

MINUTES OF THE SPECIAL MEETING OF THE ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of meeting The special meeting of the Administrative Rules Review Committee (ARRC) was held on Monday and Tuesday, August 2 and 3, 1993, in lieu of the statutory date of August 10, in Senate Room 22, State Capitol, Des Moines, Iowa.

Members present Representative Janet Metcalf and Senator Berl E. Priebe, Co-chairs; Senators H. Kay Hedge, John P. Kibbie and William Palmer; Representatives Horace Daggett, Minnette Doderer, Roger Halvorson and David Schrader. Excused first day, Senator Sheldon Rittmer and Representative Minnette Doderer; excused second day, Representative Metcalf and Senator Rittmer.

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

Convened Co-chair Priebe announced that a quorum was present and called the meeting to order at 10 a.m.

Minutes Metcalf moved that the minutes of the July meeting be approved. Carried.

AGRICULTURE Ch 64 Walter Felker gave a brief overview of filed amendments to 64.153(1) and 64.156(2), published in IAB 7/21/93, relating to additional pseudorabies disease program areas and standardized testing for monitored feeder pig herds. No questions.

SOIL CONSERVATION DIVISION Representing the Division were James Gulliford, Director and William McGill, Bureau Chief, Financial Incentive Bureau, for the following agenda:

SOIL CONSERVATION DIVISION[27]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"
 Iowa financial incentive program for soil erosion control — appropriations, 10.41, 10.41(2), 10.41(7),
Filed Emergency ARC 4085A 7/7/93
 Organic nutrient management program, ch 13, Notice ARC 4121A 7/21/93

Ch 13 Proposed new Chapter 13 was reviewed first. Maynard Jayne, Iowa Cattlemen's Association, questioned inclusion of "air" in 13.72(1) which stated, ". . . in a manner that does not degrade air, soil or water resources." He pointed out that Iowa had no odor regulations applicable to livestock operations.

Gulliford responded that this language was taken from the specifications of the Soil Conservation Service but he would review the matter.

With respect to standards and construction specifications in 13.73(1), Jayne suggested additional language to provide that criteria be consistent with sound engineering principles—to utilize private consultants or other outside capable resources. Division officials were amenable.

10.41 There was brief review of revisions in 10.41 which were intended to implement appropriations for soil erosion control.

Priebe and Gulliford discussed the allocation of funds for the Big Spring Basin located in Clayton County. Gulliford advised that existing structures damaged by this year's torrential rains would be eligible for federal dollars (small dams,

SOIL CONS.(Cont.) terraces, etc.) He concluded that protection of the waters was more cost effective than rehabilitation. No action.

Metcalf in the Chair.

CORRECTIONS Fred Scaletta reviewed the following agenda:

CORRECTIONS DEPARTMENT[201]

Gifts to inmates, 20.5, Filed ARC 4094A 7/7/93
 Mt. Pleasant Correctional Facility, 24.2, Filed ARC 4095A 7/7/93
 North Central Correctional Facility, ch 26, Filed Emergency After Notice ARC 4092A 7/7/93
 Supervision under interstate compact, 46.3(4), Filed ARC 4093A 7/7/93

20.5, 24.2 No questions or recommendations on amendments to 20.5 and 24.2 filed in ARCs 4094A and 4095A.

Ch 26 In review of Chapter 26, Daggett was informed that the North Central Correctional Facility was for men and the women's facility was located in Mitchellville.

46.3 No comments on amendments to 46.3(4).

INSURANCE The following Division agenda was before the Committee:

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Regulation of insurers — submission of quarterly financial information,

diskette filing, 5.3, 5.26(6), Notice ARC 4083A 7/7/93

Life and health reinsurance agreements, ch 17, Notice ARC 4084A 7/7/93

Adoption of NASAA statements of policy, 50.55, 50.56, 50.57(4) to 50.57(8),

50.58 to 50.67, 50.80, Notice ARC 4111A 7/21/93

NASAA guidelines, 50.57, Filed ARC 4124A 7/21/93

Small group health benefit plan, ch 71, Notice ARC 4122A, also

Filed Emergency ARC 4123A 7/21/93

Well-child care, ch 80 title, 80.1, 80.3, 80.4(1), 80.5(1), Filed Emergency

ARC 4115A 7/21/93

Jo Page, Thomas Alberts and Dennis Britson were in attendance.

Priebe in the Chair.

5.3, 5.26 In review of amendments to 5.3 and 5.26(6), Royce was advised that the format drafted by the National Association of Insurance Commissioners was followed by all states.

Ch 17 No questions on proposed new Chapter 17.

Ch 50 Britson reviewed proposed amendments to Chapter 50, regarding NASAA statements of policy and guidelines, which would be adopted to a date certain.

Britson explained statutory authority [§502.67(2)] for the uniform guidelines. He also advised that most of the securities sold in Iowa were out-of-state issues and uniform guidelines were advantageous to smaller states.

Halvorson was advised that no comments were received from local securities industries on these proposed guidelines.

No questions or recommendations.

INSURANCE (Cont.) Page reported that Chapter 71 was filed emergency to implement the law which
Ch 71 required this type of policy to be available July 1.

Page introduced Kevin Howe, Counsel for the Small Group Board, who enlightened members on the proposed new chapter. These rules were based on the most recent version of the NEIC model rules. Priebe and Daggett expressed opposition to emergency adoption of rules and Page called attention to the Notice and scheduled hearing for August 12.

Barry requested the Division to make a concerted effort with the Adopted rules following Notice to adhere to the numbering scheme used in the IAC.

Kibbie inquired if small businesses were involved in establishing these rules and Page advised that the law dictates what the insurance company can or cannot do.

Ch 80

Filed amendments to Chapter 80 were discussed. Halvorson expressed concern with mandates over the years that affect the cost of health insurance. According to Page, an actuarial study revealed an increase of only 50 cents per child per month. There would be cost benefit over long term.

Priebe questioned availability of the Recommendations of the American Academy of Pediatrics from an Illinois address. Page explained that this information was only needed by insurance companies.

INSPECTIONS & APPEALS

Robert Haxton summarized the following agenda:

INSPECTIONS AND APPEALS DEPARTMENT[481]

Food and food service establishments — fees, utility sinks, storage temperature for shell eggs, minimum cooking temperature for ground beef, toilet facilities, 30.3(5), 31.1 "9" and "10," 32.1 "10" to "12," 32.3(5), Amended Notice ARC 4104A7/21/93

Discussion focused on a proposal to increase the internal cooking temperature of certain foods from 140° F. (as set out by statute) to 155° F. Haxton took the position that the Department had the authority to modify Code language by rule to ensure the health of the public. He cited the recent deaths from E coli. Royce was requested to research the Food Service Code before the amendments were adopted.

STATE PUBLIC DEFENDER

Rebecca Walsh and William Wegman, Public Defender, reviewed the following:

STATE PUBLIC DEFENDER[493]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Contracts for indigent defense, 1.4(1), 10.1, 10.3, 10.4, 10.6(3), 10.7, 10.8, 10.10, 10.11,

Filed Emergency After Notice ARC 4103A7/21/93

No questions or recommendations.

JOB SERVICES

It was noted that the Job Service Division agenda had been rescheduled for 3 p.m.

GENERAL SERVICES

Dale Schrader, State Vehicle Dispatcher, addressed amendments to 1.8 and noted the changes that were made following the Notice.

GENERAL SERVICES DEPARTMENT[401]

State vehicle dispatcher vehicle assignments, 1.8, Filed ARC 4102A7/21/93

Review centered on subrule 1.8(4) relative to vehicles made available for temporary assignment. The subrule provided for authorization of other substitutions by the vehicle dispatcher, Transportation Director or Executive

**GEN. SERVICES
(Cont.)**

Director of the Regents Board. Priebe and Metcalf concurred that DOT or Regents could overrule the decision of the vehicle dispatcher under this language. Metcalf pointed out that many other agencies also use state vehicles. Schrader explained that GS had no statutory authority over Regents or DOT vehicles. The two agencies were included in this rule because the original legislative directive required the vehicle dispatcher to write the rules relative to these agencies. Royce clarified that the dispatcher was authorized to adopt rules on fuel efficiency in vehicles, but he questioned if that authority extended to policing other agencies with their own fleets.

Hedge suspected the authority for the rules existed without enforcement power. He reasoned that should be corrected.

**Motion to Delay
70 days - 1.8(4)**

Priebe suggested delay to allow time for Royce to research the matter. Kibbie moved that subrule 1.8(4) be delayed for 70 days.

Schrader spoke in opposition to the delay since he was comfortable with the language to allow these agencies to police themselves.

Hedge saw the need for clarification of the statute.

Motion to delay 70 days carried with one dissenting vote by Schrader. It was agreed that subrule 1.8(4) would be placed on the ARRC agenda for October.

**COMMITTEE
BUSINESS
CSG Meeting
Wisconsin**

Priebe reported on the Midwestern Legislative Conference of Council of State Governments held in Madison, Wisconsin, and he advised a decision would have to be made as to whether an official Administrative Law Section should be created as part of NCSL or the CSG.

Barry reported that she had attended the National Association of Secretaries of State/Administrative Codes and Registers (NASS/ACR) Conference in Cleveland last week. The ACR Chairman, Dan Proctor, had attended the Wisconsin meeting and was hopeful the potential Section would consider meeting with the ACR group.

Royce and Barry spoke of the logistics—the cheapest and most effective move would be to merge with an existing organization and modify it somewhat to fit the legislative needs and then proceed together.

There was discussion, both pro and con, as to the structure of the different organizations and annual dues. It was noted that membership dues through CSG would average \$400 to \$500 annually.

Recess

Co-chair Priebe recessed the Committee for lunch and reconvened it at 1:30 p.m.

**ALCOHOLIC
BEVERAGES DIV.**

Janet Huston, Legal Advisor and Chief of Licensing and Regulation for the Division, was present for a special review of rule 185—4.8(123) and Code section 123.49(2)"h" concerning responsibility of licensees whose employees sell liquor to minors. Huston discussed enacted legislation which penalizes a licensee administratively for sales to minors—on the second sale the license would be revoked. She presented the following statistics. For the calendar years 1991, 1992 and through June 1993 there were 284 administrative penalties for sales to minors. Of these violations, 270 (95%) were first-time sales to minors which impose a \$300 civil penalty; 11 (4%) were second offenses which generate a 30-day suspension; and 3 (1%) were third-time sales which result in a 60-day

ALCOHOLIC
BEV. DIV. (Cont.)

suspension. There had been no revocations during the past two and one-half years for a fourth offense.

Huston continued that of the 284 violations, 254 were made by employees of licensees and the remaining by owner/operators. If a system of administrative sanctions were imposed on only the owner/operator (the small mom and pop store), it would place them at a distinct disadvantage. Administrative sanctions were not imposed when licensees sell to those aged 19 or 20.

Huston displayed packets available at no cost to licensees to notify customers that no sales of alcoholic beverages would be made to minors. She indicated videos were also available for training employees. Huston showed the Committee a 15-minute video on falsifications of IDs and how to identify them.

Halvorson questioned whether the system was really working since the employee had nothing to lose. In her eight years with the Division, Huston had knowledge of only one instance when an employee made an intentional sale to minors.

Speaking as a licensee, Halvorson favored stricter enforcement for those who make the illegal sales. Huston indicated they could be penalized quite severely on a first-time sale, depending upon the Code section under which they were charged.

Huston stated that the Division would support stricter penalties for those who attempt to purchase alcoholic beverages with false IDs.

Kibbie was advised that the owner of a carry-out beer permit was not required to carry dram shop liability insurance—the Supreme Court had upheld this. No action.

EPC

Anne Preziosi, Legal Counsel, Christine Spackman, Darrell McAllister and Randy Clark represented the Environmental Protection Commission for the following agenda:

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Controlling pollution — exemptions to requirement for air quality construction permit, 22.1(2),

Notice ARC 4119A7/21/93

Water quality standards, designated uses, 61.3(5)"e," Filed ARC 4125A7/21/93

22.1

There were no recommendations for amendments to 22.1(2).

61.3

McAllister summarized filed rule 61.3(5)"e" regarding water quality standards of eight streams and the impact on the community of Winthrop. He advised that the repair and maintenance of drainage ditches had no impact on water quality standards. No action.

Ch 215

Clark reviewed filed new Chapter 215, Packaging—Heavy Metal Content.

Mike Lynch, Illinois Tool Works Signode, on behalf on members of the Steel Strapping Institute, Acme Packaging Corporation, Gibraltar Steel and Samuel Strapping Systems, expressed concern as to the impact of these rules on steel strapping manufacturers and their customers. He read from a prepared statement on file with the ACO. Lynch acknowledged the two changes made following the Notice but contended the rules failed to offer relief for steel strapping and the interpretation over process versus addition. Lynch continued that the issue was the tolerance level when certain elements were unintentionally introduced in the manufacturing process. He added that some states have removed the distinction

EPC (Cont.)

between "intentional" and "incidental" and created a level playing field. Other states have given steel strapping the exemption. Clark pointed out a provision for an exemption in a situation where there was no feasible alternative in the manufacturing process. Lynch interjected that the exemption process, at best, was four years. Clark clarified that there was no four-year limit, the exemptions were granted for two years at a time. Lynch had misread the statute and apologized.

Tim Smith, representing Steel Strapping Institute, pointed out that users of the steel strapping, e.g., brick layers, may have as many as five years' inventory on hand.

In response to Kibbie, Clark agreed to obtain information about other industries which might be affected.

Priebe suggested deferral of the rules until Wednesday to allow time for the Department to provide more information.

Schrader observed that the Department had been more liberal in creating the exemption than was stated in Iowa Code section 455D.19.

Halvorson took the position that the terms "intentional" and "nonintentional" should be addressed.

Deferral

Chapter 215 was deferred until 8:30 a.m., August 3, 1993.

**ECONOMIC
DEVELOPMENT**

Michael Miller and Donna Lowry, Administrator of Targeted Small Business Program, presented adopted amendments to rules 27.2 to 27.4 and 27.7 relating to financial assistance. The rules were published as ARC 4091A in IAB 7/7/93.

Metcalf referred to "unusual circumstances" as providing a possible waiver of limitations in 27.4(5) and inquired if awards might be requested because relocation was necessary due to flood damage. Miller responded that DED would be addressing a program for this area but not specifically under the TSB program.

Priebe reported on comments expressed at the recent NCSL meeting where states were considering alternatives to economic development programs. Emphasis would be placed on low-interest loans.

Miller commented that states were seeking ways where they are "not played off" against each other.

Eller advised Halvorson that about half of the awards were for less than the maximum (\$25,000). In reviewing the list, Halvorson noted several maximum grants for high-risk operations, e.g., restaurants. These grants could ultimately become donations, in his opinion.

No Committee action.

JOB SERVICE

Joseph Bervid and William Yost represented the Division for the following:

JOB SERVICE DIVISION[345]

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

Claims and benefits, benefit payment control — work search, partial claimants, recovery, voluntary quits, overpayments, 4.2(1)"c"(1) and (3), 4.2(2)"e," 4.6, 4.24(12), 4.25(35), 4.25(36), 4.25(39), 4.26(6), 4.26(17), 4.26(19), 5.7(6)"g," Filed ARC 4089A 7/7/93

No Committee recommendations.

Recess
Reconvened
EPC (Continued)

Co-chair Priebe recessed the ARRC at 3:15 p.m. to be reconvened at 8:30 a.m. Co-chair Priebe reconvened the meeting Wednesday, August 3 at 8:30 a.m. and resumed consideration of 576—Chapter 213, Heavy Metal Content, which had been deferred on Monday. Theresa Hay, DNR Legal Counsel, was present to respond to questions.

Discussion focused on "intentional" use of heavy metals during manufacturing or distribution. Hay spoke of other technologies being developed which may have potential in the future. Currently, there was no feasible alternative to the use of steel strapping. Exemptions have been granted by some states and requests made to the Coalition of Northeastern Governors. Hay explained how the exemptions could be granted in Iowa.

The statute provides that intentional introduction of any toxic elements during manufacturing or distribution would result in noncompliance. However, the law does set out several available exemptions when sufficient reason is shown. Hay maintained that the law was working as intended.

Halvorson recognized the obvious impact of these rules on industry and mentioned pursuing further clarification of "intentional" or "unintentional."

As to the number of industries in Iowa which would be affected by the rules, Hay did not have an exact number. She spoke of a variety of industries that use some type of packaging or packaging components containing toxic elements. She added that the burden on industry consists of the manufacturer submitting a letter which addresses exemption request requirements—there were about four manufacturers of steel strapping in the country.

Daggett remarked that with all the economic problems Iowa was facing due to the floods, it would be tragic to close down industries because of this rule.

Hay was not aware of anyone being put out of work or of any significant economic problems because of the law. The law was passed to discourage industry from using these toxic substances whenever possible—exemptions could be obtained. By doing this, it would provide incentive to continue searching for alternatives.

Motion to Refer

Priebe moved to refer 567—Chapter 213 to Speaker of the House and President of the Senate for referral to the appropriate committee.

Schrader voiced opposition since, in his opinion, industry had a problem with the law not the administrative rules. In researching the statute, he found the only difference between it and the rules regarding exemption language was that the rules were a bit more lenient. Schrader suggested that industry may want to lobby the legislature.

It was noted that six affirmative votes would be required to pass the Priebe motion.

Motion deferred

Halvorson moved to defer vote on the motion. Motion carried.

Priebe referred to ARC 4119A, amendment to 22.1(2), on controlling pollution and asked if this would affect tire burning. Hay advised Priebe that Rose Barr had applied for another grant but the decision has not been made on the latest round of grants. He had heard from a constituent that a grant was given to a Mason City operation which then doubled the charge for disposing of tires. His constituent

EPC (Continued)

also informed him that a large percentage of the tires burned at Mason City were coming from Wisconsin.

Priebe questioned Hay regarding Rose Barr's operation and Hay thought they were still shredding and selling tire chips for fuel.

Priebe asked the Department to follow up on the charges made at Mason City prior to the grant and what they are charging Iowa car dealers now to deliver to Mason City.

Priebe Motion

Doderer and Palmer arrived, at which time the vote was called on the Priebe motion to refer Chapter 213 to the General Assembly. Motion carried with Schrader recorded as voting "no."

HUMAN SERVICES

The following agenda was reviewed and those in attendance from Human Services included: Charles Palmer, Director; Mary Ann Walker, Rules Coordinator; Barbara Russell, P. C. Keen, Kim McMullen, Mike Murphy, Joan Anderson, Marcia Staub, Judy Dierenfeld, Anita Smith, Kathi Keller, Pat Winters, Deb Ozga, Harold Templeman, Kathy Ellithorpe and James Overland.

HUMAN SERVICES DEPARTMENT[441]

Developmental disabilities basic grant program, 1.7, ch 38 title and preamble, 38.1, 38.2, 38.3, 38.3(1), 38.3(3), 38.4, 38.5, 38.5(1)"c," 38.5(2), 38.5(3), 38.6 to 38.8, 38.10 to 38.12, Filed ARC 4063A 7/7/93

ADC eligibility — resources of stepparent, 41.6(2)"c," Filed Emergency After Notice ARC 4065A 7/7/93

Medicaid rates, 52.1(3), 78.1(2)"f," 78.3(12)"c," 79.1(2), 79.1(5)"u," 79.1(9)"d," 81.6(16)"c," Notice ARC 4069A, also Filed Emergency ARC 4070A 7/7/93

Commodity distribution programs, 73.4(3)"d"(2), Filed Emergency After Notice ARC 4066A 7/7/93

Medical assistance lien, 75.4, 75.4(1), 75.4(2), 75.4(4)"c," 75.4(5), 75.4(5)"a" to "c," 75.4(7), Notice ARC 4071A, also Filed Emergency ARC 4072A 7/7/93

Nursing care — statewide average cost to private pay person, 75.15(2), Filed Emergency After Notice ARC 4067A 7/7/93

Health insurance premium payment, 75.21(1), 75.21(3)"c," 75.21(5)"g" to "i," 75.21(6), 75.21(8), 75.21(11), Notice ARC 4118A 7/21/93

Medicaid management information system, 79.1(5)"d"(1) and (2), Notice ARC 4096A, also Filed Emergency ARC 4097A 7/21/93

Medicaid — repayment of identified overpayments or other erroneous payments, 79.2(2)"u," 79.2(3)"j," Filed ARC 4068A 7/7/93

Crisis child care providers, ch 118, Notice ARC 4073A, also Filed Emergency ARC 4074A 7/7/93

Child day care program, 130.2(6), 130.2(7), 130.3(1)"d"(1) and (2), 130.3(6), 130.4(3), 130.4(3)"e," 130.5(3)"d," 153.5(2)"d," 170.2(4), 170.2(5), 170.4(3), 170.4(7), 170.8, Notice ARC 4075A, also Filed Emergency ARC 4076A 7/7/93

Purchase of service, social services block grant and funding for local services, 150.2(1)"b" and "c," 150.3(3)"p," 150.3(4), 150.3(4)"a," 150.3(5)"a"(8), 150.4(1), 150.4(2), 150.5(3)"j," rescind ch 153, division II, Notice ARC 4099A 7/21/93

Purchase of service, payments for foster care and foster parent training — reimbursement rates, 150.3(5)"p" and "r," 156.6(1), 156.9, 156.9(1) to 156.9(3), 156.11(3)"c," Notice ARC 4078A, also Filed Emergency ARC 4077A 7/7/93

Increase in monthly allowance for children in independent living and monthly adoption subsidies, 156.12(1), 201.5(9), Notice ARC 4098A 7/21/93

Wrap-around funding program, ch 179 preamble, 179.1, 179.2, 179.2(3), 179.3, 179.4, 179.4(1), 179.4(2), 179.5, 179.6, 179.8(1), 179.9(1)"b" and "c," 179.11, 179.12(1), 179.12(2)"f," 179.13(1)"a," 179.13(2)"a," "c," and "e," 179.14, Notice ARC 4080A, also Filed Emergency ARC 4079A 7/7/93

Foster care services, 202.17, Notice ARC 4082A, also Filed Emergency ARC 4081A 7/7/93

SELECTIVE REVIEW — State cases

HUMAN SERVICES (Cont.)

Also present were Gary Guehnast, Humboldt County Supervisor; John R. Erikson, Harrison County Supervisor; Deb Westvold and John Easter, ISAC; Kit Olson, the Arc of Iowa; Julie Dettmann, Developmental Disabilities Council; Irene Howard, Story County; and Jay Brewer, Executive Director, DD Council.

At the Department's request, the special review of state cases was first on the agenda.

Special Review State Cases

C. Palmer, DHS Director, explained that if the State Case Program continued its growth of previous years, the deficit could reach \$500,000. At the end of the legislative session, when the Department knew the program was underfunded, they considered options. Obviously, one would be to discontinue new enrollees—developmentally disabled or mentally ill. The mentally retarded, by law, have a right to be covered in the state case program. Another alternative could be reduced services to those already in the program based on the assumption that the program would continue to grow at the same rate. Palmer opined that 30 to 32 percent was not unrealistic. He concluded that the situation was of great concern to county government, as well as to the Department, especially since the overall impact of the recent flood was unknown.

C. Palmer advised Halvorson that federal funds of \$855,000 for flood-related counseling would be distributed to mental health centers across the state. According to Templeman, information received from FEMA and the Red Cross cited 33 counties as having suffered the most damage. This money would be available for a 60-day period but requests were being made for additional aid available for up to two years.

C. Palmer readily admitted that there could be a significant impact on counties—an estimated \$900,000.

Halvorson questioned Paula Dierenfeld about other alternatives and she was open for suggestions.

Kibbie recalled that the legislature appropriated \$500,000 of the \$890,000 requested. He questioned why the shortfall wasn't apparent during the legislative session. He took the position that the issue should be reviewed next legislative session.

Kuehnast expressed ISAC's concerns for the precedent being set if this administrative action were allowed to take place. He acknowledged the need to adjust the budgets within departments but he felt this was a policy decision and one that should be made by the legislature. Kuehnast suggested alternative services instead of standard services for RCFs for mentally ill or less costly alternate settings. He emphasized that county mental health budgets were operating under limited growth and could not absorb more costs.

Kuehnast referred to the letter from the AG which stated that if a service were provided to an individual in their county, then it should be provided to everyone in that classification. If the state does not fund the cases, the county must pick up the cost which would result in cuts in services. He also stressed problems faced by counties accelerated by the floods—roads, bridges, additional counseling, agriculture losses, etc.

C. Palmer was willing to work with ISAC on alternatives since a decision had not been made.

DHS – Special
Review (Cont.)

Priebe and C. Palmer discussed possible reversion of ADC funds which were estimated at \$2.3 to \$2.5 million.

Howard, Story County Community Services Director, read from a prepared statement dated August 3, 1993, on file in the ACO. She urged the legislature to be cognizant of Administrative decisions being made outside the process and to consider the impact on counties.

Priebe concluded that if the Department were doing this administratively, the ARRC could ask to have the procedure brought in as rules.

Royce noted that the formal opinion did not require rule making. However, he questioned how a decision to cut back on state cases could be made without rules to indicate the method of providing services.

If there were no opposition, Priebe suggested that such rules be drafted for publication. Hearing none, he directed the Staff to pursue the matter.

P. Dierenfeld thought advice should be requested from the AG office as to the Department's ability to make these adjustments. Priebe reasoned that the legislative process might be necessary.

C. Palmer was concerned about conflicting advice with regard to the Department's responsibility and he reiterated the Department's willingness to work with all factions for resolution.

P. Dierenfeld reemphasized that a decision had not been made to cut services so rules would be premature at this time.

Howard interjected that counties lack the option of terminating services.

In response to Halvorson, C. Palmer agreed to work with the counties and the Department's assistant attorney general in an attempt to reach a decision within the next month.

There was consensus that the issue would be placed on the ARRC agenda in September or October.

Erickson, Harrison County Supervisor, echoed previous remarks and restated the financial problems facing the counties due to the flood crisis.

Kuehnast expressed hope for a speedy resolution to avoid emergency rule making. He stressed the importance of involvement by counties in the process.

1.7, 38.1 et al.;
41.6(2)

The ARRC resumed consideration of the regular agenda and there were no recommendations on filed amendments to 1.7, 38.1 et al. and 41.6(2)"c."

52.1(3) et al.

Emergency amendments to 52.1(3) et al. regarding Medicaid rates were reviewed. Priebe expressed concern about Medicaid recipients who abuse the system by seeking treatment at emergency rooms to avoid waiting in a doctor's office. He requested rule making to curtail this abuse.

- DHS (Cont.) No questions or recommendations on the following: ARC 4066A, 4072A, 4067A, 4118A, 4097A, 4068A, or 4074A.
- 130.2 et al. In review of the child day care program in 130.2 to 170.8, Royce asked why minimum wage was being paid for in-home day care service as opposed to a negotiated amount on an individual basis. Walker thought the rule followed Social Security law. She indicated the Department could not afford to pay it unless there was more than one child.
- Ch 150 The Committee had no questions on amendments to 150.2 et al. and 150.3 et al. found in ARC 4099A and 4077A.
- 156.12, 201.5 In review of proposed amendments to 156.12 and 201.5(9), Daggett was advised that the legislature appropriated money to increase the monthly allowance effective January 1.
- Ch 179 No questions regarding Chapter 179—ARC 4079A.
- 202.17 Emergency amendments to 202.17, relating to foster care services, were considered. Kibbie was advised that the fiscal year state group care target was reduced from 1405 to 1350 children. Emphasis will be on services in the home in an attempt to avoid removal of children from their home. Rules governing the Child Welfare Initiatives Program would be published soon.
- It was noted that children who reach aged 18 while participating in certain training programs in group care would be allowed to complete programs. No Committee action.
- Recess Co-chair Priebe announced a 10-minute recess.
- REVENUE AND FINANCE** Carl Castelda, Deputy Director, presented the following agenda:
- REVENUE AND FINANCE DEPARTMENT[701]
Iowa sales tax exemption for purchases from certain organizations that are instrumentalities of the federal government, 17.5, 17.7, Filed ARC 4108A7/21/93
Assessments qualifying for abatement, exemption from withholding of payments made to nonresidents for deferred compensation, pensions and annuities, 43.5(1), 46.4(7), Filed ARC 4109A7/21/93
Composite returns, 48.3, Notice ARC 4107A7/21/93
- 17.5, 17.7; 43.5, 46.4 No questions or recommendations on ARCs 4108A or 4109A.
- 48.3 In reviewing proposed amendments to 48.3 on composite returns, Daggett was informed that the nonresident pension issue was not relevant to the rule. There were no recommendations.
- PETROLEUM UST FUND BOARD** Representing the Board were David Lyons, Insurance Commissioner; Robb Hubbard, UST Board Administrator; and Robert Galbraith, Assistant AG. The following agenda was considered:
- PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
Administration of the environmental protection charge imposed upon petroleum diminution — definitions, 6.1, Filed ARC 4106A7/21/93
Prioritization of remedial account benefits and expenses, 11.7, Notice ARC 4114A 7/21/93
Community remediation, 13.1, 13.2(2), 13.2(3), 13.2(5), 13.2(6), 13.3(1), 13.3(2), 13.3(6), 13.4 to 13.9, Notice ARC 4113A7/21/93

UST (Cont.)

Lyons gave opening remarks relating to the entire agenda after which Hubbard explained the amendment to 6.1.

6.1

Halvorson was informed that the aboveground tank charge would be the same, even though there was no eligibility for cleanup.

Hubbard responded to Daggett that Iowa did not require upgrading other than meeting fire safety standards. At the federal level there was pending legislation to require uniformity for above- and below-ground tanks.

In response to Kibbie, Hubbard explained that the confusion seemed to center on whether the aboveground tank was used for retail or nonretail operations. Rule 6.1 was intended to clarify the definition of "tank" with respect to diminution.

11.7

Hubbard summarized proposed new rule 11.7 relating to prioritization of remedial account benefits and expenses. He stressed that the proposal addressed which cleanup projects would be funded, and in what order, if a shortfall occurred. Site owners would be categorized according to ability to pay. According to Hubbard, only one written comment had been received. A public hearing was scheduled for August 10 where much public comment was anticipated.

Lyons highlighted operation of the program. Without rules, the Board could not, by statute, allow deficits so claims were being reserved. Lyons emphasized that funds would probably be depleted by January.

With rules, the Board had proposed three different types of prioritization. Lyons readily admitted the rules would have a negative impact on many owners and operators and he offered examples. He was aware of many inequity arguments to be made by industries but they had been advised to consider options.

Lyons concluded that without these rules, the Board would attempt to lengthen the program and work with the legislature on high-risk and low-risk sites. They were hopeful of some clear direction this summer as to the status of these rules. He thought that an interim study committee had been appointed but did not anticipate their meeting until October.

It was noted that high-risk sites were funded first because of the threat to water supplies, for example.

Galbraith added that by late last calendar year it was obvious that funds were not available to pay all claims. Policy decisions in these rules were made by the Board in February at a strategic planning conference. This conference was planned in order to apprise the legislature of the Board's plan for prioritization if 1993 legislation had not dealt with this narrow issue.

Lyons acknowledged that the legislature had made great strides over the last two years and should be proud of the cost containment mechanisms which already have saved millions of dollars for this program.

Halvorson recognized the "Catch 22" situation for the Board to keep the program in the black. He was concerned about potential impact for counties and wondered if there were a need for an Economic Impact Statement.

Hubbard pointed out that counties have no separate legal obligation to pay for clean-up or take the contaminated property for delinquent taxes. Halvorson spoke

UST PROGRAM

of the environmental impact and was told that approximately 60 percent of the problem areas were being addressed.

Lyons was willing to prepare statistics on the number of affected sites and average cost per site. Halvorson was doubtful that counties were fully aware of their potential responsibility for reverted properties. They could not dispose of these properties and would be "going to the bottom of the pecking order" for assistance. Priebe agreed. Lyons had not heard from ISAC to date. Halvorson suggested revision of the term "high risk."

Hubbard reminded that this prerogative was delegated to the Department of Natural Resources but could be addressed by the GA.

Galbraith explained pending settlement agreements with counties. The Board was concerned about unfairness to those counties who had relied upon negotiations last fall being suddenly cut off by these rules.

There was further discussion of responsibility for property. Lyons spoke of a legal and a practical approach. Legally, no one would have to take the responsibility and eventually, if the contamination were bad enough, the property would roll over to the federal UST program. In practicality, city or county would take over the site for two reasons—economic vitality of the site and integrity of the groundwater area.

Galbraith interjected that the only advantage that counties have over other owner-operators was that Code chapter 455G provided that counties, which get property back for delinquent taxes, have no legal obligation to clean up that property.

Schrader reasoned that cities or counties would be ultimately responsible for protecting the citizens and their water supplies and, therefore, the discussion was moot.

Lyons declared that without prioritization, the cities and counties would undoubtedly be in worse situations because the Board could not respond to the high risk sites.

Hubbard emphasized that the prioritization places high-risk first and ability to pay would be considered. The second phase would be low-risk sites with the same scheme.

Galbraith stated that under these rules no fund money would go toward corrective action beyond the site cleanup report for low-risk sites.

In response to Schrader, Hubbard said that the upgrade benefits were defined as corrective action and would be subject to the overall prioritization. Specific corrective action cost would include digging up dirt and having it handled and disposed of, for example. Environmentally, the Board considered it to be very important for the benefits relative to the closure of the tank or its upgrade to be included within the overall numbers. In terms of paying the benefit of up to \$10,000 for upgrade, that was still part of the overall prioritization.

Hedge asked if there were more emphasis being placed on the low-risk sites on hold at the present time. He had complaints from constituents regarding the exorbitant costs of digging, disposal, duplication of drilling of test wells, etc.

UST Board (Cont.) Lyons reiterated that they had prioritized everything possible on high risk. The only low risks that remain prioritized under their new system were those which exist within a community remediation, under the concept that is the lowest cost ability to clean up. He reminded that the Board had no authority or jurisdiction to make determinations on high-risk versus low-risk site. Those were DNR and legislative issues. Lyons concluded that the Board had done everything they could to make the differentiation. He could not speak to what other agencies and the legislature had done.

Halvorson asked about the possibility of addressing low-risk sites in the final rules. He had received complaints regarding the potential of a 12-year monitoring versus a more reasonable approach on low-risk sites. Lyons responded that the Board had no authority in this area. Halvorson questioned Hubbard as to possible new cleanup methods, other than excavation and removal. Hubbard indicated there had been some on-site treatment systems. Also a combination approach had been used whereby a free-product recovery exists through a traditional pump and treat system using soil venting or bio-remediation. Another method was known as "air sparging."

Galbraith added that the Board had been very willing to experiment on all types of technology.

Lyons indicated that the Board may offer recommendations for modifications to the program structure to provide more funding or longer term funding. He cited four ways to accomplish this—two related to revenue and two involved expenditures: Increase the program funds or allow longer period of time for current funds. Expenditures could be reduced by prioritizing or by reducing expenditures required from an environmental perspective. Lyons concluded that legislation mandated the Board to operate this program on funds available from present revenue streams; thus, the rules on prioritization.

In response to Kibbie, Hubbard estimated 1900 sites as high risk and roughly 1200 to 1300 as being low risk. He added that the program had received approximately 4400 claims, 3200 of which were active.

David Smitherman, Iowa Petroleum Council, spoke on behalf of the Council and the Underground Storage Tank Task Force which includes members from the Farm Bureau, Iowa Motor Truck Association, Consulting Engineers Association, Iowa Petroleum Council and several marketers. Although they recognized the problems faced by the Petroleum UST Board, the Council and Task Force were concerned about the tremendous number of operators and owners—not just retail marketers—who would be devastated under prioritization. Smitherman referred to a handout which listed about 61 jurisdictions where tanks were located. He urged against haste to prioritize and offered to work with the study committee to develop significant cost savings. Smitherman stated that the Task Force had endorsed additional funding but he realized that '94 would be a difficult year. However, if funding is not addressed by the legislature, there will be unresolved environmental problems.

Lyons reminded that the statute requires a viable petroleum distribution network and a clean environment to be maintained as part of the Clean Water Act. The Board has tried to do both.

There was consensus that all factions should work together for a resolution. No formal action.

UST Board (Cont.) 13.1 et al. There were no questions or comments on amendments to 13.1 et al. noted in ARC 4113A.

EDUCATION

Priebe explained that the following Education agenda had been placed under the "No Representative required" category because Kathy Collins could not be present and no one else from the Department could review these rules:

EDUCATION DEPARTMENT[281]

Special education — autism, head injury, rehabilitation counseling, transition services, individualized education program, 41.2(3), 41.3, 41.4(1), 41.18(2)"d," 41.33(4), 41.33(6), Filed ARC 4064A 7/7/93
Chapter 18 — School fees, ARC 4005A 5/26/93

Motion to Delay

Priebe questioned the validity of this decision and moved to delay the amendments to Chapter 41 for 70 days and add them to the September agenda when Collins could be present. Motion carried. Schrader voted "no."

EDUCATIONAL EXAMINERS BD.

Orrin Nearhoof was present to review amendments to 14.30(1), 19.2, 19.6, licensure fees, Filed Emergency After Notice in IAB 7/7/93 as ARC 4087A. No recommendations.

BANKING DIV.

Attending from the Division were R. H. Buenneke, Superintendent, Steven Moser, Deputy Superintendent, and Don Senneff, Council. Revised rule 9.2 (17A, 524), real estate lending, Noticed in IAB 7/7/93 as ARC 4086A, was reviewed.

9.2

Buenneke explained this rule would allow banks to relax their procedures in making flood-related loans. The Division intended to adopt the rule emergency for early implementation following the comment period. No opposition.

UTILITIES

Present from the Division were Dan Stursma, Vicki Place and Gary Stump who presented the following agenda:

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Americans with disabilities Act, 10.3(1), 10.3(2), 10.3(4)"a," 11.4(1), 11.4(2), 11.5(1)"a," 24.7(2), 24.7(7), Filed ARC 4112A 7/21/93
Electric transmission lines, 11.1(5), 11.2, 11.3, 11.3(1), 11.3(2), 11.3(3)"c," 11.3(6), 11.3(7), 11.4, 11.4(5), 11.4(6), 11.5(2), 11.5(2)"c" and "d," 11.5(3) to 11.5(6), 11.5(8) to 11.5(10), 11.6(2), 11.7, Filed ARC 4105A 7/21/93

10.3(1) et al.; Ch 11

Filed amendments to 10.3(1) et al. and Ch 11 were reviewed with no recommendations.

SUBSTANCE ABUSE

Mike Guely and Jeff Gronstal were in attendance for the following agenda and there were no questions.

SUBSTANCE ABUSE COMMISSION[643]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Licensure standards for substance abuse treatment programs, 3.1, 3.3, 3.5(1)"i," 3.5(3), 3.7(1), 3.7(1)"a," 3.22(5)"a"(15), 3.22(5)"k"(3), 3.22(5)"m," 3.22(6), 3.22(10)"a," 3.22(11)"a"(4), 3.22(11)"b" to "i," 3.22(12)"b" to "d," 3.22(12)"g," 3.22(13)"a," 3.22(14), 3.22(15), 3.22(15)"b" to "f," 3.22(16), 3.22(17)"g" to "o," 3.22(19)"c," 3.22(24)"a"(6), 3.22(24)"b"(1), 3.22(25), 3.24(11), 3.24(14)"c"(8), 3.24(14)"d," Filed ARC 4116A 7/21/93

**PROFESSIONAL
LICENSURE**

Representing the Division was Carolyn Adams for the following:

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Practice of chiropractic, licensure, 40.1, 40.11(1), 40.11(2), 40.11(3)"a," 40.13(1)"d," 40.14(2), 40.14(9), 40.38,

Notice ARC 4120A7/21/93

No comments.

No Reps

No agency representative requested to appear for the following:

SECRETARY OF STATE[721]

Signature requirements for school director candidates, 21.17, Notice ARC 4100A, alsoFiled Emergency ARC 4101A7/21/93

EDUCATION DEPARTMENT[281]

Special education — autism, head injury, rehabilitation counseling, transition services, individualized

education program, 41.2(3), 41.3, 41.4(1), 41.18(2)"d," 41.33(4), 41.33(6), Filed ARC 4064A 7/7/93

Chapter 18 — School fees, ARC 4005A 5/26/93

Meetings

It was noted there would be three Bulletins to review at the September meeting and it was tentatively decided to schedule three days.—14, 15 and 16. The October meeting was changed to the 4th and 5th.

There was discussion of possible meetings of the ARRC in other parts of the state.

Adjournment

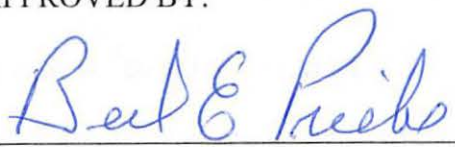
The meeting was adjourned. Next meeting was scheduled for September 14, 15 and 16, 1993.

Respectfully submitted,



 Phyllis Barry, Secretary
 Assisted by Mary Ann Scott

APPROVED BY:



 Berl E. Priebe, Co-chair