

MINUTES OF THE SPECIAL MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of  
Meeting

The special meeting of the Administrative Rules Review Committee (ARRC) was held Monday, February 11, Senate Committee Room 22, and Tuesday, February 12, 1991, Room 116, State Capitol, Des Moines, Iowa.

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 Ruhl Maulsby. Also present: Paula Dierenfeld, Governor's Administrative Rules Coordinator.

Staff present: Joseph A. Royce, Legal Counsel; Phyllis Barry, Administrative Code Editor; and Alice Gossett, Administrative Assistant.

Convened

SOIL  
CONSERVATION

Special  
Review  
60.75(3)

Chairman Priebe convened the meeting at 8:05 a.m. and called up the Soil Conservation Commission for the special review of subrule 27--60.75(3) Iowa Administrative Code. The subrule which became effective September 10, 1990, related to excavation setback distances for general mining activities.

Representing the Commission were Ken Tow, Joe Pille and James Ellerhoff. Also appearing were John Rahn, Clay County Supervisor; R. K. Clark, Clay County Engineer; Ken McNichols, Iowa Limestone Products Association; and Representative Daniel Fogarty.

Priebe recognized Clark who was aware of the rules for the first time last November when a letter from the Department of Agriculture asked for their variances on the existing pits. Clark stated that Clay County has ten registered pits from which they take gravel and they did file for variances on those. He was concerned about two large areas of gravel located inside existing farmland purchased in 1980 and 1984 which were registered at the time of purchase. At the time of purchase, a ten-foot setback from the property line was agreed upon. The new rules require 50 feet from the property line because of the 50 feet of excavation. The other pit will have to have a 25-foot setback on most of it. Clark estimated that the rules would cost them an estimated million tons of gravel and he provided documentation. The loss would be equivalent to 9 or 10 years of gravel for the entire county. Clark contended that since the pits were registered prior to the rules, an exemption should be provided.

Priebe called on Department officials to respond.

Tow thought the problem could be addressed by expanding variance provisions in subrule 60.80(8) to include 60.75(3). Tow stated that it was unfortunate that Clay

SOIL CON-  
SERVATION  
Contd.

County missed distribution of the proposed rules. The Division had mailed them to all 250 licensed operators. Counties around Clay--Palo Alto, Emmett, Dickinson--had commented on the proposal which provided an even more stringent setback. Tow indicated that Department officials planned to meet with Clay County officials today to review the problem. He stressed the importance of backfilling to prevent a vertical cliff literally right at the fence.

McNichols spoke on behalf of the limestone industry, in support of the rules which they believe will improve their image. He cautioned against circumventing what the industry had worked hard to achieve. McNichols cited problems with children falling into pits. He opined that a 25-foot setback was the most effective method to reduce those accidents. McNichols concluded that variances and exceptions would erode the purpose of the rules. Tow clarified that any rule on a variance would apply to all operators and it would not necessarily exempt any project from the requirement. They would require a plan to sufficiently grade and backfill the operation. Tow suspected that the Division would adhere to requirement for 25 foot or 50 foot setback unless there was land shaping and permission of the adjacent landowners. He pointed out that the Division was charged by statute to protect the tax values of the land. They must seek methods which will create minimum disruption to the land and property adjoining a mining operation.

Priebe urged the different factions to reach a compromise. He was doubtful that the Committee could take any formal action on the issue unless the law were changed. Rahn thanked the Committee for their interest in the issue. Maulsby was sympathetic with Clay County and reasoned there should be some consideration for their situation.

AGRICULTURE

Appearing for the Department were Charles A. Eckermann, Robert Cox, State Apiarist, Jerry Bane, Ron Rowland and Daryl Frey. Also in attendance were: Mona Bond, Iowa Alliance of Environmental Concerns; John Chaney, Spring Green Lawn Care; Michael Grooms, Iowa Professional Lawn Care Association; Douglas L. Tyrrell, Tyrrell Lawn Care; Brian Erickson and H. Dennis Pennington, Pennington Lawn Service; James Shelton, All American Turf Beauty; Harry Struyli, Struyli Turf Maintenance, Inc.; Larry Ohlinger, Ohlinger Lawn Care. The following agenda was considered:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]  
Application of pesticides toxic to bees, 45.31, Notice ARC 1633A, also Filed Emergency ARC 1634A ..... 1/23/91  
Notification requirements for urban pesticide applications, 45.50, Notice ARC 1617A ..... 1/9/91  
Organic food production, 47.7(5), Notice ARC 1632A ..... 1/23/91  
Weights and measures -- construction of scale pits, installation of pitless scale, gasoline labeled as "leaded," 85.11(1), 85.12(3), 85.48(15), Filed ARC 1631A ..... 1/23/91

AGRICULTURE  
Contd.

45.31 Rowland and Cox discussed amendment to 45.31 which changes the date by which beekeepers must register location of their hives from May 1 to April 1. Cox noted that the rule provides a notification mechanism for pesticide applicators to notify beekeepers within a two-mile radius of a field to be sprayed. The Department sends the listings of registered beekeepers to each county ASC office where the hives are identified on a map. Maulsby was not sure the date change was necessary. No formal action.

45.50 Frey told the Committee that proposed revision of rule 45.50 was a result of petition by a group of concerned citizens in Waterloo. Petitioners asked for an increase in the size of the sign for lawn application notification from 4" x 5" to 9" x 9". In addition, they requested the text of the sign to read: "Do not remove for 24 hours from this area. Chemically treated. Keep off." and a notation as to when the sign can be removed. Changes in placement and the construction of the signs have also been proposed. Flags in lieu of the signs would be eliminated and municipalities would be required to maintain a registry of persons requesting prenotification of pesticide application and the registry would be updated by March 1 of each year. Frey said that a public hearing on the controversial rule was well attended. Essentially, there was a sharp difference of agreement between two groups--one wanting more stringent regulations and the industry arguing most eloquently that the existing rule was adequate.

In response to Priebe, Frey said that Waterloo had the most organized opposition to lawn care application. Occasional complaints are received from other areas. Frey stressed that the Department would work with both factions in an attempt to compromise. He was not optimistic that an early resolution was likely. No Committee action.

47.7(5) In review of revised 47.7(5), Frey explained that it was essentially a temporary measure to regulate organic food distribution and sale in Iowa pending implementation of national standards in 1993. Most of these products come from California where standards are not as stringent as Iowa standards on the length of time that fields must be free of any synthetic pesticides and fertilizers. Frey added that the ability for Iowa consumers to obtain organic food would be minimized without the rule making.

Priebe wondered about regulation similar to the WIC program in selling the Iowa food at Farmers Markets. Frey thought that was a possibility. He commented that produce coming from California has been in compliance with Iowa organic standards through various private certifying organizations that are nationally known. However, there is difficulty with processed

AGRICULTURE  
Contd.

and packaged foods containing "organic ingredients" which may not be in compliance with Iowa standards. There was consensus that it is a virtual impossibility to monitor this food completely. Frey indicated that the Department's responsibilities are limited to investigation of complaints--there is no policing. No Committee action.

Ch 85

According to Rowland, the adopted amendments to Chapter 85 were very similar to the Notice except for clarification of the definition for leaded gasoline. The earlier version required a lead additive approved by the EPA. This would have basically prohibited the sale of leaded gasoline in Iowa since EPA does not approve lead additives. Rowland said that the Iowa Petroleum Council and the Iowa Petroleum Marketers find the revisions to be acceptable.

Tieden and Priebe questioned the addition of a minimum clearance of eight inches on pitless scales. Rowland pointed out that legislation permitting pitless scales was passed last year. Before that there were a few prototypes around the state but they are consistent with the rules. An overwhelming majority of the industry that the Department heard from were supportive of the rule. No Committee action.

Committee  
Business  
Minutes

Pavich moved that the minutes of the January meeting be approved as written. Motion carried.

Organ  
Transplants

There was informal discussion of pending rules of the Human Services Department which identify specific organ transplants which will be eligible under Title XIX. The effect of the rule making will exclude liver, pancreas and lung transplants because of budgetary restraints. Amendments to Chapter 78 of the rules was scheduled for review by the ARRC tomorrow.

ARRC  
Rules

Tieden called attention to the Committee's Rules of Procedures, Chapter 1, which were published as a Notice of Intended Action in IAB 1/23/91 as ARC 1653A. He suggested that 1.3(1) should be less stringent with respect to objections. There was concurrence that additional review and revision would be made before the rules were finalized.

Nullified  
Rules

Chairman Priebe recognized Barry who pointed out lack of legislative direction with respect to disposition of rules which are nullified under Article III, section 40 of the Iowa Constitution. There is no formal vehicle for notifying the respective agency or the Administrative Code editor. Barry commented that she has followed legislation and editorially identified the nullified provisions in the IAC. Royce pointed out an instance when a nullified rule remained in the IAC about two years. [Job Services lock-out provisions]

Nullified Rules Contd. There was unanimous consensus that the Administrative Rules Review Committee should sponsor a bill to clarify this matter.

Motion Pavich moved that a bill be drafted to address disposition of nullified rules. Motion carried.

March Meeting It was agreed that the next meeting would be held on Monday, March 11, 1991.

RACING AND GAMING Lorenzo Creighton appeared for the Commission and presented the following:

**RACING AND GAMING COMMISSION[491]**

**INSPECTIONS AND APPEALS DEPARTMENT[481] "umbrella"**

Adjustments to racing rules after one year of enforcement, simulcasting, 1.2(3), 4.1, 4.3, 4.10, 4.27, 5.15(6)"d" and "e," 7.2(13), 7.2(16), 7.2(17), 7.3(10), 7.3(13), 7.3(15), 7.3(16)"k," 7.3(17)"g," 7.3(17)"i," 7.3(17)"e," 7.3(18)"j," 7.3(22), 7.5(6), 7.5(8), 7.8(1)"a," 7.8(4)"x," 7.8(6)"e," 7.14(12), 7.14(13), 7.16, 8.2(1), 9.2(7)"a," 9.2(15)"g," 9.3(27), 9.3(28), 9.4(13)"k," 9.4(14), 9.4(15)"b"7(3), 9.6(1)"s," 9.6(1)"d," 9.7, 10.2(7)"a," 10.2(15)"g," 10.3(25) to 10.3(27), 10.4(13)"h," 10.4(14), 10.4(15)"b"7(3), 10.4(17)"b"7(5), 10.4(17)"b"7(10), 10.4(19)"e"(6), 10.4(19)"h"7(4), 10.5(1)"x" and "y," 10.6(1)"d," 10.7, ch 12. Notice ARC 1600A ..... 1/9/91

1.2 et al. Creighton described the numerous amendments as proposals to reflect necessary adjustments after the past year of enforcement. Revisions were recommendations of the industry professionals, racing stewards and agency staff. He pointed out that the simulcasting rules were essentially generic in anticipation of possible legislative changes--Chapter 12.

Priebe expressed his opposition to simulcasting without some live races. Creighton indicated that the Commission also takes that position. Tieden asked for clarification since Chapter 12 does apply to simulcast racing. Creighton explained that previous rules were ineffective because the law had been changed to allow simulcasting beyond the ten events. These rules are not in anticipation of a law change but are to clarify the ten-event criteria. Creighton indicated that the Commission worked with both groups extensively on the simulcast language and there was agreement on the final version.

Tieden questioned authority for new language in the definition of "Board" in 4.1 which provided that: "The administrator may serve as "a board of one." Creighton explained that the change was made to address a situation in Waterloo where a racing steward was terminated. This would enable an administrator to take necessary action against a racing steward. Creighton added that the Commission was the ultimate authority and could curtail the powers of the "board of one."

Priebe shared Tieden's concern and was doubtful that the administrator could have this much power.

Maulsby thought it would be more appropriate to provide "The Administrator with board approval may serve as one."

Creighton stressed that the language in question was limited to powers that the Board of Stewards would have at a race track. Priebe observed that the Riverboat Board was also included in the 4.1 definition.

RACING AND  
GAMING  
Contd.

Schrader also shared Committee concern regarding the definition. He commented on the large number of amendments generally and lack of a detailed explanation of the reasons for the revisions and rescissions.

Barry stated that agencies are encouraged to draft informative and descriptive preambles to afford the reader the concept of each rule making without lengthy publication of stricken material.

Priebe referred to 10.6(1)d(4) which, in his opinion, seemed to give the veterinarian complete control over feed supplements, medications, tonics, etc. sold for the horses. Creighton responded that the intent of the change which was initiated by veterinarians employed by the Commission was to require a label on anything sold or dispensed. Priebe concurred with this concept but suggested clarification to avoid exclusive distributorship. No formal action taken.

ECONOMIC  
DEVELOPMENT

The following rules of the Department of Economic Development were presented by JoAnn Callison, and Kathy Berry.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Iowa small business new jobs training program, 7.3(1), 7.3(9), 7.3(10), 7.4(1)a, "7.4(2)a" and "b," 7.5(3), 7.5(4), 7.6, 7.7"8" and "9," 7.8(1) to 7.8(5), 7.9, 7.11(1), 7.11(2), 7.13 to 7.21, Filed ARC 1620A ..... 1/9/91  
Rural enterprise fund, 67.1, 67.2, 67.2(1)e, "67.2(2)a" to "c," 67.3(3), 67.3(5), 67.4, 67.5(5), 67.6, 67.8(1)a, "67.8(2)a," Filed Emergency After Notice ARC 1621A ..... 1/9/91

Ch 7

Callison summarized changes from the Notice of amendments to Chapter 7. There were no questions.

Ch 67

Review of amendments to Chapter 67 were temporarily deferred. See page 4574.

UTILITIES  
DIVISION

Appearing for the Division were Gary Stump, Vicki Place, Alan Kniep and Anne Prezicsi. The agenda follows:

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[101] "umbrella"

Consumer comment hearings, 7.7(16), Notice ARC 1614A ..... 1/9/91  
Energy efficiency plans, 17.9, 19.1(12), 20.1(23), ch 35, Notice ARC 1281A Terminated, ..... 1/23/91  
also Notice ARC 1649A .....  
Applicant payment agreements, 19.2(4)c(21), 19.4(10), 19.4(16)h, "20.2(4)fz," 20.4(11), 20.4(16)h, Notice ARC 1613A ..... 1/9/91  
Investigation of winter "laboratory," 19.2(5)f and "k," 20.2(5)f and "k," Filed ARC 1615A ..... 1/9/91  
Meter test reports, 20.2(5)i, Filed ARC 1612A ..... 1/9/91  
Disconnection prohibition for 9XX charges and 9XX blocking tariffs, 22.4(7)h, "22.5(13), 22.5(14), Notice ARC 1648A ..... 1/23/91  
Access to affiliate records and requirements for annual filings ch 31, Filed ARC 1650A ..... 1/23/91  
Nonutility service, ch 34, Filed ARC 1651A ..... 1/23/91

7.7

Preziosi told the Committee that revised subrule 7.7(16) more clearly defines the circumstances under which consumer comment hearings in rate cases will be mandatory. A study of the cost of these hearings revealed that a recent rate case with four hearings cost \$15,600.

In response to Tieden, Kniep stated that the rate case expenses would be recovered by the utility through their rates. He admitted that it was a complicated process.

17.9 et al.

No questions were posed regarding 17.9 et al.

UTILITIES  
DIVISION  
Contd.

According to Preziosi the proposed amendments to 19.2 et al. were a result of petition by the Legal Services Corporation of Iowa on behalf of their client, Ken Flatness. These rules would require both electric and gas utilities to allow applicants with outstanding debts to receive service simultaneously with payment of their debts pursuant to a payment agreement. Two options have been drafted for comment purposes.

Doyle asked if a person who files bankruptcy could re-apply for utilities. Preziosi was not sure but thought the rule would be applicable to anyone in financial difficulty. She continued that companies seem to be saying in their petition that if there has been noncompliance of a past payment agreement, the rule would not apply to that customer. For example, if a bankruptcy had prevented a customer from honoring a past agreement, the company would be allowed to refuse them service or reinstatement.

19.2(5)

Preziosi explained adopted amendments to 19.2(5) and 20.2(5). Pursuant to the Board's order of March 18, 1985, in docket No. INU-85-2, affected utilities have reported monthly on the effects of the winter disconnection moratorium on low income households mandated by Iowa Code section 476.20(2). The requirements of the noticed rule replaced the monthly filings in that docket. The report includes the amount of past due revenue associated with low-income home energy assistance program customers and the number of low income households receiving disconnection notices. Based on the written and oral comments the Board made several revisions.

Priebe asked about lost revenue on past due accounts. Kniep stated this information would be in the annual report and that would be requested in every rate case. Priebe suspected that some customers would take unfair advantage of the program.

20.2(5)

There were no questions on rescission of 20.2(5)i.

22.4,  
22.5

Kniep stated that amendments to 22.4 and 22.5 were aimed at providing customers some protection against charges for unwanted 9XX information services. He continued that amendment to 22.4 prohibits the local exchange company from disconnecting a customer for failure to pay for 9XX services which are not regulated by the utilities Board. Amendment to 22.5 requires all local exchange companies to offer 9XX blocking to customers without any charge. According to Kniep, 9XX refers to part of a prefix dialed to reach certain information providers who charge by the minute or call. The prefix 9XX was selected because there are 900, 950 and possibly 976 services. Pavich spoke of problems with children using the prefix and creating large bills. Kniep did not believe that the rule would impact 911 service. Maulsby suspected that all customers would eventually bear the cost for blocking. Kniep emphasized

UTILITIES  
DIVISION  
Contd.

that programming of the digital switch to allow blocking was only one entry and not an expensive operation.

In response to Maulsby, Kniep pointed out that the 9XX companies are not the regulated companies. The rule is directed at the local exchange company and the access that it provides to the 9XX company.

Schrader spoke in support of the rule making since he had heard comments from his constituents about this problem. He was not sure that the public was aware of the blocking option and he suggested some form of notification to utility customers--perhaps in the billings.

Pavich wondered about total blockage for all with a provision that 9XX service must be requested. Kniep thought that such an intrusive regulation would be an alternative.

Chs 31,  
34

Place explained adopted Chapters 31 and 34 and there were no questions.

LIBRARY  
DIVISION  
1.4

Shirley George and Mark Peitzman presented proposed 224--1.4(303) setting a fee structure for photocopying library materials. The proposal was published in 1/9/91 IAB as ARC 1625A.

George told the Committee that the rule was proposed at the request of the Educational Appropriation subcommittee. However, the Division has learned of some negative reaction and they plan to meet with the subcommittee for resolution of the problem. A new rule will be substituted.

ECONOMIC  
DEVELOPMENT

Ch 67

Chairman Priebe called on Kathy Berry for review of amendments to 261--Chapter 67 which were deferred earlier. Berry reported that favorable comments were received at the public hearing on the amendments. They did receive request to allow nonprofit community groups to apply and administer the funds. However, the Department determined that these groups have access to the funds through existing entities named in the rules. No Committee action.

Pavich took the Chair.

INSURANCE  
DIVISION

The following agenda of the Insurance Division was reviewed by Daniel Pitts Winegarden, Craig Goettsch and Deb West:

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[191]"umbrella"

Regulation of insurers -- standards, commissioner's authority, 5.23, 5.24. Filed ARC 1642A .....	1/23/91
Port entry requirements, ch 12. Filed ARC 1630A .....	1/9/91
Surplus lines requirements, 21.32, 21.11. Notice ARC 1629A .....	1/9/91
Regulation of securities offerings and those who engage in the securities business -- waiver of disqualification, 50.1622(b)(6) and (7), 50.2222(e) and (f). Filed ARC 1622A .....	1/9/91
Prohibited sales by state employees or officials, ch 59. Notice ARC 1623A .....	1/9/91

5.23, 5.24

Winegarden summarized amendments to 5.23 and 5.24. There were no questions.

INSURANCE  
DIVISION  
Contd.

Ch 12

Winegarden described new Chapter 12 as part of the state's emphasis on international insurance development in encouraging businesses to locate their insurance operations in Iowa. They received no comments on these rules although the Division had been working in close contact with several of the actuarial consulting firms such as Milleman and Robertson regarding potential entrance under the port of entry authority. At this time there are no ports of entry in Iowa. Six major alien insurers have operations in Iowa but they were brought in by purchases of subsidiaries rather than under a port of entry mechanism. Winegarden defined an alien insurance company as one which is headquartered outside of the United States.

Winegarden informed Doyle that reinsurers are a separate category of business and would not be covered in the rules. Reinsurance is typically handled through a money center such as London. No Committee action.

21.3,  
21.4

Winegarden offered detailed explanation of amendments to rules 21.3 and 21.4 addressing surplus lines requirements. A diskette filing procedure for policies and reported premium tax obligations will replace voluminous paperwork. No questions.

50.16,  
50.22

According to Goettsch, revisions in 50.16 and 50.22 will create a simplified method of filing a notice and selling securities in the state. No comments were received on the rules. No Committee action.

Ch 59

Goettsch said that proposed Chapter 59 would implement Iowa Code section 68B.4 which went into effect July 1990. Essentially it creates some prohibitions of sales by employees or officials of regulatory agencies of certain goods and services. The rules were modeled from a draft prepared by Elizabeth Osenbaugh, Assistant Attorney General.

Doyle raised question on some of the definitions in 59.1. He asked why "official" did not include the Commissioner of Insurance. Goettsch said that the statute contains a general prohibition as to what deems an ability to get a consent and waiver. There is a stricter standard for the commissioner. Doyle also wondered why an adult child still living in the residence was not included in the "immediate family" definition. Goettsch agreed to review the definition adopted by the Revenue Department and perhaps modify 59.1 to include those who are part of the household.

With respect to the definition of "official," Doyle reasoned that it could include virtually anyone who receives a state salary. In his opinion, the provision was in conflict with 59.4(2) as to conditions of consent. Goettsch concurred that clarification was needed to limit the provisions to employees and officials of the Insurance Division.

INSURANCE  
DIVISION  
Contd.

Royce was puzzled about exclusions and their applicability in 59.4(3). For example, he wondered if an Insurance Division employee could work at J C Penney's as a file clerk. He continued that the rule should state clearly that the employee would not be restricted as long as there were no insurance connections. There was discussion of Revenue rules which implement Code §68B.4. It was noted that their situation was unique in that every business has a tax permit. Winegarden and Goettsch were willing to clarify the rules prior to their adoption in final form. No Committee action.

At the request of Tieden, Winegarden explained the five Notices of Proposed Workers' Compensation Rate filings which were published in IAB 1/23/91. He said they relate to different subcategories of workers' compensation. He continued that the rule applied by Iowa is that rates should be based upon Iowa experience to the greatest extent possible. When Iowa lacks sufficient numbers to make them actuarially valid, they would look at the experience of states in the same region with similar provisions--Minnesota, Illinois or North Dakota, not New York, Texas or California. If the percentage is not high enough to make it valid, that experience would be weighed and then they would go to the regional level and finally to national trends. If the percentage is too high NCCI may be trying to transfer burden of other states.

Priebe in the Chair.

INSPECTIONS  
AND APPEALS

Appearing for the Department were Robert Haxton, Rebecca Walsh and John Barber who presented the following:

INSPECTIONS AND APPEALS DEPARTMENT[481]

Field survey administration, food establishment inspections, food service establishment inspections, 30.2, 31.2.	
31.3, 32.1"2," 32.1"7," Filed ARC 1604A .....	1/9/91
Contractor requirements, ch 35, Filed ARC 1605A .....	1/9/91
Public assistance front end investigations, ch 72, Filed ARC 1637A .....	1/23/91

- Ch 30.2 et al. Walsh reviewed amendments to Chapter 30.2 et al. and explained minor changes from the Notice.
- Ch 32.1 Tieden referred to 32.1 which provided exemption from license for schools and school-sponsored organizations and he wondered about senior citizens. Haxton said they were covered under food service and must be licensed. Haxton advised Maulsby that the law limits churches to one day a week--32.1. No formal action.
- Ch 35 Walsh summarized Chapter 35. There were no questions.
- Ch 72 In review of Chapter 72, Tieden observed what seemed to him to be duplication of efforts by Departments of Inspections and Appeals and Human Services. Barber responded that Code chapter 10A addresses the responsibility of the Department of Inspections and Appeals regarding front end investigations on public assistance. The rules set out details. He added that Human Services Department is required to cooperate in the investigations. There was consensus that duplication

INSPECTIONS  
AND APPEALS  
Contd.

of effort does exist in some instances but legislation would be needed to correct the problem. No action.

REVENUE  
AND  
FINANCE

Dennis Meridith was present for the following:

REVENUE AND FINANCE DEPARTMENT[701]  
Marijuana and controlled substances stamp tax, 7.2"15," ch 91. Filed ARC 1603A ..... 1/9/91  
Penalty and interest provisions, 10.2, 10.5 to 10.111, 12.10, 12.11, 30.10, 37.10, 44.1 to 44.3, 44.7, 44.8, 46.5, 52.4(7),  
52.5(3), 52.6, 58, 4(3), 58.5(3), 58.6, 61.8 to 63.10, 81.8 to 81.10, 81.15, 86.2(14) to 86.2(20), 87.3(9) to 87.3(12),  
88.3(14), 88.3(15), 89.6, 89.7, 104.8, 104.9. Filed ARC 1641A ..... 1/23/91  
Cigarette tax, 82.1(13). Notice ARC 1640A ..... 1/23/91

7.2, Ch 91,  
10.2 et al.

There were no questions regarding amendments to 7.2, Chapter 91 or 10.2 et al.

82.1(3)

According to Meridith, amendment to 82.1(3) clarifies the number of permits required by a cigarette vendor. Each establishment and each retailer must have one retailer's license. No Committee action.

ATTORNEY  
GENERAL

Tim Benton represented the Attorney General for proposed Chapter 17, "Iowa Mediation Program," published in 1/9/91 IAB as ARC 1602. Also appearing were: Mike Thompson, John R. Baker and Robert Hemshoot, of the Iowa Mediation Service.

Ch 17

Benton told the Committee that the proposal encompasses the expanded scope of mediation in Iowa and it addresses the role of the Attorney General as the farm assistance program coordinator of the Iowa Mediation Program. He reported that no comments were received on the Notice and so a public hearing was scheduled. No one attended the hearing. Existing rules have been expanded to implement 1990 legislation--Chapter 1143 which increased responsibilities of the farm mediation service and Chapter 1199 which allows a landowner to challenge DNR's designation of property as a protected wetland.

Tieden was particularly interested in the new language on wetlands. Some farmers in his district have been notified concerning wetlands and their concern is the designation if they have creeks going through their land. Benton cited two available options: Direct appeal to the director, or within 60 days from receipt of the notice from DNR, file a request for mediation with the Iowa Mediation Service. Tieden questioned compensation in 17.4(3). The \$25 seemed to be a minimum. Benton stated that their intent was a \$25 ceiling. Tieden reasoned that certified checks should also be specified for payment of fees--17.6.

Benton clarified for Maulsby that intent in 17.6 was that both parties share the cost. However, when there is inability to pay, flexibility is needed.

DOT  
Highway  
Damage  
Bill Draft

Schrader distributed copies of proposed legislation to address the Department of Transportation's policy for collecting reimbursement for physical damages to highways and structures. He asked for Committee perusal and with concurrence, the bill would be ARRC sponsored.

Bill Draft  
Contd.

The Department policy was called to the Committee's attention by the State Ombudsman at the January meeting. Schrader recalled the incident when a young man had died in a traffic accident and the family was billed for traffic control at the scene.

Schrader continued that the bill requires DOT to develop rules and makes it clear that the policy that they develop in rules shall exclude from those recoverable costs traffic control. He was in agreement with the Department that costs incurred because of damage to highways and structures should be recovered.

Priebe suggested that lines 7 and 8 which read: "The policy shall exclude from recoverage damage the cost of traffic control at the scene of an accident." be amended by adding "where costs are incurred" or similar language. Otherwise, the language seemed very broad.

Tieden was supportive of the amendment and concept of the proposal. He recalled that over the years DOT has had difficulty discerning between policy and rules.

Motion

Schrader moved that the proposed language be introduced as an ARRC sponsored bill. Motion carried.

Priebe announced that he and Doyle would be attending an Agriculture meeting in the morning and therefore would not be present at the ARRC meeting.

Recessed

The Chairman recessed the meeting at 10:10 a.m. to be reconvened Tuesday at 8 a.m., Room 116.

Reconvened

Vice Chair Emil Pavich reconvened the meeting at 8:07 a.m. on Tuesday, February 12, 1991, in Committee Room 116. Senators Priebe and Doyle excused. The following agenda was considered:

# **HUMAN SERVICES**

## **HUMAN SERVICES DEPARTMENT[441]**

Various amendments to update mission and organization of DHS. Code references and implementations, ch 1 mission statement, 1.1, 1.2, 1.2(4), 1.3, 1.6, 1.6(4), 1.6(6), 1.7, 1.8, 3.3(2), 3.4(3), 3.5(1), 3.6(3), 3.11(1), 3.13(2)c." 4.1, 4.3, 5.1, 5.3, 9.3(1), 9.3(7)e." 9.6, 10.1, 10.15, 10.15(3)a." 10.15(4)a." 10.15(5)a." 10.15(6), 10.17(4), 10.22(2), 10.23, 12.2, ch 73 preamble, 73.13, 73.13(2), 73.13(4)d." 73.13(5)a" to "c." 73.13(6)a" and "b." 73.27, 73.29(1), 73.29(2), 73.42, 73.51, 73.52(2), 73.53, 73.54(1), 73.54(2), 73.56(3), 73.57(4), 73.57(5), 73.58, 73.61, 63.62, 73.62(2), 63.62(4)d." 73.62(5)a" to "c." Filed ARC 1587A ..... 1/9/91

Granting assistance, 41.7(7)a." Notice ARC 1606A ..... 1/9/91

Disability determinations for Medicaid eligibility, 50.1, 75.20, 86.3(6), 86.4. Notice ARC 1639A ..... 1/23/91

SSI cost-of-living adjustment increases, personal needs allowance for residents of residential care facilities, 51.4(1), 51.7, 52.1(1), 52.1(2), 52.1(3)a"2)1." Notice ARC 1589A, also Filed Emergency ARC 1588A ..... 1/9/91

Conditions of eligibility, 75.1(20), 75.1(20)a"3) and (4), 75.1(20)b" and "c." 75.5(3), 75.5(3)d." 75.16(2)a." 75.16(2)d"3). Notice ARC 1591A, also Filed Emergency ARC 1590A ..... 1/9/91

Application for Medicaid - foster care, 76.1. Filed ARC 1592A ..... 1/9/91

Medicaid coverage of transplants, 78.1(20), 78.3(10), 78.3(10)a"14). Filed ARC 1593A ..... 1/9/91

Increase in income guidelines used to determine financial eligibility for services funded with social services block grant funds, 130.3(1)a"1(2). Notice ARC 1595A, also Filed Emergency ARC 1594A ..... 1/9/91

Court-ordered care and treatment, 151.1(2)f." Notice ARC 1601A ..... 1/9/91

Appearing for the Department were: Mary Ann Walker, Elaine Roccosecca, Lucinda Wonderluch, Michael S. Murphy, Michael Baldwin, Donald Herman, Janice Von Arb, Joe Mahrenholz and Cynthia Tracy. Also appearing: Dan Hart, Attorney General's office; Thomas A. Krause and Richard Gleason, Attorneys, and Martin Ogga, Legal Services Corporation of Iowa; Senator Joseph Welsh, President of the Senate and Senator Mark R. Hagerla; Robert B. Wedbush; Representatives Rick Dickinson and Pat Murphy; and Steve Lawse.

Ch 1  
et al.

Walker summarized amendments to Chapter 1 et al. which were identical to the Noticed version. No questions.

41.7(7)

Walker described proposed addition to subrule 47.7(7) as providing exemption for payments from the Comprehensive Child Development Program as income for purposes of computing ADC. This program is an extension of the Head Start delivery model targeting at-risk families from the time a low-income mother becomes pregnant until the child enters school. Walker continued that the Mid-Iowa Community Action of Cedar Rapids was one of 35 national recipients of a grant. That program will serve 4 central Iowa counties and the city of Nevada.

Maulsby wondered if there were guidelines as to how far the ADC limits would be exceeded and Walker responded that they cannot exceed the difference between the state payment standard and the standard of need. No Committee action.

50.1 et al.  
Chs 51,52,75

There was brief review of amendments to 50.1 et al., Chapters 51, 52, 75 and 76. There were no questions.

151.1(2)

In review of amendment to 151.1(2), Walker noted that child day care would no longer be paid from Juvenile Justice funds.

78.1,78.3  
Transplants

Walker distributed the following position paper on proposed amendments to rules 78.1 and 78.3 relating to coverage for organ transplants:

HUMAN  
SERVICES  
Contd.

## POSITION PAPER

## PROPOSED ORGAN TRANSPLANT RULES

- 0 The transplants that are excluded from coverage in the proposed transplant rule are adult liver, lung, heart-lung and pancreas. These solid organ transplants were excluded for the following reasons:
1. The Medicaid program does not have an appropriation for these services,
  2. Medicare does not provide coverage of these transplants and considers them to be investigational or experimental, and
  3. Iowa's proposed rule for coverage of organ transplants is within the mainstream of Medicaid coverage nationwide. A 1988 report and a 1990 fall survey conducted by the Intergovernmental Health Policy Project from George Washington University of the 51 Medicaid programs' coverage of solid organ transplants revealed the following:

	1988	1990
Heart	34	40
Heart/lung	20	23
Kidney	50	50
Liver	42	48
Lung	-	15
Pancreas	9	12

NOTE: Information on age limitations for coverage of these solid organ transplants was not gathered.

- 0 The estimated cost of solid organ transplants vary greatly. The table below provides information on the cost ranges reported by the Mayo Clinic Health Letter dated November 1990 and January 1991, Iowa Medicaid's initial hospital payment rate\*, and estimated first-year costs.

	Mayo Clinic	Initial Hospital Cost	First-Year
Pancreas	\$35,000 to \$45,000	\$5,300 to \$7,100**	\$37,500 to \$38,300
Liver	\$120,000 to \$250,000	\$64,100 to \$85,900	\$100,100 to \$351,000
Lung	\$100,000 to \$150,000	\$18,600 to \$25,000**	Billing History N/A
Heart	\$75,000 to \$150,000	\$93,300 to \$149,300	\$119,200 to \$333,800
Kidney	\$50,000 to \$60,000	\$80,500 to \$108,000	\$104,500 to \$140,100

\* Iowa's reimbursement system pays for these transplants in a two step process. The initial payment and a secondary "outlier" payment which is calculated on the basis of total charges. Total charges vary among patients

\*\* Lung and Pancreas transplants are not distinguished within the Diagnosis Related Group (DRG) category as are the other transplants. As a result, the dollar amount of the initial payment is diluted by less costly procedures included in that DRG category.

- 0 A study completed by Williams and et. on liver transplant patients from 1979 to 1984 reported the following costs:

Preoperative Evaluation Cost	\$4,000
Hospitalization Cost	\$35,000 to \$320,000
Mean Cost of 1-year Follow-up Care	\$20,556*

\* The 1-year follow-up care included the cost of the anti-rejection drug, cyclosporine, which ranged from \$4,000 to \$8,000.

- 0 There will be an additional cost to the Medicaid program to cover transplants not in the current appropriation. These costs include the preoperative evaluation, the transplant, first-year follow-up cost, and ongoing costs for anti-rejection drugs and services related to the transplant. An estimate of the costs are difficult to project because the number of Medicaid-eligible persons requesting transplants varies, the cost of the same type of solid organ transplant can vary among individuals by over \$100,000, and the availability of solid organs varies. There are not enough organs for everyone waiting for transplants and some persons die before an organ is found.
- 0 If additional funds are not appropriated, optional services to persons over the age of 21 will need to be cut because the other options are being utilized to balance the current budget.
- 0 To date there have been eleven inquires for payment of transplants not covered by this rule and allowed by the lawsuit. Four of the eleven inquires have been approved and two transplants have been completed with Medicaid payment to occur sometime in this quarter or next.

HUMAN  
SERVICES  
Contd.

Ch 78

Von Arb reviewed the paper which explained the rationale used by the Department in drafting the amendments.

Tieden asked for explanation of paragraph "2" and Von Arb stated that Medicare makes the determination as to which transplants will be covered. At this time, Medicare does not cover adult liver, heart, lung or pancreas transplants since they are considered as investigational or experimental in nature.

Tieden took the position that the age limit for liver transplants was discriminatory--78.1(20)a(4). Von Arb commented that such surgery was not considered investigational for those under age 18. Early periodic screening diagnosis and treatment changes have occurred.

Tieden was interested in data on the average waiting period for liver or heart transplants. Von Arb had no data but pointed out different criteria and priority lists. She cited matching of tissue types as of great importance. Von Arb agreed to provide the ARRC with criteria which they follow for prioritizing.

Steve Lawse recounted his experience as an organ donor--a kidney to his brother. A few years later, in 1984, he became the recipient of a kidney from a 17-year old boy who appeared to be brain dead. Lawse spoke of what he considered discriminatory practices in availability of organs on the basis of the recipient's "value to society." He continued that there were major mismatches in the tissue typing but he was lead to believe that his kidney was the best match. To this day, Lawse was uncertain whether he had "donated" or was "harvested." Evidence seemed to point to the fact that he was "harvested" of a vital organ, both psychologically and physiologically. He stated that, in a broad sense, there were only two causes of kidney and liver diseases--heredity or environmental. In conclusion, Lawse reasoned that effort should be directed to prevention rather than treatment.

Pavich recognized Krause who appeared on behalf of Legal Services clients Susan Meusberger, not present today, and Robert Wedbush. Krause was challenging the adoption of amendments to Chapter 78 which list the transplant procedures for which payment will be made. Krause noted that Legal Services had filed a lawsuit on behalf of Susan Meusberger, seeking payment by the Medicaid program for a pancreas transplant. The U.S. District Court entered a judgment for Susan Meusberger in the 8th Circuit finding that: (1) the Medicaid policy was to cover all nonexperimental medically necessary organ transplants; (2) the rules' reliance on the Medicare program was an administrative convenience for determining what was experimental; and (3) the pancreas transplants are not experimental. As a result, the 8th Circuit ordered the Department pay for the pancreas transplant for Susan Meusberger. Krause continued that

HUMAN  
SERVICES  
Contd.

the Department now seeks to limit Medicaid coverage to certain listed organ transplants by simply eliminating references to the Medicaid program.

Ch 78

Krause contended that the revisions were poor policy and he saw no evidence of the Department's claim for cost effectiveness on the heart, liver or kidney transplants which they are covering. He indicated that Legal Services had requested a definition of "cost effectiveness" from the Department but never received it. Krause declared that "cost effectiveness" was an unworkable standard. He cited examples of care which prolong life but are not cost effective: a stroke patient in a skilled nursing facility whose condition will not improve, care of AIDS patients and those terminally ill from cancer. Krause failed to understand why organ transplants were being singled out since they are effective. He noted that the University of Nebraska Medical Center has a 78 percent success rate for liver transplants, and the University of Minnesota has a success rate of 60 to 70 percent on pancreas and lung transplants. Krause pointed out that the Department's rules now provide payment for liver transplants for children at an institution with a 50 percent success rate. Other transplant procedures have a higher success rate at other institutions but the Department has not covered those. Krause could foresee a policy of health care rationing.

Krause argued that the revised rules were subject to a number of legal challenges. The previous version tracked virtually verbatim the Medicare policy for covering transplants and merely eliminating the reference to the Medicare program does not change that policy. It seemed clear to him that the Department planned to continue to cover what was experimental as determined by the Medicare program. In addition, Krause was doubtful that the Department had explored all available options. He recommended three in particular: A cap on expenditures for an individual patient--the University of Nebraska Medical Center has entered into an agreement with the State of Arkansas placing a cap on payment for an adult liver transplant; place restrictions on the institutions eligible for payment for heart and liver transplants--the Department has the authority to limit transplants to institutions with a certain success rate; explore use of drugs which have been found to reduce hospitalization time for liver transplants.

Krause informed the ARRC that Legal Services, on January 31, 1991, filed a lawsuit against the Department of Human Services on behalf of Robert Wedbush. Wedbush had been approved for Medicaid payment for a liver transplant after the Iowa Foundation for Medical Care determined that it was medically necessary and was not experimental. The Department is now telling Mr. Wedbush that they will not pay for such a transplant after March 1. A preliminary injunction hearing has been set for

HUMAN  
SERVICES  
Contd.

Ch 78

February 25 on the matter. Krause stressed that the issue must be dealt with in much greater detail and he urged delay of the amendments to Chapter 78 to allow study by the entire Legislature.

Wedbush expressed his gratitude to the Department of Human Services for their services, cooperation and assistance to date but he was concerned about the policy change. Wedbush was referred to a liver transplant center last August and felt an incredible amount of hope when evaluation revealed he would be an excellent candidate for survival of a liver transplant. Prior to that time his future was very gloomy because of his terminal condition. It had been suggested that Wedbush establish residence in another state where a transplant would be available. However, Wedbush preferred to remain in Iowa, his home. In his struggle to survive, Wedbush had become sensitive to the needs and the pains of others. He was hopeful that a way would be provided for him to live and be able to share some of what he had learned.

Tieden asked if there had been similar situations where denial was made after approval had been given. Department officials were not aware of any. Royce questioned whether the Department could constitutionally withdraw approval of payment for Wedbush. Hart took the position that the Department was entitled to change the coverage under its program if adequate notice were provided and he saw no legal problem.

In response to Tieden, Von Arb said that in the Iowa Medicaid program, three facilities have been approved to perform liver transplants--the University of Iowa, the University of Nebraska and the University of Chicago. Krause and Gleason discussed the fact that Wedbush's current physical condition was relatively good and with a liver transplant he would have a 90 to 98 percent chance for survival.

Von Arb clarified that the rules were not based on cost effectiveness but on the allotted appropriation and she referred to the Department's position paper on their basis for writing the rules.

Schrader questioned the Department as to the legal ramifications of a delay beyond the March 1 effective date for these rules. Von Arb stated that in the fiscal sense, it would depend upon the number of transplants which is an unknown factor because of availability of organs. Schrader reasoned that the Department was also confronted with unknown numbers in the first nine months of the fiscal year.

Hart was convinced that legislative oversight of the issue would ultimately strengthen the Department's legal position.

HUMAN  
SERVICES  
Contd.

Von Arb advised Welsh that the Council on Human Services adopted the revisions to Chapter 78 on December 12.

Motion to  
Delay

Schrader moved to delay until the end of the 1991 legislative session the implementation of 78.1(20), 78.3(10), 78.3(10)f(4). Although he was confident that the Department was within the scope of its authority in the rule making, Schrader believed it was appropriate for those legislators with expertise on organ transplants and health care issues to have an opportunity for input regarding this change of policy.

Schrader emphasized that his motion did not necessarily reflect a position that the amendments were inappropriate. On the contrary, it reflected concern that the ability to make this decision be shared with the legislature who by their action, or by their inaction, may have some input.

Tieden concurred with Schrader's position and added that the legislature could address the matter through the appropriations process.

A file of documents and materials submitted by interested persons concerning the Human Services rules is on file in the office of the Administrative Code Editor.

Schrader's motion to delay carried with <sup>4</sup> ayes. Priebe and Doyle absent.

No Agency  
Rep.

No agency representatives requested to appear for the following:

ADMINISTRATIVE RULES REVIEW COMMITTEE[11]

Rules of procedure, ch 1. Notice ARC 1653A ..... 1/23/91

ARCHITECTURAL EXAMINING BOARD[193B]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181] "umbrella"

Description of organization, registration, continuing education, rules of conduct. 1.1, 1.3, 1.4, 2.2, 2.4, 3.1(2),

3.1(3), 1.1, 4.1(3)"b", 4.1(4)"c." Notice ARC 1611A ..... 1/9/91

CITY DEVELOPMENT BOARD[263]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261] "umbrella"

Amend and transfer 220—ns 1 to 4 and 6 to 263—chs 1 to 4 and 6, rescind 220—ch 5. Filed ARC 1607A ..... 1/9/91

COMMUNITY ACTION AGENCIES DIVISION[427]

HUMAN RIGHTS DEPARTMENT[421] "umbrella"

Community services block grant, 22.3(2), 22.4(3), 22.7(3). Filed ARC 1608A ..... 1/9/91

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281] "umbrella"

Human relations component, amend and transfer 281—84.18 to 84.22 to 282—14.25 to

14.29. Filed Emergency ARC 1624A ..... 1/9/91

EDUCATION DEPARTMENT[281]

Organization and operation, 1.1(1), 1.1(4)"c.", 1.1(5)"a.", 1.3, 1.3(1), 1.3(3), 1.3(4), 1.3(5). Notice ARC 1597A.

also Filed Emergency ARC 1598A ..... 1/9/91

Administrative dismissal of continued appeal, 41.3(9). Notice ARC 1318A Terminated ARC 1598A ..... 1/9/91

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561] "umbrella"

Emission standards for contaminants, 23.1(2), 23.1(3). Notice ARC 1609A ..... 1/9/91

JOB SERVICE DIVISION[345]

EMPLOYMENT SERVICES DEPARTMENT[341] "umbrella"

Employer's contribution and charges, claims and benefits, 3.1(3)"a.", 4.1(25)"b"(17) to (21), 4.1(25)"c.", 4.2(15)"i"

1.5(16). Filed ARC 1627A ..... 1/9/91

LABOR SERVICES DIVISION[347]

EMPLOYMENT SERVICES DEPARTMENT[341] "umbrella"

Annual application fee for permit or renewal of permit to remove or encapsulate asbestos.

82.3(2). Notice ARC 1652A ..... 1/23/91

No Agency  
Reps.  
Contd.

MEDICAL EXAMINERS BOARD[653]  
PUBLIC HEALTH DEPARTMENT[641] "umbrella"  
Licensure requirements — examination fees, licensure and renewal fees, 11.31(1) to 11.31(3), 11.31(14),  
11.31(15). Filed ARC 1635A ..... 1/23/91

NURSING BOARD[655]  
PUBLIC HEALTH DEPARTMENT[641] "umbrella"  
Licensure requirements for advanced registered nurse practitioners, 7.2(4)"c." 7.2(7)"c." Notice ARC 1599A ..... 1/9/91

PERSONNEL DEPARTMENT[581]  
IPERS, 21.11(7). Notice ARC 1616A ..... 1/9/91

PROFESSIONAL LICENSURE DIVISION[645]  
PUBLIC HEALTH DEPARTMENT[641] "umbrella"  
Speech pathology and audiology examiners — board quorum requirements and license reinstatement procedures,  
300.8(4), 301.9(2)"b" to "d." Notice ARC 1610A ..... 1/9/91

PUBLIC HEALTH DEPARTMENT[641]  
Outpatient diabetes education programs, 9.1 to 9.12. Notice ARC 1619A ..... 1/9/91  
Maternal and child health, 76.3. Notice ARC 1618A ..... 1/9/91

PUBLIC SAFETY DEPARTMENT[661]  
Minimum toilet facility standard, 16.401. Filed Emergency ARC 1626A ..... 1/9/91

SCHOOL BUDGET REVIEW COMMITTEE[289]  
EDUCATION DEPARTMENT[281] "umbrella"  
Organization, petitions for rule making, declaratory rulings, agency procedure for rule making, public records  
and fair information practices, duties and operational procedures, chs 1 to 6. Filed ARC 1628A ..... 1/9/91

STATUS OF BLACKS COMMISSION[434]  
HUMAN RIGHTS DEPARTMENT[421] "umbrella"  
Organization, public records and fair information practices, chs 1, 2. Filed ARC 1636A ..... 1/23/91

Nullified  
Rules  
ARRC  
Sponsored

Copies of a bill draft regarding disposition of nullified rules were distributed to ARRC members. There was concurrence that it should be introduced as a companion bill by this Committee.

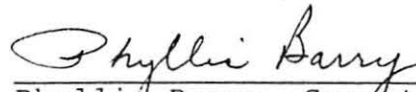
Next  
Meeting


The next meeting was scheduled for March 11, 1991 at 8 a.m.

Adjournment

The meeting was adjourned by Vice Chair Pavich at 8:50 a.m.

Respectfully submitted,

  
Phyllis Barry, Secretary  
Alice Gossett, Admin. Asst.

  
Chairman