

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting The regular meeting of the Administrative Rules Review Committee was held Tuesday and Wednesday, October 9 and 10, 1990, Committee Room 22, 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 Betty Jean Clark.

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

Convened Chairman Priebe convened the Tuesday session at 10:05 a.m. and called on Public Safety for the following agenda:

PUBLIC SAFETY	PUBLIC SAFETY DEPARTMENT[661] Closed circuit videotape surveillance systems on excursion gambling boats, ch 23. Notice ARC 1264A 9/19/90 Marijuana eradication procedures, ch 28. Notice ARC 1247A 9/19/90
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Appearing for the Department were: Michael Coveyou, Tom Ruxlow, Ken Arduser and Jim Lewis. Also appearing was: Gene Kennedy representing Robert's River Boats.

Ch 23 Coveyou explained chapter 23 which establishes standards for the closed circuit video tape surveillance systems installed on excursion gambling boats. Priebe noted that questions had been raised as to the number of color cameras needed and their locations and required lighting.

Ruxlow spoke of the complexity of meshing with the emerging industry of riverboat gambling. Rules for the surveillance systems need to be in place for the boat manufacturers. On the other hand, boat operators who will be working with the Department are just coming on line. The Department has discovered that for the most part, no other blueprints exist for a closed circuit TV system on boats. Ruxlow continued that they attempted to glean ideas from regulations of New Jersey and Nevada and tailor them for a water facility.

He mentioned a meeting scheduled for October 10 with boat management to assist that industry. Ruxlow thought many concerns had been addressed.

Priebe did not want to be critical but wondered why there had not been earlier meetings with the industry. Ruxlow pointed out that the staff they must work with was just being hired, e.g., the casino managers.

Ruxlow offered details as to camera requirements in the casinos and monitoring of the roulette wheels. Ruxlow stressed the importance of one video screen coverage of the wheel to discourage past posting. This can be accomplished only by two cameras feeding into the same tape.

PUBLIC
SAFETY
Contd.

With respect to the Surveillance Room, Ruxlow stated that it must be kept locked and secured at all times with restricted entry. This requirement would not differ from jurisdiction at any casino.

Ruxlow discussed monitoring and recording of telephone calls which could be retrieved later. He emphasized that customer rating was not the job of security surveillance personnel. They provide internal security of the games. Priebe wondered how they would determine whether there was a personnel problem or just a customer rating. Ruxlow reasoned that the \$200 limit would preclude the need for customer ratings. Ruxlow informed Pavich that the records would be retained a month or so.

Ruxlow defended provision in 23.9(7) to require repair of a malfunctioning camera within 24 hours. The Department would be tolerant in extenuating circumstances, e.g., a long holiday weekend when repairmen might not be available. Pavich wondered if the rule should address exceptions. Ruxlow said that DCI would be working with the operators.

Tieden referred to 661--23.2 which related to minimum standards and provided that the director of the DCI or the administrator had discretion to require a licensee to comply with casino surveillance system requirements that were more stringent than those set forth by rule. He voiced opposition to the vague provision.

Ruxlow emphasized the need for some flexibility in dealing with a new industry which has never been regulated.

Doyle and Ruxlow discussed minimum number of lines on the video recorders. Ruxlow stressed that the 300 minimum was intended to ensure a professional grade.

With respect to split screens, Schrader was not critical of the rules but was hesitant to mandate an expensive surveillance system for the benefit of the operators. It would seem to be in their best interest to do what they thought was proper.

Ruxlow pointed out a past posting case could not go to court unless the split screen image had been used. He continued that their goal was to adopt a system which would be in the best interest of the operator, the State of Iowa, enable the DCI to do their job, and safeguard the integrity of the industry.

Kennedy, representing the Dubuque Casino Belle, praised the DCI and particularly, Agent Ruxlow, and offered to work with them in formulation of rules acceptable to all factions. Kennedy also indicated that more funding would be needed for law enforcement on riverboats. He was hopeful the General Assembly would be cooperative.

Doyle urged interested persons to attend the public hearing on October 11. Pavich suggested that the Department notify all people involved about the hearing.

PUBLIC
SAFETY
Contd.

Coveyou anticipated that revisions would be made prior to final adoption of the rules. No Committee action.

Ch 28

Coveyou introduced Ken Arduser, Special Agent in charge of the Division of Narcotics Enforcement who presented proposed Chapter 28. The rules would implement 1990 Acts, H.F. 2166, regarding eradication of marijuana by cooperation with local law enforcement agencies.

Priebe observed there were no specific eradication requirements in the rules. Coveyou replied that the Department lacks the manpower to eradicate the uncultivated marijuana.

Arduser commented that they intend to allow the landowner an option to mow or spray. Priebe pointed out that the rules do not address methods for destroying the marijuana. Royce concurred that there was no absolute enforcement for uncultivated crops.

Coveyou referred to Code section 80.9 on duties of the Department with respect to identifying and eradicating marijuana plants growing on public or private property. He would refer the matter to their legal counsel for clarification.

Priebe was aware of budgetary problems in many departments but he thought the Act contained a mandate. Arduser responded that estimates by National Guard flights place the number of plants in the millions and available funding through the federal government is \$10,000 per year.

Royce advised that the rules could be modified to provide enforcement and eradication subject to available funds. Coveyou interjected that reaction by the county sheriff or the local police department would also be subject to the availability of funds.

Doyle quoted from 28.3(1) wherein it states that the Department shall request the landowner to voluntarily remove the marijuana. He asked about recourse if the landowner contends he cannot afford the expense.

Tieden wondered about the noxious weed law but Arduser stressed that marijuana was not a noxious weed but a controlled substance which was the main problem. Coveyou declared they were hampered by lack of resources as were most county sheriffs.

Priebe recalled that intent of the Act was also to protect the persons who were unaware of marijuana on their property.

In response to Clark, Arduser said that spraying was an alternative to digging the marijuana. However, that option would be a 3- to 5-year program since seeds take that long to germinate. Priebe reiterated his preference for addressing means of eradication in the rules.

PUBLIC
SAFETY
Contd.

According to Arduser, "flyovers" are invaluable in locating plots that are being tilled. Questionable areas are then investigated by ground enforcement. No formal action.

REVENUE
AND
FINANCE

Appearing for the Department were Carl Castelda and Dennis Meridith. The following agenda was considered:

REVENUE AND FINANCE DEPARTMENT(701)	
Exempt sales—carbon dioxide, 17.3, <u>Filed</u> ARC 1249A	9/19/90
Sales to other states and their political subdivisions, 17.23, <u>Notice</u> ARC 1228A	9/5/90
Exempt sales—nonprofit private museums; sales and use tax on construction activities, 17.24, 19.12,	
<u>Filed</u> ARC 1253A	9/19/90
Taxable and exempt sales—E911 emergency telephone service access lines, 18.20(1) <u>c</u> , <u>Filed</u> ARC 1250A	9/19/90
Sales and use tax on services—cable and pay television, 26.56, <u>Notice</u> ARC 1229A	9/5/90
Administration of the environmental protection charge imposed upon petroleum diminution,	
37.18, <u>Filed</u> ARC 1251A	9/19/90
Determination of net income, adjustments to computed tax, withholding, fiduciary income tax, 40.21, 40.27,	
40.27(2), 40.33, 40.36, 42.2(3), 42.2(3) <u>c</u> , 42.2(6), 42.2(9), 42.9, 46.1(1) <u>b</u> (3) and (5),	
89.10(5), <u>Filed</u> ARC 1254A	9/19/90
Adjustments to computed tax, 42.9(3), 42.9(4), <u>Notice</u> ARC 1094A <u>Terminated</u> , <u>Notice</u> ARC 1248A	9/19/90
Inheritance tax, 86.1(2), 86.6(5), 86.13, <u>Filed</u> ARC 1230A	9/5/90

17.3, Meridith summarized amendments to 17.3, 17.23, 17.24, 19.12,
17.23, and 18.20(1)c.
17.24,
19.12, No recommendations.
18.20

26.56 In review of revised 26.56, Meridith said it would clarify that pay television encompasses cable television as well as satellite. Litigation in another state had challenged that these media were not being treated equally.

Priebe asked if the "dish" in a backyard would be included. Meridith thought that service sold to the customer would be covered. It was his understanding the individual must pay for a decoder or descrambler.

It was Priebe's understanding that the RECs were going to offer paid television of some sort and he wondered how that would be taxed and if these rules should reflect RECs. Meridith opined that tax would be levied on the ultimate consumer for this service in the same manner that cable service was taxed.

Castelda addressed the law challenge in another state which was taxing cable television but not other types of television. In order to head off lawsuits in Iowa that would void tax on cable television, the Department took the matter to the General Assembly. They believe all points are covered.

Castelda clarified there would be no tax for the television from a dish because there would be no gross receipts involved.

Priebe noted that decoders were sold in other states and he asked how the tax would be collected. Castelda indicated that it would not be collected unless the seller has a nexus in the State of Iowa. The Department must then assess a use tax. If the user in the State of Iowa is paying a fee to an out-of-state company, then the Department must identify that user and assess a consumers' use tax.

REVENUE
AND
FINANCE
Contd.

Priebe asked about the motel that offers free service through a dish. Castelda advised that the motel would pay the tax to whomever provided the service. That is basic sales and use tax which applies to telephone and many other services. No Committee action.

37.18,40.21,
et al., 42.9,
Ch 86

There were no questions on the remaining amendments.

EDUCATION
DEPARTMENT

Appearing for the Department of Education agenda were Ray Morley, Kathy L. Collins, Sue Donielson, Susan Andersen and Ed Ranney. Also appearing was Lisa Johnson, Essex, Iowa.

EDUCATION DEPARTMENT[281]

Postsecondary enrollment options, 22.1, 22.3, 22.4. Notice ARC 1208A.....	9/5/90
Schools, programs and support services for dropouts and dropout prevention, 61.1(1), 61.1(2), 61.2, 61.5(2)"d," 61.5(3)"a" and "h," 61.5(4)"a" and "d," 61.5(10), 61.5(10)"a," 61.7. Notice ARC 1207A, also	
Filed Emergency ARC 1226A	9/5/90
Innovative programs for at-risk early elementary students, 65.2, 65.4, 65.6, 65.5"5," 65.6, 65.8, 65.9(1) to 65.9(6), 65.10, 65.19 to 65.23. Notice ARC 1208A	9/5/90
Procedures for charging and investigating incidents of abuse of students by school employees, 102.3, 102.4(1), 102.8(5), 102.9(1), 102.10, 102.13. Filed ARC 1210A	9/5/90
Corporal punishment ban, ch 103. Notice ARC 1209A	9/5/90

22.1,et al.

Ranney told the Committee that amendments to Chapter 22 reflect revision of Code Chapter 261C. Vocational technical education was added to the courses available to eleventh and twelfth grade students in secondary schools to take in eligible postsecondary institutions. Non-public school students will now be eligible. No recommendations.

Ch 61

Morley explained that there were no negative comments on the rules at the hearing held September 25. There will be elementary as well as secondary level programs for at-risk students--Chapter 61.

Priebe questioned Morley as to how determination is made about "potential dropouts." Morley replied that specific characteristics are identified in the rules, e.g., low academic achievement, poor grades in subjects and irregular school attendance.

Discussion of 61.5(10)a relative to limitation of 5 percent of the districts' budget enrollment for dropouts. No action.

Ch 65

In review of amendments to Chapter 65, Andersen said three comments were made at the public hearing on September 25. She reviewed changes which they planned to make before final adoption. A minimum of one innovative at-risk grant will be funded in each of five districts ranging from less than 401 to 2501 and larger. Andersen interpreted the intent of the legislation was to award grants in buildings with a high percentage of children at-risk. Currently, there is funding for five additional grants.

In response to Priebe, Andersen said that the grants would be continued after an evaluation of the program.

EDUCATION
DEPARTMENT
Contd.

Priebe favored reevaluation of all grants to allow other schools to complete.

It was Royce's understanding that a million dollars was available for five new grants and has nothing to do with the programs for last year. Andersen reasoned that it would not be the best utilization of the grant to terminate programs that are operating successfully.

Priebe clarified that he was not advocating termination of the programs but opening up new dollars to everyone.

Tieden questioned two different definitions of at-risk student--61.2 and 65.2.

Donielson commented that the definitions addressed different populations and age groups. Chapter 61 pertained to programs for dropouts which is one category of at-risk. Chapter 65 related to innovative programs for at-risk early elementary students.

Schrader recalled previous discussion of legislation which provided for targeting schools with concentration of at-risk students. Although, the ARRC had favored including different size categories, they concurred that additional legislation was needed.

Andersen spoke of difficulty in identifying the greatest need when you look at the entire state of 430 varying sized districts. She continued that public hearings and contact with legislators led them to believe that they could also consider the building with greatest need.

Schrader asked why that policy was not followed initially.

Collins spoke on the Department's philosophy which has always been conservative in implementing the intent of the law. She pointed out that the ARRC had not voiced opposition when the rules were initially adopted. Citizen concerns arose and the issue became controversial. Collins emphasized that the Department would be more comfortable if the legislature amended the law. She added that the Department would honor the position of the ARRC.

Schrader recalled that the first submission of rules on the at-risk program was adopted under emergency provisions, thus precluding ARRC or public input.

Clark took the position that the Department was attempting to address the problems that the ARRC and public presented to them. Priebe thought it was regrettable after the fact.

Schrader reiterated his concern that the policy will not change with respect to the grants of \$3 million.

EDUCATION
DEPARTMENT
Contd.

It seemed reasonable to Clark that the successful programs should not be interrupted by withdrawal of funds.

Priebe expressed his frustration that the program was handled inefficiently at the outset.

Clark interjected that it was her belief that the Department acted in good faith in interpreting the legislation and should not be faulted for trying to make corrections.

Johnson questioned the definition of "low-income family" in 65.2. She pointed out that comments at the public hearing and letters from school administrators, and public health and human services officials had opposed use of free and reduced lunch statistics. They had supported provision that a low-income family was one whose total income was equal to or less than 125 percent of federally established poverty guidelines. Johnson pointed out that this definition was used in Chapter 64.

Andersen explained that Chapter 64 deals specifically with preschool children who do not apply for free and reduced price lunches. Chapter 65 deals with kindergarten through third grade children who can apply for the special lunches. Andersen contended that 125 percent above poverty was virtually the same as the free and reduced price lunch criteria which was established by the federal government and documented in every Iowa public school.

Andersen emphasized that Chapters 64 and 65 address two different grants. She noted that the Committee was hearing from one person, not from 425 other school districts.

Johnson was convinced that districts would have opposed the rules if they had realized the impact. She concluded that percentage of participation was dependent on the attitude of communities toward welfare in general.

Priebe concurred that rural people have a different set of standards. Many consider it a stigma to receive free lunches.

Collins failed to see the difference between asking for free and reduced price lunches or qualifying under the 125 percent poverty level.

Donielson pointed out that districts would have to rely on parents for information on the 125 percent poverty level. She admitted that many were reluctant to reveal their poverty.

Clark asked Johnson for suggestions. Johnson recalled a recommendation to compile average family income from the census statistics. This could be broken down by zip codes. If ranking points were eliminated, the idea of a low-income family would become equal to all the other

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Contd.

factors considered. Johnson failed to understand why ranking points were so important for the K-3 grant but not for the other grants.

Andersen commented that 40 ranking points constitute approximately 21 percent of K-3 grant. She declared that poverty was the greatest factor for placing children at-risk.

Royce clarified status of the rules. He said that based on emergency rules, \$3 million was awarded and the program had been administered. The rules before the Committee today focus on an additional \$1 million with a new set of criteria. He advised that the amendments to Chapter 65 would be renoticed to reflect the five additional significant amendments.

There was discussion of time frame for getting the rules adopted to meet statutory deadlines. The grants should be awarded by March 1, 1991, for the July 1 program. Andersen was hopeful that RFPs could go out in November.

Schrader recalled that the issue had been referred to the General Assembly. No formal ARRC action.

Ch 102

Collins reviewed amendments to Chapter 102. No recommendations.

Ch 103

Collins stated that Chapter 103 was in response to the corporal punishment legislation--1990 Acts, H.F.2416,\$2. Minor changes will be made to 103.1 and 103.2 as a result of suggestions at the public hearing.

In response to Schrader Collins read 103.1 in its revised form: "In conjunction with Iowa Code [Supplement] section 280.21, the purpose of this chapter is to define and exemplify generally the limitations placed on employees of public schools, accredited nonpublic schools and area education agencies in applying physical contact or force and to require that any such force or contact is reasonable and necessary under the circumstances."

Schrader recalled an earlier amendment in Chapter 102 which, in his opinion, would have implemented the corporal punishment bill that was passed in 1989. He was aware that the Department was also asked to adopt a new chapter to address corporal punishment. It seemed to him that by including the reasonable necessary force language some clarity of the statute was removed. Schrader continued that it had been difficult to convince people that physical contact was not necessarily a reasonable force. He wondered if comment had been made as to the physical confinement and detention rule--103.6. This issue had not been discussed by the legislature. Collins had heard nothing even though she had assumed that the child advocacy groups would come forward.

EDUCATION
DEPARTMENT
Contd.

Collins added that she had studied rules of all 50 states and followed their definitions of corporal punishment. Also an incident in the Dubuque area had prompted the need for confinement regulations. Chapter 103 seemed a logical place since it could be argued that unreasonable confinement does have an impact on the physical body of the child.

Schrader quoted the last sentence of 103.2: "It includes contemplated, calculated, or premeditated physical acts as well as spontaneous, unprivileged physical reactions." He observed that it was not language from the law and wondered if it would be deleted. Collins responded in the negative since the language addresses two categories of corporal punishment. She cited examples and stated that 99 percent of the incidents are spontaneous reactions by unprivileged where there was no reason to use that force or physical contact.

Schrader noted the absence of a definition of "unprivileged physical reaction" and suspected that would be grounds for discussion.

Collins stated that the Department took the position that it was better to provide as much information as possible.

Clark reasoned that they would not need to list what was "unprivileged" as long as "privileged" was well defined.

Schrader cited examples of a teacher setting a child down in a chair or tugging back in line which would be physical contact. Collins stressed the need for that basic working definition so that the teacher who tugs the child back into line is tested under the unreasonable physical force or physical contact made with the intent to harm or cause pain. If neither of those is present, then corporal punishment does not exist and there is no need for application of the exceptions and privileges. On the other hand, if there were unreasonable physical force, then the second exception applies. In either event, the teacher would be taken out of the definition of corporal punishment, or the action was taken outside the definition.

Schrader asked if pounding the table and scaring the child would be considered a spontaneous physical reaction and Collins answered that it could be.

No formal action taken.

EMPLOYMENT
APPEAL
BOARD

Appearing for the Board were James A. Althaus and William C. Whitten. The following rules were considered:

EMPLOYMENT APPEAL BOARD[486]

INSPECTIONS AND APPEALS DEPARTMENT[481] "umbrella"

Boilers and unfired steam pressure vessels appeals, ch 9. Notice ARC 1246A

9/19/90

NATURAL
RESOURCE
COMMISSION

Appearing for the Commission were Mike Carrier, Steve Dermand and Lon Lindenberg. The following agenda was before the Committee:

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561] "umbrella"

General license regulations—habitual offenders, 15.6, <u>Notice ARC 1233A</u>	9/5/90
Rental fee schedule for state-owned property, riverbed, lakebed, and waterfront lands, 18.2 to 18.4.	
<u>Notice ARC 1232A</u>	9/5/90
Removal of animals from traps and snares, trap tag requirements, 110.5, 110.6, <u>Filed ARC 1234A</u>	9/5/90

18.2-18.4

Carrier explained amendments to Chapter 18. He informed Priebe that most private homes or cottages built on state property have been removed. There was discussion of the public access problems which are being resolved.

Tieden referred to 18.4 and asked about the 18 percent cost for departmental inspection. Carrier said that this was the indirect expense rate that the Department applies to other programs for administrative charges.

In response to question by Clark, Carrier said they applied 25 percent to each frontage and depth fee. The commission intends to honor the current fee structure for all existing leases. The revisions will apply to renewals and new leases.

110.5,
110.6

No questions on amendments to 110.5 and 110.6.

15.6

In presenting new rule 15.6, Lindenberg said that no one attended the public hearing. Three telephone calls voiced support of the rule.

There was discussion of the point values assigned to convictions. Lindenberg reminded that Iowa Code Chapter 109 sets a separate violation for each animal, fish or fur.

In response to question by Tieden, Lindenberg stated that under current Iowa law, minors are not excluded from violations of fish and game laws. Tieden preferred to impose the penalty against the parent or guardian. Lindenberg was willing to consider that approach.

Tieden spoke of the problem with poaching in his area.

Doyle was interested in agreements with the county clerks for record-keeping procedures. Lindenberg indicated that the rule would provide the authority and no problems were anticipated in following a procedure similar to one used by Department of Transportation. The clerks will be asked to provide DNR once each week the disposition reports. Costs will include envelopes and mailing.

Doyle referred to 15.6(2)c and noted that the sheriff was not included in the list. Lindenberg indicated that "officer name" would include trooper, deputy sheriff, city police officer, etc.--they will be identified. According to Lindenberg, information required in paragraph c will be listed on the citation. The Department

NATURAL
RESOURCE
COMMISSION
Contd.

will need to provide forms for notification of suspensions, revocations and the right to hearings when the rules are final and the computer system is on line.

Doyle suggested an emergency filing when the effective date is known.

LAW EN-
FORCEMENT
ACADEMY

William Callaghan, Counsel, presented the following amendments:

LAW ENFORCEMENT ACADEMY[501]

Minimum standards for Iowa law enforcement officers—MMPI test, 2.2(2)"b," 2.2(3), 2.2(5)"a,"
2.2(5)"c." Notice ARC 1231A

9/5/90

Ch 2

Doyle asked if state university campus police were certified and Callaghan responded in the affirmative. Callaghan stated that all officers who train through the academy must take the MMPI test. No Committee action.

Recess

The Chairman recessed the meeting for lunch at 12:15 p.m.

Reconvened

Chairman Priebe reconvened the meeting at 1:15 p.m. and called up rules of the Utilities Division as follows:

UTILITIES
DIVISION

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181] "umbrella"

Fire protection costs, 21.8. Filed ARC 1280A 9/19/90

Directory assistance charging, 22.3(10)"a" and "b." Notice ARC 942A Terminated ARC 1225A 9/5/90

Energy efficiency plans, 17.9, rescind 19.1(2) and 20.13(3), new ch 35, Notice ARC 1281A 9/19/90

Those appearing for the Division were: Vicki Place and Anne Preziosi.

21.8

Preziosi told the Committee that rule 21.8 would implement Iowa Code Supplement section 476.6(18) which allows cities furnished water by a public utility subject to rate regulations, to apply to the Utilities Board for the inclusion of all or a part of the cost of fire hydrants or other improvements, maintenance and operations. No questions.

22.3(10)

There were no questions regarding termination of ARC 942A relative to allowance for directory assistance.

17.9 et al.

Place described 17.9 et al. as intended to implement 1990 Acts, S.F.2403, sections 18 to 28 and 30, which requires public utilities to provide energy efficiency programs for all of their customers. These rules set out the requirements for filing of plans for the programs. No questions.

VOTER REGIS-
TRATION
COMMISSION

Douglas Lovitt, Commission Director, was present for the following:

VOTER REGISTRATION COMMISSION[821]

Postcard registration form, 2.1(5). Notice ARC 1259A

9/19/90

2.1(5)

Lovitt told the Committee that the amendment to 2.1(5) would implement 1990 Acts, H.F.2329, section 13. This Act changed the statutory deadline for postcard registration. The voter's signature will also be required on the card.

VOTER REGIS-
TRATION
COMMISSION
Contd.

There was discussion of mileage information requested from rural voters. If the voter has a rural route number, mileage information should be provided. In order to determine school director districts and school districts, the County Auditor needs to know precisely where a particular residence is located. When every address in the state has a house number and street name, the rural voters portion can be eliminated from the form.

Lovitt stated that the recent legislation set the same deadline date for postcards and personal registration. No Committee action.

WALLACE
TECHNOLOGY
TRANSFER
FOUNDATION
Chs 1-4,10,
11

Appearing for the Foundation was Daniel Dittemore, Deputy Director of the Foundation and Melanie Johnson, Economic Development.

Johnson described the Foundation as a private corporation that will be awarding loans for technological advancement and their commercial application. The rules provide guidelines on match requirements and set out general housekeeping procedures. The Foundation is a state agency for purposes of Iowa Code chapter 17A only.

Tieden raised question as to quorum and voting requirements of the Board. Dittemore responded that the Foundation had filed a Certificate of Corporation and Articles of Corporation in its bylaws, all of which were developed in consultation with the Attorney General's office and recorded with the Secretary of State's office and Polk County.

Dittemore said there were 19 board members, 4 of whom are nonvoting legislative members. There was committee consensus that it would take 8 members to take formal action. Royce advised amending the rules to reflect this.

BANKING
DIVISION

The Banking Division was represented by Robert R. Rigler, Superintendent, Steven Moser, Deputy; Mary Fehring, Kirk Vandewille, Charles L. Wasker, Banks of Iowa; John Rigler and Jeff Lamson, Norwest Corporation; Sharon Sievers, Iowa Bankers Association; and Richard Berglund, Iowa Independent Bankers Association.

The following was considered:

BANKING DIVISION[187]

COMMERCE DEPARTMENT[181] "umbrella"

Acquisition by out-of-state bank holding company, 2.8. Notice ARC 1218A..... 9/5/90

2.8

Rigler reported on the hearing regarding rule 2.8 and he spoke of many changes that will be made in the Noticed version. Copies of the revised rules were distributed. It was Rigler's belief that concerns of those who were adamantly opposed to interstate banking had been addressed. Examples included definitions of "community," "holding companies" and "confidentiality." Rigler thought the most controversial and nebulous part of the law was the definition of "developmental loans." He said that they will consider every loan made by a bank

BANKING
DIVISION
Contd.

in its community to be a developmental loan except for credit card loans. They added several categories of foreign loans. Rigler discussed the requirement for meeting the state average of loan to deposit ratio.

Tieden referred to the last sentence of 2.8(2), "Publication of notice of a substantially complete application will be the responsibility of the superintendent." He asked about the deadline for the notice and Rigler said they must make a decision within 180 days as required by law.

Berglund indicated that they were still working with the Division regarding the application process but they had no opposition to the rules as revised.

Doyle recommended that "or designee" be added after "superintendent" in the rule.

CREDIT UNION
DIVISION

James Forney, Superintendent, presented the following:

CREDIT UNION DIVISION[189]
COMMERCE DEPARTMENT[181] "umbrella"

Maintenance of allowance for loan losses account, ch 18. Notice ARC 1263A 9/19/90

Forney said that the rules would provide for the use of an acceptable accounting practice in the disclosure of financial statements for credit unions. The Credit Union Division can provide for necessary supervision of state chartered credit unions to ensure that adequate assets are available to meet liabilities.

Tieden and Forney discussed application of General Acceptable Accounting Principles. Doyle asked about tightening up on insurance for loan losses on certain property, e.g., mobile homes or automobiles. Forney indicated that rules and the statute set out procedure for credit unions to follow in dealing with that type of loans. These loans are insured to the same degree as banks or other financial institutions. The Division plans to review existing rules for real estate and home equity lending. No formal action.

Minutes

Doyle moved the approval of the minutes of the regular meeting held September 11 and 12 and the Telephone Conference of September 28. Motion carried.

Recess

The Committee was in recess for 10 minutes and reconvened at 2:30 p.m. by Chairman Priebe.

HUMAN
SERVICES
DEPARTMENT

The following agenda was before the Committee:

HUMAN SERVICES DEPARTMENT[441]

State community mental health and mental retardation services fund and special needs grants, ch 32 title, 32.3, 32.3(1)"c", 32.3(1)"c"(2), (7) and (14), 32.3(2)"a", 32.3(2)"b"(9), 32.4, 32.5. Filed ARC 1195A 9/5/90

Mental health, mental retardation and developmental disabilities special services fund, ch 39. Notice ARC 1197A, also Filed Emergency ARC 1198A 9/5/90

Granting assistance, conditions of eligibility, 41.2(6)"b"(1), 41.2(6)"d", 75.14(1)"d", 75.16(1)"f", 75.18(2)"a", "b"(1) to (3), and "c." Filed ARC 1222A 9/5/90

Adolescent pregnancy prevention programs, 41.7(7)"ab." Filed Emergency After Notice ARC 1223A 9/5/90

Rate changes for Medicaid: rebasing and recalibration of DRG prospective payment system; medical necessity for ambulance service, 52.1(3), 78.7(1)"e", "f" and "j", 78.11(2), 78.14(7)"a", "b" and "d", 79.1(2), 79.1(5), 79.1(8), 79.1(8)"a" and "d", 79.1(9)"d", 82.14(4) "f", 150.3(5)"p", 156.6(1), 156.6(4)"a" to "c", 156.9(1), 156.11(2), 177.4(3), 177.4(7), 177.4(8)"b", Filed ARC 1216A 9/5/90

Increase in protected resources for community spouse, 75.5(3)"d." Filed Emergency After Notice ARC 1224A 9/5/90

Payment for disabled adult's physical examination required for school or camp, 78.1(1)"b"(4), Notice ARC 1261A 9/19/90

Nursing facilities, intermediate care facilities for the mentally retarded, 81.10(6), 81.20, 82.14(6), 82.18. Filed ARC 1212A 9/5/90

Collections, nonassistance child support recovery program, support enforcement services, 95.8, 95.10, 95.13(3), 96.7, ch 98 preamble, 98.21 to 98.46, Filed ARC 1213A 9/5/90

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Child day care program, 130.3(1)"d"(2), 130.3(6)"d", 163.5(6), Filed ARC 1214A 9/5/90
 Court-ordered care and treatment, 161.1(1)"c", 161.1(4), 161.1(5), Filed ARC 1215A 9/5/90
 Resource and referral grants program, ch 169 title, 169.1 to 169.4, 169.6, 169.8, 169.10, Filed ARC 1217A 9/5/90
 Adolescent pregnancy prevention and services to pregnant and parenting adolescents program, 163.3(3)"a" and
 "b", 163.3(5), Filed ARC 1219A 9/5/90
 Child day care grants program, ch 168 preamble, 168.1 to 168.9, 168.12, 168.13, Filed ARC 1220A 9/5/90
 Sheltered work/work activity services, 172.1, 172.2(3), 172.2(4), Filed ARC 1221A 9/5/90
 Dependent adult abuse, 176.5(4)"c" and "e", 176.6(5), 176.7(3), 176.10(3)"a"(1) and (3), 176.10(3)"b"(5),
 176.10(3)"e"(6), 176.13(2), Notice ARC 1262A 9/19/90
 Family support subsidy program, ch 184 preamble, 184.1, 184.2(2), 184.3(1), 184.3(4), 184.4(3), 184.5, 184.7,
 184.8(1)"c", Filed ARC 1196A 9/5/90
 Selective Review--ARC1127A, "OBRA" Care Facility Regs.
 IAB Vol.XIII, #3
 Selective Review--Compensation in Care Facilities,
 81.6(11)"h"(4) to (6)

Those appearing for the Department were: Mary Ann Walker, Gary Gesaman, James Chesnik, Pat Waits, Vivian Thompson, Susan Bergwall, Marcia Stark, Robert F. Schoene, Suzanne Boyde, Sandi Koll, Barbara Bosch, W. McCracken, Norma L. Ryan, Elaine Roccasecca, Kathy Ellithorpe, and Jo Lerberg. Also appearing were Mary Oliver, DIA; Blaine Donaldson, Storm Lake Care Facility; Paul Romans, Iowa Hospital Care Association; and Linda Goldner, Iowa Hospital Association.

- Ch 32 No questions on amendments to Chapter 32.
- Ch 39 Walker explained new Chapter 39. Tieden asked about 39.29 which provided for automatic termination of the rules. Walker stated they would be terminated unless additional funding was approved.
- 41.2(6) No questions were posed on amendments to 41.2 et al. or
 et al. 41.7(7)ab.
- 52.1(3) According to Walker, amendments to 52.1(3) implement
 et al. changes in rates for Medicaid and service providers and were adopted emergency July 1, and also noticed. No comments were received. The amendments also implement changes in the payment system for the inpatient hospital reimbursement system. The Department's carrier will calculate and pay outlier claims at 85 percent of the total and hospitals may submit a request for the remainder. Comments revealed that many hospitals would never claim the remaining 15 percent so the Department took 8 percent of that and added it to the base which increased the payment levels.
- 75.5(3), No Committee recommendations for amendments to 75.5(3),
 78.1(1), 78.1(1)b, or 81.10(6) et al.
 81.10(6)
 et al.
- 95.8 et al. There was discussion of amendments to Chapters 95, 96 and 98 pertaining to areas of child support enforcement.
- Doyle asked if bookkeeping problems had been resolved. Department officials indicated some difficulty when the spouse previously filed in Iowa but is now out of state.

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130.3,
153.5(6)

In review of amendments to 130.3 and 153.5(6), Walker stated that they increase the monthly gross income guidelines and revise procedures for allocation and reallocation of child day care funds. In addition, they provide that any family who has received 12 months of transitional child care does not have to be placed on a waiting list for day care services if the family is eligible for state child care assistance. Concerns expressed by the ARRC on the latter were given to the Council. However, the Department Director urged and received Council approval since so much time and effort had been invested in these clients.

151.1,
Ch 159,
163.3,
Ch 168

No questions on amendments to 151.1, Chapter 159, 163.3 or Chapter 168.

Ch 172

In review of amendments to Chapter 172, Doyle asked if there were any nonaccredited agencies. Schoene estimated there were 10 percent. They are funded by Vocational Rehabilitation and specialized rehab insurance companies also work with agencies.

Ch 176

Walker summarized revisions in Chapter 176 on dependent adult abuse some of which were mandated by 1990 Acts, H.F.2504.

Doyle questioned meaning of 176.10(3)a and Walker said that if a dependent adult has a guardian, that guardian's attorney could also have access to information on the registry.

Ch 184

No questions re amendments to Chapter 184.

With respect to the foster parent program, Walker agreed to provide Doyle information relative to compensation for care of cocaine babies and confidentiality for babies with AIDS.

Selective
Review

81.6(11)h

As requested by the ARRC, there was selective review of 81.6(11)h(4) to (6) pertaining to compensation in care facilities. Schrader reported on his review of the document submitted by DHS at the September meeting regarding limits on owner/administrator compensation. He had shared the information with the care facility in his area and had conferred with Paul Romans. It was his understanding that negotiations were continuing and he favored placing the issue on the November ARRC agenda.

Chairman Priebe recognized Romans who said his group had presented six positions to the Department regarding inequities in the reimbursement assessment. One of those involved owner-administrator, owner-employee. He favored a "rational approach to this very emotional and difficult issue" and concurred that further action should be deferred.

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Gesaman noted that basic owner-administrator compensation limit was established about five years ago and it was based on a petition from the Iowa Health Care Association. The allowable limit was increased at that time in response to their petition. That limit has been indexed forward every six months based on the inflation indicator. Information is gathered from the Cost Reports of the facilities. Gesaman continued that the only thing they had added recently was expanding coverage of related parties to the administrator to include others beside the assistant administrator. Also, the director of nursing was to include any employee at the facility who is involved with the ownership or related to the ownership of the facility.

November
Agenda

There was agreement that 81.6(11)h(4)to(6) should be placed on the November agenda.

Selective
Review

Priebe took the Chair and announced Selective Review of ARC 1127A; OBRA Care Facility Regulations--amendments to Chapters 77 to 81.

Gesaman distributed compilations of costs and statistical data for participating nursing facilities. These figures were used to adjust the maximum daily rate October 1. They were presented to the ARRC in two formats--one was an alphabetical listing of facilities and the other showed ranking of the facility from lowest cost to highest cost. Gesaman offered detailed explanation of the compilation. The cost per day is the facility reported cost on file June 30 of this year. That cost was used to establish the 74th percentile effective July 1. When the Department established the \$44.75 cap, it was based on the amount in the Cost Per Day column. Facilities could submit budgets to the Department up to August in terms of anticipated additional costs to meet OBRA requirements. Those budgeted amounts were then added to the actual costs on file to reach a combined cost. They ranked the combined costs per day from low to high and again established the 74th percentile which resulted in \$48.49 which was the basis for the October 1 cap.

Gesaman clarified that any increase would be the difference between \$44.75 and \$48.49 or \$3.74. Facilities will get their actual cost plus budgeted cost up to the maximum.

Tieden observed that some homes have an add-on cost of \$10.00 a day and others have little or none. Gesaman explained the variance could be attributed to the fact that some facilities already have a registered nurse or the director of nursing--others did not. Some facilities may have had a registered nurse working on one shift during the day or had a licensed nurse on duty all shifts--other facilities did not. They still met the Pre-OBRA requirements but had to do other things in order to meet the post-OBRA requirements. Gesaman

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suggested that these costs not be taken literally in terms of what the facility will actually get. These were the costs used to establish the maximum rate. Facilities may very well have submitted cost reports that came in after the maximum rate was set. Any cost report received prior to October 1 plus OBRA will be used for rate setting.

Gesaman continued that the OBRA requirement would affect each facility differently. One with higher property cost and a lower staffing cost will probably have to add staff in order to meet the OBRA requirements. Another facility may have the staff with lower property cost. Gesaman was doubtful that OBRA would require facilities to add anything in terms of property cost. Some facilities have very high property costs but will still have to do a number of things to meet the OBRA staffing requirements. He pointed out that facilities will be allowed to operate for 6 months on the basis of combined actual plus budgeted costs. An actual cost report covering the period of October 1 through March 31, will be required and the Department will do a reconciliation between actual costs versus the amount they were reimbursed.

Schrader asked if the Department knew the OBRA add-on cost per day. Gesaman estimated \$3.5 million to the state cost for the nine months remaining in this fiscal year. They will be short \$1½ million. This will add to the Medicaid deficit.

In response to Tieden, Gesaman said they did not consider the nurse aide training requirement to be significant expense for most facilities but they will do further analysis.

Gesaman stated that law precludes a facility from charging a nurse aide employed by that facility for the training. The Department has not attempted to interpret further than that. Gesaman was aware that some facilities are requiring an aide to be employed for a period of time before they will bear the training expense.

Oliver interjected that DIA had questioned federal officials on the question of nurse aide turnover and Federal advised that the facility must pay. Their rationale was that the federal government would reimburse the facility. Oliver indicated that they were working with federal officials in Baltimore for clarification and possible resolution. She spoke on the importance of safety training for aides, e.g., feeding patients safely and learning to handle them to prevent falls and turning them in bed. Oliver pointed out that classroom instruction required by the federal government is the 16 hours--understanding the elderly and the operation of the nursing home.

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It was Gesaman's understanding that Iowa was unique in the region with an approved state plan. He noted that Iowa is unusual in that they had a large intermediate care program and a small skilled nursing program--the national average is 50/50.

There was discussion of the 30-day delay imposed on 81.6(11)h(4)to(6) at the September meeting. The Committee had expressed preference for reducing the 24-hour annual in-service training to 12 hours--the current requirement.

Priebe favored a Session delay for the provision.

There was also discussion of extending the delay to 70 days and after that the provision could be delayed into the General Assembly. It was noted that any delay must be published in the Iowa Administrative Code.

Gesaman pointed out that Medicaid never had a nurse aide training requirement--it was only in state licensure rules. Schrader expressed his preference for the 12-hour standard.

Royce clarified that any modification of the rule would automatically void the delay.

Motion to
Delay

Tieden moved that the 30-day delay imposed on 81.16(4) at the September 12, 1990 meeting be extended to 70 days. Motion carried.

Romans received assurance that the 24-hour requirement would not be implemented at this time. Oliver commented that the only time DIA looks at qualification of staff and nurse aide training is when they find inadequate care.

Oliver advised Tieden that Iowa will accept reciprocity for nurse aide qualifications. However, some states do not.

Donaldson took the position that nurse aide training was the biggest problem in the state. An aide cannot be on the floor without 16 hours of classroom training and no one in his area offers this training. His facility provides the 20-hour orientation course and aides agree to take the classroom work.

Romans spoke of the problem of hidden costs for which facilities have not budgeted. He offered an example of a simple testing of blood at the bedside of diabetics. They have been performing this service twice each day for years but under the new ruling, that will be considered a laboratory service.

Priebe reiterated his concern for escalated costs and the need to alert Congress of the crisis. Private pay patients have complained to him about their increasing burden. Donaldson saw the need for a formal group to work with Congress.

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Priebe suggested a delegation of Midwestern States. Clark reasoned that the Midwest Conference of State Legislators would be a possible vehicle and she suggested contacting Representative John Connors to place the issue on a Conference agenda. Priebe expressed his opinion that the Rules Committee should be part of NCSL.

Recess

Chairman Priebe recessed the meeting at 4 p.m.

Reconvened

All Committee members and staff were present when Chairman Priebe reconvened the meeting at 9:05 a.m., October 10, 1990.

ENVIRON-
MENTAL PRO-
TECTION
COMMISSION

Chairman Priebe called up the following:

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[661] "umbrella"
Requirements for properly plugging abandoned wells, 39.8(3), 39.8(4)"a," 39.8(4)"c," Filed ARC 1271A..... 9/19/90
Water quality standards, 61.3(5)"a"(2), 61.3(5)"c," Filed ARC 1268A..... 9/19/90
Water quality standards, 61.3(5)"e," Notice ARC 1269A..... 9/19/90
Water quality standards--human health criteria, Economic Impact Statement..... 9/19/90
Land application of wastes, 121.3(2), 121.3(3), Filed ARC 1270A..... 9/19/90
Technical standards for underground storage tanks, 135.7(9), 135.8(3) to 135.8(6), 135.9, Filed ARC 1273A..... 9/19/90
Grants for solid waste demonstration projects, 209.1 to 209.4, 209.6 to 209.11, Filed ARC 1272A..... 9/19/90

Selective Review--Underground Storage Tanks, Ch 135--
Fed. vs. State Regs.

Appearing for the Commission were: Gayle Farrell, Randy Clark, Mark Landa, Keith Bridson, Wayne Reed, Mike Murphy, Ralph Turkle, Vic Kennedy, Robert Ribbens and Pete Hamlin. Also present was Ed Kistenmacher, Petroleum Marketers.

39.8

No recommendations on amendments to 39.8.

61.3

Farrell discussed the Department's long-term process of reviewing and reclassifying the streams and lakes of Iowa in accordance with changes in water quality standards that were adopted last spring. This rule making is referred to as Round 1.

Doyle questioned Department officials with respect to possible community problems. Sioux City is digging an 85-foot well and getting river water. Turkle cited potential nitrates sources in the river water. From a bacteria standpoint, there should be no problem since the water would be disinfected. Doyle thought previously there had been restrictions on taking water directly from the Missouri River. Murphy stated that would be under the water withdrawal program.

61.3(5)e

Murphy described proposed 61.3(5)e as Round 2 of the water use redesignations--21 streams will be classified. No Committee action.

Economic
Impact
Statement

There was discussion of the economic impact statement voluntarily prepared by the Department of Natural Resources on proposed human health criteria under water quality standards. The statement was prepared in accordance with the Environmental Protection Agency directives on amendments to Chapters 60 and 61 published in IAB 7/11/90 under Notice of Intended Action as ARC 1054A.

Chs 60,61

EPC
Cont.

Ch 121

Kennedy explained that new subrule 121.3(2) pertains to land application of petroleum-contaminated soils. Paragraph h was changed as a result of comments to indicate that the petroleum-contaminated soil should be applied only to soils classified as acceptable. Priebe wondered who would make that determination and Kennedy answered that it would be made on the basis of the U.S. Department of Agriculture soil classifications.

At request of Priebe, Farrell agreed to advise an Algona business as to the appropriate procedure for disposing of large amounts of lime-like material collected from a welding operation.

Ch 135

Landa told the Committee that amendments to Chapter 135 establish corrective action levels for petroleum contamination. They set out minimum requirements for the assessment of contamination at site closures; requirements for assessment of contamination after overexcavation of contaminated soils and acceptable analytical methods for determining petroleum contamination. Landa reviewed revisions following Notice.

Tieden asked if consultants who do the testing were licensed and Hamlin said there was no statutory requirement for licensing or permits. Hamlin touched on misinformation being spread by sales people and some consultants which he believed to be a big contributor to negative comments about the tank program. The Department is also aware of exorbitant fees charged by consultants for cleanups but they have no authority to regulate in this area. This would be part of the insurance program.

Doyle wondered if the Consumer Protection Division could protect the public from some of this. Bridson indicated it was being addressed through H.F. 447 and financial assistance. Williams and Company is directly involved in the cost aspects of this program and are exerting an effort to control cost measures.

Landa commented that discrepancies in those types of fees were not peculiar to underground storage tank programs.

Ch 209

Kennedy and Ribbens explained the amendments to Chapter 209 which were modified following Notice.

Tieden referred to 209.9 and observed the lack of a point system for ranking project awards. Ribbens stated that points were included with the criteria in the application material. They were omitted from the rules because they wanted to first see if changes in the program were necessary. Royce advised a weighting system to be included in the rules. Ribbens saw no problem and there was Committee consensus that an emergency amendment could be filed to accomplish this.

EPC
Contd.

Selective
Review

Ch 135

At the request of the ARRC, Environmental Protection Commission officials prepared a comparison between Federal and State Regulations for Underground Storage Tanks and, in particular, to discuss where state requirements are in addition to the federal regulations. Hamlin reported that Iowa rules were virtually identical to the federal regulations with the exception of statutory differences and the amendments to Chapter 135 discussed today. Those amendments are additions to the federal regulations but which do not address specific cleanup standards.

Hamlin distributed a comparison of the cleanup standards for several surrounding states and Arizona. The study revealed that Iowa was comparable to the other states. Illinois was more stringent and Missouri has a sliding scale. Kansas, Arizona and Minnesota have comparable standards. Priebe noted that Kansas and Arizona have much sandier soil.

Hamlin mentioned additional parameters in other states which must be analyzed, and this increases cost. He concluded that Iowa was comparable with the other states and, in many instances, was less stringent. Iowa still has groundwater standards essential to the program.

Kistenmacher distributed a packet of materials, including a letter he had sent to the 2000 plus petroleum marketers in Iowa and to all Iowa legislators. His intent was to assist them in complying with statutory deadlines and to ensure participation in the legislation which allows them to participate in the 75/25 percent underground tank contamination cleanup program. Kistenmacher displayed various charts showing differences between Iowa and federal law on compliance dates.

There was consensus that the big concern was meeting the time frames. Bridson observed that compliance dates on the first chart were exactly the same as those adopted by DNR and EPA. Any discrepancy related to the insurance program which is implemented through the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board. That Board is in the process of adopting their rules. In order to get insurance, the shortened time schedule must be followed.

Kistenmacher referred to his chart on UST financial responsibility which compared Iowa dates for compliance with those of U.S. EPA.

There was discussion of insurance and upgrading hardware. Bridson was doubtful that private insurers would insure a tank that was not upgraded. Kistenmacher spoke of the confusion which prevails for the laymen on the UST issue. Bridson stated that the dates required by the Iowa Insurance Program are those originally established in Federal law and regulations. The feds have rolled back those dates on technical rules one year for the two categories of smaller tanks only. That was legislated in

EPC
Contd.

Iowa through the insurance program but legislation must roll back the dates. Schrader noted that financial responsibility for the small tank owner has been extended to 1991 by EPA and Bridson concurred. He added that it had not been extended in Iowa law for the Iowa insurance program so that one is still running at the earlier schedule.

Schrader expressed concern for the smaller service station operations which are being devastated financially. He pointed out that usually the operator was not responsible for the total years of pollution activity and he thought that should be addressed. He suspected there was overemphasis on cleanup of contaminated soils around the tanks. Much of the soil may be inert after many years. Schrader readily agreed that contamination which continually seeps into the groundwater must be addressed.

Hamlin stated that DNR Staff had a keen awareness of the social cost of the program. He was hopeful the General Assembly would study the insurance program and find ways to liberalize the fund. Hamlin commented on contaminated soil. He emphasized the difficulty of determining whether contamination is stationary or migrating. This would require extensive hydrogeological study of each site.

Pavich was of the opinion that the entire issue should be reviewed by the appropriate legislative committees. No formal action.

INSPECTIONS AND APPEALS

Appearing for the Department were: Sherry Hopkins, Sharon Gilbert, Jan Curtis, Rebecca Walsh, Beverly A. Zylstra, and Don Mendenhall. Also appearing were: Betty Lou Jones, Father Leonard Kenkel, Linda K. Tollari, Joseph G. Blunk, Harold Henning, John Glizer, Luan Ponsetto, Kenneth Gibson, Sr., Christina Brown, Jim Jones, Patty Egenberger, Russel Laird, Josephine Davis, John Haynes; Robert Nulans, Bingo Youth Foundation, Waterloo; Karen Feters, IOOF 106 and 181; Marcia Stamos, Mary Lee Walker, and Kay Bennett, IOOF 576; Ray Winslow, Ankeny Bingo; Jim Demarest, American Legion; and Charles Watkins, Park Fair Bingo.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Iowa targeted small business certification program. ch 25. Notice ARC 1257A, also

Filed Emergency ARC 1258A	9/19/90
Care facilities, 56.10, 57.15(5), 57.19(2) "m" (1), 57.22(3), 57.23(3) "c" (2), 57.24, 57.38(5), 57.45(4), 58.14(5), 58.21(11) "c," 58.27, 58.42(5), 58.49(4), 59.17(6), 59.26(11) "c," 59.32, 59.47(5), 59.54(4), 62.14(4) "b" (12), 62.17(1) "e," 62.22, 62.23(19) "d," 63.15(5), 63.22, 63.36(5), 63.43(4), 64.4(6), 64.35, <u>Notice</u> ARC 1256A	9/19/90
Administration, amusement concessions, social gambling, bingo, rescind chs 100 to 105, new chs 100 to 103, <u>Filed</u> ARC 1211A	9/5/90

Ch 25

Walsh described revised Chapter 25 as an emergency filing necessary to comply with 1990 Iowa Acts S.F. 2274 relative to qualification as a targeted small business. Language pertaining to performance bond waivers and specified fraudulent practices which could result in the decertification of a targeted small business was expanded. The conditional certification process was defined and an application processing fee was initiated. Clarifying language suggested by the ARRC addresses recent transfers of ownership. Walsh continued that comments received at

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AND APPEALS
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a public hearing held yesterday and written comments received from the Attorney General's office and the Board of Regents would be considered.

Royce pointed out that the rules were also under Notice and that any further modifications could be made in the final adoption. No Committee action.

56.10
et al.

According to Walsh, amendments to 56.10 et al. eliminate conflicts between the rules and current department practice, add classification of violation codes, and implement legislation relative to a resident's personal funds or property if used without written consent. Comments received at a public hearing yesterday will be evaluated.

Royce raised question on behalf of Blaine Donaldson, Care Facility Administrator, with respect to space in the grille work around the fan. Oliver was aware of Donaldson's concern which involved the Department's construction rules. The Department was willing to modify the rules so they would not conflict with manufacturers' dimensions. However, they were waiting for documentation from manufacturers which would be sent to the ARRC.

Chs 100 to
103

Walsh summarized intent of adopted rules intended to clarify expectations of persons participating and operating gambling occasions in Iowa. She stated that 7 public hearings were held throughout the state with extensive participation which resulted in modification following the Notice.

Pavich quoted from 481--103.9 which provided in part that "Each location shall be easily identified with the name of the licensee on the exterior of the building." He asked if the name must be on the building. Mendenhall responded that intent was for the name of the licensee to be outside of the location on a sign. He was not aware of any churches that do not have identification. Pavich thought the language could be interpreted to mandate that the name be on the wall of the building and he suggested clarification.

Pavich also asked if the state could dictate to a non-profit organization on how they can spend their money. Mendenhall was familiar with some rulings but did not believe they were relevant to bingo. He recalled that the issue involved was tax exempt status and nonprofit status. In other words, a charity would be required to limit administrative costs to a certain percent.

Schrader's constituents had concern regarding volunteers being precluded from playing bingo during an occasion in which they work--103.7(4). He suggested striking the words "volunteers" and leaving "paid workers or the security guards". Mendenhall indicated that this issue was being reviewed with consideration being given to using the definition provided in the Code as far as conducting a game. He pointed out that concession workers were not

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prohibited from playing bingo. Clark suggested providing for exclusion of the volunteers only during time in which they work. Mendenhall was relying on Code language but was willing to review the law and rule.

Priebe thought "the" caller should read "a" caller in 103.13(1), first unnumbered paragraph. He questioned 103.12(b)(2) which stated, "If packets are assembled by the organization, the number of each category and series used in the packet must be recorded separately." Then paragraph c(1) of the subrule provided that: [O]nce a roll of tickets has been started, tickets from that roll shall be issued consecutively...." Priebe failed to see how the provision could be implemented with six or eight people selling those tickets. He also reasoned that 103.13(2)c(3) was in conflict with c(1).

Mendenhall indicated that the Department was considering possible clarification in this area. He emphasized that the rule contained a suggested method of identifying the number of hard cards sold or played. It was not a requirement.

Mendenhall stated that their purpose was to identify the number of hard cards sold and they wanted to avoid a difficult process.

Fetters spoke of problems in keeping track of the paper strips--103.13(2)b(1). She thought a count on sales for a night would be sufficient.

Winslow noted that players have a right to select their cards and if they make random selections, it would be impossible to keep accurate records. Mendenhall reiterated that the roll tickets are to be used only for hard cards. With respect to the paper games to which Fetters referred, Mendenhall said they were asking only how many of this type of paper were used during a game. He pointed out that the word "series" should be "serial number" in 103.13(2)b(1).

In response to question by Stevens as to cost for each game being the same, Mendenhall said that 103.4(4) would be clarified.

Mulans recalled that several years ago the Bingo Youth Foundation was started to support the Boys and Girls Club. They were hesitant to identify the operation with "Boys and Girls Club Bingo," and instead spent \$1700 for a sign that reads "Bingo Youth Foundation." The licensee is the Boys and Girls Club. Mendenhall explained their intent in requiring the name of the licensee on the sign. He said that bingo was not a commercial business but is a nonprofit charitable venture. The organization is the licensee and the operator is responsible for the operation. Therefore, it should be identified. In addition, the public should know where the receipts are going. Mendenhall concluded that if an organization chooses to

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discontinue operation, a new organization should be identified as the recipient of the bingo funds. Mendenhall advised that the Bingo Youth Foundation sign would be acceptable if it indicated "Proceeds to the Boys and Girls Club."

Bingo operators continued to question the requirement for the name to be outside the building. Mendenhall was not certain that display of the sign inside the building would cause difficulty. He was amenable to further study of the matter. Priebe thought the rule should be modified to allow discretion in placement of the sign. Pavich favored some guidance in the rule as to placement. His preference was the lawn as opposed to on the building. He agreed that the recipient of the bingo funds should also be identified.

Gibson brought up the question of City Code restrictions relative to signs.

Schrader voiced support of the Department's position.

Priebe recognized the importance of the sign but had no preference for inside or outside. He disliked Bingo signs on a church. Tieden took the position that a bingo sign should clearly indicate the recipient of the funds and be located outside the building.

Gibson voiced opposition to requiring a ticket for each hard card purchased. Mendenhall reiterated that the rules list than as an option but sure method of keeping track of hard cards.

Mendenhall advised Fetters that announcement of gross receipts was statutory.

Question was raised as to age restrictions for children in a bingo hall. Mendenhall stated there were no age restrictions since initially bingo was considered a family activity in the church.

Mendenhall discussed the fact that social gambling was prohibited where beer or liquor is sold. Beer and liquor cannot be sold at an American Legion that plays bingo. There was no formal action.

Pavich in the Chair.

PUBLIC
EMPLOYMENT
RELATIONS
BOARD

Appearing for the Board were Jan V. Berry and Susan M. Bolk and the following was considered:

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Fees of neutrals, amend and transfer 7.2 to 1.8. Notice ARC 1260A 9/19/90

1.8

Berry explained amendment to renumbered rule 1.8 pertaining to fees of neutrals which are paid by a 50-50 split between the parties of the dispute. Berry pointed out that the state would be involved only if collective bargaining agreements proceed to the fact finding and interest arbitration stage of the resolution. There are six contracts in effect between unions and the state of

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Contd.

Iowa. He added that this fee was applicable to grievance arbitrators selected from a list maintained by the Board and if the state collective bargaining agreement provides for arbitrators by request, the limitation on fees would apply. Berry said that Iowa fees were very low compared with other states. He indicated that much comment had been received on the proposed increase. There has been no resistance and most believe that \$375 per day is inadequate. There is concern about decline in the availability of qualified individuals and Berry suspected that the final rule would show a large increase.

Public comment also revealed a willingness for Iowa to adopt the philosophy of Wisconsin and Illinois--let the market control. The Board is hesitant to take that approach at this time because of budgetary problems for the small local union unaffiliated with an international. No formal action.

PUBLIC
HEALTH
DEPARTMENT

Jane Schade and Carolyn Adams presented the following amendments for the Department:

PUBLIC HEALTH DEPARTMENT[641]
Office of rural health, 110.4(4), 110.4(6). Notice ARC 1244A 9/5/90

Ch 110

Schade summarized the changes and there were no questions.

ECONOMIC
DEVELOPMENT
DEPARTMENT

Appearing for the Department were: Melanie Johnson, JoAnn Callison, Mary Kay Baker, Mike Miller and Lane Palmer who presented the following:

ECONOMIC DEVELOPMENT. IOWA DEPARTMENT OF[261]
Retraining program, 6.2, 6.4, 6.6(5)"a"(4), 6.6 (5)"b"(1), 6.6(5)"b"(13) and (14), 6.8, 6.8(1) to 6.8(4), 6.8(6), 6.8(12), 6.8(15). Notice ARC 1238A 9/5/90
Self-employment loan program, 8.3(7), 8.4(2). Notice ARC 1237A 9/5/90
Youth affairs, 14.3(7)"b," 14.3(8)"a" and "b," 14.4(1), 14.4(4), 14.5(2), 14.5(5)"a" and "c," 14.7(5). Notice ARC 1235A 9/5/90
Youth affairs, 14.4(4), 14.7(5). Filed Emergency ARC 1236A 9/5/90
CDRC nonentitlement program, 23.2, 23.4(3)"c," 23.5(1)"c" and "i" to "k," 23.6(3), 23.6(4), 23.6(8), 23.7(1)"f," 23.7(5)"c," 23.7(9), 23.8(1)"a," 23.8(2), 23.8(4), 23.8(5), 23.8(8)"f," 23.9(2), 23.9(4)"c," 23.9(6), 23.9(6), 23.10"5," 23.11(2), 23.11(3)"d," 23.11(6)"d," 23.11(7)"d," 23.11(9), 23.12(2), 23.12(6), 23.12(7), 23.12(8)"g," 23.12(9), 23.13(3)"c" and "d," 23.13(6), 23.13(11), 23.13(13), 23.14. Filed ARC 1241A 9/5/90
Iowa rental rehabilitation program, 26.1, 26.3(2)"a," 26.3(3)"c," 26.3(4)"b," 26.3(4)"d," 26.5(2)"d"(15) to (17), 26.6(5), 26.7(2)"d." Filed ARC 1240A 9/5/90
Rural community 2000 program, 28.2, 28.3(1), 28.4(1) to 28.4(3), 28.4(4)"b," 28.4(5)"c," 28.5(2), 28.5(3), 28.5(4)"c," 28.6(1), 28.6(3)"a," 28.7(1), 28.7(3). Filed ARC 1239A 9/5/90
Value-added agricultural products and processes financial assistance program, ch 29, Filed Emergency After Notice ARC 1242A 9/5/90
Community builder program, ch 80. Notice ARC 1243A 9/5/90

Ch 6

Callison told the Committee that amendments to Chapter 6 were clarifying with respect to application procedures and they also redistribute point criteria to aid smaller businesses to compete for the program. As a result of many comments, the Department plans a number of changes. Rather than changing the point criteria which is considered to be very fair and objective, they plan to add bonus points for small businesses under a certain size. They want to avoid placing companies at a disadvantage with competitors. No Committee action.

8.3, 8.4,
Ch 14

Callison summarized amendments to Chapters 8 and 14. No Committee recommendations.

ECONOMIC
DEVELOPMENT
Contd.

Palmer explained amendments to Chapters 23, 26 and 28.
No questions.

Ch 29

There were no questions on Chapter 29.

Ch 80

Palmer stated that Chapter 80 would implement 1990 Acts, H.F. 705, pertaining to funding for community planning programs.

UST
BOARD

Daniel Pitts Winegarden, Insurance Division, presented the following and there were no questions:

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
Determination or adjustment of cost factor—credit permitted against charge, 5.3. Filed ARC 1252A 9/19/90

INSURANCE
DIVISION

The following rules of the Insurance Division were reviewed by Daniel Winegarden, Executive Assistant.

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181] "umbrella"

Unfairly discriminatory acts or practices, 15.84. Filed ARC 1227A 9/5/90
Medicare supplement insurance minimum standards, ch 37. Filed ARC 1285A 9/19/90

15.84

Winegarden described 15.84 as response to the Carruthers Case which began before the Iowa Civil Rights Commission. The rule prohibits discrimination based solely on income. No Committee action.

Ch 37

Winegarden offered detailed explanation of Chapter 37 which sets standards for both Medicare Supplement Insurance and Long-term Care. The rules follow the NAIC Model Act and policies must meet these standards. Winegarden outlined requirements in the federal standards, which include a 200 percent cap on an agent's first year premiums. This consumer protection device mandated by federal law has generated opposition from agents. Winegarden spoke of threat of the federal government to take direct control of this market if states fail to regulate.

In response to Royce, Winegarden said there were no provisions in current federal law to penalize Iowa for failure to act by the December 13 deadline. He continued that the Division of Insurance wants to avoid loss of jurisdiction since they have a good record for responsiveness to consumer complaints.

Winegarden explained in detail Appendix A of the rules-- Medicare Part A and Part B, services and benefits. Doyle raised questions as to how the rules would apply to state employees aged 65. Winegarden indicated that was another issue since Blue Cross/Blue Shield provides a Medicare carveout which will cover everything that Medicare does not cover. Doyle mentioned a Task Force which has been appointed to study the possibility of a group supplement program for all government retirees. Winegarden was aware of an interim committee meeting on that issue earlier this year where the Division of Insurance provided some information on differences between various

INSURANCE
DIVISION
Contd.

city and county and state programs. He agreed to provide information to the Committee.

Schrader spoke at length about his concern about mandated benefits by the national group. He contended there could have been some very volatile issues in this mandate other than just the issue of compensation of agents. Schrader favored a delay of the rules for further study before the December 13 deadline mentioned by Winegarden. He thought it was regrettable that the insurance industry which communicated their dissatisfaction with the rules, failed to appear today. A delay would give them another opportunity. Schrader took the position that Division actuaries should address the administrative cost of an insurance company, their loss ratios and their cost of administering the insurance. He was concerned that restrictions were limited to one group of people--the agents.

Motion

Schrader moved that rule 37.10 be delayed for 70 days and placed on the agenda for the November meeting.

Schrader referenced letters from interested persons concerning the rules. It appeared to him that the Federal government was holding "a hammer with some unpassed legislation in Congress." Winegarden responded that states which adopt the model language will have a certified program and will not be subject to more severe standards from federal. He added that sale of uncertified policies would not be prohibited but competitors across state lines would be selling certified policies. This could create competitive disadvantage for agents because of credibility or appearances.

Winegarden spoke of the fact that insurance is a state-regulated industry and Iowa has had great success at being effective. He reiterated that there were growing moves in Washington to go to federal regulation of insurance because insurance companies do business across state lines. Winegarden saw the role of NAIC as being one to impose uniformity to the extent possible by offering model legislation which addresses concerns across the 50 states. He was aware of controversy over the 200 percent premium cap but questioned the wisdom of agents attempting to block it this time. He was convinced that the next hammer will be harder and more severe.

Schrader took the position that having insurance commissioners of the 50 states drafting model legislation which states must adopt or face the consequences of the federal government was less than ideal. Winegarden emphasized that this was a relatively unique situation where the federal government has essentially acted through the NAIC. Other NAIC models are "voluntary" with no potential penalties coming from the federal government.

Winegarden explained to Schrader that the NAIC was not the certifying body but the supplemental health insurance panel created under federal law--the "ship panel." This

INSURANCE
DIVISION
Contd.

panel does include state insurance commissioners which was an accommodation at the federal level to attempt to include state insurance regulators in the resolution for the administration of a federal reform.

Winegarden stressed that certification is not possible without the 200 percent limit. He quoted from communication from the federal government which provided in part, "that in order for a state's program to be approved by the ship panel, the state must specifically address each of the areas covered by the NAIC model by adopting provisions that are equal to or more stringent." That is, in order to be certified by the ship panel, Iowa would have to have 200 percent or stricter. Winegarden indicated that some states may adopt level commissions. This would mean that the first year commission could be no different from the commission for renewing the policy in year 2, whereas, the 200 percent cap says that the first year can be 200 percent greater than the continuation. The reason for the cap was that a major complaint of Medicare supplement policies was a practice called "twisting" or persuading insured to replace policies when not in their best interest. Another problem has been sales of duplicate coverage. Winegarden concluded that there were serious problems of fraud and abuse in the Medicare supplement area.

Tieden was not supportive of a 70-day delay.

Priebe had not been contacted by any agents in his area.

Winegarden commented that in fairness to Schrader, the state has not typically been very intrusive in the area of contractual structures of the commissions and the Iowa Division would probably not be taking an initiative on this point without the pressure from the national level.

Doyle and Winegarden discussed the present exemption of insurance from the Sherman Act.

With respect to the contract between agents and company, Winegarden said the amount of the commission was not limited--only the payment structure. There is direct incentive for continuation of the policy, both for the agent and company. Consistently, the rules contain disincentives for replacing existing policies. Part of the consistent policy throughout the federally mandated model is that some of the confusion and marketing practices that have been epidemic in this particular market will be eliminated.

Schrader reasoned that this new regulatory area with a step toward level commission year by year, could work against the consumer. Winegarden responded that level commission does not mean that the commissions between different policies would be identical but that the commission on a policy year 1 to year 2 would be the

INSURANCE
DIVISION
Contd.

same and into the out years of a policy. However, he agreed there were incentives for having agents available to service clients in the state.

In the event of a delay, Winegarden encouraged the ARRC to invite input from consumer representatives.

Winegarden advised Doyle that he was aware of 4 or 5 license revocations for "twisting" in the last six months.

Motion
Lost

Schrader repeated his motion to delay 191--37.10(514D) for 70 days. The motion lost with 2 dissenting votes. Clark absent. Priebe in the Chair.

Recess

Chairman Priebe recessed the meeting for lunch at 12:20 p.m.

Reconvened

The meeting was reconvened at 1:20 p.m. by Chairman Priebe who called on Lloyd Jessen, Executive Secretary, Pharmacy Examiners Board for the following:

PHARMACY
EXAMINERS

PHARMACY EXAMINERS BOARD[657]

PUBLIC HEALTH DEPARTMENT[641] "umbrella"

Hearings—administrative law judge, 1.2(5)"a," "e," and "g,"	Filed ARC 1275A	9/19/90
Licensure—examinations, 2.1, 2.9, 2.10(1), 2.10(2)	Notice ARC 1279A	9/19/90
Iowa drug law examination, 2.10(1)	Notice ARC 954A Terminated ARC 1274A	9/19/90
Change of pharmacist in charge, 3.4(6)	Notice ARC 1282A	9/19/90
Pharmacist-intern, 4.1	Filed ARC 1276A	9/19/90
Eligibility for reciprocity, 5.4	Notice ARC 1283A	9/19/90
Initials of dispensing pharmacist required on prescription label, 8.9(5)"a," 8.14(1)"h,"	Filed ARC 1277A	9/19/90
Documentation requirements of pharmacy automated patient record systems, 8.11(3)	Notice ARC 1284A	9/19/90
Controlled substances—who must register, 10.2	Notice ARC 1285A	9/19/90
Controlled substances—who can administer, 10.16	Filed ARC 1278A	9/19/90
Drugs in emergency medical vehicles, 11.1(1), 11.1(3) to 11.1(5), 11.1(8), 11.2(6) to 11.2(10)	Notice ARC 1286A	9/19/90

1.2(5)

In review of amendment to 1.2(5), Jessen said they would file an emergency amendment to delete the words "who is an attorney" from paragraph a. This is necessary since not all ALJs are attorneys. [Amendment was published in 10/31/90 IAB].

2.1 et al.

Jessen explained amendments to Chapter 2. He noted that 2.10(2) would place a time limit for passing all components of the examination.

11.1, 11.2

There was brief discussion of amendments to Chapter 11 which were intended to clarify responsibilities for drugs in emergency vehicles. Priebe was advised that emergency vehicles in rural areas would be covered.

Tieden wondered who had the liability for EMV drugs and Jessen said those drugs would be under the base pharmacy.

There were no questions on the other amendments.

DOT

The following Department of Transportation agenda was before the Committee:

TRANSPORTATION DEPARTMENT[761]

Primary road access control, ch 112	Filed ARC 1205A	9/5/90
General requirements and covenants for highway and bridge construction, 125.1		
Notice ARC 1077A Terminated	Notice ARC 1255A	9/19/90
Motor vehicle equipment—front windshields, windows or sidewings, 450.7	Notice ARC 1201A, also	
Filed Emergency ARC 1200A		9/5/90
Regulations applicable to carriers, 520.1(1)"a" and "b," 520.1(2), 520.4	Notice ARC 1202A, also	
Filed Emergency ARC 1203A		9/5/90
Chauffeur's license, 800.10(5)	Filed Emergency ARC 1204A	9/5/90
Removal of tracks from crossings, 800.20	Filed ARC 1199A	9/5/90

DOT
Contd.

Appearing for the Department were: Walt McDonald, Gordon Sweitzer, Jan Hardy, Jody Johnson, John C. Hocker, E. Rees Hakanson, Will Zitterich. Also appearing were: Kevin Vinchattle, Iowa Grain & Feed Association; Lt. Mike Krohn, Iowa DOT Enforcement; Scott Weiser and Craig Luciano, IAMTA.

Ch 112

No questions regarding Chapter 112.

125.1

Hocker provided background on amendment to 125.1 which was modified to incorporate three revisions to the standard specifications for bridge construction. Hocker said that one revision was housekeeping for terminology. Two articles were added: 1103.08 Contract Bids--which will require prime contractors to disclose names of their subcontractors; 1102.18 relates to disadvantaged business enterprises. Those specific additions were published with the rule.

Priebe asked if the rule were acceptable to the Associated Contractors and Hocker replied in the affirmative.

Royce observed that the actual detail of the so-called DBE program was still not set out in the rule--1102.18 adopts by reference the federal material. He continued that the federal material was highly detailed and somewhat controversial. He saw the real issue to be whether adoption by reference was acceptable or whether the entire package of regulations should be set out.

Priebe recalled that the matter was referred to the General Assembly last year and Royce thought intent of the legislation was to set out the DBE program in the rule. Priebe discussed his opposition to Department Staff making decisions and excluding the Commissioners from any of these hearings. Hocker interjected that the rule making would be before the Commission at their November 6 meeting. Sweitzer added that Department procedures had been changed and rules are routinely sent to the Commission for their concurrence. That presentation also constitutes a hearing.

Priebe quoted from H.F. 2201, "The Department of Transportation shall promulgate rules," and reminded that Code chapter 17A was very specific on legislative oversight. He concluded that good government involved having public input.

Schrader had expected to see all the "nuts and bolts" changes. Hocker explained in detail the use of Supplemental Specifications which contains nuts and bolts information. Pertinent supplemental specifications are attached to each plan that gets a bidding proposal through the Contracts Office. The Department believes this is the most widespread way of disseminating that information. The same policy prevails with their proportions for concrete paving. Specifications at a given time are attached to a particular project and remain for the duration of the

DOT
Contd.

project. Hocker emphasized that anyone requesting a bidding proposal will receive all relevant specifications.

There was discussion of the fact that full text of manuals are not published in the Iowa Administrative Code--they are adopted by reference to a date certain. Priebe suggested inclusion in the rule that "any specification changes will be submitted with the bidding form." Hocker saw no problem if that were not already the policy.

Schrader still had some reservations about public participation on the DBE program. He suspected that the DBE contractors were not general contractors on those projects. Hocker assured him that information was available to all who request it. Hocker provided Schrader a copy of the Supplemental Specifications. No formal action.

450.7

Hardy told the Committee that new rule 450.7 clarified the current federal regulation concerning the amount of luminous transmittance required for driving visibility in a motor vehicle. It also provides for a physician's statement of an exemption from the requirement for persons who are suffering from a severe light sensitive condition.

Doyle recalled an ARRC objection to an existing rule on the subject because it was a double delegation. He viewed the new rule as an attempt to circumvent the objection since they still refer to the ANS standards which two courts have already ruled are not readily available. Because of the controversy, Doyle felt strongly that public input should have been provided. He continued that the Department was aware of legislative effort to clarify the law to authorize a rule that would be fair to those who desire that tint and to those small Iowa businesses that apply it. It was his opinion that the rule should not have been emergency adopted. He commended the Department for the dark window exemption, however--450.7(3).

Motion
to Object

After further discussion, Doyle moved to object to subrules 450.7(1) and (2) on the basis that the adoption was an unreasonable use of Code section 17A.5 and public input was not provided.

Doyle clarified that the issue was whether 450.7(1) and (2) should be filed on an emergency basis or whether prior to its implementation, it should get full notice and public participation.

Hardy defended the Department's position in the emergency adoption since the standard of transmittance was in existence and the dark window exemption will benefit the public.

DOT
Contd.

Schrader saw no problems with emergency filing in that it merely clarifies a previous rule. He saw no need for public input.

Motion
Deferred

Doyle asked to defer his motion until Clark returned.
So ordered. *See p. 4485*

Royce advised that an emergency rule was permanent but would expire in 180 days from the date an objection is filed. Hardy pointed out that Notice of Intended Action was submitted simultaneously with the emergency filing. No further action.

520.1,
520.4

According to Krohn amendments to Chapter 520 will bring Iowa into compliance with the federal regulations for motor carriers.

Doyle questioned Krohn as to allowable length of a load on a single trailer flatbed. Krohn advised that federal truck and trailer law allows some extension of the load beyond the flatbed, depending on the total length and particular configuration.

Kistenmacher expressed opposition to the emergency adoption of the rules which impact 2000 plus gasoline and LP fuel oil trucks and drivers of his industry. He had intended to attend the oral hearing on October 6 but learned from a friend that day that this hearing had been canceled. When Kistenmacher called the DOT office on 2nd Avenue, he was informed that he would have to wait for the Commission meeting in late October.

Kistenmacher noted on a federal basis, all annual inspections of these vehicles must be done in registered repair shops. With only 3 or 4 registered repair shops, he was concerned about compliance. He also had questions as to how exemptions for gas trucks constructed in certain years would be affected by these rules.

Schrader was in agreement with the assessment by Kistenmacher and he reviewed the Department's reasons for the emergency filing. He reasoned that immediate enforcement was more benefit to the department than to the general public. Schrader was doubtful that safety of the general public would have been endangered. He concluded that public input provides a means for discussion of pros and cons to ensure that rules are consistent with the federal regulations.

Motion
to Object

Schrader moved to object to the emergency adoption of amendments to 520.1. Motion carried.

Royce prepared the following:

In a review held on October 10, 1990, the committee voted to object to the "emergency" filing of ARC 1203A. This filing contains amendments to 761 IAC 520, and is published in IAB vol. 13, no. 5 (09-05-90).

DOT
Contd.

It was the opinion of the committee that "emergency" filing the rule without notice or public participation was unreasonable and constituted an abuse of the "emergency" rule-making procedures. This filing adopts by reference federal regulations relating to motor carriers. The committee does note that Iowa law requires our rules to be consistent with federal regulations; but the committee feels that this does not automatically eliminate the need for notice and public participation prior to the implementation of federal rules. Consistent does not mean identical, and implies that Iowa rules can vary, at least to some extent, from the federal regulation. That possibility does justify providing for public participation prior to the rules implementation.

600.10(5) McDonald offered detailed explanation of amendment to 600.10(5) which provides for extending a chauffeur's license beyond it's expiration date. There were no recommendations.

800.20 Hakanson presented new rule 800.20. No questions.

Objection Deferred to November Doyle requested to defer his objection to 450.7(1) and (2) until the November meeting. So ordered.

No Reps There were no recommendations for the following and no Agency Representatives were requested to appear.

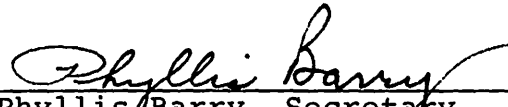
ELDER AFFAIRS DEPARTMENT[321]
Retired senior volunteer program. 14.1(1), 14.1(2), 14.2 to 14.5. Filed ARC 1245A 9/19/90

PERSONNEL DEPARTMENT[581]
Iowa public employees' retirement system. 21.2(3), 21.4(1)"f.", 21.4(3)"a.", 21.5(1)"a.", "c" and "d.", 21.6(9) "b" and "c.", 21.8(1)"a.", 21.8(2) to 21.8(4), 21.9(1)"a.", 21.11(3), 21.11(7), 21.12(1), 21.12(5), 21.12(6), 21.12(7)"a" and "b.", 21.12(8)"d" and "e.", 21.13(1), 21.13(2)"c.", 21.13(6)"a" and "c.", 21.13(10), 21.14(2), 21.14(4), 21.16(2), 21.17(1), 21.19(1), 21.19(5), 21.22(1), 21.22(1)"c.", 21.22(3), 21.24(1) to 21.24(3), 21.24(5), 21.24(7). Filed ARC 1266A 9/19/90

The next regular meeting was schedule for November 13 and 14, 1990. Statutory dates would be scheduled in January on the 8th and 9th.

Adjourned Chairman Priebe adjourned the meeting at 2:15 p.m.

Respectfully submitted,


Phyllis Barry, Secretary
Alice Gossett, Admin. Asst.

APPROVED:

Chairman