

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 Tuesday and Wednesday, August 20 and 21, 1991, in Senate Room 22, State Capitol, Des Moines, Iowa. This meeting was held in lieu of the statutory date of August 13.

Members  
Present

Senator Berl E. Priebe, Chairman; Representative Emil E. Pavich, Vice Chairman; Senators Donald V. Doyle, Dale L. Tieden, H. Kay Hedge, John P. Kibbie; Representatives David Schrader, Ruhl Maulsby, Janet Metcalf and Jane Teaford.

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

Chairman Priebe called the meeting to order at 10 a.m. and called up the following:

ATTORNEY  
GENERAL

ATTORNEY GENERAL[61]  
Iowa mediation program--fees, 17.6, Filed Emergency ARC 2154A ..... 7/24/91  
Noncredit property insurance in consumer credit transactions, ch 20, Filed ARC 2119A ..... 7/10/91  
New motor vehicle warranty--protection (lemon law), ch 30, Filed Emergency ARC 2155A ..... 7/24/91

Tim Benton, Peter Kochenburger and William Brauch were in attendance.

17.6

Benton gave background information on 17.6 and informed Doyle that the Iowa Mediation Service has the discretion to set mediation fees at a lower level but the intent was that the hourly fee not exceed \$50 for the borrower and \$100 for the creditor in farmer/creditor mediation. He continued that if the borrower demonstrates financial hardship, the Mediation Service may waive the fee.

Kibbie inquired if other creditors who wished to be included in the mediation would also have to pay the \$50 fee. Benton deferred to Mike Thompson, Executive Director of the Iowa Mediation Service, who responded in the affirmative. No formal action by the ARRC.

Ch 20

Kochenberger briefed the Committee on Chapter 20, Non-credit Property Insurance in Consumer Credit Transactions. He said that the rules basically split up the sale of nonproperty insurance and require creditors to sell only that insurance after the loan has been closed.

Priebe referred to rule 61--20.3 relative to exclusions and questioned exemption for insurers who do not engage in consumer credit transactions or creditors who engage

ATTORNEY  
GENERAL  
Cont'd.

in these transactions for selling insurance only. Kochenburger said they did not intend to govern those whose major business was selling insurance but he was willing to clarify the rule.

Metcalf suggested that in 20.6(2)a, "Notice to Consumers," paragraphs "1" and "2" should be reversed. Kochenburger was amenable.

Tieden inquired about written comments on the rules and Kochenburger replied that changes made were in response to these comments. No Committee action.

Ch 30

Brauch presented Chapter 30 which was intended to implement the motor vehicle "lemon law" [91 Acts, House File 566].

COLLEGE AID

Laurie Wolf, Director of Administrative Support, presented the following rules:

**COLLEGE STUDENT AID COMMISSION[283]**

EDUCATION DEPARTMENT[281]"umbrella"

Stafford loan program--late disbursements, 10.17(2), Filed ARC 2127A ..... 7/10/91

Stafford loan program--electronic disbursement, 10.17(4), Notice ARC 2124A, also

Filed Emergency ARC 2123A

Stafford loan program--eligible lender definition, 10.42(2), Notice ARC 2126A ..... 7/10/91

State of Iowa scholarship program--restrictions, 11.1(3)"e," Notice ARC 2164A ..... 7/24/91

Tuition grant program--restriction pertaining to credits earned by experience and examination, 12.1(8),

Filed ARC 2129A

Tuition grant program--restriction pertaining to loans discharged in bankruptcy, 12.1(8), Notice ARC 2167A ..... 7/24/91

Vocational-technical tuition grant program--restrictions, 13.1(8), Notice ARC 2171A ..... 7/24/91

Osteopathic grant subvention program--restrictions, 14.1(7), Notice ARC 2172A ..... 7/24/91

Loan restrictions, 18.14(8), 22.1(5), 25.1(3), Notice ARC 2125A ..... 7/10/91

Work-study program--restrictions, 18.15, Notice ARC 2125A Terminated, also Notice ARC 2179A ..... 7/24/91

Occupational therapist loan payments program--restrictions, 19.1(1)"f," Notice ARC 2166A ..... 7/24/91

National guard loan payments program--restrictions, 20.1(1)"f," Notice ARC 2165A ..... 7/24/91

Nursing loan payments program, 21.1(1)"f," Notice ARC 2116A ..... 7/10/91

Iowa minority grants for economic success (IMAGES), 22.1(5), Notice ARC 2125A Terminated, also

Notice ARC 2174A

Medical tuition loan plan--restrictions, 25.1(3), Notice ARC 2125A Terminated, also Notice ARC 2180A ..... 7/24/91

Iowa grant program--restrictions, 27.1(11), Notice ARC 2173A ..... 7/24/91

Access to education grant program--restrictions, 28.1(11), Notice ARC 2170A ..... 7/24/91

Displaced workers financial aid program--restrictions, 29.1(8), Notice ARC 2168A ..... 7/24/91

Osteopathic forgivable loan program--restrictions, 30.1(9), Notice ARC 2169A ..... 7/24/91

Graduate student financial assistance program, ch 33, Filed ARC 2128A ..... 7/10/91

Chs 10 to 12

There were no questions on ARCs 2127A, 2123A, 2126A, 2164A or 2129A.

12.1(8)

Wolf discussed proposed amendment to 12.1(8). She pointed out that a number of students had filed bankruptcy in the past and had their loans forgiven. Many are now requesting additional loans but before additional grants will be made, these debts must be reaffirmed. Wolf advised Doyle of a seven-year statute of limitation by federal law and commented on these statutes. She also stated that the Commission has the option of waiving interest on a delinquent obligation. The Commission works with the borrower.

13.1(8),  
14.1(7),  
18.15

There were no recommendations for ARCs 2171A, 2172A or 2179A.

Tieden raised question as to use of "borrower" and "student." Wolf stated that if the student must have a loan to qualify for the program, they would be considered a "borrower." Under the grant and scholarship programs, the term "student" is used.

COLLEGE AID  
Cont'd.

Responding to Tieden and Maulsby, Wolf said that the Commission relies on the Regents' definition of "resident of Iowa"--an individual born in the state of Iowa or a resident for two years prior to beginning an educational program. Maulsby reiterated his opposition to the two-year restriction.

Wolf informed Tieden that the default rate was a cumulative 7.2 percent--approximately \$23 million--of which 34 percent has been collected. In three years the federal government will assume any uncollected loans. Wolf continued that in the past 10 years, Iowa has ranked 48th. The higher the number, the lower the default rate. The current national average is 12.5 percent. There are 127 schools in Iowa that qualify for the guaranteed student loan programs. There was discussion of the time frame in which the loan is paid. Pavich had received complaints of unclear repayment costs. No formal action.

There were no questions on the remaining amendments to Chapters 18 to 22, 25, 27 to 30 and 33.

REVENUE AND  
FINANCE

Carl Castelda, Deputy Director, introduced Melvin Hickman, Supervisor of Policy Unit, who has assumed duties of Dennis Meridith, former legislative liaison for the Department. The following rules were considered:

## REVENUE AND FINANCE DEPARTMENT [701]

Sales and use tax, 16.45, 17.19(1)"a," 33.1, 34.1(4), 89.11, Notice ARC 2147A ..... 7/10/91  
Drop shipment sales, 18.55, Filed ARC 2153A ..... 7/24/91

16.45 et al. Priebe referred to 16.45, which addressed tax on sale of baling wire and twine. He suspected that implement dealers would be displeased with the rule. Castelda said there was no specific statutory authority to exempt the products unless it is a manufacturer who sells the product at retail. He added that the Department has allowed an exemption to farmers and other groups under the resale exemption. Castelda pointed out this rule was rewritten to reflect the taxability of the twine but admitted that it was not enforced.

18.55 There was brief discussion of 18.55.

There were no recommendations for Revenue amendments.

ECONOMIC  
DEVELOPMENT

JoAnn Callison and Lane Palmer, Bureau Chiefs, and Melanie Johnson, Legal Counsel, represented the Department for the following rules:

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261]

Additional program requirements--community builder program and environmental criteria, 6.6(1)"d," 7.4(2)"h," 22.6(1)"e," 23.5(1)"i," 27.3(5), ch 80 title, 80.1 to 80.12, 80.86 to 80.91, Filed Emergency After Notice  
ARC 2151A ..... 7/10/91

Community development block grant nonentitlement program, 23.4(3)"h," "t" and "y," 23.4(4)"e," 23.5(1)"i" to "k," 23.6(1), 23.6(3), 23.6(8)"a," 23.7(1)"e," 23.7(1)"g," 23.7(5)"d" and "e," 23.7(7), 23.7(8) to 23.7(11), 23.8(1)"d" and "e," 23.8(5)"a"(4), 23.9(4)"e," 23.9(6)"b"(6), 23.9(8), 23.11(3)"f," 23.11(8)"a"(4), 23.12(3)"e," 23.12(8), 23.13(3)"a," 23.15, Notice ARC 2117A ..... 7/10/91

6.6(1) et al. Callison explained amendments to 6.6(1)d et al. There were no questions.

ECONOMIC  
DEVELOPMENT  
Cont'd.

23.4 et al.

Palmer briefed the Committee on amendments to 23.4(3)h et al. relating to community development block grant entitlement programs. Schrader observed references to federal regulations and other publications in the rules and suggested that dates certain be included. Palmer described the rule making as an attempt to increase basic industries within the state and clarify the point system used.

Jack Kegal, Attorney with the Iowa Association of Municipal Utilities, commended the Department for their responsiveness to concerns on the set-aside program. No Committee action.

Committee  
Business

Citizens'  
Aide

The Committee considered a request from William Angrick, the State Citizens' Aide, to include his revised rules in the Iowa Administrative Bulletin under ARRC authority of Iowa Code section 17A.6(1)c. Iowa Code section 601G.9(5) exempts the Citizens' Aide from Code chapter 17A but requires the rules to be published in the Iowa Administrative Code. There was unanimous consent to authorize publication in the IAB.

Sound  
system

There was discussion of the seating arrangement of the Committee. Inability to hear all the proceedings was a major concern of some members. It was suggested that the Staff explore the possibility of borrowing or purchasing a lecturn and microphones and report at the September meeting.

Meeting  
dates

The following meeting dates were agreed upon: September 10 and 11, October 8 and 9, November 12 and 13, December 10 and 11 and January 7 and 8, 1992. Tentative plans were made for a Christmas party on December 10 with time and place to be announced.

Video  
Lottery

At the request of Schrader, there was unanimous consent to request a representative of the Lottery Division to appear before the ARRC on Wednesday, August 21, to discuss video lottery. Schrader wanted to communicate the Committee's opposition to emergency adoption of a pilot program which had been mentioned in a local newspaper.

Tieden and Schrader reiterated their concern that the Committee's power was being preempted by emergency rule making. Other members concurred and there was discussion of possible legislation to address the problem.

Minutes

Schrader referred to Kibbie's motion to update the ARRC Rules of Procedure to coincide with increased membership from six to ten. He did not recall agreeing to seven for a quorum. [Page 4987] Priebe pointed out that other rules of the Committee require two-thirds of the members to take action. He suggested, "A quorum consists of six members and it takes seven members to take action."

Committee  
business -  
Cont'd.

Schrader contended that his question was limited to quorum number. He then moved to change "seven" to "six." Royce commented on the status of the ARRC as to whether it was similar to a standing committee of the legislature or a state agency as defined in Code section 17A.2. The question had never been addressed. In legislative committees, a quorum is a majority of the membership; for a state agency it is two-thirds. Royce continued that unlike standing committees, the ARRC was created by statute in the legislative branch of government.

Schrader interjected that commissions and boards created by the legislature have a quorum of one more than half of the members.

Priebe viewed the ARRC as a state agency established by the legislature mandated to meet on the second Tuesday of every month and functioning under their published Rules of Procedure.

Hedge understood that a quorum was six but pondered the purpose of a meeting if no action could be taken without seven members being present.

Discussion followed on action taken by the Committee at a previous meeting regarding their rules. Kibbie suggested changing the wording of his July 12 motion by striking the reference to a quorum. Metcalf maintained that minutes could not be revised after the vote.

Priebe advised legislation would be needed to change the "two-thirds" to "a majority." Pavich noted that he had requested such legislation as a Committee bill.

Schrader clarified that his motion was to correct the minutes.

Defer

It was decided to defer approval of the minutes until the tapes could be reviewed. So ordered.

State  
Mandates  
Act.

Royce advised the Committee of confusion which prevails with respect to interpretation of the State Mandates Act--Chapter 25B. Earlier this year it was amended by Senate File 182 to require a fiscal note whenever a state agency proposes a rule which "necessitates additional annual expenditures exceeding \$100,000 by political subdivision or agencies..." Question has arisen as to whether it would be the statewide impact of over \$100,000 or is it \$100,000 per entity. Priebe suggested that the Committee check with Senator Miller, Chairman, Local Government Committee, in an attempt to learn more about this legislation.

Recessed  
Reconvened

Chairman Priebe recessed the meeting at 11:40 a.m. and reconvened it at 1:30 p.m.

HUMAN  
SERVICES

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

**HUMAN SERVICES DEPARTMENT[441]**

Health insurance premium payment program, 9.7(1)"b""6," 75.21, 75.25, 88.4(4)"e," 88.24(4)"e," 88.47(1)"c"(6), <u>Filed Emergency After Notice</u> ARC 2112A .....	7/10/91
ADC-income and resource exemptions for earned income credit payments and Radiation Exposure Compensation Act payments, 41.1(1), 41.6(1)"l," 41.7(6)"y," <u>Notice</u> ARC 2135A .....	7/10/91
ADC schedule of living costs increased and chart of basic needs components revised, 41.8(2), <u>Notice</u> ARC 2113A, also <u>Filed Emergency</u> ARC 2114A .....	7/10/91
Copayment exemption removed; Medicare for RCPs, maximum copayment-home health care, 52.1(3)"a"(2) and (5), 79.1(13)"c," "g" and "h," <u>Notice</u> ARC 2162A .....	7/24/91
Medicaid and service providers, 54.3(15), 78.1(20)"a"(4), 78.3, 78.31(1), 78.33, 79.1(2), 79.1(5)"n," 81.6(16)"a" and "e," 82.5(16)"b," 150.3(5)"u"(3), <u>Notice</u> ARC 2100A, also <u>Filed Emergency</u> ARC 2101A .....	7/10/91
Residential care facilities-basis for reimbursement and upper limits, 54.3(15), <u>Notice</u> ARC 2158A .....	7/24/91
Emergency assistance program, 58.11, <u>Notice</u> ARC 2094A, also <u>Filed Emergency</u> ARC 2095A .....	7/10/91
Refugee services program-interpretors and translators for legal proceedings, 61.1, 61.15, <u>Filed</u> ARC 2096A .....	7/10/91
Relief for needy Indians, 64.2(9), <u>Notice</u> ARC 2097A, also <u>Filed Emergency</u> ARC 2098A .....	7/10/91
Income eligibility guidelines for Federal Surplus Food Program, 73.4(3)"d"(2), <u>Filed Emergency</u> ARC 2092A .....	7/10/91
Medicaid eligibility-exclusion of life insurance policies, 75.5(3)"c"(7) and (9), 75.5(3)"c"(11) to (13), <u>Notice</u> ARC 2132A .....	7/10/91
Conditions of participation for providers of medical and remedial care; amount, duration and scope of medical and remedial services; other policies relating to providers of medical and remedial care; nursing facilities, 77.12, 78.7(1)"c," "f" and "j," 78.14(7)"a," "b" and "d," 79.1(2), 79.1(9)"h," 79.1(13), 81.3(1), 81.3(2), 81.3(4), 81.6(16)"e" and "g," 81.10(4)"h," 81.13(9)"b"(3)"1," 81.20(4), 81.21, <u>Filed</u> ARC 2091A .....	7/10/91
Medicaid providers-nurse-midwives, certified registered nurse anesthetists, family or pediatric nurse practitioners, 77.26, 77.31, 77.36, 78.1(13)"c," 78.29(1), 78.35, 78.40, 79.1(2), 79.1(13)"b," 80.2(2)"ak," <u>Notice</u> ARC 2133A .....	7/10/91
Ambulatory surgical center services, 78.26, 79.1(2), 79.1(3), <u>Notice</u> ARC 2161A .....	7/24/91
Advance directives, 79.12, 81.1, 81.13(5)"p," <u>Notice</u> ARC 2163A .....	7/24/91
Nursing facilities-rates for Medicaid eligibles, 81.22, <u>Notice</u> ARC 2131A .....	7/10/91
Rescission of paragraphs nullified by SJR9, 85.8(2)"e," 85.8(3)"h," 85.8(4)"g," <u>Filed Emergency</u> ARC 2099A .....	7/10/91
Cash bonus to employers who hire ADC recipients eliminated, ch 92 preamble, 92.2, 92.3(1), 92.4, 92.5(1), <u>Notice</u> ARC 2102A, also <u>Filed Emergency</u> ARC 2103A .....	7/10/91
PROMISE JOBS-payment for child care, 93.10(1), <u>Notice</u> ARC 2104A, also <u>Filed Emergency</u> ARC 2105A .....	7/10/91
Income guidelines for child day care services increased, 130.3(1)"d"(2), <u>Notice</u> ARC 2106A, also <u>Filed Emergency</u> ARC 2107A .....	7/10/91
Dependent adult abuse treatment and protection services, 130.3(1)"e," 176.6(7), <u>Filed</u> ARC 2093A .....	7/10/91
Court-ordered care and treatment, family-centered services, ch 151 preamble, 151.1, 151.1(1), 151.1(2)"a," "g" and "h," 151.2(5), 151.3(1), 151.3(2) 151.3(2)"a" and "c," 151.3(3), 151.3(8), 182.11, <u>Notice</u> ARC 2110A, also <u>Filed Emergency</u> ARC 2111A .....	7/10/91
Adolescent pregnancy prevention and services to pregnant and parenting adolescents program, ch 163 preamble, 163.1, 163.3(1), 163.3(2), 163.3(5), 163.3(5)"d," 163.4(1), 163.4(2), 163.5(2)"d," 163.5(3), <u>Notice</u> ARC 2108A, also <u>Filed Emergency</u> ARC 2109A .....	7/10/91
Out-of-state foster care placement, 202.8(2), <u>Notice</u> ARC 2134A .....	7/10/91

Present from the Department were Mary Ann Walker, Bureau of Policy Analysis, Cynthia Tracy, Jo Sheeley, Mike Murphy, Anita Smith, Deb Ozga, Kathy Ellithorpe, JoAnne Kennebeck, Vivian Thompson, Maya Krogman, Gary Gesaman, Rita Vidraska, Wayne Johnson, Joe Mahrenholz, Wayne McCracken, Jo Lerberg, Barb Bosch, Sarah Stark, and Sandi Koll. Also present were John McDonough, Iowa Association of Nurse Anesthetists, Jim Carney, Lobbyist, and Dr. Dann L. Simon.

9.7 et al. Walker briefed the Committee on ARC 2112A regarding health insurance premium payment program for Medicaid-eligible persons who have private health insurance available to them.

Smith responded to questions by Schrader and Maulsby in 75.21(1) that the Department generally allows a parent ten working days to provide the necessary information to determine availability and cost-effectiveness of group health insurance, etc. as stated in the second paragraph of this subrule.

Tieden and Smith discussed premiums being a court-ordered obligation of an absent parent.

41.1(1) et al. There were no questions or comments on amendments to 41.1(1) et al.

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Cont'd.  
41.8(2)

Walker briefed the Committee on amendments to 41.8(2) which revised the Schedule of Needs and Chart of Basic Needs Components to include transportation as a basic need.

Thompson and Walker answered Schrader's question regarding the reduction in the figures and addition of transportation in the Chart of Basic Needs Components. Iowa State did the study and the basic needs figure is reflected in the Schedule of Needs and the Chart of Basic Needs is a division of the ADC grant. The legislature did not increase this grant but the Department had to include transportation. Result is that instead of an ADC grant meeting 85 percent of a person's needs, it meets only 50 percent.

Vice chairman Pavich was in the Chair.

52.1, 79.1

Walker described amendments to 52.1(3) and 79.1(13) as removing the copayment exemption for Medicare crossovers and residents residing in RCFs and maximum copayment for home health agency. She reported low attendance at the eight public hearings.

In response to Schrader, Ellithorpe pointed out that home health care was ongoing and differed from occasional physician care, for example.

54.3 et al.,  
54.3(15),  
58.11

There were no Committee recommendations for amendments to 54.3, et al., 54.3(15), or 58.11.

61.1, 61.15

Amendments to 61.1 and new rule 61.15 regarding interpreters and translators for legal proceedings were before the Committee. Johnson replied to Metcalf's inquiry regarding reimbursement of interpreters in a situation where they could not be understood. Johnson informed Doyle that the rules address legal proceedings in courtrooms. Metcalf then asked for clarification of charges per day with respect to state employees and Johnson said the employee gets nothing--the money goes into the fund received from the federal government.

64.2(9)

In her explanation of amendment to 64.2(9), Walker said that it specifies that the tribal council shall not use more than five percent of its annual funds for administrative purposes. Krogman stated that the rule pertains to Indians living off the settlement in Tama. She was not aware of any programs for the Omaha or Winnebago Indians along the Missouri River.

73.4

There were no questions or comments on 73.4(3)d.

Ch 75

Walker explained proposed amendments to Chapter 75 which update the list of resources excluded in the computation of the attribution of resources when one spouse is living in a medical facility and clarifies policy on exclusion of life insurance policies. Walker and Schrader discussed "face value" of a policy.

HUMAN  
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Cont'd.

77.12 et al. Walker gave a brief overview of amendments to 77.26 et al.  
77.26 et al. re Medicaid providers--nurse-midwives, certified registered nurse anesthetists, family or pediatric nurse practitioners.

78.1(13) Dr. Dann L. Simon, Iowa Society of Anesthesiologists expressed opposition to 78.1(13), paragraph "c" which, in part, provides that an advanced registered nurse practitioner or certified registered nurse anesthetist certified under board of nursing rules 655-Chapter 7 is exempt from the direct personal supervision requirement when services are performed under a written protocol established between physician and the advanced registered nurse practitioner. Simon continued that Medicare regulations spell out specific requirements for physician supervision, particularly for a nurse anesthetist in the operating room, who is continually supervised by the surgeon or the anesthesiologist. The rule seemed to be a direct contradiction. Simon urged rewording to clarify that "scope of practice" includes direct physical supervision in the case of a nurse anesthetist. He concluded that this controversial issue should be addressed in an acceptable manner for both nurses and physicians.

John McDonough, Iowa Association of Nurse Anesthetists, complained that their Association had no input in developing the rules. The Association has taken the position that the rules will be extremely detrimental to patient care and the quality of anesthesia practice. McDonough urged the Department to withdraw the proposal and work with the Association for acceptable language.

Ellithorpe responded that the Department, the Council, the Iowa Nurse Practitioner Association, Iowa Medical Society and Iowa Osteopathic Medical Association were involved in discussions on the family and pediatric nurse practitioner rules. It was her understanding that the Nurse Practitioner Association would include CRNA representation and if that were not so, she apologized for the oversight. Ellithorpe explained that intent was to define auxiliary personnel of the physician. Payment will be made to the physician for auxiliary personnel services. The rule defines when an advanced registered nurse practitioner is an employee of a physician and sets out supervision requirements to afford payment to that physician. This procedure differs from the one for a CRNA who is practicing independently.

Responding to Schrader, Ellithorpe clarified that 77.36 pertained to an independently practicing family or pediatric nurse practitioner--78.1(13)c was relative for Medicaid patients only.

Simon recalled that under current Medicaid rules, certified registered nurse anesthetists could be enrolled as participating providers in the Medicaid program



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Cont'd.

without physician supervision. The CRNA provides the service requested of the physician and can submit claims for the service to the Department under Medicaid.

Ellithorpe advised Schrader that language in the rules was excerpted from the Board of Nursing scope of practice (655--Ch 7). She emphasized that if the physician is paid for services provided by the ARNP, the ARNP could not be enrolled as a provider.

Pavich urged the two factions to work out a compromise. No formal action.

Priebe took the Chair.

79.1(13)  
Copayment

Metcalf asked for review of the status of subrule 441--79.1(13) on copayment published in 7/10/91 IAB, ARC 2091A. It was her understanding that action taken by the ARRC at their July meeting would leave the Department without copayment rules in early January 1992.

Royce offered detailed explanation of the filings and potential impact. The emergency subrule placed in effect in February 1991 [IAB 3/20/91, ARC 1808A] was followed by a Notice of Intended Action [IAB 3/20/91, ARC 1807A] which was adopted under regular rule making [IAB 7/10/91, ARC 2091A]. The Adopted and Filed subrule was to be effective 9/1/91.

Action taken by the ARRC:

- Delayed Adopted and Filed subrule 79.1(13) until the adjournment of the 1992 GA;
- Objected to the substance of that subrule contending it was not authorized by the appropriation language which allowed copayments, initially;
- Objected to the emergency subrule which was published 3/20/91. This version will cease to be effective 180 days after the date the objection was filed. The Committee did not believe that a true emergency existed to justify the subrule.

Royce continued that as a result of the Committee action, early in January, six months after the objection was filed, the emergency subrule will terminate. The permanent rule that was originally to have replaced it is under a Session delay and will not be in effect until the last day of Session unless the legislature acts. It was his opinion that copayments cannot be collected after the January date.

Metcalf viewed this as a very significant action which she did not understand at the time the votes were taken in July.

Schrader questioned Royce's statement that all copayments would be eliminated. He thought the objections and delay were focused on the newly initiated copayments. Royce

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79.1(13)  
Copayment  
Cont'd.

stated that the objections were imposed on all of subrule 79.1(13) which was extensively amended. He reasoned that when a rule is enacted it replaces the previous version. The former language would not be reinstated.

It was Priebe's opinion that if the Committee were to consider different action it would have to be directed at the Adopted (following Notice) version of the subrule.

Tieden pressed for clarification as to whether the entire subrule or only the amendments would terminate in January. Royce reiterated that the emergency filing would terminate on January 6 leaving no rule since the adopted version had been delayed until the end of the Session. He had conversed with Dan Hart, DHS, about the issue and both concurred that the entire subrule would terminate because the revisions were so interrelated.

Priebe opined that the old language could stand alone.

Schrader referred to the Administrative Procedures Act and declared that if the premise that an objection to an emergency rule causes the old rule to be nonexistent, the only power that the Committee has over emergency rule making would be eliminated. He concurred with Priebe.

Maulsby interjected that his intent was to object to the emergency rule but not eliminate the entire subrule. Priebe said that a motion could always be reconsidered. Hedge felt it was important to be certain of the impact of the ARRC action.

Royce inquired if the Committee was interested in seeking an opinion of the Attorney General since discussion today was basically suppositional.

Schrader voiced opposition to involving the Attorney General.

Dierenfeld reviewed the course of events and saw the question as being: Did the emergency adoption replace the previous language and when the emergency adoption expires after 180 days will there be no copayment?

In response to Walker, Royce said that rescission of a rule by the legislature was always a "self-defined strike."

Discussion turned to the responsibility of the Administrative Code editor when the emergency subrule expires in January. Barry pointed out that the amended version was codified in the IAC.

Walker stressed the importance of a decision today so another rule making could be commenced to ensure retention of copayment.

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79.1(13)  
Copayment  
Cont'd.

Schrader declared that it should be incumbent upon opponents of the action taken by the Committee to find a way to reverse the action. Dierenfeld saw no problem with the Department initiating another rule making as a precautionary measure.

Priebe mentioned the possibility of lifting the objection and then objecting to only the amendments in the emergency version of 79.1(13).

September  
Agenda

Doyle asked for unanimous consent that the Committee explore questions raised today and that the matter be placed on the September agenda. It was clarified that discussion will be limited to results of the motions of the July meeting.

Metcalf requested that the matter be added to the agenda for tomorrow but Doyle thought more time was needed to gather information. There was no opposition. So ordered.

78.26 et al. There were no questions or comments on ARCs 2161A and  
79.12 et al. 2163A.

81.22 In response to Tieden, Walker summarized Medicaid eligibility for residents of nursing facilities.

85.8 There were no questions regarding rescission of portions of rule 85.8 which had been nullified by the legislature.

Ch 92 Amendments to Chapter 92 re cash bonus to employers who hire ADC recipients were considered. In reply to question by Maulsby, Walker said that an ADC recipient who has been unemployed for 36 months, and then finds employment could apply for eligibility for the cash bonus program. If the individual stays employed for six months, they will receive \$500. Under policy prior to July 1, the Department would also pay \$500 as an incentive for hiring. The employer incentive is being removed. Maulsby suspected that the rule encouraged some to stay off the work force for three years. He recommended incentive for 24 months also. Since the program is entirely state funded, Walker said the Department could consider the suggestion.

Thompson advised Kibbie that about 50 had been paid the \$500 in the last year. A majority of the recipients are no longer on ADC. Although the legislature directed the discontinuance of employer incentive, Thompson was unsure of the impact.

There were no recommendations for 93.10(1), 130.3(1), 176.6(7), amendments to Chapters 151 and 163 or 202.8(2).

Nursing  
Board -  
deferred

Chairman Priebe announced that the Nursing Board representative was unable to be present to explain their proposed amendments to Chapters 5 and 6 of the IAC. He asked that the rules be placed on the September agenda. No objection.

ELDER AFFAIRS David Ancell, Administrator, presented the following rules:

**ELDER AFFAIRS DEPARTMENT[321]**

Senior community service employment program (SCSEP), retired Iowans community employment program (RICEP),

Iowa elderlaw education, elderly services, 10.2(1)"b," 10.3(1)"1," 10.3(2)"g," 10.3(3), 10.5(1)"b," 11.1(3)"b"(3),

11.1(3)"c," 11.1(6)"c," 13.2, 13.3(1), 13.3(2), 13.3(2)"e" and "i," 13.3(3), 13.3(3)"b," 13.6(1) to 13.6(3), 15.4,

15.5, 15.8, Notice ARC 2115A ..... 7/10/91

10.2 et al. Ancell described the rule making as essentially bringing their rules into compliance with Iowa and federal requirements.

He advised Metcalf that there was no elder law appropriation this year.

Tieden was informed that federal regulation governs residency requirements.

DEAF  
SERVICES -  
Special  
Review  
2.4

At the request of Teaforð, the Committee reviewed rule 429--2.4(601K) relating to fees for interpreting services for the deaf and reversion of these fees to the general fund.

Diana Leonard, Administrator, Deaf Services Commission, was in attendance. She stated that the Commission had reviewed their appropriation at the end of the fiscal year and realized that 6 percent of the amount supplemented by the state appropriation would revert to the general fund. In a letter sent to Teaforð and others, the Commission indicated that 6 percent of the fees would revert. Leonard clarified that it would be 6 percent of the actual expenditures of their operating budget to provide services in Iowa. The rules were drafted to allow continuing service through the revenues generated to offset state obligation.

Leonard stated that the state appropriates \$300,000 and the Division must raise the 6 percent. In reality, the state gives them 94 percent of that budget. The Division raised the 6 percent. Last year they had a vacant interpreter position which was not filled because of the hiring freeze. This resulted in excess funds which will be reverted. The Commission believes this is unfair when the money is needed for programs and that the reversion is in conflict with legislative intent.

Royce advised that the Committee has authority to refer this issue to the General Assembly for review. The Committee also has authority to introduce legislation.

Teaforð moved that rule 429--2.4(601K) be referred to the Speaker of the House and President of the Senate for review by the appropriate committees. Motion carried with 9 ayes and 1 no.

BANKING  
DIVISION  
Special  
Review - 2.9

At the request of Teaforð, the Committee also reviewed rule 187--2.9(17A) pertaining to licensing of debt management companies by the Banking Division.

BANKING  
DIVISION  
Special  
Review - 2.9  
Cont'd.

The Division was represented by Scott Galenbeck, Assistant Attorney General, Steven Moser, Deputy, and Larry Kingery, Bureau Chief.

Teaford had become aware of a Northeast Iowa Debt Management Company that had been in operation five years and was now being required to be licensed even though nothing had changed. She had no problem with close regulation of these organizations but thought clarification of the statutory exemption from licensure would be helpful.

Galenbeck addressed the Committee with respect to Code section 533A.2(1)"f" which provides exemption from licensure for "Nonprofit religious, fraternal or cooperative organizations, including credit unions, offering debtors gratuitous debt-management service." He continued that the Division took the position that the statute was clear. Galenbeck emphasized that companies with nonprofit status for tax purposes would not qualify for the exemption. He said there were only 11 firms holding 15 licenses in Iowa for assisting in debt management for individuals.

Metcalf wondered about inconsistencies in regulation of the company in question. Banking officials indicated they had met with this company five years ago and documentation supported exemption from licensing. However, investigation of complaints about the company resulted in a fact determination by the Banking Division that the company no longer met the statutory requirements for exemption.

Metcalf spoke of the vulnerability of some potential clients for debt management service and was supportive of stringent regulation.

Petition  
Request

Teaford favored inclusion of a definition of "gratuitous debt management service" in the rules. After some discussion, it was agreed that Royce should draft a petition for rule making under Iowa Code section 17A.7 for review at the September meeting.

Emergency  
Rules Survey

Doyle requested that Royce and Dierenfeld review policies of other states with respect to emergency rule making and report to the ARRC at the September meeting.

Recess

Chairman Priebe recessed the meeting at 3:45 p.m. to be reconvened at 8:30 a.m. on Wednesday, August 21, 1991.

Chairman Priebe convened the meeting at 8:30 a.m. All members and Staff were present.

Lottery  
(electronic)

Chairman Priebe recognized Schrader who briefed the Committee on his reasons for requesting special review of a rule, the text of which does not yet exist. He had learned through the news media of the proposed implementation of a video lottery. Schrader was hopeful that this review would preempt any problem or confrontation between the ARRC and the Lottery Division. He added that the Committee does not look favorably upon emergency rules which diminish their role in the review process. He asked to be enlightened on Division plans.

Nicki Schissel, Assistant Commissioner of the Iowa Lottery, stated that the rules were being drafted but had not been submitted to the Lottery Board for adoption. There was no set plan or course of action at this time. Schissel defended emergency filings in the past for a variety of reasons--most of the time for marketing. She was amenable to conveying to the Board any Committee recommendations.

Schrader had received petitions from citizens who want input in the development of rules--emergency adoption would preclude this. At this time, he knew of no valid reason for an emergency filing.

Schissel emphasized that Division rules deal primarily with how the customer plays the game and rarely has anyone attended any of their public hearings.

Priebe interjected that if the number of calls he had received was any indication, there would be people at a video lottery hearing. Schissel reiterated that rules would not address concerns of the public but would describe how to play, what constitutes a ticket, and how to claim a prize.

Responding to Schrader, Schissel continued that contractual arrangements with the major on-line vendor stipulates what the cost will be, what the state's share will be, and sets out terms and conditions. This type of information is not necessarily included in the rules. Schrader declared that is the reason the Committee wants to review these rules under the 17A process.

Pavich had received inquiries regarding awarding of the contracts for these electronic devices. He said that small cities were very concerned.

Tieden observed that the relative statute was not new and he saw no need for emergency filing which would bypass the intent of this Committee.

Lottery  
Cont'd.

Kibbie recalled that a newspaper article indicated that 11 counties would be involved. He was interested in knowing how placement of these machines would be determined. Schissel said the Board would follow the process generally used with all of their products in licensing retailers. The Board selected the 11 western counties in an attempt to keep the geography fairly small for economical administration and for the available communication lines to service the terminals. Any on-premise consumption liquor licensee is eligible to apply for a terminal. A Lotto license is not a prerequisite. Most of the 100 licensees in the 11-county area have instant ticket and pull-tab licenses. Their applications could be processed more quickly because background checks are completed but retailers are welcome to apply. Schissel clarified that gambling licenses were not required--only on-premise beer and liquor consumption licenses. Schissel spoke of considerations that will be given to each applicant to determine profitability for the state. Kibbie asked if a decision had been made to operate under emergency rules and Schissel responded that under the existing licensing rule, the Board will always do an evaluation based on different marketing principles for each licensee. Licensing procedures are published in their administrative rules.

Responding to Doyle's inquiry if there would be more than one manufacturer, Schissel stated the experiment would be implemented by the current Iowa Lottery on-line vendor that runs the Lotto system called "On-Line System." The company which services the riverboats would not be involved. Schissel continued that common games such as keno and pull-tab would be available on each terminal--a menu situation to be competitive with games in North Sioux City. A 90 percent payout would be recommended with all of the terminals paying out the same amount. Much of that is earned credit and winnings are replayed through the machine ("churning") so payout is reduced to approximately 65 percent. The remaining 35 percent is the net revenue to be divided among the retailer, the lottery and the on-line vendor.

In response to Schrader, Schissel said all the necessary rules governing the items mentioned are already in place. Existing purchasing rules would govern the bidding process for the on-line system and those for licensing retailers were already in place. She said that video lottery would be a new game but not a new class of game.

Schrader urged the Board to follow the normal rule-making process. Priebe cautioned against emergency rules without justification.

Chairman Priebe recognized Representative Rod Halvorson who concurred with the Committee's position on emergency rules. He urged them to consider legislative intent if the rules are adopted. Halvorson recalled

Lottery  
Cont'd.

1984 legislation specifically excluded video lottery games. In 1985, they changed the law to prohibit the Board from authorizing a game using electronic computer terminals or other devices if the terminals or devices dispensed coins or currency as prizes. The legislature wanted to avoid Las Vegas-type slot machines. Authorizing a ticket instead of cash would circumvent that law, in his opinion. Halvorson declared that Iowa exceeds other states in choices for gambling but he was convinced that the legislature did not intend to add video lottery. No formal action.

# ENVIRONMENTAL PROTECTION

Diana Hansen, Attorney, and Ralph Turkle, Engineer, presented the following rules:

## ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Federal Water Pollution Control Act, effluent and pretreatment standards, and toxic effluent standards updated, 60.2,

62.4, 62.5, Filed Without Notice ARC 2143A ..... 7/10/91

Water quality standards, 61.2(2)"h" and "i," Notice ARC 2118A ..... 7/10/91

60.2, 62.4,  
62.5

Hansen briefed the Committee on annual update of rules pertaining to effluent standards for various industries. Amendments to 60.2, 62.4 and 62.5 were Filed without Notice because the Department is required to adopt rules equivalent to federal regulations.

Kibbie inquired as to the impact of these rules on small business and Hansen replied that a small metal plater or metal finisher as well as big businesses such as meat packers would be governed. No Committee recommendations.

61.2(2)

Turkle presented amendments to 61.2(2)"h" and "i."

Priebe noted that he had received many comments regarding the poor job of publicizing amendments. Turkle recalled large attendance at the public hearings with many comments, including a complaint about poor notification. Information on the six hearings was printed in the Bulletin but through possible oversight did not utilize the media. Turkle stated that the nationwide permit in question had been in effect for about 9 or 10 years and the Department did not anticipate controversy. He planned to summarize all comments received and make a recommendation for certifying Section 401 Water Quality Certification on each one of the 40 different nationwide permits. Comments are still being received so the Commission will not consider his recommendations until September or October. Turkle emphasized that their ultimate goal was protection of Iowa's water quality without excessive burden on land-owners.

Maulsby wondered if Iowa were "hiding behind the federal regulations to go beyond what is practical for the communities."

Turkle advised Tieden that decisions on certification or denial of the nationwide permits must be included in the rules. No Committee action.



ENVIRONMENTAL  
PROTECTION

Pavich in the Chair.

Doyle inquired as to enforcement policy regarding Indian land and grassland. Turkle said that the Corps of Engineers has the enforcement and agency certification would apply to any of the waters in the state of Iowa, including those under Indian control. He was not aware of any formal agreement between Iowa and Nebraska but the Corps was very helpful. No formal action.

HISTORICAL  
DIVISION

Patricia Ohlerking presented the following amendments:

**HISTORICAL DIVISION[223]****CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"**

Description of organization, collections policies, historical marker program, 1.3, 1.4, 1.5(6)"h," 13.4(2)"d," 13.6(4)"b,"

13.6(5)"c," ch 23, Filed ARC 2150A ..... 7/10/91

1.3 et al.

Ohlerking described amendments to 1.3 et al. as organizational changes. Tieden referred to the duties of the administrator with respect to deaccession of materials in 13.6(4)b. Tieden asked why it was revised to allow the administration to approve or disapprove all recommendations. Ohlerking replied that the administrator still makes a recommendation to accept or disapprove but she was unsure of the impetus for the change.

Royce interjected that the rule will make it more difficult for deaccession from the historical collection. This has always been controversial in historical circles. No recommendations.

## INSURANCE

Priebe took the Chair and recognized Deb West, Craig Goettsch and Fred Haskins from the Insurance Division for the following rules:

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

Asset valuation, risk-based capital and surplus, actuarial certification of reserves, 5.6(5), 5.6(6), 5.27 to 5.29,

45.10(6), Filed Emergency ARC 2136A ..... 7/10/91Life companies--permissible investments, definition of investment grade, 5.10, 22.1(4), Notice ARC 2137A ..... 7/10/91Annual audited financial reports, 5.25, Filed ARC 2184A ..... 7/24/91Participation in the NAIC Insurance Regulatory Information System, 5.26, Filed ARC 2183A ..... 7/24/91

Broker-dealer members of SIPC not required to furnish surety bond; proof of membership required to be filed with Iowa

securities bureau, 50.1(1)"c," 50.1(3)"b," Filed Emergency ARC 2139A ..... 7/10/91Agents of exempt broker-dealers also exempt from registration requirements, 50.8(13), Filed Emergency ARC 2140A ... 7/10/915.6, 5.27-  
5.29, 45.10

West gave a brief explanation of ARC 2136A. Metcalf noted that the International Insurance Task Force was aware of concerns as to whether companies which do not operate in the United States had a different way of valuing assets. Haskins indicated that these rules were not relevant to that issue.

5.10, 22.1

In review of amendments to 5.10 and 22.1(4), Metcalf asked if the word "only" should be inserted in the last sentence of 5.10(2) so it would read "...applicable to only foreign insurers." Haskins responded that the legal reserves limitations are applicable to both domestic and foreign but only the deposit is applicable to domestic.

5.25, 5.26,  
50.1

There were no questions on ARC 2184A, 2183A or 2139A.

INSURANCE  
Cont'd.

50.8(13)

West gave a brief overview of amendment to 50.8(13) and Tieden questioned the significance of the number "three" in the preamble, referring to "...three or fewer non-institutional persons within the state." Goettsch responded that most states allow out-of-state brokerage firms to do a minimal amount of business before they have to be licensed and this reflects that policy.

LABOR  
SERVICES

The Division was represented by Walter W. Johnson, Deputy, for the following rules:

**LABOR SERVICES DIVISION[347]****EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"**OSHA rules for general industry--hazardous waste and emergency response, 10.20, Filed ARC 2157A ..... 7/24/91

OSHA rules for general industry--hazardous waste operations, emergency response, occupational exposure to lead,

10.20, Notice ARC 2156A ..... 7/24/91

Boiler inspections and administration, 41.2, 41.5, 41.11, 41.12, 42.2, 42.3\*2" to "7," 42.3\*9," 43.2(2), 43.2(3),

44.1(1), 44.4(10), ch 45 title, 45.2(3), 45.3(8), 45.10 to 45.21, 46.2(3), 46.2(4), 46.6(2), 48.1(2), 48.1(3),

48.2(2)\*b," 48.2(4), ch 49 title, 49.2, 49.4, 49.7(1), 49.7(2), 49.14 to 49.16, Notice ARC 2148A ..... 7/10/91

10.20

OSHA rules for general industry in ARC 2157A and 2156A were presented by Johnson with no questions.

Priebe apprised new members of adoption by reference to a date certain.

41.2 et al.

Amendments to 41.2 et al. regarding boiler inspections and administration were before the Committee.

Johnson discussed the fee structure for boiler inspections. In rule 42.2, the fee is for the issuance of a certificate, even if inspection is made by the insurance company. Insurance companies perform most of the inspections in heavy industrial areas. The Division covers schools, government buildings, and churches.

Metcalf inquired if a school or church is charged these fees for boiler inspections. Johnson replied that, in these cases, a certificate fee is included in the inspection fee. An inspection by an insurance company would cost \$15; the inspection and certificate fees would be \$35 when inspected by the Division. Johnson advised Metcalf that the law requires fees to approximate the cost of the program. Fees have not been increased in three or four years and they have not equaled costs the last two years. Any profit in the coming year would serve as a balance.

Maulsby questioned deletion of miniature boilers from Chapter 49 and Johnson cited legislative exemption two years ago.

Hedge noted that inspectors of insurance companies were not liable and he wondered if this had created problems for the state. According to Johnson, a case going to trial next month will raise this issue for the first time. The suit was originally filed against the insurance company for failure to properly inspect and then question arose as to whether an inspection was even made. A statute relieves insurance companies from liability for inspections which they perform for defects,

LABOR  
SERVICES  
Cont'd.

failures and omissions. Johnson had been unaware of this liability issue until the lawsuit. He added that historically, boilers are inspected by insurance companies. Boiler insurance is carried and the inspection is built into their fees. The Division has the responsibility of ensuring that inspectors are qualified.

Johnson informed Tieden that hotel boilers were not covered by the rules or statute.

Hedge referred to legislation that exempted from inspection steam engines used for exhibition purposes and he wondered about liability. Johnson saw no problem since the state has not assumed the responsibility by statute. He pointed out that the miniature boiler provision being struck from the rules is part of this issue.

Johnson stated that legislation last session decreased the state's responsibility for liability for boiler inspections but it is not retroactive. No formal action.

PERSONNEL  
DEPARTMENT

Representing the Department were T. A. Meyer and Renee Hardman for the following:

**PERSONNEL DEPARTMENT[581]**

IPERS—cost of benefits for sheriffs, deputy sheriffs, protection occupations, 21.6(9)"b" and "c," Filed Emergency

ARC 2159A ..... 7/24/91

21.6

Meyer summarized amendment to 21.6(9), paragraphs "b" and "c" which implements Code section 97B.49(16)"e." The Department has actuarially determined the annual cost of additional benefits provided to sheriffs, deputy sheriffs and special protection occupation groups under IPERS. Hardman advised that the contribution rate for regular IPERS was 3.75 percent for the employee and the employer contribution was 5.75 percent. No Committee action.

PUBLIC  
SAFETY

The Department was represented by Michael Coveyou, Ken Arduser, Narcotics Enforcement, and Jerry Corbett, Deputy Fire Marshal, and the following rules were presented:

**PUBLIC SAFETY DEPARTMENT[661]**

Smoke detectors, 5.807(6), 5.807(11), 5.808, 5.809, Notice ARC 2145A, also Filed Emergency ARC 2146A ..... 7/10/91

Marijuana eradication, ch 28, Notice ARC 1247A Terminated, also Notice ARC 2144A ..... 7/10/91

5.807-  
5.809

There was brief review of amendments to 5.807(6) et al. which implement 1991 Acts, Senate File 383 regarding requirements for installation and operability of smoke detectors.

Ch 28

Chapter 28 was before the Committee. Coveyou explained that proposed Chapter 28 addresses eradication of marijuana, particularly the uncultivated, and provides for voluntary cooperation in its eradication.

Tieden questioned whether cost of two Watts lines could be justified. According to Arduser, one is for use in marijuana eradication and another for general narcotics information. The Division must pay for a separate line

PUBLIC  
SAFETY  
Cont'd.

for marijuana eradication and federal money is provided. Pavich inquired about the impact of budget cuts on the Division and Arduser reported the loss of six vacant positions, one agent, and one support staff. No Committee recommendations.

Committee  
Business -  
Minutes

Chairman Priebe referred to a copy of the corrected motion that was distributed to the members. The last line was corrected to read "...a quorum consists of six members." Doyle then moved to approve the minutes as corrected. Motion carried.

There was discussion of possible inclusion of names and addresses of ARRC members in the IAB. They have been included in the "General Information" segment of the IAC since 1975. Metcalf suggested that the list be included at the end of each monthly Agenda in the Bulletin. Priebe favored inclusion of the names on the Preface page or near the front of the Bulletin. It was agreed that Royce and Dierenfeld should also have their names and telephone numbers included in the list. Barry agreed to provide a draft for the September meeting.

Committee  
Rules

Kibbie raised question with respect to the Committee's Rules of Procedure and quorum requirements. Royce admitted there was some confusion but the rules are correct in stating that some motions require a majority and others require two-thirds. He advised that numbers could be inserted. Priebe interjected that requiring seven members to take affirmative action, the minority party would control the Committee. He preferred to see the Committee continue as it now functions unless there is conflict. A majority of the members could amend the rules at such time. Schrader took the position that the statutory two-thirds must be followed. A legislative Act would be required to change that.

Metcalf reiterated her frustration that the membership of the ARRC is appointed six months after a new general assembly has been elected. Priebe reasoned that the party in power should be responsible--by sharing equally credit and blame.

Priebe stressed the need for legislation to require staggered terms for this Committee. Barry noted that prior to 1975, this was statutory.

Priebe commented on his interpretation of the statute that Committee meetings must be at least four hours. The ARRC has adhered to this practice in the past.

SOIL  
CONSERVATION

The following agenda was presented by Kenneth Tow:

**SOIL CONSERVATION DIVISION[27]**

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

Financial incentives program for soil erosion control--appropriations, 10.41, 10.41(1), 10.41(2), 10.41(7),

Notice ARC 2122A .....

7/10/91

SOIL  
CONSERVATION  
Cont'd.

According to Tow, no one appeared at the public hearing. After brief discussion, there were no recommendations.

TRANSPORTATION

The Department was represented by Mike Krohn, who reviewed the following:

**TRANSPORTATION DEPARTMENT[761]**

Regulations applicable to carriers, 520.1(1)"a" and "b," 520.1(2)"a," 520.2, Filed ARC 2185A ..... 7/24/91

520.1

The changes are necessary to comply with federal regulations. Tieden referred to the last line of the fourth paragraph of the preamble and asked for clarification re "...enforceable for commercial vehicles operated intrastate unless exempted by the Iowa Code." Krohn responded that certain industries were exempted from federal regulations by Iowa Code, for instance, petroleum, pesticide, and fertilizer dealers have certain exemptions depending on the type of commodity they are hauling; vehicles on construction sites are exempted from certain regulations. No Committee recommendations.

PROFESSIONAL  
LICENSURE

Representing the Professional Licensure Division of Public Health were Marilyn Ubaldo, Kathy Williams, Barbara Charls, and Susan Osmann. The following rules were discussed:

**PROFESSIONAL LICENSURE DIVISION[645]**

**PUBLIC HEALTH DEPARTMENT[641]"umbrella"**

Mortuary science examiners, 101.1, Filed ARC 2141A ..... 7/10/91

Optometry examiners, 180.112 to 180.122, Filed ARC 2178A ..... 7/24/91

Physical therapy examiners, 200.3(1)"b," 200.4(4), 200.10(7), 200.19(2) to 200.19(12), 200.20(7)"k"(4),

Filed ARC 2176A ..... 7/24/91

Podiatry examiners—standards for podiatry assistants engaging in podiatric radiography, ch 221, Notice ARC 2175A ..... 7/24/91

Physician assistants, 325.3(1)"a"(4), 325.3(1)"e" to "g," 325.4(1), 325.4(5)"d," 325.15(7)"a," Filed ARC 2177A ..... 7/24/91

101.1

Pavich took the Chair and recognized Ubaldo for amendments to 101.1 relating to mortuary science examiners. There were no questions or comments.

Ch 180

Charls gave a brief overview of the filed rule which amends Chapter 180, Board of Optometry Examiners. No questions or comments.

Ch 200

Ubaldo presented amendments to Chapter 200. No questions.

Ch 221

In her review of proposed Chapter 221, Ubaldo informed Tieden there were no hearings scheduled. She said there were approximately 300 licensed podiatrists and she estimated that 150 to 300 students may be certified for podiatry assistants engaging in podiatric radiography.

Ch 325

Williams presented amendments to Chapter 325, Physician Assistants. No Committee recommendations.

Committee  
Meetings

Priebe informed the members that Royce, Kibbie and he researched the Code on the "four-hour rule" and found it to be a gray area as to whether the ARRC would be a standing committee or subcommittee. Chairman Priebe announced that the Committee meeting would be conducted as usual with the exception of the second day when they would convene at 8:30 a.m. There were no objections.

PUBLIC  
HEALTH

Chairman Priebe recognized the Department for the following rules:

**PUBLIC HEALTH DEPARTMENT[641]**

Maternal and child health program, 76.4, 76.9, 76.10, 76.12(4) and 76.12(5), Notice ARC 2142A ..... 7/10/91  
Homemaker-home health aide services, 80.16, Filed Emergency ARC 2152A ..... 7/10/91

76.4 et al.

Present were Carolyn Adams; Cheryl Christie, Assistant Director, Division of Maternal and Child Health Services; and Pat Howell, Bureau Chief, Homemaker-Home Health Aide Program. There was discussion of changes in administration of maternal and child health block grant money. Priebe asked why "granted" was changed to "available" in 76.9. He also wondered if the "less affluent" areas of a city would suffer because of the one-to-three match--76.12(4). Christie replied that money was available from other state funds as a match. She added that was a minimal match and the more affluent would have an excess of matching funds, for use in their clinics but would not be reported as a match. When agencies send requests for proposals for the next year's grant application, the Department assigns a numerical value based on the number of clients available for service within their geographical area. With respect to substituting "available" for "granted," Christie said that grant money is available later in the year and contracts can be adjusted.

Tieden questioned the use of the words "Ability of an agency to receive...." in the last sentence of 76.9 and Christie was willing to clarify.

In response to Doyle, Christie was not aware that "allowable in-kind" was defined. Doyle suspected possible inequities by alleging in-kind.

Metcalf noted that the rules did not provide for matching with other state funds and Christie agreed to clarify that as well.

Schrader's concern was in 76.10(1) which required performance standards of the agencies that contract with the Department. He took the position that the standards should be set out by rule. Christie indicated that standards comprise six pages but were not yet formalized. Royce advised that the standards be included in rules in full or at least in abbreviated form. Adoption by reference was another option.

Kibbie inquired as to the number of local agencies involved in review by the Department for some other reason and wondered if there were duplication of effort. Christie responded that this was an expansion of the agencies they have worked with for years on MCH projects. They will perform additional chart reviews and staff observations. Community health consultants evaluate the agencies providing services. She concluded that the agencies that they fund for MCH programs have adequate match funding.

PUBLIC  
HEALTH  
Cont'd.  
80.16

According to Howell, emergency rule 80.16 would implement legislation relative to payment for court-ordered homemaker-home health aide services. During the 1991 legislative session, because of the deficit and the need to control the juvenile justice program, a portion of the money was placed in the homemaker-home health aide grant for these services. Schrader was concerned about duplication of other services. Howell described the program and pointed out it began by helping disturbed families. The role has expanded over the years and is now viewed as primarily an elderly services program.

Howell emphasized that services were not performed by social workers or counselors. State grant money is allocated to the counties for use within a particular county. The rules provide a mechanism whereby another agency which does not ordinarily serve a county, could do so. No Committee action.

#### REAL ESTATE

The following rules were before the Committee:

##### REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Division[193]

##### COMMERCE DEPARTMENT[181]"umbrella"

Administrative procedure, prelicense education and continuing education, discipline and hearing procedures, 2.1(5) to

2.1(7), 2.10(1), 2.10(2), 2.14(4), 2.15(7), 2.15(8), 2.16, 3.1, 3.2(1) to 3.2(4), 3.3(2) to 3.3(9), 3.4 to 3.6, 4.40(4)"e" and "f,"

4.40(17) to 4.40(19), Filed ARC 2149A ..... 7/10/91

Marie Thayer introduced Jerry Duggan, Real Estate Commission Chair, Council Bluffs; Russ Nading, Commissioner; Susan Griffel, Education Director; and Roger L. Hansen. Also present were Lucille Wiederrecht, Director of Education Iowa Association of Realtors and Brad Hains, Real Estate Broker and Home Study Course Sales.

2.1(5) et al. It was noted that the rules had been placed under a 70-day delay by the ARRC for further study.

Nading urged Committee support for the revisions.

Discussion focused on Continuing Education requirements. Nading said that Iowa realtors are required to have 36 hours of Continuing Education every three years. The rules currently allow all 36 hours by correspondence but this will be cut to 18 hours. The change was well publicized and they received two telephone calls from opponents. A letter-writing campaign of protest was initiated by some providers of Continuing Education. Nading spoke at length on the importance of interaction at "live" seminars. He did not consider six hours a year in a classroom setting where the examination can be proctored to be excessive. The Real Estate Commission is upgrading education requirements and instructors must have 16 hours beginning in January.

Schrader was interested in knowing of any opposition to the rules.

REAL ESTATE  
Cont'd.

Chairman Priebe recognized Wiederrecht who reported on a poll of the 6,000 members--about half of the licensees--of the Iowa Association of Realtors. Some preferred no correspondence courses and others believe that 18 hours is acceptable. Wiederrecht cited several disadvantages to correspondence courses and on the positive side, admitted the convenience aspect. She stressed that the courses should be updated continually with emphasis on having the profession work to the benefit of the public.

Schrader commended those who reached a compromise on this issue.

Haines addressed the Committee in support of home study courses which he viewed as a valid method of learning and he cited several advantages. In conclusion, Haines said that if it were true that a higher quality of learning takes place in the classroom, the Real Estate Commission should confirm this with an affirmative study proving such an assumption.

Haines informed Kibbie that he taught Continuing Education in the real estate field at numerous community colleges. Through a joint venture he does mailing and advertising and uses their facilities and telephone for registration.

Doyle and Griffel discussed reexamination requirements for instructors and courses they can take to remain current.

Motion -  
Delay lifted

Schrader moved to lift the 70-day delay that was imposed on ARC 2149A on July 24. Motion carried.

No Reps

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

#### EDUCATION DEPARTMENT[281]

Hearing and appeal procedures, ch 6 implementations and ALJ references, 6.2, 6.3(1), 6.3(3), 6.4, 6.6(1), 6.7(2)"n," 6.7(2)"o"(7), 6.9(1) to 6.9(3), 6.10(4), 6.10(5), 6.12, rescind ch 7, Filed Emergency ARC 2120A ..... 7/10/91  
Quality instructional center initiative, 21.57 to 21.63, Notice ARC 1859A Terminated ARC 2121A ..... 7/10/91

#### INDUSTRIAL SERVICES DIVISION[343]

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

Payroll tax tables, 8.8, Filed Emergency ARC 2160A ..... 7/24/91

#### REGENTS BOARD[681]

College-bound program, 1.6(2)"c," Filed ARC 2130A ..... 7/10/91

#### SECRETARY OF STATE [721]

Election forms, 4.3, Filed Emergency ARC 2138A ..... 7/10/91

#### UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Consumer comment hearings, 7.7(16), Notice ARC 1614A Terminated ARC 2182A ..... 7/24/91

Applicant payment agreements, 19.2(4)"c"(21), 19.4(10), 19.4(16)"h," 20.2(4)"z," 20.4(11), 20.4(16)"h,"

Notice ARC 1613A Terminated ARC 2181A ..... 7/24/91



Next meeting    The next regular meeting was scheduled for Tuesday and Wednesday, September 10 and 11, 1991.

Adjournment    Meeting adjourned at 12:30 p.m.

Respectfully submitted,

Phyllis Barry  
Phyllis Barry, Secretary  
Mary Ann Scott, Admin. Asst.

Bea E. Pugh  
Chairman