

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting The regular meeting of the Administrative Rules Review Committee (ARRC) was held on Tuesday and Wednesday, October 8 and 9, 1991, in Senate Room 22, State Capitol, Des Moines, Iowa.

Members Present Representative Emil S. Pavich, Vice Chairman; Senators Donald V. Doyle, Dale E. Tieden, H. Kay Hedge, John P. Kibbie; Representatives David Schrader, Ruhl Maulsby, Janet Metcalf and Jane Teafor. Senator Berl E. Priebe, Chairman, was not present due to the death of his daughter, Connie.

Also present: Joseph A. Royce, Legal Counsel; Paula S. Dierenfeld, Administrative Rules Coordinator; Phyllis Barry, Administrative Code Editor; Bonnie King and Mary Ann Scott, Administrative Assistants; Caucus Staff and other interested persons.

Convened Vice Chairman Pavich called the meeting to order at 10:05 a.m. and announced review of the following:

STATUS OF WOMEN

STATUS OF WOMEN DIVISION[435]
HUMAN RIGHTS DEPARTMENT[421]"umbrella"
Mentor advisory board, ch 6, Notice ARC 2281A 9/4/91

Ch 6

Charlotte Nelson, Division Administrator, told the Committee that no one appeared at the public hearing on the rules. She described the Mentor Advisory Board which consists of representatives of state departments and agencies to assist the coordinator in determining policy and program. Presently, 12 people serve from 10 different departments and there is no reimbursement for travel or expenses. They discuss the barriers that exist in terms of identifying people to be offered the program.

Doyle referred to rule 6.4 wherein provision would allow a "substitute" to attend meetings in lieu of a board member. He recommended use of "designee." No formal action.

SOIL

CONSERVATION

Kenneth Tow presented the following:

SOIL CONSERVATION DIVISION[27]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"
Iowa financial incentive program for soil erosion control, 10.41, 10.41(1), 10.41(2), 10.41(7),
Filed Emergency After Notice ARC 2302A 9/4/91
Regions of representation for state soil conservation committee farmer members, 1.2(5), 1.2(6), Notice
ARC 2385A 10/2/91

10.41

In response to a question from Tieden, Tow stated that the percentage in subrule 10.41(2) was increased from 5 to 10 for watersheds above publicly owned lakes to comply with new legislation.

1.2

There were no recommendations for amendments to 1.2.

HEALTH DATA
COMMISSION

The Commission was represented by Jan Walters who explained the following:

HEALTH DATA COMMISSION[411]

Uniform hospital billing form, data accessibility and confidentiality of public records and fair information practices.

5.5(6), 7.3(1)"I" to "I." Notice ARC 2337A 9/18/91

5.5
7.3

Amendments to 5.5 and 7.3 will provide the Health Data Commission with sanctioning authority for failure of providers to submit required data to the Commission or for breach of patient confidentiality. Fines of up to \$500 per day may be imposed on hospitals, physicians, and third-party payers.

According to Walters, most of their data comes from the third-party payers and is analyzed by county or demographic area. The Health and Human Services Departments utilize the data.

IOWA FINANCE
AUTHORITY

9.14

Royce informed the Committee of his discussion with the Citizen's Aide's office concerning rule 2.65--9.14(220) of the Iowa Finance Authority with respect to participation requirements for abstracters. The Authority contracts with at least one abstractor in each county to provide abstracting service for properties financed through that Authority. A restriction which is not in rule form precludes younger abstracters from participating in the Iowa Finance Authority work. There was unanimous consent to place rule 9.14 on the November agenda for special review.

Emergency
Filing

There was discussion of emergency rule making in general. Royce commented that agencies should state in detail the reasons for emergency rules and he added that emergency filing was not always justified. There was consensus that use of emergency provisions has increased and members expressed an interest in researching other states on this issue.

ATTORNEY
GENERAL

Bill Brauch, Assistant Attorney general, Consumer Protection Division, appeared for the following:

ATTORNEY GENERAL[61]

New motor vehicle warranty protection ("lemon law"), 30.1 to 30.6, Notice ARC 2288A 9/4/91
General provisions, ch 1, Filed ARC 2354A 10/2/91

Ch 30

Brauch explained that Chapter 30 would implement the Attorney General's responsibilities under Iowa's new "lemon law", 1991 Iowa Acts, H.F. 566. It contains information that motor vehicle manufacturers are required to provide regarding settlements and decisions of manufacturers' dispute resolutions. Rules 30.1 and 30.2 were filed emergency July 1, 1991, and were renumbered as 30.2 and 30.3 and clarified in the Notice. Brauch discussed the form of a disclosure statement to be given to subsequent purchasers by sellers who are aware that the vehicle being sold was once returned as a "lemon." He stated that no written comments had been received on the rules, copies of which were provided to the Iowa Automobile Dealer's Association. No one appeared at the public hearing on October 1, 1991.

ATTORNEY
GENERAL
Cont'd.

In response to Maulsby, Brauch estimated "several hundred vehicles in Iowa would come under this law every year." He pointed out that the law applied only to new vehicles.

Hedge asked at what point would a vehicle no longer be considered new and Brauch referred to Code Chapters 321 and 322 where "new vehicle" is defined as one which has not been sold or leased at retail in Iowa. The disclosure regarding the returned vehicles, applies to vehicles which are repurchased or replaced by the manufacturer pursuant to this law. When these vehicles are repurchased, the manufacturer is required to report the vehicle identification number, date of sale, and other information to the Transportation Department. That information is entered on the computer system and thereafter, any Iowa title for that vehicle will be stamped with a designation that it was returned pursuant to the "lemon law." Failure to comply would be a violation of Iowa's Consumer Fraud Act.

Metcalf was concerned that the consumer might not be aware of a use tax refund to which they would be entitled. She reasoned that some reference to this should be included in the rules. Brauch said that the law requires the manufacturer to make that refund as part of the transaction. He continued that the disclosure statement was general but specific information could be obtained from the AG's office.

In response to Doyle regarding recalls, Brauch stated that the AG receives information from the federal government periodically. According to Brauch, the law allows three attempts to repair the vehicle--defects that impair the use or market value of the vehicle. The consumer must inform the manufacturer by overnight mail that the vehicle has failed to conform to the warranty.

In conclusion, Brauch stressed that the Statement of Consumer Rights must be hand delivered to the purchaser or lessee. No Committee action.

Ch 1 There were no questions on Chapter 1.

CORRECTIONS Fred Scaletta represented the Department for the following:

CORRECTIONS DEPARTMENT[201]	
Furloughs, 20.12(6)"a"(5), Notice ARC 2414A	10/2/91
Parole relief fund, rescind 45.1(9), Filed Emergency ARC 2415A	10/2/91
Discharge from parole, 45.6, Notice ARC 2411A	10/2/91
Temporary holding facilities, 51.9, 51.11, 51.11(1)"f", 51.13(2), 51.13(6)"c," Notice ARC 2413A	10/2/91

20.12 There were no questions on amendment to 20.12(6).

45.1 Scaletta explained that 45.1(9) was rescinded because the law authorizing the Parole Relief Fund of up to \$100 for personal reasons was repealed.

45.6 In review of amendment to 45.6, Dierenfeld assured Tieden there would be no conflict with the Governor's

CORRECTIONS
Cont'd.

office regarding restoration of citizenship. The amendment will allow discharged parolees to make requests to the Board of Parole rather than the Governor's office. The Governor, the Parole Board and the County Sheriffs have files on those who have citizenship restored.

Ch 51

Scaletta reported that revisions in Chapter 51 more accurately reflect operating procedures of temporary holding facilities. Precautionary measures have been added in areas of suicide. No Committee action.

INSURANCE
DIVISION

The Insurance Division was represented by Deb West, Assistant Commissioner, Kim Greiner, Market Conduct Attorney, and Craig Geottsich, Superintendent of Securities, who presented the following:

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

Life companies--permissible investments, definition of investment grade, 5.10, 22.1(4), Filed ARC 2289A	9/4/91
Licensing of agents, ch 10, Notice ARC 2344A	9/18/91
Continuing education for insurance agents, ch 11, Notice ARC 2343A	9/18/91
Surplus lines requirements, 21.1(1), 21.2(2), 21.3(1), 21.3(2), 21.6, Notice ARC 2290A	9/4/91
Medicare supplement insurance minimum standards, ch 37, Notice ARC 2345A	9/18/91
Long-term care insurance, ch 39, Notice ARC 1788A Terminated, also Notice ARC 2342A	9/18/91
Individual accident and health--minimum standards, rescind 36.6(1)"o," Notice ARC 2380A	10/2/91
Broker-dealer registration--banks, 50.81 to 50.83, Notice ARC 2381A	10/2/91

5.10, 22.1

West distributed copies of a summary of the rule making. There were no questions on 5.10 or 22.1(4).

Ch 10

West stated that new Chapter 10 would clarify policies and procedures relating to the licensure of insurance agents in the state.

10.8

Kibbie noted that 10.8 on qualifications contained "hail only". West stated that "hail" was an antiquated term and would be changed to "crop" insurance. Another modification would be made before adoption of the rules. The words "or the health qualification" would be deleted from 10.6(6). As a consumer protection measure, health insurance should not be sold by nonadmitted insurers on a surplus lines basis.

In response to Teaford on temporary permits in 10.19, Greiner advised that these permits could be issued by the Insurance Commissioner to allow the surviving spouse or immediate family of an insurance agent to assist with family business affairs.

In response to Tieden regarding outside testing service, Greiner stated that in the past, the Insurance Division contracted with outside testing service. Performance is evaluated on a minimum yearly basis through the Examination Review Committee.

Ch 11

According to West, requirements for continuing education for insurance agents had been rewritten in new Chapter 11. There were no questions.

Ch 21

West summarized amendments to Chapter 21 which were to assure that the premium taxes owed on surplus lines sales

INSURANCE
DIVISION
Cont'd.

are collected in this state by expanding the definition of agent and by imposing additional responsibilities for remitting the premium tax on the nonresident agent. No questions.

Ch 37

Under proposed revision of Chapter 37, there would be reasonable standardization and simplification of terms and benefits of Medicare supplement coverage. The number of policies available for sale in this state would be limited to 10. The federal government delegated creation of the policies to the NAIC and required the states to adopt new rules by July 1992. They had received no comments.

Ch 39

In review of revised Chapter 39, West pointed out that the cap on agents' long-term care commissions would be lifted. Substantive changes include deletion of most of the insurers' reporting requirements. West stressed that the Division wants to ensure that agents have monetary incentives to replace inadequate coverage policies. Rates must be actuarially sound. West agreed to provide Tieden with information on establishment of need under Medicare.

36.6

West advised that subrule 36.6(1)"o" would be rescinded to conform with federal law. Iowa law currently prohibits the sale of a health insurance policy to a person who is covered by Medicaid. No questions.

Ch 50

According to West, new rules on brokerage services would clarify which types of securities activities that a bank may engage in without being required to register as a broker-dealer. No questions.

UTILITIES
DIVISION

The Division was represented by Vicki Place and Gary Stump, Assistants General Counsel, for the following:

UTILITIES DIVISION[1991]
COMMERCE DEPARTMENT[181]"umbrella"
Netting of purchased gas adjustments and take-or-pay adjustments, 19.10(7)"b" to "c," Filed Emergency After Notice 9/4/91
ARC 2304A 9/4/91
Reorganization procedures, 32.5, 32.6, 32.9(1), 32.9(3), 32.9(4), Filed ARC 2305A 9/4/91

19.10

There was discussion of 19.10(7) which had been Filed Emergency After Notice. Place said that the rule making was intended to clarify the five percent refund when a customer class overbilling exceeds five percent in either the purchased gas adjustment (PGA) or the take-or-pay adjustment (TPA) and the other adjustment is an under-collection or an overcollection not exceeding five percent. The Board believes that utilities should be allowed to net the PGA and TPA to determine the criteria for making a refund to customers.

In response to Tieden, Royce explained the two different procedures for emergency rules. In the case of ARC 2304A, the agency had followed the Notice process but adopted and filed the amendment to be effective sooner than 35 days after the Notice. This precludes the ARRC from imposing any delay. It was noted there were only 26 days between adoption and effective date rather than

UTILITIES 35 days.
DIVISION

Ch 32 Stump presented amendments to Chapter 32. No questions.

INSPECTIONS Rebecca Walsh, Administrative Rules Coordinator, and
AND APPEALS Don Mendenhall, Licensing Manager, appeared for the
following:

INSPECTIONS AND APPEALS DEPARTMENT[481]

Qualified organizations--90- and 180-day raffle licenses, 100.2, 100.2(2), 100.6(1)"b," Filed Emergency

ARC 2321A

9/18/91

100.2, Mendenhall explained that amendments to Chapter 100 would
100.6 establish two new license categories to enable a quali-
fied organization to conduct 90-day and 180-day raffles.
The maximum prize that can be won by an individual in
games of skill and chance is corrected to \$50 in mer-
chandise in 100.6(1)"b."

Mendenhall informed Tieden that the 90-day license was
\$40.00 and the 180-day license was \$75.00 as set out in
the statute but not included in the rules. Mendenhall
added that the appropriate fee was included on the
application. Royce commented that the fees should be
set out by rule--a price would not have to be stated
by rule. No formal action.

Committee There were no recommendations concerning ARRC quorum
Business requirements in 1.1(3) which was amended in ARC 2317A,
Quorum 9/4/91 IAB.

Emergency Schrader brought up the continuing problem with emergency
Rules rules and suggested possible legislation to provide the
ARRC some authority over these filings.

Minutes Doyle moved that the minutes of the September meeting
be approved as submitted. Motion carried.

Recessed Vice Chairman Pavich recessed the Committee for lunch
Reconvened at 11:52 a.m. and reconvened it at 1:30 p.m.

HUMAN The following rules were reviewed by representatives
SERVICES from the Human Services Department:

HUMAN SERVICES DEPARTMENT[441]

Agency procedure for rule making--oral proceedings, 3.5(2), Notice ARC 2296A 9/4/91
Appeals and hearings, administration of ADC, food stamp and Medicaid programs, 7.7(2)"k" and "l," 40.2(5)"c,"
40.4(3), 40.7(1), 40.7(2)"b," 40.7(3), 40.7(4)"b," 40.7(4)"e"(8), 40.7(4)"f"(8), 41.7(2)"d"(2), 65.1, 65.2,
65.19(2)"c," 65.19(6)"d"(3), 65.19(19), 65.20(1), 76.7, Notice ARC 2338A 9/18/91
Mental health, mental retardation and developmental disabilities special services fund, ch 39 preamble and parenthetical
implementations, 39.1, 39.5, 39.6, 39.7(1)"b," 39.7(2)"a," 39.7(3)"a," 39.8, 39.9, 39.22 to 39.24, Filed
ARC 2287A 9/4/91
Conciliation process prior to imposition of a PROMISE JOBS sanction, 41.4(7)"a"(1) to (3), Notice
ARC 2339A 9/18/91
Work force investment project incentive allowance payments exempted from income for ADC program, 41.7(7)"ad,"
Notice ARC 2308A 9/4/91
Administration of food stamp program, 65.3, 65.4(1), 65.4(5), 65.5, 65.19(20), 65.19(20)"a," "d," and "e," 65.30(3),
65.32 to 65.35, Notice ARC 2307A 9/4/91
Medicaid--insurance questionnaire, pay and chase provisions for provider reimbursement, 75.2, 75.4(3), 75.25, 80.5(2),
Filed ARC 2286A 9/4/91
Medicaid waiver services, 83.22(1)"b," Notice ARC 2309A 9/4/91
Early and periodic screening, diagnosis, and treatment, 84.1, 84.3, 84.4(1), Notice ARC 2340A 9/18/91
PROMISE JOBS program--priority of service, 93.5, Notice ARC 2332A 9/18/91
Nonassistance child support recovery program, purchase of service, 96.13, 96.15, 150.3(5)"p" and "r," Notice
ARC 2283A, also Filed Emergency ARC 2284A and Filed Without Notice ARC 2285A 9/4/91

HUMAN
SERVICES
Cont'd.

Purchase of service--reimbursement rate determination, private moneys, 150.3(5)"a"(8), Filed	ARC 2282A	9/4/91
Policy revisions for reserve bed payment for group foster care, family foster home care, and shelter care, 156.6(2), 156.8(2) to 156.8(5), 156.8(7), 156.9(2), 156.9(3)"b," 156.10, 156.11, 156.18(6), Notice	ARC 2341A	9/18/91
Dependent adult abuse, 176.1, 176.6(1), 176.6(3), 176.10, 176.13, 176.14, 176.15(1), 176.15(2)"c" and "e," 176.16(3), Notice	ARC 2306A	9/4/91
Subsidized adoptions, 201.3(1)"g," 201.4(4), 201.5(7), 201.6(1)"a"(1), (3) and (4), 201.6(1)"d," Notice	ARC 2331A	9/18/91
Iowa adoption exchange, ch 203 preamble and implementations, 203.1 to 203.4, Notice	ARC 2330A	9/18/91
Family support subsidy program, 184.3, 184.3(1), 184.3(2), 184.3(4), 184.6, 184.8(3), Notice	ARC 2355A	10/2/91

Present from the Department were Mary Ann Walker, Bureau of Policy Analysis; Dan McKeever, ADC Policy Specialist; Cindy Homan, Food Stamp Policy; Mohammed Amjed, Family Support Subsidy; James Cheonich, Housing Specialist; Mary Helen Cogley; Sally Nadolsky; Michael Baldwin; Marcia Stark and Margaret Corkery.

- 3.5(2) Walker indicated that amendment to 3.5(2) relative to locations for oral proceeding was on hold until the Court rules on the reorganization of field offices.
- 7.7 et al. Walker stated that changes in 7.7 et al. would simplify their monthly reporting process. No questions.
- Ch 39 Walker pointed out correction following the Notice in rule 39.5, Eligible providers and placement. The amendments to Chapter 39 had been filed Emergency with simultaneous Notice in June.
- 41.4 Walker described amendment to 41.4(7) as simplifying the procedures that Income Maintenance workers are required to follow during the conciliation process that occurs prior to the imposition of a PROMISE JOBS sanction.
- 41.7(7) Walker said that proposed amendment to 41.7(7)ad would exempt incentive allowance payments from the Work Force Investment Projects from income for purposes of the aid to dependent children (ADC) program.
- Ch 65 There was discussion of amendments to Chapter 65 and Homan cited main differences between the current policy and the proposed policies on the food stamp program, e.g., households certified for expedited food stamps between the 20th and 25th of the month will have an additional month to get their food stamps. Previously, it was only the 25th of the month. Some of the changes will make it easier for the recipient but others will make it a little more difficult.

With respect to food stamps that are lost in the mail, the recipient is required to sign and return an affidavit attesting to the fact that they did not receive the food stamps within 10 days. Currently, there is no time limit.

Walker explained that public hearings were held in all eight of their locations with little interest in the rules.

Homan reminded that food stamp benefits were all federally funded. With respect to state money, Homan stated that

HUMAN
SERVICES
Cont'd.

- 75.2 et al. Walker explained that amendments to 75.2 et al. require Medicaid clients to complete an insurance questionnaire with their applications and any time a change in their insurance information occurs while receiving Medicaid.
- 83.22 According to Walker, the elderly Medicaid Waiver Services Program would be expanded to seven additional counties, Black Hawk, Dubuque, Hamilton, Howard, Johnson, Muscatine and Polk counties. Cogley spoke of the lack of knowledge regarding this program.
- Ch 84 Amendment to Chapter 84 will expand notification requirements regarding screening, diagnosis and treatment to all Medicaid eligible children under age 21. Children between the ages of one to five must be screened for lead poisoning at an estimated increased cost of \$112,500 for the state's share. Nadolsky spoke briefly on detection of lead poisoning and the development of programs to address the problem.
- 93.5 Walker reviewed revised rule 93.5 which enumerated circumstances that can affect the amount of PROMISE JOBS services provided by the state. Federal target group expenditure and participation rate requirements were incorporated in the rules. These amendments also address PROMISE JOBS waiting lists.
- McKeever informed Tieden that the PROMISE Welfare Reform Work Group was made up from six agencies. Teen parents, persons who have been on ADC 36 of the last 60 months and persons who are within two years of losing ADC eligibility due to the age of the youngest child comprise the target group. General population would be considered as the nontarget group. If the target requirements are met, the Department receives the enhanced fund--an additional \$1.46 million per year from federal funds. McKeever pointed out that the PROMISED JOBS program was limited to ADC recipients.
- Maulsby was interested in obtaining a list of requirements for the program. He was somewhat confused by increasing welfare rolls and the shortage of people committed to physical labor. McKeever cited child care costs as an example why some resist a job commitment. He concluded that the Department was trying to address problem areas.
- 96.13 et al. Walker explained amendments to 96.13 et al. which mandate the reduction in the child support recovery unit, community-based services, and local purchased services by increasing revenue or reducing the spending obligations of the Department. The application fee for child support increased from \$5 to \$20 and an annual charge of \$10.65 per nonassistance households was added to cover a portion of the cost of administering the child support program.

HUMAN
SERVICES
Cont'd.

Schrader expressed concern about the cost increase from \$5 to \$30.65. He did not believe the legislature intended two fees.

Birdman clarified that there would be an annual fee of \$10.65 for services. This figure was used to meet the 3.25 percent on budget reductions.

Motion

Schrader moved to refer the child support recovery issue to the Speaker of the House and the President of the Senate for consideration by the appropriate committees. Carried.

Walker stated that the Public Assistance Advisory Group that consults with child support personnel asked the Department to explore other means for cost recovery from noncustodial parents.

150.3,
156.6,
Ch 176

Walker summarized 150.3(5), 156.6(2) et al. and amendments to Chapter 176 and there were no recommendations.

Ch 201

With revisions in Chapter 201, the age limit to receive the subsidy for children of a minority race or ethnic group will be removed. Criteria will be added to allow approval for subsidy after the adoption has been finalized. Policy was revised to require the use of Medicaid rates for payment to Medicaid and nonMedicaid providers. No recommendations.

Ch 203

Discussion of proposed revisions in Iowa Adoption Exchange rules which will provide automation.

In response to Doyle as to the number of children adopted each year, Corkery estimated 125 children from 50 families.

Families are registered on the exchange and different requests are considered with computer use for matching children to families. According to Walker, many farmers adopt special needs children from the age of nine and up. Federal funds are utilized.

Ch 184

There were no questions on amendments to Chapter 184.

REVENUE AND
FINANCE

Carl Castelda, Deputy Director; Mel Hickman, Supervisor of Policy Unit, and Ed Henderson presented the following:

REVENUE AND FINANCE DEPARTMENT[701]

Sales and use tax, 16.45, 17.19(1)"a," 33.1, 34.1(4), 89.11, Filed ARC 2312A	9/4/91
Sales and use tax on municipally owned pay television service, 18.5(3), 18.39, 26.56, Notice ARC 2316A	9/4/91
Sales and use tax--test laboratories, 26.44, Notice ARC 2315A	9/4/91
Manufacturer's refund of use tax on defective motor vehicle, 34.11, Notice ARC 2334A	9/18/91
Domestic abuse services checkoff, 43.4(4), Notice ARC 2335A	9/18/91
Composite returns, 48.3"1," 48.4, 48.6 to 48.8, Notice ARC 2313A	9/4/91
Property tax credits and exemptions, 80.11(1), 80.11(2), Notice ARC 2310A	9/4/91
Inheritance tax, 86.3(3)"a," Notice ARC 2314A	9/4/91
Sales of mobile homes and related property and services for one package price, 33.9, Filed ARC 2365A	10/2/91
Corporate income tax, individual income tax and withholding, 39.11, 39.12, 40.40, 41.5(5), 42.1, 42.2(6), 42.2(7), 42.2(9), 42.9(1) to 42.9(4), 43.4(3), 52.7, Notice ARC 2362A	10/2/91
Disallowance of private club expenses--discrimination, 40.41, 41.5(6), 53.8(1), 59.17, Notice ARC 2363A	10/2/91
Taxpayer notification of department to receive refund upon finalization of a federal matter after the normal statute of limitations; due date for reporting tax on unrelated business income of nonprofit corporation; interest from bonds issued by the governments of Guam, Puerto Rico and the Virgin Islands, 43.3(8)"c" and "d," 52.1(5)"e," 55.3(5)"c" and "d," 59.5, 60.3(5)"c" and "d," Filed ARC 2391A	10/2/91
Ethanol blended gasoline, 63.3(5), 64.1, 64.4, 64.5, 64.8, Filed ARC 2364A	10/2/91
Special Review--Petroleum Underground Storage Tank--Duplication of rules	

REVENUE AND FINANCE
 Cont'd.
 16.45 et al. In review of amendments to 16.45 et al. discussion focused on 16.45 pertaining to tax on baling wire and twine. Castelda provided history on the statute and the Department's interpretation of a complex issue on a simple subject. There were no recommendations.

18.5 et al., 26.44 There were no questions on 18.5 et al. or 26.44.

34.11 Castelda explained new rule 34.11 relating to the manufacturer's refund of use tax on a defective motor vehicle.

In reply to Metcalf's concern that consumers would not be aware of their options to apply for the use tax refund from the manufacturer, Hickman assured her that the consumer does not need to initiate this refund. As requested by General Motors, the Department sent a detailed letter explaining the process to them.

43.4 Discussion of domestic abuse services \$1.00 checkoff with Castelda pointing out that the checkoffs are on priority as to when the law was established.

Metcalf interjected that there were eleven checkoffs currently and she wondered about administration costs. Castelda stated that each time the income tax system is changed, it takes three or four months to reprogram all of the computers, design forms, etc. at an estimated cost of \$100,000 to \$200,000 for staff time. The Olympic checkoff brought in only \$26,000 to \$28,000 last year. Less than 1/10th of 1 percent of the persons filing income taxes took advantage of this. The Department has recommended for simplification that when checkoffs are created, a minimum participation level should be set. If the minimum is not met, it would be taken off the tax returns. No Committee recommendations.

Ch 48 Castelda informed the Committee that proposed amendments to Chapter 48 would be terminated and rewritten.

80.11 No questions on 80.11.

86.3(3) Castelda reviewed revision in the time frame for payment of interest on inheritance tax refunds.

Tieden asked if six percent were fixed by law and Castelda responded that it was by statute prior to December of 1981. Starting in 1984-1985, the computation of interest was basically determined by the Director of Revenue each October based on the federal reserve rate average for the last fiscal year.

33.9 Hickman presented amendment to 33.9. No questions.

39.11 et al. Castelda summarized amendments to 39.11 et al.

In response to Tieden, Castelda stated that in most cases,

REVENUE AND FINANCE Cont'd. the Iowa net income and the federal adjusted income would be the same. Exceptions would be moving and adoption expenses.

40.41 et al. Amendments to 40.41 et al. will disallow a deduction for entertainment expense paid to a private club which discriminates on the basis of age, sex, marital status, race, religion, color, and ancestry, or national origin. Castelda reasoned that enforcement would be difficult.

43.3(8) et al. No recommendations for amendments to 43.3 et al. or 63.3 et al.

UST Board by Reference Vice Chairman Pavich called up Special Review of the issue considered in September regarding duplication of effort by the UST Board and Revenue and Finance. Both agencies have rules governing the environmental protection charge imposed upon petroleum diminution. The rules are basically identical. It was decided that Revenue should adopt by reference UST Board rules 591--Chapter 6. The Departments will continue to work together on the drafting.

EDUCATION The Department was represented by Kathy L. Collins, Legal Consultant; Don Helvick, Accreditation Consultant; George Lawry, Vocational Education Consultant; Roger Foelske, Acting Chief, Voc. Ed. and Ed Ranney, Guidance Consultant. Also present, Bill Wieland, Immediate Past President, West Des Moines Girls Softball Team, for the following rules:

EDUCATION DEPARTMENT[281]

Community colleges--fee increase for course for drinking drivers, 21.31, Filed ARC 2303A	9/4/91
General accreditation standards, area vocational schools and area community colleges, vocational education programs, 12.5(4), 12.5(4)"i" to "k," 12.5(5)"i," 21.4(2), 21.4(6), 46.6, 46.7, Filed ARC 2360A	10/2/91
Open enrollment, 17.3(1), 17.3(2), 17.4(5), 17.8(2)"e" to "i," 17.9(1), Notice ARC 2359A	10/2/91
Postsecondary enrollment options, 22.2, 22.4, 22.5, Notice ARC 2376A	10/2/91
Driver education, 26.1, 26.1(1), 26.1(3), 26.2(1), 26.2(2)"h" to "j," 26.7, Notice ARC 2377A	10/2/91
Extracurricular interscholastic competition, 36.1, 36.14 to 36.17, 36.20(2) to 36.20(4), Notice ARC 2358A	10/2/91
Extracurricular athletic activity conferences for public school districts and accredited nonpublic schools, ch 37, Notice ARC 2361A	10/2/91
Educational support programs for parents of at-risk children aged birth through three years, 67.6, 67.8, 67.14, 67.18, 67.19, 67.20, Notice ARC 1861A Terminated ARC 2356A	10/2/91
Advisory committees, rescind ch 76, Filed ARC 2375A	10/2/91
Corporal punishment ban, 103.2, Filed ARC 2374A	10/2/91

21.31 No questions regarding 21.31.

Chs 12, 21, 46 Foelske and Lawry spoke to adopted amendments in Chapters 12, 21, and 46 with respect to accreditation standards to expand vocational education in public schools.

Tieden raised question as to new competency-based programs and Foelske noted that schools must offer and teach at least three units of instruction (200 minutes per week for the 36 weeks) in four of the six vocational service areas. The Department is required to establish minimum competencies within the service areas. To determine competencies, the Department used a structured group interview process of incumbent workers who were working within an occupational area. An example, home economics, was divided into six broad clusters of programs.

EDUCATION
Cont't.

Foelske referred to 46.7(2) for another process offered.

Department officials cited Code section 256.11 for waivers for school districts.

Foelske stated that the Department had input from a technical committee and they requested the Regional Planning Board to develop a plan on delivery of staff development for vocational teachers. At the public hearing, it was argued that the planning process was in place, for example, through the AEAs and community colleges and the rules were revised to reflect this.

Tieden wanted assurance of flexibility for the students. Foelske was of the opinion that most school districts would offer only one or two clusters, e.g., production agriculture and agribusiness programs. Within those programs there will be different competencies and programs.

Maulsby asked about availability of federal money and Foelske stated that funds were allocated each year and there was a slight increase nationally. He added that funding is based on population and economic need.

Foelske discussed recommendations of the Task Force of the House and Senate three years ago.

In response to Hedge, Foelske discussed the minimum competencies, how they are determined and the monitoring process by teachers. When a student leaves the program, that record is similar to a transcript which can be taken to an employer.

Foelske assured Kibbie that every administrator received the rules prior to the February 26 hearing.

Kibbie questioned Foelske regarding the time table and implementation of the rules under the tight budget. Foelske stated that implementation was set for the 1992-1993 school year but curriculum modification would be ongoing. Economics will limit ability to respond totally with the education and employment community.

Kibbie recalled that community colleges currently receive 72 percent of the Carl Perkins money. Foelske spoke of the three-year plan which must be followed. Next year, half of the funds will be spent at the K-12 level and half at the college level. The third year, an estimated 72 to 75 percent would be spent at the secondary level and the remainder at the community college level. Foelske emphasized that the federal law requires assessment of the vocational programs at both levels and focus of the dollars where the greatest improvement is needed.

EDUCATION
Cont'd.

Foelske informed Teaforde that only seven states were initially approved. Iowa has responded to deficiencies in their plan and returned it to the U.S. Department of Education.

A possible procedural problem with the rule making was noted. The rules were published under Notice in the February 6, 1991 IAB. Iowa Code section 17A.4(1)"b" requires an agency to adopt a rule in final form 180 days after either publication of the Notice of Intended Action or the last date of oral presentation. The oral presentation on these rules was held on February 26 and August 19 would have been the deadline for adoption. However, the rules were not adopted until September 12.

After further discussion, there was agreement that presentation of the Economic Impact Statement at the July ARRC meeting would be considered under the meaning of "oral presentation."

Foelske called attention to the Board's initial approval of the rules on May 9. The rules were reapproved on September 12 following the ARRC acceptance of the Economic Impact Statement.

Royce could not recall a similar situation and there was discussion of possible legislation to address the matter.

Motion
Carried

Tieden moved to refer--without prejudice of the rules--ARC 2360A to the Speaker of the House and President of the Senate with suggestion that the rules be reviewed by the Committees on Education. Motion carried.

Ch 17

Helvick offered detailed explanation to amendments to Chapter 17 pertaining to open enrollment and consistency in the area of transportation.

Metcalf expressed surprise that nonpublic school students and resident district buses travel into another district to pick up these students. Helvick responded that they can contract with a public school for transportation of nonpublic school students. No Committee action.

22.2 et al.

Ranney explained amendments to Chapter 21 which expand the student's eligibility for summer school enrollment and mandate recognition of postsecondary earned credit as high school credit by school districts. Other changes include provision for counting an accredited nonpublic school student as a shared-time student. The responsibility of the local board of education in determining comparable course offerings will be clarified. No questions.

Ch 26

There were no questions regarding driver education.

EDUCATION
Cont'd.

Ch 36

Collins told the Committee that proposed rules governing extracurricular interscholastic competition had generated much interest and they anticipate controversy regarding 36.15(6)--summer camps/clinics and nonschool leagues, and practices. Three hearings had been scheduled and will conclude November 4.

Collins continued that the rationale for the rules was multiple. Iowa is unique in that it is the only state with girls' softball and boys' baseball during the summer. Other states run them before school is out or after school begins. She spoke of frustration of summer sports coaches when they have a player who feels the pressure from another coach to attend the camp or a clinic. The Department wants to restrict the time period when those camps and clinics can be conducted to avoid interference with the summer sports season.

The number of days that a coach can meet with a player during the nonseason will be reduced to a maximum of five days. Intent is to help students enjoy a variety of sports. Regarding the camps and clinics, Collins said that some school districts offer their own. Collins emphasized that the rules would not ban students from attending those clinics, but no more than two from a given school would be on any given scrimmage team. Also, they could not be coached by their own coach as if it were team practice. Collins admitted that this would be an enforcement nightmare but they plan to work with the three universities as well as private colleges.

Violation of the rules would subject the student to a one-year loss of eligibility. The coach who creates this situation would also be subject to sanction and the school would be out of competition for one year.

Metcalf interpreted the rules to include all athletic participation outside the parameters of a high school team and she questioned such broad expansion. Collins pointed to 36.15(6)b which sets out the two conditions relative to swimming, golf or tennis. The language was a recommendation of the Athletic Directors' Association and the Girls' Union. Collins advised that "while also participating" means during the regular high school season. Pavich wondered if there were public clamor for the rules and Collins admitted potential negative impact on the rural areas because of difficulty in recruiting coaches--the school coach could not serve the church team under the rules. She continued that the goal was to provide opportunity for more children to participate.

Kibbie could foresee negative impact and he cited the American Legion Baseball as an example.

Royce advised that if the rules were adopted, the summer games of 1992 would not be affected. Also, the ARRC would have another opportunity to review them and take formal action.

EDUCATION
Cont'd.

Collins agreed that parents were a big concern and she reasoned that the scheduled public hearings were the best vehicles for alerting interested persons of the rules.

Hedge wondered about how "team" was interpreted and Collins answered that it would include anyone who was out for a given sport at a school.

Hedge asked if the rules would affect academic competition between schools, e.g., students who wanted to meet with a mathematics professor during the summer and they were on the same academic decathlon team or whatever. Collins recognized that as a valid question but stated that the rules govern only interscholastic athletic competition.

Maulsby interjected that the camps/clinics should be regulated in some way because of undue pressure on students in some instances.

There was continued discussion on this issue with Collins emphasizing if there are three athletes from a school who want to play on a church team, only two of them can play at this point.

Bill Wieland, Immediate Past President of the West Des Moines Girls Softball Team, and a parent addressed the Committee. He had been a coach and board member for this organization for four years and he spoke of problems with this proposal.

He reasoned that the rules would eliminate recreational leagues and create a double standard. Wieland thought the Iowa games would be affected also. His daughter occasionally plays on the Valley High School Softball team but she does not start. He recognized a need to regulate the camp/clinics regarding softball.

Schrader asked whether a football player could play baseball in any number and Collins answered in the affirmative. He suspected the problem could be attributed to coaches, if in fact one exists. Maulsby suggested regulation of the large clinics and provision for reprimanding coaches. No formal action taken.

- Ch 37 Collins noted that proposed Chapter 37 would create an opportunity for a school excluded from an athletic conference to have the director of education admit the school to a conference after a hearing. No public hearing had been scheduled on the rules.
- Chs 67,
76 There were no questions on Chapter 67 or the rescission of Chapter 76.
- 103.2 Collins stated that amendment to 103.2 deletes objectionable language which had been delayed into the 1991 G.A. No recommendations.
- Recessed Pavich recessed meeting at 4:20 p.m. to be reconvened Wednesday, October 9, at 8:30 a.m.

Reconvened Vice Chairman Pavich reconvened the meeting at 8:35 a.m. All members and staff were present with the exception of Senator Priebe.

PHARMACY
10.16

Lloyd Jessen, Executive Secretary, represented the Board of Pharmacy Examiners on the 70-day delay of amendments to 657--10.16 (204), published in 8/21/91 IAB as ARC 2246A. The Committee had received copies of a revised proposal on who can administer drugs. Metcalf was still unclear as to the terms "veterinarian technicians" and "veterinarian assistants." Jessen thought there was a difference between them and he took the position that both terms should be used in the rule.

Royce advised that the revision could be adopted on an emergency basis and the delay could be lifted. However, he favored placing the revision in effect on the date the delay expires. The Committee concurred with the latter solution.

NURSING
5.2(2)

Chris Newell, Associate Director, Board of Nursing, appeared before the Committee to discuss proposed 655--5.2(2)f(2) and (3), IAB 7/24/91, ARC 2187A. The Committee had raised question concerning the lack of dates certain for continuing education offered by private organizations. The subrule will be revised by listing these organizations with a date certain. Newell stressed that the Board was not delegating decision-making power to an out-of-state entity. No questions.

RACING AND
GAMING
25.22

The Commission was represented by Charles Patton for the following agenda:

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Riverboat operations--forfeiture of property, 25.22, Notice ARC 2039A Terminated ARC 2319A 9/18/91

Patton explained that proposed rule 490--25.22 would be terminated since it was a duplication of statutory language. No recommendations.

AUDITOR
OF STATE
Ch 21

Warren Jenkins was present from the Auditor's Office to answer questions on adopted Chapter 21 which was published in 10/2/91 IAB as ARC 2390A.

Other interested persons in attendance were Karen Straum, Buena Vista County Auditor; James L. Lynch, County Auditor; M. J. Dolan, Iowa Association of School Boards; and Stan Bonta, Iowa Society of CPAs.

Jenkins outlined two major changes from the Notice:
(1) The maximum potential filing fee was reduced from \$1500 to \$1000 in 21.1(2), and (2) subrule 21.1(1) provided for six fee strata instead of five. It had originally been \$1 million to \$5 million and now will

AUDITOR
OF STATE
Cont'd.
Ch 21

be \$1 to \$3 million and \$3 to \$5 million based on a Committee suggestion. He referred to a handout which set out a three-year filing fee analysis. He pointed out that the fee for this year was less than the maximum allowed by the rules. Flexibility for emergencies had been provided and by dividing the fee strata, small entities will benefit--particularly those in the \$1 to \$2 million budget category.

Jenkins told Kibbie that most concerns from CPAs and school districts were based on the \$1500 maximum, even though the Department had no intention of charging that amount.

Bonta stated that the Iowa Society of CPAs had never opposed the increase request but they wanted supporting data from the Auditor for the increase. They had written to Jenkins' office on April 8 with such a request but had received no response. Jenkins cited an office audit as reason for the delay. He clarified that the fee increase would result in collection of the amount that was in their legislatively approved budget.

Jenkins offered details on how the fee amounts were determined for the different entities. He specifically pointed out the 31 entities with \$25 million expenditures.

Kibbie also requested from the Auditor's Office the information sought by the CPA Society so he could share it with the State Government Committee next session. Jenkins was amenable. Discussion followed regarding reviews, reaudits and fees.

Maulsby was informed that the law requires a school or city to pay for a reaudit.

Jenkins recounted involvement by the Auditor's Office in the Lincoln High School audit. He also mentioned two other major reaudits--Charles City and Davenport School Districts--which resulted from petitions directly to the Office from a group of citizens.

Question was raised as to why fees were not set out in the rules and Jenkins reiterated the need for flexibility and to avoid rule making for miniscule fee adjustments.

Jenkins informed Doyle that the Auditor's budget anticipated a reduction of 19 FTEs and they were reducing discretionary expenditures in order to retain their full FTE authorization.

Tieden reiterated public concerns that, because of budgetary cuts, the fees would increase. Jenkins said

10-9-91

AUDITOR
OF STATE
Cont'd
Ch 21

that reaction was due to a perceived tripling of filing fees which was never intended. He pointed out that filing fees cannot be used to finance the general office operations but are restricted to providing the services on behalf of local governments.

Committee consensus was for the Auditor to set the fee amounts annually and follow the rules process. Schrader indicated that he would resist any Committee action on these rules if there were assurance that the fees would be in the rules and revisited annually, if need be.

Maulsby could see both sides of the issue. He suggested leaving the \$1000 maximum and providing 75% of the maximum for 1991 and in '92 they would determine if it is 80% of maximum or should remain at 75%. He opined that some continuity in the rules would be helpful.

Dolan favored setting the maximum fee in the rules and she too wanted justification for increase in fees.

Lynch conveyed county auditors' opposition to the increase without justification.

Pavich concurred with Schrader and Jenkins was willing to follow Committee recommendations.

SECRETARY
OF STATE
Ch 30

Allen Welch reviewed the following agenda:

SECRETARY OF STATE[721]

UCC financing statement forms--carbon paper, 30.1(1), 30.2(1)"a," 30.6(1)"a," Notice ARC 2329A 9/18/91
Registration of waste tire haulers, ch 44, Notice ARC 2328A, also Filed Emergency ARC 2327A 9/18/91

Welch gave a brief overview of the amendments to Chapter 30. He pointed out that the General Assembly imposed a termination fee and Chapter 30 will be revised accordingly.

Maulsby voiced opposition to being charged a fee for filing and one for lifting. Welch said the remedy would be to repeal the \$10 fee for the termination. Discussion followed on termination fees and how they originated, as well as other fee increases within the Department. Welch and Maulsby discussed lean searches and the state's involvement.

Doyle suggested uniformity in lengths of the financing statement forms. No formal action.

Ch 44

When presenting new Chapter 44, Welch explained how they arrived at the \$50 registration fees for waste tire haulers. No Committee recommendations.

TRANSPORTATION

The Department was represented by Dennis Ehlert, Jan Hardy, Michael Winfrey, Terry Dillinger and Shirley Andre for the following rules:

TRANSPORTATION DEPARTMENT[761]

Implied consent plates; sale, lease or transfer of vehicles with impounded plates, 400.60, Notice ARC 2318A . 9/18/91
Vehicle registration and certificate of title, 400.41, 400.41(2), Notice ARC 2357A 10/2/91
Special Review - CDL Test Site IAC
Special Review - Farm trucks--inspection, 520.1(2)b IAC

TRANSPORTATION
Cont'd.
400.60

Ehlert gave a brief review of new rule 400.60. He informed Doyle there was no special registration for plates for leased vehicles.

400.41

There were no questions re 400.41.

CDL Test
Sites

There was brief discussion of the CDL test sites.

It was agreed that special review of farm truck inspection would be deferred until the November meeting since Senator Priebe had requested the review. Winfrey addressed concerns of Maulsby. He said the annual inspection adopted in August 1990 was for commercial vehicles, and farm trucks fall into this category if they have a gross weight rating in excess of 10,000 pounds or combination gross weight rating of more than 10,000 pounds where trucks and trailers are used in combination. Maulsby said that some contend if they do not have a commercial license, the vehicle would not be a commercial truck. Maulsby urged clarification. Winfrey stated there was no exemption from annual inspection for the special farm plated truck for which the driver does not need the commercial driver's license, even though it is a commercial vehicle. Press releases have been distributed and the Department has been in contact with industry associations. The Farm Bureau has printed several articles in their Spokesman magazines. The feed and grain industry and Institute of Coops are also disseminating information in their respective articles and newsletters. Winfrey agreed to provide Maulsby an Appendix G which sets out all of the inspections standards.

AGRICULTURE

Ron Rowland, Regulatory Director, and Michael Mammaing, Bureau Chief of Meat and Poultry Inspection Bureau represented the Department for the following agenda:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adoption of federal standards for meat and poultry inspections and voluntary inspections of exotic animals.

76.1 to 76.4, 76.6, 76.13, Notice ARC 2347A 9/18/91

Consumer and producer protection division, 1.1(4), 1.6, Notice ARC 2382A 10/2/91

Ch 76

Rowland gave a brief overview of amendments to Chapter 76 which include a provision for voluntary inspection of exotic animals. Under the federal regulations "exotic" animals are defined as being reindeer, elk, deer, antelope, water buffalo or bison. Cattle, sheep, swine, goats, equines, and domesticated poultry are governed by mandatory federal regulations. Rowland offered information on inspection of exotic animals in other states. In Iowa, the process is initiated by the owner of the exotic animals--usually deer. Rowland clarified that the program would have no impact on gun season or the thousands of gunshot deer that are taken in Iowa and surrounding states and are processed in Iowa plants. No Committee action.

AGRICULTURE
Cont'd.
1.1, 1.6

A proposal to change the name of the Regulatory Division of the Department to the Consumer and Producer Protection Division was questioned by Metcalf and Tieden. They took the position that this would create confusion since consumer problems are often referred to the Consumer Protection Division of the Attorney General's office. No Committee action.

LAW ENFORCE-
MENT ACADEMY
3.3, 3.6

Present from the Academy were Ben Yarrington and William Callaghan for adopted rules 501--3.3"2" and 3.6 which were published in 10/2/91 IAB as ARC 2383A.

Yarrington briefed the Committee regarding the expansion of the short course curriculum. Teaforde inquired as to course material for domestic abuse. Yarrington recalled seven two-day courses this past year which dealt with domestic abuse and a video tape is available in the Academy library. He continued that a basic training school curriculum consists of six hours in the crisis intervention area, most of which is on domestic abuse and has been updated to incorporate the new law. The cost for the 8-week course, which includes everything but food, is \$970.

Recess

The Committee was in recess for ten minutes.

PERSONNEL
5.3(3)

T. A. Meyer and Clint Davis presented amendments to 5.3(3) to rescind and adopt as emergency subrule 5.3(3) regarding background checks. (ARC 2378A and ARC 2379A, IAB 10/2/91)

Tieden inquired about arrest records and Meyer said that an arrest record was no indication of guilt but they would be working with the Department to ensure that those involved with background investigations fully understand their responsibilities. Responding to Doyle, Meyer said the subrule covers all Corrections Department employees, all nonpeace officer employees of the Public Safety Department as well as all employees in child and dependent adults custodial responsibilities in the institutions in the Department of Human Services. Meyer added that the Personnel Department does not hire anyone for background checks. Public Safety provides its staff and investigations performed by DHS and Corrections do not include face-to-face investigators.

PUBLIC SAFETY Michael Coveyou, Administrative Rules Coordinator for the Department and M. L. Rehberg, Administrator of Crime Laboratory, presented the following agenda:

PUBLIC SAFETY DEPARTMENT[661]

Ignition interlock device, 7.8(3), 7.8(4), Notice ARC 2372A 10/2/91

7.8

Coveyou gave a brief overview of the amendments to 7.8. Rehberg responded to Pavich's inquiry regarding operation of the device in cold weather conditions. He said they were not temperature-dependent because

PUBLIC SAFETY
Cont'd.
7.8

the sensor is kept warm by the battery. Rehberg and Maulsby discussed possible legal ramifications with the 15-minute waiting period between the last drink of alcohol and time of blowing into the device. Tieden inquired what .025 would allow in consumption of alcohol and Rehberg said that for a 160-pound man it would be 1 1/2 to 2 beers in an hour. Rehberg informed Metcalf there were 400 of these devices in use in Iowa. The two distributors are located in the Quad Cities and Des Moines with offices in Waterloo and Minona County. It was noted that increased use of the devices would place no more burden on the state because it would be borne by the defendant. Most offenders lease the devices at an initial fee of \$100 and then \$50 per month. Every 60 days the devices must be checked for proper calibration.

Responding to Doyle, Coveyou said that the National Highway Traffic Safety Administration has proposed guidelines which recommend .025 as the threshold level on interlocking devices. These guidelines would probably be adopted before the Department's rules are final. No Committee action.

NATURAL
RESOURCE

The Commission was represented by Victor Kennedy, Legal Counsel; Judy Powell, License Bureau; and Don Cummings, Wildlife Bureau and the following agenda was presented:

NATURAL RESOURCE COMMISSION[571]	
NATURAL RESOURCES DEPARTMENT[561]"umbrella"	
Free hunting and fishing license for low-income persons who are 65 years of age or older or who are permanently disabled, 15.7, Notice ARC 2386A	10/2/91
Waterfowl and coot hunting seasons, 91.1 to 91.3, 91.4(2)"b," Filed Emergency After Notice ARC 2384A	10/2/91
Pheasant, quail and gray (Hungarian) partridge hunting seasons, 96.1(1), 96.2, 96.3, Filed Emergency After Notice ARC 2388A	10/2/91
Wild turkey spring hunting, 98.2(5), 98.3, 98.3(1), 98.10, 98.12, 98.14, Notice ARC 2387A	10/2/91

15.7

Rule 15.7 was explained by Powell who informed Tieden that it did not pertain to habitat stamps but they were not required for persons 65 years of age or older. He advised Doyle that they followed Department of Human Services guidelines for the definition of "low-income." Doyle favored use of "who is eligible" for "who is a recipient" in the definition. Discussion followed. Powell thought verification of "eligibility" might be acceptable. She was anxious to pursue the simplest means to comply with the law and any auditing. Kennedy interjected that this was the best approach in dealing with the poverty level. Doyle suggested input from others who deal with senior citizen groups. The Department was willing to consider the suggestions.

Ch 91

Cummings stated that amendments to Chapter 91 were an attempt to improve the harvest by decreasing the hours on hunting geese.

Schrader questioned addition of the words "(including the road right-of-way)" in 91.4(2)"b." Cummings and Kennedy inferred that intent was to delete these words.

NATURAL
RESOURCE
Cont'd.
Ch 96, 98

After some discussion, it was agreed that the rule would be reviewed in November.

There were no questions or recommendations for Chapters 96 or 98.

ENVIRONMENTAL
PROTECTION

The following agenda was considered:

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Temporary air toxics fee, 20.3(6), new ch 30, Notice ARC 2323A 9/18/91
Registration of groundwater professionals, ch 134, Notice ARC 2324A, also Filed Emergency ARC 2326A 9/18/91
Technical standards and corrective action requirements for owners and operators of underground storage tanks, 135.1(3)"c," 135.2, 135.3(1)"e," 135.3(2)"a," 135.4(5), 135.5(1)"d," 135.5(2)"a," 135.6(1) to 135.6(3), 135.6(4)"a," 135.7(2), 135.7(3)"a"(5), 135.7(5) to 135.7(10), 135.8 to 135.10, 135.10(3), 135.10(4), Notice ARC 2325A, also Filed Emergency ARC 2322A 9/18/91
Special Review - Big Creek-Class A Designation ARC 2333A - Item 2-2A 8/7/91

Those in attendance were Mark Landa, Doug Campbell, David Wornson, Keith Bridson and Michael Murphy.

Ch 30

Landa briefed the Committee on proposed new Chapter 30 which would result in collection of \$300,000 in fees this year across the state. No questions.

Ch 134

No questions on Chapter 134.

Ch 135

Wornson presented amendments to Chapter 135 developed in response to Senate File 362 which modified the underground tank program--namely, the site investigation process. Wornson defended the emergency adoption as being in the interest of contractors with projects in process as well as site owners who are contracting and paying for these services. The rules establish criteria for classifying sites--high risk, low risk and no action.

Maulsby reasoned that if it took the Department five months to prepare the rules, 30 to 60 days was needed to analyze them. He felt the Department was trying to circumvent the process which was unfair to the public. Wornson recalled the difficulty in drafting the rules and he stressed that they welcomed all input. The legislation was effective in June and the rules were consistent with standards established in the statute. The Department will not enforce the rules before the public has the opportunity to comment.

Economic
Impact

Kibbie and Doyle requested an Economic Impact Statement on the proposed amendments to Chapter 135, ARC 2325A.

Big Creek
Class A

Wornson reported on continuing discussions with the city of Mt. Pleasant regarding reclassification of water use designation for Big Creek, Skunk River Basin (567--61.3(5)"e"). The Department has invited the city to file a petition for rule making to reopen the issue but has received nothing to date. This segment of the rule was delayed 70 days by the ARRC at its September meeting.

*not valid
rule was in
effect on 9/11/91
See p. 5026*

UST BOARD

The following agenda was before the Committee:

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]		
Cost factor, 5.2, Notice	ARC 2293A, also Filed Emergency	ARC 2292A 9/4/91
Administration of the environmental protection charge imposed upon petroleum diminution, 6.1, 6.8, Notice	ARC 2295A, also Filed Emergency	ARC 2294A 9/4/91
Reimbursement for tank system upgrades, 11.4, Notice	ARC 2352A, also Filed Emergency	ARC 2353A 9/18/91
Environmental damage offset, 11.5, Notice	ARC 2350A, also Filed Emergency	ARC 2351A 9/18/91
Soil remediation payments, 11.6, Notice	ARC 2349A, also Filed Emergency	ARC 2348A 9/18/91
Eligibility--financial responsibility coverage, 10.1(1), 10.1(3), 10.1(4), Notice	ARC 2412A 10/2/91
Remedial and insurance claims--claim cutoff date, 11.1(3)"d," Notice	ARC 2409A 10/2/91
Remedial account benefits--EPA-approved tank, 11.4(5)"e"(1), Filed Emergency	ARC 2410A 10/2/91

Present were Bob Galbraith, Assistant Attorney General, and Robert Hubbard, UST Board Administrator. Other interested persons in attendance were Donald Abel, Central Regional Manager, Xerxes Corporation; Charles Becker, Attorney, representing National Fiber Tank Manufacturers; Ned Chido, representing Fiberglass Petroleum Tank and Pipe Institute; Representative David Osterberg; Glenn Norgart, Casey's General Stores; and Jane B. McAllister, Ahlers Law Firm.

5.2, Ch 6

Galbraith presented amendment to 5.2 regarding the cost factor (ARC 2292A) and amendments to 6.1 and 6.8 regarding charges imposed upon petroleum diminution (ARC 2294A). He explained that the increase in the petroleum diminution was based on the amount of petroleum that will leak from a tank. No recommendations.

11.4

In presentation of emergency rule 11.4, Hubbard stated that much public comment, both written and oral, had been received. A number of changes were anticipated based on these comments--particularly on what type of installation should be approved for specific conditions.

Galbraith pointed out that Senate File 362 added provision to allow \$10,000 of fund dollars to reimburse a tank owner for system upgrades to bring a tank into compliance with federal law. The legislation also authorized the Board to approve for fund upgrade money double wall, as well as other tank types. The Board wanted to increase the number of types of tanks that could be used in both environmental sensitive and nonsensitive areas. From comments, some people do not believe the Board has expanded this far enough. The Board plans to initiate a new Notice of Intended Action based on comments received on the first draft. In all probability, additional types of tanks will be added. Galbraith reiterated that the fund can pay for upgrades for double-wall tanks or any other type of tanks which the Board approves. Additional legislation would not be necessary.

Schrader asked if sentiment indicated a more liberalized approach to the types of tanks allowed and were there people who felt that the emergency rule was too liberal. Galbraith replied in the affirmative. Hubbard added that the Board responded to the most sensible approach for owner/operators. For example, if a single-wall steel tank costs \$5,000, a double-wall tank would be twice as much. The same would

UST BOARD
Cont'd.
11.4

apply with fiberglass. As an alternative, the Board elected to approve ACT-100, a steel and fiberglass composite (steel interior with a fiberglass lining on the outside).

Hubbard was aware of contention of unfair competition by fiberglass tank manufacturers. He referred to 11.4(5) which provided a number of options. Subsequently, they filed an amendment that allowed fiberglass tanks in specific circumstances. The Board recognized that a double-walled tank would not be mandatory in areas which were not environmentally sensitive. Hubbard continued that what the program will pay, however, was considerably different. A double-wall standard for everything would substantially change the cost that the owner/operator would bear and differ from what the Board had outlined for the legislature. At the time these issues were discussed, it was estimated that there would be an approximate \$18 million impact to the program. Straight double wall would probably have increased that cost substantially. In terms of trying to address the issue both from the standpoint of environmental protection and in terms of assisting the owner/operator, the Board elected to go forward with the ACT-100 standard, simply on the basis that the cost difference on that tank compared to a fiberglass or single wall. The Board will not authorize payment for the cost of a single-wall tank. That is cost which would have been incurred by the owner/operator anyway. The program will pay the difference between the amount for the single system versus the double wall.

Schrader observed that the rule was regulatory and he reasoned that strict decisions were necessary when money was being given away. Galbraith stressed that the regulated community could rely on these rules without penalty until "a final rule was in place." They wanted upgrading to begin before winter and, at the same time, they tried to fill their two basic objectives. Their goal was to publish final rules in early November.

Maulsby was hesitant to support emergency rules, maintaining that the Board had five months for the process.

Galbraith defended the Board action in that they were enabling some people to qualify for funds if they moved forward. Upgrades were not included in the fund program prior to the 1991 legislation which did not become law until June 10. Galbraith concluded that it took six weeks to gather input from various regulated parties, formulate the rules, have them critiqued, and filed by August 30.

UST BOARD
Cont'd.
11.4

Abel took exception to the emergency filing since it appeared to give a competitive advantage to ACT-100-- basically a single-wall tank rather than fiberglass. Abel was concerned there would be misunderstanding that fiberglass tanks were unsafe and unacceptable. This could place a great hardship on the Xerxes facility in Tipton if they could not sell tanks in Iowa. Galbraith took the position that the legislation intended the best overall protection. Rationale for selection of the ACT-100 tank was the strength of steel and the protection of fiberglass. He reiterated that the Board had instructed revision of the rules to allow for differing types of tanks which specifically includes steel and fiberglass. Those changes will be made.

Becker wanted clarification as to the types of acceptable tanks. He contended that Senate File 362 did not limit placement of tanks contingent upon whether or not the fund would pay \$10,000. The fund has control over tanks in any site that is deemed high or low risk, whether or not it came under the statute. Even if an individual or company used their own money, the Board would still have control over the type of tank to be used. Becker continued that the fact that the emergency rule would not be strictly enforced would not help his client or Mr. Abel. A production line may or may not be shut down because of this rule. Becker argued that other states would look at Iowa and he could foresee a definite impact on fiberglass manufacturers. He concluded that many of the largest manufacturers and users of the tanks in the state were not approached regarding the rule and he urged delay of implementation to allow for public input.

Hedge inquired when and how the safety of these tanks would be determined so that the rule might be changed. Galbraith said it would have to come within the comment period. Galbraith commented that the rule applies to sites classified as low risk or high risk--sites that are already contaminated. The legislature has said that they would allow only double-wall tanks on contaminated sites but would allow discretion to the Board as to whether other types would be safe enough.

Hubbard advised Hedge that EPA has approved installation of fiberglass, single-wall fiberglass, and single-wall steel tanks which meet the requirements so there is a base level established regarding these issues. He reiterated that the rule clearly provides that if no contamination exists, it does not apply--upgrade does not apply, and the money does not apply. Regarding a site with contamination, the state has exposed the insurance portion of the fund, which is very limited in terms of available funds, without additional safeguards. That was the rationale behind the double-wall requirement.

UST BOARD
Cont'd.
11.4

Royce spoke to Committee options on the rule which were two kinds of objections. The Committee could analyze the substance of the rule itself to determine whether selection of tanks set out in the rule was appropriate and reasonable or they could consider the procedural aspects of the emergency rule filing to determine if they were reasonable. Delays were not options.

Chido declared that the action by the Board was an "outrageous travesty on our administrative rules process." He urged rescission of the emergency rule and submission of a Notice to start the whole procedure over again.

Hubbard pointed out that no one from the Steel Tank Institute provided any input on the ACT-100 tank and "these assertions are off base." He spoke of a number of hearings with industry representatives who were supposed to be representing the owner/operators who are ultimately paying for the vast majority of this. Hubbard stressed that the rule protects the owner/operator--the small business, not the manufacturers. He agreed that the Board was testing reaction because of interest in this rule.

Hubbard clarified for Kibbie that the rule provides for EPA-approved tanks and the fiberglass tank was EPA-approved. Galbraith then referred the Committee to the last item on their agenda where 11.4(5)"e"(1) was amended by adding, "; or an EPA-approved tank is acceptable if automatic in-tank gauging is added." He was unsure how many sites would be affected if the rule were not implemented.

Osterberg echoed, in part, comments by Abel and Becker and favored rescission of the rule because of competitive advantage. He argued that ACT-100 would provide no advantage and should be eliminated. Osterberg urged return to double-wall tanks with monitoring within the walls.

MOTION TO
OBJECT

After further discussion, Schrader moved to object to 591--11.4(455G) on the grounds that use of emergency procedures was unreasonable and arbitrary. Metcalf seconded the motion and it carried by voice vote. For text of objection, see page 5075.

11.5

In review of new rule 11.5, environmental damage offset, Tieden asked how the Board arrived at 12 times per year in 11.5(2)"a." Hubbard replied that waste oil was considered small gallonage--100 to 300 gallon--and the Board intends to change "12" to "4" in the final adoption following Notice.

11.6

Galbraith told the Committee that minimal comment had been received on both 11.5 and 11.6 and these comments will be incorporated in the final rules. Hubbard

UST BOARD

Cont'd

11.6

10.1, 11.1,

11.4

added that emergency adoption was an attempt to keep the fund expenditure from being even more significant.

No questions or comments on ARCs 2412A, 2409A and 2410A.

COLLEGE

AID

There was unanimous consent to remove from the agenda the proposed rules of College Student Aid Commission. They will be considered in adopted form at a subsequent date.

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]"umbrella"

Stafford loan program--guarantee fee, 10.24, Notice	ARC 2393A	10/2/91
PLUS and SLS loans--guarantee fee, 10.62, Notice	ARC 2394A	10/2/91
State of Iowa scholarship program--restrictions, 11.1(3)"c," Filed	ARC 2398A	10/2/91
Tuition grant program--restriction pertaining to loans discharged in bankruptcy, 12.1(8), Filed	ARC 2400A	10/2/91
Vocational-technical tuition grant program--restrictions, 13.1(8), Filed	ARC 2401A	10/2/91
Osteopathic grant subvention program--restrictions, 14.1(7), Filed	ARC 2399A	10/2/91
Work-study program--restrictions, 18.15, Filed	ARC 2396A	10/2/91
Occupational therapist loan payments program--restrictions, 19.1(1)"f," Filed	ARC 2404A	10/2/91
National guard loan payments program--restrictions, 20.1(1)"f," Filed	ARC 2403A	10/2/91
Nursing loan payments program, 21.1(1)"f," Filed	ARC 2402A	10/2/91
Iowa minority grants for economic success (IMAGES)--restrictions, 22.1(5), Filed	ARC 2405A	10/2/91
Medical tuition loan plan--restrictions, 25.1(3), Filed	ARC 2406A	10/2/91
Iowa grant program--restrictions, 27.1(11), Filed	ARC 2407A	10/2/91
Access to education grant program--restrictions, 28.1(11), Filed	ARC 2395A	10/2/91
Displaced workers financial aid program--restrictions, 29.1(8), Filed	ARC 2397A	10/2/91
Osteopathic forgivable loan program--restrictions, 30.1(9), Filed	ARC 2408A	10/2/91

Recess

The Committee was in recess for lunch at 12:30 p.m. Vice Chairman Pavich reconvened the meeting at 1:30 p.m. and called up the following:

VETERINARY
MEDICINE

VETERINARY MEDICINE BOARD[811]

Application for license; examinations; auxiliary personnel; reciprocity; discipline; continuing education, 6.1 to 6.7, 7.1, 7.2(4), 8.1 to 8.3, 8.5 to 8.7, 8.9, 8.10, ch 9, 10.4(2), 10.4(3)"c," 10.4(7)"2," 10.4(11), 10.4(13), 10.4(22), 10.4(23), 10.8, 10.50 to 10.80, 11.1, 11.2, 11.3(3), Notice

9/18/91

The Board was represented by Lynette Donner, Assistant Attorney General and Dr. Michael Everly, Board member. Also present were Dr. Ron Emerson and Dr. Tomas Neuzil, Iowa Veterinary Medicine Association, and James Carney, Attorney.

Chs 6-11

Donner gave an overview of the amendments to Chapters 6 to 11.

Metcalf requested explanation of the definitions of "veterinary technician" and "veterinary assistant." Donner said there were two classifications--registered and unregistered. Everly stated that a "veterinary technician" has two years of training and is licensed and many practices in the state have "assistants" who are not school-trained, licensed veterinary technicians. Currently, Kirkwood in Cedar Rapids offers the only two-year course for veterinary technician in the state.

Hedge and Donner discussed 6.4 relative to acceptance of graduates from foreign schools through the American Veterinary Medical Association (AVMA) Program. It was noted that few foreign graduates practice in Iowa.

Carney was interested in question raised by Metcalf about the technicians and assistants. He referred to

VETERINARY
MEDICINE
Cont'd.

8.7 on action against veterinarians and recommended clarification as to ethical responsibility for veterinary assistants.

Carney also made the following observations:

1. With respect to continuing education in 8.10, the language, "credit hours may be obtained by attending approved scientific seminars" should be clarified.
2. In 10.4(2), reference is made to Chapter 12 which is a very limited chapter on veterinary ethics. This reference would cause significant problems if revision being considered by Board were adopted.
3. Revision in 10.50(2) [renumbered as 10.51] would authorize the Board to consider anonymous complaints without a written complaint following. Other practice professions require that complaints be put in writing.
4. Regarding 10.54(3), there should be language as to what constitutes "probable cause."
5. Subparagraph 10.57(3)"g"(4) would create a surprise element at the hearings in that it would not be known who would attend or how many witnesses there would be. The Association considers this provision to be fairly harsh.

Metcalf urged clarification of all agency rules relative to delegation of prescription responsibilities. Everly indicated that the Board has been working with the Pharmacy Examiners on issues pertaining to veterinarians and they would follow up on Metcalf's concern.

UST Board

Royce informed the Committee that the UST Board had begun the process to rescind Emergency filed rule 11.4. This will halt the \$10,000 payments for tank upgrades.

JOB SERVICE

William Yost, Ralph Hoksbergen and Joseph Bervid were present for the following agenda:

JOB SERVICE DIVISION[345]

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

Employer's contribution and charges, claims and benefits, benefit payment control, 3.40(3)"a," 3.60(2), 4.58,

4.60(3)"b"(4), 5.7(6)"f," Filed ARC 2389A 10/2/91

3.40 et al.

There were no changes from the Notice and no Committee questions or comments.

PROFESSIONAL
LICENSURE
DIVISION

The Division was represented by Rose Vasquez, Assistant Attorney General, Kathy Williams, Barbara Charls, Harriet Miller, Marilyn Ubaldo, Ken Leo and Roger Chapman, Cosmetology Board Chairman. Also present were Ruth Cooperrider, Legal Counsel, Citizens Aide Office; and Joanne Ramsey, Manicurist. The following agenda was before the Committee:

PROFESSIONAL
LICENSURE
Cont'd.

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Barber examiners, uniform rules, 20.3(7), 20.10, 20.101(5), 20.101(6), 20.109(3), 20.110(4), chs 23 to 25, Notice

ARC 2300A

9/4/91

Cosmetology examiners--manicurists, 60.14(20), 60.14(21), 60.15(1) to 60.15(5), Notice ARC 2291A

9/4/91

Mortuary science examiners--disinterment permits, settlement procedures, uniform rules, 100.3, 100.4(2)"b" and "d,"

100.4(3), 101.1(3), 101.6, 101.204, chs 102 to 104, Notice ARC 2299A

9/4/91

Licensure of nursing home administrators, 141.6(2)"c" and "d," Notice ARC 2297A, also Filed Emergency

ARC 2298A

9/4/91

Standards for licensing physical therapist assistants, 200.1, 200.3(2), 200.4(5), 200.4(7), 200.20(7)"k," 200.20(8)

to 200.20(14), ch 202, Notice ARC 2301A

9/4/91

Chs 20, 23-25 Miller presented amendments to Chapter 20 and new Chapters 23 to 25 regarding barber examiners and there were no Committee recommendations.

60.14, 60.15 Charls introduced Chapman who reviewed proposed amendments to Chapter 60 regarding manicurist--advanced curriculum license.

Discussion focused on the 450-hour requirement in 60.15(4). Chapman stated that the Board worked with the schools and established the hours which are higher than the national average. Forty states require advanced hours, ranging from 100 to 600. A full-time student could complete the training in 11 weeks.

Cooperrider reported on a complaint they had received from a person currently practicing manicuring, including artificial nails and related work in a licenced barbershop. The individual who had been performing this service for several years was concerned about the potential impact of these proposed rules on current practitioners.

Cooperrider raised question as to whether there was authority for the Cosmetology Board, under Iowa Code chapter 157, to create an additional manicuring license. She cited the definition of "manicuring" as basic nail trimming and polishing which does not include nail extensions, artificial nails and pedicuring. Cooper-rider spoke in detail of inequities between a licensed cosmetologist and the newly created manicurist-advanced curriculum in practice as well as continuing education requirements. Inconsistencies occur in that licensed cosmetologists are grandfathered in to do this advanced work, but manicurists working in licensed barbershop are not. Cooperrider urged the Committee to reconsider these issues before they are finalized.

Vice Chairman Pavich recognized Ramsey who addressed the Committee concerning her economic loss if the rules were promulgated. Most of her income as a manicurist was earned from preparing sculptured nails. Ramsey had invested in supplies and equipment. She had trained for six months on the job which she reasoned was equivalent to the 450-hour requirement. Ramsey falls under the 1989 grandfather clause and thought she was protected by it. [\$158.14]

PROFESSIONAL
LICENSURE
Cont'd.

Schrader cited from existing rules on manicuring and noted no mention of application of nail extensions, artificial nails or pedicures. This seemed to imply that these areas would not be subject to any licensing. Chapman responded that those rules governed cosmetologists.

Vasquez clarified that "basic manicuring" in cosmetology rules does not include nail extensions or artificial nails--the 2100-hour cosmetology license was required. Vasquez continued that barbers had never addressed the issue of manicuring. As a result, manicures have been performed in barbershops by other than licensed cosmetologists. However, Vasquez emphasized that an unlicensed person could not set up a shop and do artificial nails or pedicuring. The exemption exists only in a barbershop. The law was changed in 1989 and those who were doing manicures at that time could continue--in the barbershop. A cosmetologist in a beauty salon has a 2100-hour license. In 1989, the legislature added Code section 157.5A which required 40 hours of training for manicuring in licensed schools of cosmetology or barbering. Rules of the Board did not address sculptured nails, etc.

Charls interjected that she receives at least two telephone requests each week for licenses for people who have received their training out-of-state and are moving to Iowa. At this time, no license is available for those who want to do sculptured nails--they must take the full 2100 hours of training required for a cosmetologist.

Schrader felt it incumbent upon both boards to work out some type of "grandfathering in" or continuing education training for existing operations. Vasquez contended that the 450-hour rule would make it possible for the Board to look at situations such as Ramsey's and possibly allow credit for experience to extend a license for barbershop work. Chapman was willing to consider such amendment.

After further discussion, Metcalf concurred with Schrader that some adjustments to the rule making were needed and possibly 450 hours was excessive. No formal action.

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|-------------------|---|
| Chs 100 to
104 | Ubaldo outlined amendments under Notice in ARC 2299A. There were no recommendations by the Committee. |
| 141.6(2) | Williams presented subrule 141.6(2). No questions. |
| Chs 200, 202 | Leo explained amendments to Chapters 200 and 202 and indicated that many comments had been received. There was strong sentiment to reduce the practical hours for educational exemption--202.5(147) which the Board would consider. |

PUBLIC
HEALTH

Present were Carolyn Adams, Phyllis Blood, Gary Ireland, Mary Weaver, Michael Guely, Marge Bledsoe, and Barbara Nervig. The following agenda was presented:

PUBLIC HEALTH DEPARTMENT[641]	
Burial transit permit, 101.4, <u>Notice</u> ARC 2320A	9/18/91
Statewide obstetrical and newborn indigent patient care program--income guidelines, 75.4(1)"a" and "c,"	
<u>Filed Emergency</u> ARC 2369A	10/2/91
Maternal and child health, 76.4, 76.9, 76.10, 76.12(4), 76.12(5), <u>Filed</u> ARC 2366A	10/2/91
Statewide indigent obstetrical and orthopedic patient care program, 82.2(1)"a," "e" and "f," <u>Filed Emergency</u>	
ARC 2370A	10/2/91
Basic emergency medical care, 131.1, 131.3(1)"d," 131.4(1)"f" and "r," 131.4(1)"s," 131.4(4)"b" and "c,"	
131.4(9)"c," <u>Notice</u> ARC 2373A	10/2/91
White flashing light authorization, 133.1, 133.2(2), <u>Notice</u> ARC 2371A	10/2/91
Agency procedure for rule making, ch 174, <u>Filed</u> ARC 2368A	10/2/91
Certificate of need program, ch 202, <u>Filed</u> ARC 2367A	10/2/91

Ch 101

In review of proposed rescission of 641--101.4, Adams told the Committee that House File 534 eliminated the requirement for the Department to issue burial transit permits. Metcalf observed use of the words "burial transit permits" in other rules of the Department which should also be rescinded.

75.4, Ch 76,
82.2

No questions or comments on ARCs 2369A, 2366A or 2370A.

Ch 131

Guely informed the Committee that he had transferred to the Substance Abuse Division and he introduced his successor, Gary Ireland. They reviewed amendments to Chapter 131. Guely pointed out that the number of people taking the Emergency Rescue Technician course was declining. The amendments will allow area colleges more flexibility in scheduling that course, finding instructors and eventually increasing interest.

Metcalf questioned the substitution of "It is recommended" for "required" with respect to topic areas to be completed--131.4(4)"c"(3). Ireland responded that it was an attempt to attract more students. He stressed that finding qualified instructors for ERT has been a problem and the amendments will reduce requirements for certification. Metcalf was concerned that the standards would be lowered but Guely assured her that the initial course and training would not be affected, only continuing education thereafter.

Chs 133, 174, No questions on ARCs 2371A, 2368A or 2367A.
and 202

No Reps

No agency representation was requested for the following rules and there were no questions.

ARTS DIVISION[222]	
CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"	
Organization and operation, granting programs, chs 1 to 30, <u>Filed</u> ARC 2336A	9/18/91
CULTURAL AFFAIRS DEPARTMENT[221]	
Commemorative art, 6.14, <u>Filed Emergency</u> ARC 2333A	9/18/91
Arts division, rescind chs 10, 11, 12, <u>Filed Emergency After Notice</u> ARC 2392A	10/2/91

OBJECTION
UST BOARD

The following objection was prepared by Royce:

At its October 9, 1991 meeting the Administrative Rules Review Committee voted to object to the "emergency" adoption and implementation of ARC 2353A, on the grounds that the use of the emergency procedures was arbitrary and unreasonable. This filing appears in IAB Vol. XIV, No. 6 (9-18-91). It is codified as 591 IAC 11.4(455G).

In filing this rule without notice, the board cites that notice and publication are "unnecessary" in that comments had already been received by interested parties. That is inadequate justification in that there is no guarantee that all interested parties were aware of the unpublished rule. Moreover, the emergency adoption denied the Administrative Rules Review Committee of its opportunity to comment on the proposal.

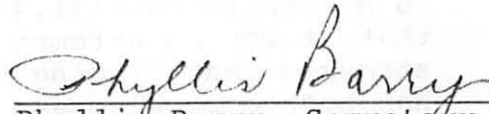
The rule is then made effective on filing on the grounds the rule confers a "benefit" to the public by protecting the environment and public safety. This justification is also questionable. The filing does confer a benefit on those tank manufacturers whose product is accepted for use and eligible for partial reimbursement from the UST fund. However, the filing also imposes a disadvantage to those manufacturers who are not on the approved list. Whether the approved tanks protect "the environment and public safety" any better than the nonapproved tanks appears to be a serious point of contention and raises questions whether the approved list in fact confers a real benefit on the public.

For these reasons the committee has concluded that the emergency adoption of ARC 2353A, without a full period of notice and public participation was arbitrary and unreasonable. It was the opinion of the committee that this filing should be withdrawn and a new notice of intended action published. This notice will hopefully generate a full and open discussion over which types of underground storage tanks most effectively and economically protect the public against future underground leaks.

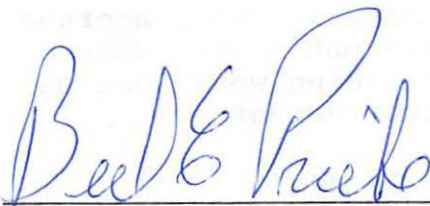
Adjournment

Vice Chairman Pavich adjourned the meeting at 2:45 p.m. The next regular meeting was scheduled for Tuesday and Wednesday, November 12 and 13, 1991.

Respectfully submitted,


Phyllis Barry, Secretary

Mary Ann Scott and Bonnie King,
Administrative Assistants



Chairman