRC.

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561] "umbrella"
Authorization to use a crossbow for deer and turkey hunting during the bow season by handicapped individuals. 15.5, Notice ARC 912A 5/30/90
Game management areas, 51.3(1)"a"(1) to (3), Notice ARC 924A 5/30/90
Nonresident deer hunting, 94.1, 94.2, 94.6, 94.7(1), 94.7(4), 94.8, Filed ARC 926A 5/30/90
Common snipe, Virginia rail and sora, woodcock and ruffed grouse hunting seasons, 97.1 to 97.4, Filed ARC 925A 5/30/90
Wild turkey fall hunting, ch 99; rescind ch 95, Filed ARC 928A 5/30/90
Crow and pigeon regulations, 100.1, Notice ARC 909A 5/30/90
Deer hunting regulations, 106.1, 106.2, 106.5(2)"c," "d" and "g," 106.6(1) to 106.6(3), 106.7(1), 106.7(4), 106.8, Filed ARC 927A 5/30/90
Rabbit and squirrel hunting, 107.1 to 107.3, Filed ARC 907A 5/30/90
Mink, muskrat, raccoon, badger, opossum, weasel, striped skunk, fox (red and gray), beaver, coyote, otter and spotted skunk seasons, 108.1, 108.1(2), 108.2 to 108.5, 108.7(2)"j" and "k," Filed ARC 908A 5/30/90

RACING AND GAMING

Charles Patton, Director of Riverboat Gambling, presented the following:

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481] "umbrella"
Manufacturer's, distributor's, vendor's and occupational licenses, ch 22, Notice ARC 869A 5/16/90

He explained changes that would be made following Notice. The last sentence of Rule 22.17(1)h would be stricken since it was the Commission's intent that only law enforcement officers be armed on excursion gambling boats. Also, the fee structure would be revised eventually.

There was discussion of the meaning of vendor as referenced in the rules. Patton described a vendor as an individual who performs some task on the riverboat but is not necessarily employed by the boat, e.g. a person who changes the linens.

Priebe asked Doyle to explain 22.14(7)h(2) relative to conviction of a felony or drug related offense. Doyle suggested that the Commission review the language and check for statutory authority.

No Committee action.

INSPECTIONS AND APPEALS

Appearing for the Department of Inspection and Appeals were: Kim Schmitt, Appeals; Mary Oliver, Health Facilities; John Barber, Investigations; Amy Christensen Couch, Administrative Law Judge; Chris Smith, Overpayment Recovery; Rebecca Walsh, Rules Coordinator; and Norma Lock. Also present: Elizabeth Osenbaugh, Deputy Attorney General.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Contested case hearings, ch 10, Filed ARC 876A	5/16/90
Special unit or facility dedicated to the care of persons with chronic confusion or a dementing illness, 58.54, 59.58, Notice ARC 944A, also Filed Emergency ARC 943A	5/30/90
Minimum physical standards for intermediate care facilities for persons with mental illness and for nursing facilities, ch 61, Notice ARC 877A	5/16/90
Overpayment recovery section, 71.1, 71.5(1)"c" to "f," Notice ARC 945A	5/30/90

Ch 10

Walsh stated that Chapter 10 would govern procedures which pertain to those stages of contested case hearings conducted by the Department of Inspections and Appeals. Several modifications were made following the comment period and Walsh summarized them.

Royce discussed the Attorney General's Opinion to Representative Rosenburg dated January 3, 1990, copies of which had been distributed to the ARRC. The opinion focused on applicability of Chapter 10, in particular, the first unnumbered paragraph, entitled, "Scope and Applicability." Royce continued that the Opinion basically states that the rules would be applicable to hearings within the Department of Inspections and Appeals, dealing with nursing homes and other matters inherently within the department. However, when Administrative Law Judges are essentially working for other agencies, they will be using the procedural rules of those agencies. That is not reflected in the rules.

Chairman Priebe recognized Osenbaugh who recommended that the Scope paragraph be amended by adding at the end of the first sentence the words, "when not inconsistent with the rules of the originating agencies".

Motion to Delay

After a brief discussion, Pavich moved to delay for 70 days, the introductory paragraph, Scope of Applicability, of Chapter 10.

Schmitt disagreed that there was an inconsistency in the paragraph in question. He added that the Department made every effort to follow the Attorney General's Opinion and these rules serve multiple purposes.

Schmitt continued that they had tried to implement reorganization and create complete procedural rules.

Osenbaugh reiterated her concern that the Scope language would be confusing to attorneys and others.

Motion Carried — The Pavich motion to delay was carried.

58.54, 59.58 — In review of rules 58.54 and 59.58 Walsh said that 1990 legislation [SF 2221] required the department to establish a special license classification for an intermediate care facility, skilled nursing facility, nursing facility or special unit within the facility, that designates and dedicates itself to provide care for persons with chronic confusion or a dementing illness. Formerly the licensure for these special units was voluntary.

Priebe questioned use of "substantially changed" in 58.54(3). Oliver replied that the language was consistent with their other chapters. She offered examples: An activity program changed from morning to afternoon would come under the category of a substantial change.

Tieden was advised that Inspections and Appeals rules appearing in Chapters 58 and 59 would be rewritten as one chapter to comply with new legislation relative to Intermediate and Skilled Care facilities.

Ch 61 — Discussion of Chapter 61 which reflects substantial changes in construction standards for ICFs for persons with mental illness and for nursing facilities. Public hearing was held June 13th with one person in attendance. No action.

71.1, 71.5 — In presenting amendments to 71.1 and 71.5, Walsh said that current rules of the Departments of Human Services and Inspections and Appeals were being expanded to incorporate federal requirements relating to recovery of Promise Jobs overpayments and transitional child care overpayments. These proposed amendments add providers of services as debtors in the overpayment recovery procedure and whenever possible, offsetting will be used to reduce the balance owed.

No recommendations.

EDUCATION EXAMINERS BOARD — The Board of Educational Examiners was represented by Orrin Nearhoof and Jane Yeager for the following:

EDUCATIONAL EXAMINERS BOARD[282]
EDUCATION DEPARTMENT[281]"umbrella"
Rescind 287—chs 1 to 7; adopt 282—chs 1 to 5 and 11 to 13, Filed Emergency ARC 880A 5/16/90

Nearhoof explained the reorganization legislation in S.F. 794 adopted in 1989. The Board of Educational Examers superseded the Professional Teaching Practices Commision and assumed all licensure functions previously under the State Board of Education.

EDUCATION EXAMINERS BOARD Contd.

Nearhoof stated that the rules of Professional Teaching Practices were adopted with minor revisions. The rules were emergency adopted to ensure that case work could continue with updated provisions.

No recommendations.

EMPLOYMENT APPEAL BOARD

The Employment Appeal Board was represented by Wendell R. Benson, William C. Whitten and James A. Althaus and the following agenda was considered:

EMPLOYMENT APPEAL BOARD[486]
INSPECTIONS AND APPEALS DEPARTMENT[481] "umbrella"
Construction contractor registration appeals — form and time of appeal, 7.1(1). Filed ARC 868A 5/16/90
Construction contractor registration appeals, 7.1(2), 7.1(8). Filed Emergency ARC 873A 5/16/90

Whitten told the Committee that an attempt had been made to address concerns of the Bureau of Labor with respect to confidentiality. It was noted that the amendment lacked pertinent language set out in the preamble and Whitten was amenable to adding the sentence: "The work product of the agency is not considered a part of the record."

No ARRC action.

No Agency Reps

No agency representatives requested to appear for the following:

ATTORNEY GENERAL[61]
Claimant's right to appeal, 9.37. Filed Emergency After Notice ARC 916A 5/30/90
COLLEGE AID COMMISSION[283]
EDUCATION DEPARTMENT[281] "umbrella"
Iowa Stafford loan program — eligible lender, 10.42(2). Notice ARC 932A 5/30/90
DENTAL EXAMINERS BOARD[650]
PUBLIC HEALTH DEPARTMENT[641] "umbrella"
Utilization and cost control review, ch 32. Notice ARC 119A Terminated ARC 904A 5/30/90
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
Cost factor, 5.2. Notice ARC 866A 5/16/90
REGENTS BOARD[681]
Targeted small business, 7.7, 8.1, 8.6. Filed ARC 892A 5/16/90
TRANSPORTATION DEPARTMENT[761]
General requirements and covenants for highway and bridge construction, 125.1. Filed ARC 895A 5/30/90
Rail rate regulation, ch 840. Filed ARC 894A 5/30/90
SECRETARY OF STATE[721]
Election forms, 4.3. Notice ARC 906A 5/30/90
Approval of voting booths for use in Iowa, 22.1, 22.4(2)"a" to "d," 22.19 to 22.29. Notice ARC 898A, also Filed Emergency ARC 897A 5/30/90

Adjourned

Chairman Priebe adjourned the meeting at 3:05 p.m. The next meeting was scheduled for Tuesday and Wednesday, July 10 and 11, 1990.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Assisted by Alice Gossett,
Administrative Assistant

APPROVED:

CHAIRMAN