

MINUTES OF THE REGULAR MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting

The regular meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday and Wednesday, December 11 and 12, 1990, Senate Committee Room 22, State Capitol, Des Moines, Iowa.

Members Present

Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; and Representative David Schrader. Not present: Representative Betty Jean Clark who remains hospitalized.

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

Convened

Chairman Priebe convened the meeting at 10:05 a.m. and called up Civil Rights Commission for the following rules:

CIVIL RIGHTS COMMISSION

**CIVIL RIGHTS COMMISSION[161]**  
Complaint process — reopening of files, 8.15(1), 8.15(4), Notice ARC 1418A ..... 11/14/90  
Employment policies relating to pregnancy and childbirth, 8.55, Notice ARC 1418A ..... 11/14/90

Appearing for the Commission was Ron Pothast, Director of Administration.

3.15

Pothast explained proposed changes to rule 3.15 which were intended to clarify reopening of a complaint file.

8.55

With respect to proposed 8.55, Pothast stated that the revision removed redundant language and clarified employment policies relating to pregnancy and childbirth.

Tieden wondered if the rule would coordinate with rules of the Personnel Department.

Royce advised that 8.55 was not a personnel rule per se, since the requirements would apply to all employers in the state covered under the Civil Rights Act. He continued that the rule would impact small business and suggested that this fact should be noted in the Notice as provided in Code section 17A.31.

No formal action.

UTILITIES DIVISION

Appearing for the Division was Vicki Place who presented the following agenda:

**UTILITIES DIVISION[199]**  
**COMMERCE DEPARTMENT[181] "umbrella"**  
Consent for the sale of goods and services, 1.6, Notice ARC 1429A ..... 11/14/90  
Practice and procedure — attorneys, 7.2(7)"e", Notice ARC 1499A ..... 11/28/90  
Energy efficiency and cost recovery, 7.4(4), 35.12, Notice ARC 1412A ..... 11/14/90  
Service copies, 7.4(6)"e"(23), Notice ARC 1494A ..... 11/28/90  
Consumer comment hearing options, 7.7(16), Notice ARC 980A Terminated ARC 1413A ..... 11/14/90  
Utility audit workpaper documents, 16.9, Notice ARC 1497A ..... 11/28/90  
Utility audit workpapers, 19.2, 20.2, 21.2, 22.2, Notice ARC 1045A Terminated ARC 1498A ..... 11/28/90  
Exterior lighting, 20.16, Filed ARC 1414A ..... 11/14/90  
Reorganization of public utilities, ch 82, Filed ARC 1495A ..... 11/28/90

UTILITIES  
DIVISION  
Contd.

Also present: Keith Luchtel, Iowa Society of CPAs.

- 1.6 Place described 1.6 as intended to implement 1990 Acts, Chapter 1209. There was brief discussion and Royce suggested that it should be established that employees could have "moonlighting jobs." No Committee action.
- 7.4  
35.12 According to Place, amendments to 7.4(4) and 35.12 were the companions to another rule making that lays out energy efficiency plans. This is the mechanism by which utilities who present energy efficiency plans to the Board can recover those costs.
- No questions on 7.4(6)e(23) or the termination of 7.7(16).
- 7.2(7)e Place stated that 7.2(7)e was intended to conform with the Board's policy with respect to out-of-state attorneys who may practice before the Board.
- Tieden interpreted the rule as "forcing" the retention of an attorney. Place did not agree.
- 7.4(6) There were no recommendations for 7.4(6)e(23).
- 16.9 Place explained that proposed new rule 16.9 would replace terminated ARC 1498A which had proposed amendments to 19.2, 20.2 and 21.2 relative to audit workpapers.
- Pavich took the Chair and recognized Luchtel, who contended that proposed 16.9 exceeded the statutory authority. He viewed it as being improperly broad and a hindrance to performance of the audit function.
- Place told Royce that Iowa Code section 116.31 designates the audit workpapers as property of the accountant.
- Luchtel thought that these papers were the property of the auditor under Chapter 116. In the past, the Consumer Advocate has had access to these papers but the work is generally done in the auditor's office because of voluminous materials.
- It was Place's understanding that the revised proposal would allow that examination to be done at the auditor's office. No formal action.
- 20.16 Place reported that new rule 20.16 would implement Iowa Code Supplement sections 476.62 and 364.23, which provides that all public utility-owned exterior floodlighting, including but not limited to street and security lighting, shall be replaced with high pressure sodium lighting or lighting with equivalent or better energy efficiency type lighting.
- Priebe noted that he rented the outside security light on his farm through the REC.

UTILITIES  
DIVISION  
Contd.

Place pointed out that legislation did not exempt farm exterior lighting. The Board did not impose a date since the statute was silent on that issue.

Royce advised Doyle that the Handbook referenced in 20.16(3) would not need a date certain since "12th Edition" was the equivalent of the date. However, he questioned availability of the publication. Place indicated that the Handbook was available in their library. She added that no one had opposed the provision.

Ch 32

No questions were raised on Chapter 32.

22.10(1)

There was discussion of 22.10(1) relating to telephone service checks which had been delayed 70 days for further study. Place offered detailed explanation of the rule making.

Motion to  
Lift Delay

After studying the rule, Schrader viewed it as applying to the internal bookkeeping of the utility rather than how the consumer would be charged. Schrader moved to lift the 70-day delay imposed at the November 14 meeting of the ARRC. The action would be effective December 12. Motion carried.

PETROLEUM  
UNDERGROUND  
STORAGE  
TANK FUND  
BOARD

Appearing for the UST Board was Robb Hubbard who presented the following:

<b>PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]</b>	
Eligibility, ch 10, <u>Filed</u> ARC 1451A .....	11/14/90
Remedial or insurance claims, ch 11, <u>Filed</u> ARC 1461A .....	11/14/90
Guaranteed loan program, ch 12, <u>Filed</u> ARC 1480A .....	11/14/90
Installers and inspectors, ch 15, <u>Notice</u> ARC 1425A, also <u>Filed Emergency</u> ARC 1424A .....	11/14/90

Chs 10  
to 12

Hubbard explained that Chapters 10, 11 and 12 address insurance eligibility issues.

In response to question by Tieden, Hubbard urged him to encourage constituents to call Hubbard with their questions. Hubbard was confident he could assist them to not only keep them in business longer but more importantly to help them understand their functions and obligations. He emphasized that the role of the UST Board was to help but they need to be made aware of problems. Hubbard provided an 800 telephone number where he could be reached.

Doyle raised question as to insurance premiums in 10.3(1). Hubbard responded that legislation established the premium this year at \$150 per tank if the system is upgraded. If not, the premium is \$300 per tank until 10-26-92 at which time tanks not upgraded will be ineligible for the insurance.

Hubbard pointed out that generally testing was required prior to participation in the program so the Board is aware of which tanks are contaminated within the framework of the insurance. The policy itself does not cover an existing condition but the remedial program is designed to address this.

Maulsby spoke of communication problems between the Department and the gas stations in his area where they have excavations and are going out of business because of no response from state officials.

Hubbard pointed out that the approval process was under the Department of Natural Resources which must act before the UST Board becomes involved. This is a regulatory issue, not financial, from the standpoint of the program.

Hubbard discussed federal rules with respect to leak detection. Over 80 percent of the tanks in this state are impacted by those rules as of 10-22-90 which renders as moot any controversy over Iowa dates. Response to various mailings to the applicants are indicative of the type of problems. All of the 3700 claims received in one week qualified for assistance.

Pavich in the Chair.

Hubbard stressed that the UST Board will work with the legislature and the owner-operators in an effort to prevent business loss. He declared the "Iowa program is the best in the country."

Priebe in the Chair.

Ch 15

Hubbard said that legislation required specific standards for installers, both from a licensing and an educational standpoint, and inspectors for the review of the work being done. Experience has shown that approximately one-third of all the problems are caused by improper installation. The rules were filed emergency to permit cost recovery against installers. In order to begin the licensing process, it was important to determine who was holding themselves out to be installers. Hubbard noted that several public hearings were held and the Board plans to incorporate many suggestions and refile the rules under the normal process. He discussed the fact that removers were not covered under the legislation or rules. The League of Municipalities had opposed such legislation fearing their ability to pull their own tanks would be eliminated. Hubbard estimated that 120 temporary licenses had been issued. No Committee action. A Dec. 3 letter from Harold Fischer was placed on file.

INSURANCE  
DIVISION

Appearing for the Insurance Division was Daniel Pitts Winegarden and Fred Haskins, Assistant Attorney General. The following agenda was considered:

<b>INSURANCE DIVISION[191]</b>	
COMMERCE DEPARTMENT[181] "umbrella"	
Regulation of insurers — general provisions, 5.23, 5.24, <u>Notice</u> ARC 1481A .....	11/28/90
Port of entry requirements, ch 12, <u>Notice</u> ARC 1459A .....	11/14/90

5.23, 5.24

Winegarden described 5.23 and 5.24 as "hazardous financial condition rules." The National Association of Insurance Commissioners (NAIC) is in the process of implementing standards for creditation of the state insurance departments as approved financial regulators, to eliminate weak links or weak states in the insurance regulatory scheme. The standards will impose more uniform solvency and financial oversight for all U. S. insurance companies regardless of where they are headquartered or chartered. Iowa will be reviewed by the accreditation committee in 1991. Winegarden noted that Iowa is known for quality

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DIVISION  
Contd.

regulation and the rule making is an effort to maintain that reputation. Haskins added that in an increasingly litigious society, companies have challenged the authority of the Commissioner to make a determination that a company is in a hazardous financial condition without specific standards. The NAIC has supplied a definition.

Ch 12

Winegarden stated that Chapter 12 would provide admission procedures and financial requirements for alien insurers seeking to become domestic insurers under Iowa's port of entry laws.

In response to Tieden, Winegarden stated that the trust account must fully fund with moneys deposited in the U.S. any liabilities of the U.S. operations plus the minimum capital and surplus. Minimum capital and surplus in Iowa is currently \$5 million.

In a matter not on the agenda, Doyle and Winegarden discussed charges and insurance coverage for mammograms. Winegarden noted that the mammogram requirements stemmed from federal law--women are paying for prostate cancer surgery for men and men are paying for mammogram benefits for women in Medicare supplement policies. Winegarden continued that at least one or more insurance companies sent out a rate increase notification averaging \$90 per policy and attributed the increase to mammograms. Winegarden stressed that the notice was grossly misleading and the companies involved were under investigation by the Insurance Division. The property casualty actuary has estimated \$7 to \$10 increase for mammogram benefits. Winegarden indicated that the rate increase would depend on whether it was a group or individual policy and would have been approved by the Division. Haskins interjected that they have a parameter of 30 percent per year increase in overall premium but the review does not break this down into benefits. That is a very important question which the Division is studying.

Pavich was interested in disciplinary procedures and Winegarden said they would include the requirement of sending a correction letter, pointing out the potential violation of unfair insurance trade practice and resulting punishment.

Schrader had received a few comments from his constituents and noted that Bankers Life was one of the companies in question. He agreed to provide material to the Division.

Winegarden recalled his appearance at a previous ARRC meeting when rules of the Division relative to Medigap or Medicare Supplemental insurance were reviewed. These standards were mandated by the federal government under the "Baucus" bill passed in 1988. Winegarden pointed out that OBRA which passed October 27, 1990, strengthened the Baucus bill. Additional changes will be needed in the Insurance rules in order to conform with the new federal

INSURANCE  
DIVISION  
Contd.

requirements so the Division can continue to administer at the state level. Key elements remain in place, including mandatory limitations on commission received by insurance agents. Winegarden distributed a packet of materials to the ARRC.

In response to Doyle, Winegarden estimated that currently, the Division of Insurance has leverage over 30 percent of health care dollars.

At the request of Priebe, the Job Service Division rules proposed in ARC 1454A were moved from the "No Agency Representative Requested" category for review at 2:30 p.m. today.

PUBLIC  
SAFETY  
DEPARTMENT

Michael Coveyou and Donald Appell represented the Department for the following:

PUBLIC SAFETY DEPARTMENT[661]  
State of Iowa building code, 16.140(1)"e," 16.400(1)"y," 16.401, 16.704(5), Figure 3, 16.705(3), Table  
705A. Notice ARC 1485A ..... 11/23/90

Ch 16

Coveyou reported that amendments to Chapter 16 follow the mandate of 1990 Iowa Acts, Chapter 1214, (S.F. 2011) and also clarify existing portions of the building code.

Discussion of 16.401 pertaining to minimum toilet facility standards. Appell advised that the law requires that water closets installed after January 1, 1991, must be efficient to use 3 gallons or less water per flush. Schrader raised question as to the practicality of some of the rules. Appell emphasized that the amendments were applicable only to new construction and renovation of existing structures. He called attention to the federal American Disabilities Act which has placed strict requirements on existing buildings which could impact Iowa. No Committee action.

LIBRARY  
DIVISION

Appearing for the Library Division were Shirley George, Gerry Rowland and Mark Peitzman and the following was considered:

LIBRARY DIVISION[224]  
CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"  
Organization and operation, library services and construction Act (LSCA) grant program.  
chs 1, 6, Notice ARC 1415A ..... 11/14/90

Chs 1 to 6

George told the Committee that copies of the proposed rules on the organization and operation of the Library Division and the LSCA Grant Program had been distributed to 50 key Iowa libraries. These libraries are participants in the state documents depository program. There are 525 libraries in Iowa. George pointed out that the LSCA program had not changed in many years and has been distributed to each of the public libraries in the form of a Handbook. Priebe questioned George as to costs and George admitted that administrative rules were needed to address costs. Priebe reasoned that books were transferred and available to every library and he asked why this material was not available to all 525 libraries. George indicated that 50 libraries receive the IAB and a separate publication went to all the public libraries in Iowa. She continued that the Division had reviewed

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DIVISION  
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See also  
page 4532

the letter from Royce wherein he pointed out the need for comprehensive rules for the library operations. George apologized for the delay. She said that rules addressing copying charges for out-of-state libraries were being developed. The State Library shares resources within the state as well as out of state. Royce advised that library rules should be complete so they would not have to be supplemented by handbooks. He also pointed out the absence of eligibility criteria in the LSCA grant rules. Royce urged the Division to develop a timetable to complete their initial rule making. There was Committee consensus that the rules should be distributed to every library in the state. Tieden observed lack of gender balance and geographic equality for the LSCA Advisory Council--6.2(2). George responded that the requirements were taken from the federal guidelines.

COMMITTEE  
BUSINESS

There was discussion of the September 13, 1990, proposed revision of the Committee Rules of Procedures. Final rules are published in Volume I of the Iowa Administrative Code. Priebe thought it advisable to omit names of the Staff and Legal Counsel and refer only to the position. He also recommended clarification with respect to tapes of ARRC meetings. "Anyone wishing to listen to or copy the tapes will be required to do so in the office of the Secretary."

Motion

Pavich moved that the rules be approved as amended. Motion carried.

There was discussion of Royce's proposed statutory amendment to Code section 4.3 which addresses adoption by reference. The proposal is as follows:

**4.3 REFERENCES TO OTHER STATUTES AND OTHER DOCUMENTS.**

Any statute or rule which adopts by reference the whole or a portion of another statute of this state shall be construed to include subsequent amendments of the statute or the portion thereof so adopted by reference unless a contrary intent is expressed.

Any statute or rule which adopts by reference the whole or portion of another statute, rule or document of any nature, enacted by another state, the federal government or any non-governmental entity must contain a citation to the specific effective date or date of publication of the adopted materials. An adoption by reference under this paragraph does not include any subsequent amendments to that cited effective date or date of publication.

In addition, a rule which adopts such material must contain a brief synopsis of the contents of such material and identify where interested persons may obtain a copy of the text of the adopted material. This material must be made available by the agency promulgating the rule at a cost no greater than the cost of reproduction.

Motion

Schrader moved that the ARRC pursue having the language drafted as a bill. Motion carried.

Rules  
Noticed

There was consensus that the proposed Rules of Procedure should be published in the IAB as a Notice of Intended Action to allow for public comment.

Barry called attention to the fact that rules of the Citizens' Aide had never been revised and transferred

COMMITTEE  
BUSINESS  
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to conform with 1986 Government Reorganization. Royce recalled that the Supreme Court had ruled that the office was subject to Code Chapter 17A.

Motion

Schrader questioned use of "proposed rule" in the ARRC Rules of Procedure, le. He moved to reconsider the vote by which the rules were adopted for the purpose of deleting the word "proposed." Royce reminded that the rule had been in existence for 15 years and was based on Code section 17A.4, which states that the Committee as a whole may vote to require an agency to hold a public hearing on a proposed rule. Paragraph e of the Committee rules allows any one member to make a request on behalf of the Committee. The Rules Committee has no legal authority to demand a public hearing on an existing rule, only on a proposed one.

Motion  
Withdrawn

Schrader withdrew his motion.

Barry asked if a Committee rule were needed with respect to their recommendation that the full text of an adopted rule may be eliminated from the Bulletin if it is identical to the Noticed version. Priebe favored allowing discretion to the Editor at this time.

Motion

Pavich moved that the rules as amended be published under Notice. Royce and Barry agreed to renumber the rules and prepare a document for publication. Motion carried.

Recess

Chairman Priebe recessed the Committee for lunch at 12:10 p.m. and reconvened the meeting at 1:35 p.m. The Human Services Department was present for the following:

HUMAN SERVICES DEPARTMENT	HUMAN SERVICES DEPARTMENT[441]	
	Correction and updating of Iowa Code references and departmental organization, ch 24 implementations, ch 25 preamble, 25.2(1)"a"(3), 25.2(1)"b"(1), 25.2(2), 25.3(2), 25.5(2)"b", 25.5(4)"a"(6), 25.5(4)"b"(4), chs 25 and 26 implementations, 28.1, 28.2(4), 28.9, 28.11(6), ch 31, 33.5(6), 33.5(7), 33.5(7)"b" and "c," 33.5(10), 35.9, 35.12, chs 38 and 37 implementations, Notice ARC 1470A	11/28/90
	Mental health, mental retardation and developmental disabilities special services fund, ch 89, Filed ARC 1472A	11/28/90
	Model waiver, elderly waiver, hospice programs, 77.30(5)"c," 77.33(6)"b," 78.36(2)"c," 78.36(3), 78.36(3)"c," 78.39(4)"b," 79.1(2), 79.1(14)"b," 83.1, 83.2(1)"d," 83.2(1)"e"(2), 83.2(1)"f," 83.2(2)"b," 83.3(4)"d," 83.3(2)"c," 83.21, 83.22(1)"d," 83.22(2)"a" and "b," 83.23(4)"c," 83.26, 83.28(2)"c," Notice ARC 1483A	11/14/90
	Medicaid reimbursement policy, 78.3, 78.3(8), 78.3(13), 78.3(14), 78.3(16), 78.11(4), 79.1(5)"j," Notice ARC 1480A	11/23/90
	Model waiver program - homemaker services, 78.34(1), Notice ARC 1188A Terminated ARC 1432A	11/14/90
	Determination of inpatient admission, 79.1(6)"p," Notice ARC 1469A	11/23/90
	Family planning services, 173.1, Notice ARC 1471A	11/23/90
	Subsidized adoptions, 201.1, 201.2, 201.5(1), 201.6(1), Notice ARC 1479A	11/23/90

Those in attendance included: Mary Helen Cogley, Mary Ann Walker, Kathleen Keller, Kathy Ellethorpe, Vivian Thompson, Carl Stratemeyer, Deloris Conner, James Chesnik, and Jo Lexberg. Also appearing was Jodi Tomlonovic, FPCI.

Ch 24,  
et al.

Walker described amendments to Ch 24 et al. as "cleanup" Statutory references and implementation provisions were updated.

There was discussion of the continuing problem of interpretation and codification of intent language included in appropriations bills which would be effective for only the fiscal year. Priebe wondered if the matter should be called to the attention of the Speaker of the House and the President of the Senate. Royce mentioned a possible opinion of the Attorney General on the problem.

HUMAN  
SERVICES  
Contd.

Barry commented on the importance of also citing the version that everyone has access to at a given time, e.g., Senate or House File or Chapter of Acts until the codification appears in the Iowa Code or Code Supplement. Many agencies do not convert the File or Act citation until the rules need other amendments. Barry called attention to Tables in Volume III of the Iowa Code which give the Disposition of Acts of each General Assembly. There was further discussion of the problem of including legislation of a permanent nature in appropriations Acts--a practice which was not condoned in earlier years.

Walker spoke of her cooperation with the IAC Editor in identifying obsolete references and amending the rules in the course of regular rule making.

Priebe attributed many of the problems to "wide open" conferences and he indicated that he would attempt to amend Conference Committee policy. No formal action.

The remaining agenda items were summarized by Walker and there were no recommendations.

Human  
Services  
Council

Royce reported on his recent appearance before the Human Services Council. The Council had written the ARRC to express their concerns when members of the public present issues to the Rules Committee without first contacting the Council. Royce cited an example which involved the Medipass rules when Betty Hoffman-Bright appeared before the Committee to protest the impact of the rules on the Muscatine center. The rules were in final form, yet Hoffman-Bright had never talked with the Department. The rules were delayed 70 days and problems were ultimately resolved. However, the Council maintained that the entire rule-making process suffers when these incidents occur. Priebe recalled his frustration with the consultant hired by Human Services for \$60,000 who readily admitted her bias in favor of the Medipass program. He asked Walker to check as to whether the consultant is being retained. There was Committee consensus that, ideally, problem issues would surface during the Notice process. However, realistically, they are often unknown until the rules are adopted.

Royce indicated that the Council wondered about the possibility of the ARRC taking public testimony but deferring formal action until the matter could be presented to the Council. He advised that the only way this could be accomplished would be by telephone conference toward the end of the month. Schrader pointed out instances when the Committee had done that--the OBRA rules, for example. Pavich suggested that the Department attempt to learn of soft points early in a rule making.

COMMITTEE  
BUSINESS

Chairman Priebe asked Royce to report on his recent meeting with Midwestern Rules Review staffs in St. Paul, Minnesota. Royce summarized points of interest. In

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addition to Iowa, Wisconsin, North Dakota, Minnesota, Missouri, Idaho and Michigan were represented. Only two legislators attended. A suggestion was made to hold a convention in conjunction with the Congress of State Legislatures, Council of State Governments, July 1991, in Omaha, Nebraska. The CSG volunteered to make space available for a rules review section on the program--a Sunday afternoon presentation followed by a Monday morning conference of some kind dedicated strictly to rules review. Future developments would rest with the rules committees of the various states.

The Minnesota program addressed legislative veto, suspensions of rules--Wisconsin's law on session delay is being tested in court. Royce indicated that he was selected to coordinate the Omaha meeting. Legislators who are involved in the rule-making process will be invited. Priebe reiterated his opposition to any attempt to diminish the legislative function. Royce understood that completely and pointed out that the idea of a permanent organization had been shelved.

AGRICULTURE  
AND LAND  
STEWARDSHIP  
DEPARTMENT

Appearing for the Department were Ron Rowland, John Hinshaw, Jack Wakefield and Lowell Anderson, State Veterinarian. Also appearing was Angela Anderson, Executive Director of Iowa Poultry Association. The agenda follows:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]	
Dairy industry commission, rescind 810--ch 1. Filed ARC 1486A.....	11/14/90
Poultry, 60.1, 60.2(2), 60.3. Filed ARC 1409A .....	11/14/90
Registration of Iowa-foaled horses and Iowa-whelped dogs, 62.1, 62.8, 62.8(1)"f" to "h," 62.4, 62.12(3), 62.12(4), 62.14(1), 62.15(2), 62.15(4), 62.16(5), 62.16(6), 62.22(3), 62.22(4), 62.24(1), 62.25(2), 62.25(4), 62.26(5), 62.26(6), 62.32(3), 62.32(4), 62.34(1), 62.35(2), 62.35(4), 62.36(5), 62.36(6), 62.41, 62.41(1). Filed ARC 1485A .....	11/14/90
Infectious and contagious diseases -- poultry and birds, 64.34(6), 64.35, 64.35(4). Filed ARC 1419A .....	11/14/90
Livestock importation -- all poultry and their hatching eggs, 65.11. Filed ARC 1408A .....	11/14/90
Dairy farm water supply, 68.35. Filed ARC 1462A .....	11/28/90

Ch 1

No recommendations on rescission of Chapter 1.

Chs 60, 64  
and 65

Anderson reviewed amendments to Chapters 60, 64 and 65 relative to poultry and birds. Priebe questioned A. Anderson with respect to MG testing for chickens and Priebe knew of a large hatchery operation where they import eggs since Iowa does not require MG testing. She responded that it is required for turkeys and Iowa is an "MG clean state" for egg-producing or meat-type chickens. She was not aware of any problem for the egg-type chickens and she noted that there had been no large degree of broilers in our state for many years. The operation Priebe referenced was hatching approximately 50,000 chickens daily and he contended that Iowa should perform MG testing so the eggs could be produced here. A. Anderson reiterated that testing was not done since production did not warrant it. Generally, production and breeding tend to go hand in hand. Testing would have to take place at the breeder farm. No action taken.

According to Anderson, amendments to Chapter 64 reflect changes from the Notice to allow for market classes that were consigned to slaughter to be exempt from the salmonella typhoid and pullorum testing if they could be separate from the tested classes of poultry and birds at the same show. Priebe referred to 64.35, first sentence,

AGRICULTURE  
AND LAND  
STEWARDSHIP  
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which stated, "Each county fair shall have an official veterinarian who will inspect all livestock, poultry and birds when they are unloaded or shortly thereafter." He would have preferred placing a period after "birds". Priebe also questioned, "No certificate of veterinary inspection shall be required on livestock, poultry or birds exhibited at a county 4H or FFA show." Anderson explained that the provision was not new and was intended to avoid having the 4H and FFA members and exhibitors have a veterinarian examine their animals and write a certificate prior to the show. No formal action.

65.11

There were no recommendations regarding 65.11.

Ch 62

Hinshaw presented clarifying amendments to Chapter 62. Hinshaw and Priebe discussed transfer of ownership of thoroughbred mares--62.15(4). Hinshaw stressed the importance of determining the breeder of a mare at time of foaling. Priebe pointed out that the Jockey Club allows more time for transferring and he suspected this could cause confusion. Hinshaw opined that most people affected were aware of the law and rules.

68.35

Rowland and Wakefield reviewed 68.35. No questions.

DEPARTMENT  
FOR THE  
BLIND

Creig Slayton and Kris Nelson were present for the Department for the Blind and the following was considered:

**BLIND, DEPARTMENT FOR THE[111]**  
Administrative organization and procedures, chs 1, 2, 12, 13.13(2) to 13.13(4). Notice ARC 1474A ..... 11/28/90

Chs 1  
et al.

Slayton told the Committee that the Department was involved in a five-year review of their rules which resulted in several technical corrections, consolidation and clarification; for example, at least six meetings will be held each year but specific date, time and location requirements were eliminated. Goods and services in excess of \$5,000 will be purchased through competitive bidding. No Committee recommendations.

JOB  
SERVICE  
DIVISION

Joe Bervid presented the following agenda for Job Service:

**JOB SERVICE DIVISION[345]**  
**EMPLOYMENT SERVICES DEPARTMENT[341] "umbrella"**  
Employer's contribution and charges, claims and benefits, 3.40(3)"a," 4.1(25)"b"(17) to (21), 4.1(25)"c," 4.24(15)"i,"  
4.51(6). Notice ARC 1454A ..... 11/14/90

3.40 et al.

Bervid viewed amendments to 3.40(3)a et al. as nonsubstantive. He pointed out that 4.51(6) with respect to reasonable assurance as applicable to an educational institution was revised as required by federal interpretation. The Iowa State Education Association wrote in support of the change.

ATTORNEY  
GENERAL

The following agenda of the Attorney General was before the Committee:

**ATTORNEY GENERAL[61]**  
DNA profiling, ch 8. Notice ARC 1450A ..... 11/14/90  
Additional charges — service contract or warranty, ch 13. Notice ARC 1449A ..... 11/14/90  
Noncredit property insurance in consumer credit transactions, ch 20. Notice ARC 1447A ..... 11/14/90  
Consumer credit insurance, ch 21. Notice ARC 1446A ..... 11/14/90  
Notification and fees, ch 22. Notice ARC 1448A ..... 11/14/90

Appearing for the Attorney General were Richard Cleland, Julie Fleming and Richard Williams. Also appearing were: Mike Rehberg, Public Safety, DCI; John W. Thomsen, Martha

ATTORNEY  
GENERAL  
Contd.

Martell, Jackie Walczyk, Iowa Auto Dealers Association; Kevin Kruse, Iowa League of Savings Institutions; Larry Kingery and Jeff Jungman, Division of Banking; Sharon Sievers, Iowa Bankers Association; John Rigler, Norwest Bank; Gary Poetting, Norwest Financial.

Ch 8

Williams discussed proposed DNA rules which were mandated by Code Supp. section §13.10. Implementation will be contingent upon the Division of Criminal Investigation obtaining the ability to process specimens and establish a profile data bank. They attempted to limit potential offenses to those involving assaults and more serious crimes in order to limit the number of samples which must be processed initially. The rules will become effective when the Department of Public Safety is in a position to begin processing the samples--8.6. If funds are granted, it would be January 1, 1993, before the process could commence by staffing and equipping the laboratory for a target date of January 1, 1994. Priebe was intrigued by the exemption if it is determined that due to age, health, physical disability, the person is highly unlikely to commit a crime of violence in the future. (8.4) Williams responded that he included the provision and he cited when it could apply: a convict who had been incarcerated for many years and was transferred to a nursing home at a very old age.

It was Doyle's opinion that the law would preclude such an exemption. Williams recalled that the law allows them to prescribe those offenses which would be subject to it. He added that they probably also lack authority to address prescribed sample technique which they believe to be necessary. Williams was willing to delete the questionable language which was added as a time- and cost-saving measure. Priebe concurred that the rule on exemption should be modified and the Committee should alert the legislature of the problem. Doyle reasoned that the law was too tight in using "shall," thus requiring offenders to submit specimen for DNA profiling.

Rehberg stressed the need for funding to begin the program. He viewed this technology as the most sophisticated and sensational forensic science in 25 years but it must be done correctly--there will be many variables.

Motion

Doyle moved that the Speaker of the House and President of the Senate be sent a copy of the Notice with a request that the issue of DNA profiling be forwarded to the appropriate committee to determine whether specific exceptions should be added to Code section 13.10. He recommended that laboratory personnel be contacted as well. Motion carried.

Ch 13

According to Cleland, proposed Chapter 13 will allow the sale of service and warranty contracts in consumer credit transactions. No recommendations.

Pavich in the Chair.

ATTORNEY  
GENERAL  
Contd.

Ch 20

Cleland stated that proposed Chapter 20 covers the sale of insurance on property which is not collateral to the loan. It is distinguished from what the Division terms credit property insurance which is collateral to the loan. Noncredit property insurance cannot be sold to the consumer until the underlying consumer credit transaction, if there is one, is completed and the consumer has the proceeds of that loan. No verbal or written sales efforts regarding noncredit insurance may be made until the initial loan or credit transaction has been completed and the complete proceeds of the consumer credit products have been received by the consumer. In addition, certain disclosures are required in the sale of this product. The creditor must inquire about existing property insurance held by the buyer. Cleland continued with detailed explanation of the proposal. He distributed copies of a case brought to their attention last year regarding a sale of noncredit property insurance and said that a hearing was scheduled for December 12. In response to Doyle as to the Insurance Commissioner's jurisdiction, Cleland said that primary jurisdiction for consumer credit transactions would be with the administrator of the consumer credit code. Although the statute does not require approval from the insurance commissioner on the rules, they consult with the Division.

Ch 21

In review of Chapter 21, Cleland admitted that it was highly controversial. They had received in excess of 60 written comments--mostly negative. The hearing held this morning lasted approximately 4 hours. A handout in advance of today's meeting summarized the history of credit insurance complaints. The rules will regulate consumer credit transactions on the sale of credit life and credit disability and accident insurance. Both are based on the complaints and investigations not only by the Attorney General's office but by other enforcement agencies throughout the country. Cleland spoke of problems which include the belief by many borrowers that the insurance is prerequisite for loan approval. Another concern is insurance packing or sliding which is the inclusion of credit life and disability and accident insurance in the principle amount of the loan or in the loan balance without disclosure to the consumers. The rules attempt to place some temporal restrictions on when the lender can engage in the sale process of the credit life and disability and accident insurance and provide that that sales pitch cannot begin until the lender has communicated the fact that they will make the loan. Certain written and oral disclosures are required and Cleland reviewed these. The rule also mandates the use of a specific blue disclosure form that must be filled out in the transaction. The colored form is intended to inhibit hiding that document in a stack of white papers.

Cleland discussed their options and noted that the whole issue was complicated by the change in administration January 1. The administrator could terminate the rule-making; consider the comments, revise the rules,

ATTORNEY  
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Contd.

and issue a new Notice of Intended Action; or adopt this Notice as final rules. Based on the comments that were received today, Cleland did not anticipate that the current proposal would be adopted. However, the new Attorney General will make that decision.

Priebe in the Chair.

In response to Doyle, Cleland was not aware of any law that would prohibit purchase of credit life after age 65. There was committee consensus that modification would dictate renoticing the rules. Priebe favored termination of the Notice.

Ch 22 Cleland explained Chapter 22 and there were no questions.

Recess Chairman Priebe recessed the meeting at 3:15 p.m. to be reconvened, Wednesday, December 12 at 9 a.m.

Reconvened Vice Chairman Pavich reconvened the meeting at 9:05 a.m. with all members and Staff present except Clark.

ENVIRON-  
MENTAL  
PROTECTION  
COMMISSION

Appearing for the Commission were Diana Hansen, Ralph Turkle, Randy Clark, Judy Riessen, Mark Landa, Paul Nelson, Peter Hamlin and Victor Kennedy. The following agenda was reviewed:

**ENVIRONMENTAL PROTECTION COMMISSION[567]**  
NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Water quality standards — human health criteria, 60.2, 61.2(1), 61.2(4), 61.2(4)"c," 61.3(3)"b"(3)"3," 61.3(3)	
Table 1, Filed ARC 1442A .....	11/14/90
Federal effluent and pretreatment standards, federal toxic effluent standards, 60.2, 62.4, 62.4(3), 62.4(14), 62.4(16), 62.4(67) 62.4(71), 62.5, Filed ARC 1444A .....	11/14/90
Flood plain development, 70.1, 70.3, 70.4, 70.5(1), 70.5(3), 70.5(4), 71.1(1), 71.3(1), 71.3(5), 71.8, 72.3(1)"a," 73.1(1), 73.1(2)"a"(1), 73.2(1), 73.11(1), 73.20(1), 73.21(1)"d"(1), 73.21(2)"c"(3), 73.22, ch 74, 75.1(1), Notice ARC 1443A .....	11/14/90
Technical standards and corrective action requirements for owners and operators of underground storage tanks, 135.3(1)"c"(1)"2," 135.5(1)"c," 135.7(11), Notice ARC 1445A .....	11/14/90
Determination of insolvency, 135.7(10), Notice ARC 1440A .....	11/14/90
Financial responsibility for underground storage tanks, 136.2(3), 136.2(4), 136.3, 136.3(2), 136.14(1)"b," Notice ARC 1441A .....	11/14/90
Grants for solid waste demonstration projects, 209.9, Filed Emergency ARC 1467A .....	11/14/90

60.2 Hansen presented amendments to 60.2 et al. [ARC 1442A and et al. 1444A.] There were no questions.

70.1 According to Clark, amendments to 70.1 et al. reflect et al. legislation which repealed the regulatory provision of Iowa Code Chapter 469 pertaining to mill dams. No Committee recommendations.

Ch 135 Landa said that proposed amendments to Chapter 135 pertain to the underground storage tank program. The first two items will adopt amendments to the federal program and the third one addresses certification of clean closures of contaminated sites. No questions.

135.7 Landa advised that new subrule 135.7(10) would provide a mechanism for determining solvency of persons liable for cleanup of contamination resulting from release of gasoline or petroleum products from underground storage tanks. Public hearings had been held and written comment was received. They will review comments very closely in an attempt to provide an acceptable procedure for making some of these determinations. No questions.

EPC  
Contd.

Landa stated that amendments to Chapter 136 were intended to correct errors or clarify current rules relative to financial responsibility for underground storage tanks. Dates regarding financial responsibility deadlines will be changed. Nelson indicated that the Department was responding to numerous calls with respect to compliance dates for showing financial responsibility. No Committee recommendations.

136.2  
et al.

209.9

Kennedy pointed out that amendment to Chapter 209 was emergency adopted at the Committee's request to include points for each of the various items in determining the criteria for grants. Schrader questioned new language in 209.9 which indicated that not all of the criteria would apply to each proposal and that applications would be scored on the percentage of the available points from criteria that applied to that proposal. He wondered if applicants for grants could manipulate the system by scoring low in certain categories to keep a high percentage. Kennedy did not see that as a problem. He viewed the provision as covering situations where there would be no criteria and the applicant would not be penalized. He stressed that the Department would carefully scrutinize applications.

Schmitz spoke of the different types of proposals. For example, recycling project involving market analysis. He added that awards were really determined by the type of project, not whether the community included information that could be supported in that criteria.

Responding to Schrader and Royce, Schmitz said that possibly a few criteria would not apply to certain projects and those were listed, one being the public education aspect, and another market analysis. Schrader encouraged the Department to clarify every aspect of the program since it is so competitive. No formal action.

NATURAL  
RESOURCE  
COMMISSION

Lon Lindenberg, Rick McGeough, Bob Walker, Eileen Bartlett and Craig Reberg submitted the following agenda:

NATURAL RESOURCE COMMISSION[571]  
NATURAL RESOURCES DEPARTMENT[561] "umbrella"

Hunter safety and ethics course, 15.1(2), 15.1(2)"c," Notice ARC 1487A .....	11/23/90
Habitual offenders — revocation and suspension of license, 15.6, Filed Emergency After Notice ARC 1488A .....	11/23/90
Rental fee schedule for state-owned property, riverbed, lakebed, and waterfront lands, 18.2 to 18.4, Filed ARC 1489A .....	11/23/90
Speed restrictions on the Green Impoundment of the Shell Rock River, 40.35, Notice ARC 1486A .....	11/23/90
Operation of motor vehicles in meandered streams, navigable streams and trout streams, ch 49, Filed ARC 1484A .....	11/23/90

15.1

No questions on amendment to 15.1.

15.6

McGeough pointed out that as a recommendation of the ARRC, rule 15.6 was adopted emergency after Notice for implementation this fall. Changes from the Notice included: Deletion of language related to data entry and a cooperative effort with the Department of Public Safety. It is their intent to interface the computer system with the Department of Public Safety so that the officers will have 24-hour access to information. The rules clearly

NATURAL  
RESOURCE  
COMMISSION  
Contd.

identify that offenders will be held accountable for the points that they accrue in violations if they are found guilty of the charge regardless of action taken by the court--15.6(5). Maulsby questioned whether those points would be retained after the period of probation. McGeough was willing to discuss with their attorneys whether "deferred judgment" should be stricken.

Lindenberg spoke to the position of the Division Staff and the frustration when Al Farris eliminated language which would provide immediate radio access to habitual violator information on fish and game restrictions. This access was desired by conservation officers. One concern had been cost of the system. They later learned that the cost would be negligible and they are already trying to implement a computer link for access to deer and turkey license files, etc. At this time, Public Safety considers a uniform crime reporting system to be a priority. Lindenberg continued that it was his understanding that Farris has agreed to cooperate to computerize the information.

Priebe took the Chair and reported on a conversation he had with the Governor this morning concerning this issue. It was his understanding that the system would be relatively inexpensive and DNR officers feel strongly that it is needed.

Motion

Priebe moved to object to 15.6 which can be corrected by reinstating Noticed language. Motion carried with 5 ayes; Schrader asked to be recorded as abstaining. He concurred with the sentiments but was unsure of grounds for objection. Royce drafted the following:

Carried

At its December 12 meeting the committee voted to object to ARC 1488A. This filing relates to habitual violators of hunting, fishing and trapping regulations. It is codified as 571 IAC 15.6, published in IAB Vol. XIII, #11, ARC 1488A (11-28-90).

The committee had objection to two specific portions of the filing. The committee objected to subrule 15.6(2) on the grounds that it was unreasonable in that a significant portion of that rule was amended from the notice of intended action. The notice provided for direct access by radio for habitual violator information. This provision was omitted from the adopted rule. It was committees' opinion this omission exceeded the committee standard for modifying the text of a proposed rule. The standard is based on three criteria:

1) THE EXTENT TO WHICH AN INDIVIDUAL CONCERNED WITH THE ADOPTED RULE SHOULD HAVE UNDERSTOOD THAT THE PROPOSED RULE COULD HAVE AFFECTED THEIR INTERESTS.

2) THE EXTENT TO WHICH THE SUBJECT MATTER OR ISSUES INVOLVED IN THE ADOPTED RULE DIFFERED FROM THOSE OF THE PROPOSED RULE, AND,

3) THE EXTENT TO WHICH THE EFFECTS OF THE ADOPTED RULE DIFFERED FROM THE EFFECTS THAT WOULD HAVE OCCURRED IF THE PROPOSED RULE HAD BEEN ADOPTED.

This omission exceeded the third criteria. The notice had the effect of allowing conservation officers radio access to habitual offender information, while the adopted rule did not allow that access. This access was highly desired by conservation officers and the notice provided no clue that this

NATURAL  
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access would not be provided in the adopted rule. This subrule should either be re-noticed and an opportunity provided for the officers to comment upon this change; or the original language should be added to the subrule.

The committee also objected to subrule 15.6(5) on the grounds that it is unreasonable. That provision in part states that a guilty plea or guilty verdict is made, penalty points will be assessed even if the court provides for a deferred judgement. The committee believed that if a court found sufficient extenuating circumstances to justify a deferred judgement, then it would be inappropriate for the division to impose a sanction where the court has declined to do so.

Tieden emphasized that detailed instructions should be given to the Department. Priebe thought the filing was unreasonable in that major changes were made following the Notice.

January  
Agenda

Doyle requested that ARC 1488A [15.6] be placed on the ARRC January agenda for further discussion of the penalty points.

On behalf of the Officers Association, Lindenberg thanked the Committee for their support.

Priebe clarified that he was not planning to set a time frame for entering the information. That should be a cooperative effort of the two departments. Doyle wondered if the Department and Clerks of Courts had resolved any problems and McGeough answered in the affirmative. They have tried to minimize the Clerk's involvement by asking only that they show the disposition of the case on the back of the officer's copy of the citation and send it to DNR. This would include violations of Code Chapters 109 to 110B. A photo copy must be made if there is a serious misdemeanor. McGeough pointed out that most citations are scheduled violations. He commented that a conscientious Clerk of Court is well aware that information on the charge must be filed before the person is found guilty. An officer may fill out information in the magistrate's office and a Clerk of Court could very easily copy that, add the disposition and send it to DNR. He was optimistic that when conservation and peace officers have access to the computer information, there will be a cooperative effort from the law enforcement community and the general public.

Lindenberg discussed use of a robot deer to arrest poachers in some states. Officers have approached the Department in hopes of obtaining one of these but to no avail. Pavich asked about cost and Lindenberg estimated \$500 each but knew of associations that would donate them. He offered to share a video tape of actual use of a decoy by officers in western states where they have been very effective. Schrader wondered what the charge would be and Lindenberg said it would be attempting to take. This has been tested in the Supreme Court and is not entrapment but Lindenberg suspected the Department feared legal ramifications.

NATURAL  
RESOURCE  
Contd.

Priebe was informed that a hunting license was not required when hunting on your own land with a farmer's permit. A stamp is not required in this instance either.

Doyle and McGeough discussed the definitions of suspension and revocation. The rules define "revocation" as the taking or cancellation of an existing license; "suspension" means to bar or exclude one from applying for or acquiring licenses for future seasons--15.6(1). Under the point system, the length of revocation is spelled out not to exceed 5 years. Doyle asked if there would be a difference between suspension and revocation for a person with over 13 points. McGeough said that a suspension was taking an existing license which is valid for one year. The Department wanted to clarify that they could bar the hunter from procuring another license. Doyle referred to Code §110.22 and noted that the County Recorder will have a set of files too. McGeough concurred, if the magistrate invokes statutory authority to continue to revoke or suspend licenses. This can be done at the bench without any points being assessed. This has been the law for years and has not been changed. McGeough spoke of legal question as to whether the magistrate has authority to revoke future privileges. A valid argument is that they can deal only with the present license. Doyle asked if there were a procedure to apply earlier if a person gets a three-year suspension or revocation. McGeough said there was none but noted they are entitled to a 17A hearing. There is no allowance for mitigating circumstances. Lindenberg pointed out that the most serious violation was only three points. He advised Priebe that by statute, the same fine applies for not carrying your license as for not having one.

18.2 to  
18.4

Walker explained amendments to 18.2 to 18.4 which were unchanged from the Notice.

40.35

In review of 40.35, McGeough said that jet skis were considered as vessels in Iowa.

Ch 49  
See also  
Page 4537

Walker stated that Chapter 49 was intended to limit the use of ATVs. Six-wheel vehicles that will float or can be run by the wheel action will not be allowed on the beds of certain streams listed in the rules. This would not include running on the bank by the stream. Walker said that the state ATV Association and the ATV Advisory groups have no problems with the rules. No Committee action.

CREDIT  
UNION  
DIVISION

The following rule was presented by James Forney:

CREDIT UNION DIVISION[189]  
COMMERCE DEPARTMENT[181]"umbrella"  
Maintenance of allowance for loan losses account, ch 18 Notice ARC 1484A ..... 11/14/90

Ch 18

No questions.

HISTORICAL  
DIVISION

Carol L. Ulch and Judy McClure reviewed the following:

HISTORICAL DIVISION[228]  
CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"  
Historic property rehabilitation tax exemption, ch 47, Notice ARC 1468A, also Filed Emergency 1464A ..... 11/28/90

HISTORICAL DIVISION Contd.

Ch 47

According to Ulch, the rules provide property tax exemptions through the County Boards of Supervisors and County Assessors for properties that have been substantially rehabilitated. The state's only role is a review of the changes to the historic building following a pattern similar to the one used for national. Priebe mentioned restoration of an old Wells Fargo office in Algona.

There was discussion of Acts citations used throughout the rules with Barry pointing out that they had not been codified as yet. Tieden expressed his preference to have the statutory language repeated in the rule for convenience. Ulch indicated that this issue had been debated internally with decision being made not to repeat statutes in the rules. Priebe agreed that it would certainly lengthen the rules process. Barry cited increased printing costs. Royce suggested agency discretion when the statute is only a few lines. Priebe asked that the matter be placed as an item of business for the January meeting.

Minutes

Pavich moved to approve the minutes of the November meeting as submitted. Motion carried.

Royce reported a request for hearing on the Library rules which were before the Committee on December 11.

Library Rules Motion

Pavich moved to request the Library Division to schedule two or three oral presentations throughout the state with Notice of same to be published in the Iowa Administrative Bulletin. Motion carried. [See also page 4521.]

CULTURAL AFFAIRS

The following agenda was presented by Mark Pietzman:

CULTURAL AFFAIRS DEPARTMENT[221]
Cultural enrichment grant (CEG) program, ch 8. Filed ARC 1478A ..... 11/28/90

Pietzman pointed out a modification from the Notice. The appeals process was changed from formal to informal for this grant program. No Committee recommendations.

ELDER AFFAIRS DEPARTMENT

The Department was represented by David Ancell and Lois R. Haecker for the following:

ELDER AFFAIRS DEPARTMENT[821]
Technical corrections in conformance with Older Americans Act and Code of Federal Regulations, 1.7, 2.7(6)"a," 3.4"2," 4.1(3), 4.1(4), 4.21(2). Notice ARC 1468A ..... 11/28/90
Contract eldercare, entrepreneurial activities of AAAs, 1.7, 6.14(1), 6.14(3)"b," "e," "f," 6.14(4) to 6.14(6). Notice ARC 1502A ..... 11/28/90

1.7 et al.

Ancell summarized amendments to 1.7 et al. No recommendations.

1.7, 6.14

In review of amendments to rules on contract eldercare, Priebe asked for explanation of "severe disability." Ancell said that it was impairment restricting more than one functional activity. No Committee action.

PROFESSIONAL LICENSURE

The following agenda was presented by Barbara Charls and Harriet Miller and there were no questions.

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641] "umbrella"
Barber examiners, 20.102(3). Filed ARC 1507A ..... 11/28/90
Optometry examiners, 180.8(4), 180.9. Notice ARC 1452A ..... 11/14/90
Respiratory care practitioners, 260.4, 260.7(1), 260.7(3), 260.7(4), 260.8(2), 260.10(1), 260.10(2), 260.10(7). Notice ARC 1453A ..... 11/14/90

RACING AND GAMING

The Commission was represented by Lorenzo Creighton who explained the following:

RACING AND GAMING COMMISSION[491]  
 INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"  
 Greyhound racing, 7.3(16)"m," 7.3(17)"n," 7.6(20), Filed ARC 1422A ..... 11/14/90  
 Application process for excursion gambling boats, 20.10(5)"i," 20.21, Notice ARC 1420A ..... 11/14/90

7.3, 7.6

Creighton described amendments to 7.3 and 7.6 which will preclude racing of greyhounds in Iowa if they have been trained with rabbits or other live lure. Priebe suspected that enforcement would be difficult. Creighton said the rule would aid the Department when there is a known violation. No formal action.

20.10,  
 20.21

In presenting amendments to 20.10 and 20.21, Creighton stated that they have an application in Sioux City for an excursion gambling boat out of that dock. Flexibility is provided for embarking and disembarking passengers. The boat must be on the river for at least 2 1/2 hours. Schrader questioned a waiver provision in 20.10(5)i. Creighton said the waiver would be in place for the first year only. Some of the boats will not be finished before the April 1 deadline and cannot meet the 120-day requirement. The 120 figure was set arbitrarily by the Commission. No Committee action.

INSPECTIONS AND APPEALS

Appearing for the Department were: Sherry Hopkins, Jan Curtis, Sharon Gilbert, Rebecca Walsh, Krystine Lange, Christie Scase and Mary Oliver. Also appearing was newly elected Representative Tom Baker.

INSPECTIONS AND APPEALS DEPARTMENT[481]  
 Iowa targeted small business certification program, ch 25, Filed ARC 1458A ..... 11/14/90  
 Psychiatric medical institutions for children, 41.2"1" and "8," Notice ARC 1456A, also  
 Filed Emergency ARC 1455A ..... 11/14/90  
 Health care facilities administration, 50.8(8), Notice ARC 1478A ..... 11/28/90  
 CCDI unit or facility, 58.54, Notice ARC 844A Terminated ARC 1457A ..... 11/14/90  
 Minimum physical standards for residential care facilities, intermediate care facilities for the mentally retarded, 60.12(1)"d," 64.3(1)"l," 64.61, Notice ARC 1477A ..... 11/28/90

Ch 25

Walsh stated that the adopted rules in Chapter 25 replace those filed emergency in August 1990. The revisions made following Notice include changing "must" to "shall" in several places.

Chairman Priebe recognized Baker who addressed issues which he contended should not pertain to new businesses. He opposed requiring an applicant to reveal his or her financial background when the only interest should be: whether the business is minority-owned and operated; has less than 25 employees; and has less than \$3 million. Curtis indicated that financial background was required by law. Baker argued that a new business would have no financial records so why would they have to show three years of their tax records.

Schrader was of the opinion that the rules implement changes made in S.F. 2274 last year and that the Department had adopted the rules accordingly. He continued that benefits had been weakened and the legislature chose to strengthen the program by making the application process more difficult. Although income tax forms were not mentioned as a way to prove worth, it seemed a reasonable

INSPECTIONS  
AND APPEALS  
Contd.

way to determine whether sales were \$3 million or not. He thought there should be provision specifically for start-up businesses. Curtis emphasized that much could be learned from income tax records, e.g. perhaps what was purported to be a "new business" could be a transfer from husband to wife.

Doyle advised that tax records are confidential unless they are required. Human Services can ask for them at any time and banks can request that you waive your right. Generally, federal and state income tax returns are confidential except for child support. Rights are waived when asking for a grant. Curtis pointed to the confidentiality statement in 25.32. She had documentation from other states who request tax records.

Motion

Schrader moved to refer 481--Chapter 25 to the Speaker of the House and the President of the Senate so that they can be referred to the appropriate committees for further study. Motion carried.

41.2

There were no questions on amendments to 41.2.

50.3

Walsh stated that amendment to 50.3 would implement legislation which eliminated the two separate levels of licensure as intermediate care facility or skilled nursing facility. One level of licensure was created for nursing facilities and within that level this amendment creates licensed categories for facilities serving a particular type of resident. The department may use the existing rules and chapters 58 and 59 prior to adoption of rules being developed for nursing facilities. In addition, the amendment updates language to reflect the current location of standards used to determine licensure for the various types of facilities. Oliver said that no comments were received. She continued that the facilities are inspected for federal certification on the basis of the new OBRA rules. Current rules can be used for state licensure but there are some conflicts between those two--Chapters 58 and 59. When they inspect facilities both federal and state rules are followed. As of October 1, the payment a facility receives would be from OBRA. Training of nurse aides will not be checked unless there are care problems in the facility. No Committee action.

58.54,  
59.58

No question regarding termination of 58.54 and 59.58.

60.12  
et al.

Oliver advised that amendments to 60.12 et al. reference the latest publication of the National Electrical Code. Question was raised as to whether the building code should be referenced and whether a date certain should be included. Doyle noted the requirement for metallic tubing and commented that it was his understanding that Iowa standards stipulate plastic. Oliver was willing to pursue the questions before final adoption of the rules.

**MEDICAL EXAMINERS BOARD**

Dennis M. Carr, Associate Director, presented the following Board rules:

**MEDICAL EXAMINERS BOARD[658]**  
 PUBLIC HEALTH DEPARTMENT[641] "umbrella"  
 Licensure requirements—examination fees, 11.31(1) to 11.31(8), 11.31(14), 11.31(15). Notice ARC 1428A..... 11/14/90  
 Physician's assistants, rescind ch 20, Notice ARC 879A Terminated ARC 1427A ..... 11/14/90  
 Physician's assistants, rescind ch 20, Filed Emergency ARC 1426A ..... 11/14/90

11.3 Carr offered detailed explanation of fee structures. No comments had been received. Doyle asked about an inactive license for someone who wants to retire. Carr replied that a license will become inactive when continuing medical education is dropped but practice would not be allowed. As long as they are practicing, fees must be maintained. If someone is truly retired, they can show on their renewal application that they wish to become inactive and the fee will not be assessed.

Ch 20 No questions regarding Chapter 20.

**PHARMACY EXAMINERS BOARD**

Appearing for the Board was Lloyd Jessen, Executive Secretary, and the following was reviewed:

**PHARMACY EXAMINERS BOARD[657]**  
 PUBLIC HEALTH DEPARTMENT[641] "umbrella"  
 Precursor substances, ch 12, Notice ARC 1488A ..... 11/14/90

Ch 12 Jessen pointed out that Chapter 12 will apply to all who handle precursor substances so purchasers and sellers are included. A permit is required for anyone who sells these or who resides in Iowa and is purchasing them from an out-of-state source. Information will be collected and funneled to Public Safety, Division of Narcotic Enforcement for monitoring for illegal activity. Doctors must now receive any drug samples personally and reports are required. Jessen advised Doyle that existing rules address samples.

**LABOR SERVICES DIVISION**

Appearing for the Division was Wally Johnson who reviewed the following:

**LABOR SERVICES DIVISION[847]**  
 EMPLOYMENT SERVICES DEPARTMENT[841] "umbrella"  
 Non-English speaking employee services, 1.3, ch 160, Filed ARC 1500A ..... 11/28/90  
 OSHA rules for general industry, 10.20, Notice ARC 1482A ..... 11/28/90  
 OSHA rules for general industry, 10.20, Filed ARC 1501A ..... 11/28/90  
 OSHA rules for construction, 28.1, Notice ARC 1491A ..... 11/28/90  
 Construction contractor registration, 150.4(2), 150.4(3), 150.4(6)\*, 150.6(1), 150.18(1)\*, 150.14, Notice ARC 1490A ..... 11/28/90

1.3, Ch 160 Johnson called attention to the fact that rule 160.4(4) contained a reference to the Spanish Speaking Peoples Commission which will be changed to Latino Affairs. Tieden asked about opposition to the rules and Johnson cited active recruitment where they read the statute to say that if an employee is actively recruited from more than 500 miles away and decides to quit within four weeks, the employer must pay their way back. Some people interpreted that to apply only to non-English speaking employees. Johnson noted the statute defined both non-English speaking employees and employees.

In answer to question by Doyle, Johnson said if a person appears on the list from the Latino Affairs Commission as an interpreter of Spanish, they would qualify as an interpreter. There is no list for Asians but the person must be capable of explaining job duties, safety signs,

LABOR  
Contd.

employee risks, and hours and wages. There are no sanctions in the statute for not having an interpreter. The only sanction is for not paying to return an employee to place of recruitment. No recommendations.

OSHA

There were no questions regarding amendments to 10.20 or 26.1.

Ch 150

According to Johnson, amendments to 150.4 et al. relate to bonding requirements for out-of-state contractors. The Division has received complaints about an unfair competitive advantage to require out-of-state contractors to file bonds and legislation will be proposed to require blanket bonding. Johnson recalled that when the law was changed to transfer bonding from the Secretary of State to the Labor Division, only 5 bonds were on file from out-of-state contractors working in the State of Iowa. They now have over 100 bonds on file. Johnson estimated 7000 contractors are registered under new legislation. He spoke of a provision that requires a registration number to obtain a building permit in a city which has adopted the Uniform Building Code. Doyle referred to 150.14(1) which stated that "Rule 150.13 shall be suspended to the extent necessary..." It seemed vague to him. Johnson was not sure if that was language from the statute. He continued that the inconsistency problems could vary depending upon the federal regulations involved. If there is a prohibition under federal rules, the Division will suspend their rule.

Johnson concurred with Doyle that an out-of-state contractor which is a corporation is required to file with the Secretary of State to do business in Iowa and have a registered agent. No Committee action.

DNR  
Ch 49  
See also  
page 4532

Chairman Priebe called up Chapter 49 of Natural Resource Commission for further discussion. He noted that Donald D. Etler, Emmetsburg had sent a letter to the Committee wherein he expressed opposition to portions of Chapter 49. Etler contended that Code Ch. 106 granted authority to prevent activities on private lands in the interest of environmental protection. It seemed to him there was a deliberate attempt to circumvent the Environmental Protection Commission.

It was Schrader's opinion that there was misunderstanding. Rule 49.4 implements Code section 106.34 by listing the streams where vehicles are not allowed. In Palo Alto County, the west fork of the Des Moines River is the only prohibited spot. Doyle interjected that the law specifically requires the NRC to identify the navigable streams and rivers in which motor vehicles may be operated and this would be a lengthy list. Thus, the Department chose to list only those where vehicles are prohibited.

Referral  
to GA

Doyle recommended that Royce send a letter to the Speaker of the House and President of the Senate alerting them of the drafting problem with Code section 106.34A(3). So ordered. Chairman Priebe asked that the letter from Etler be placed on file.

Recessed The meeting was recessed at 11:40 a.m. and reconvened at 1:45 p.m. with Vice Chairman Pavich in the Chair.  
 Reconvened Chairman Priebe excused for the remainder of the meeting.

TRANSPOR- Appearing for the Department were: Ron Juelfs, John  
 TATION Hocker, George Sesson, Craig Marvick, LaVonne Short, Sharm Green, Valerie Hunter, Mike Winfrey, Ralph Ager, Walt McDonald, Jan Hardy, Jody Johnson, Dennis Ehlert, Kathy Ridnour, Ian MacGillivray. Also appearing: Jim Clewell and Todd Elverson, Iowa Window Tinters Association; Joan Grimm, Association of General Contractors.

The following agenda was before the Committee.

<b>TRANSPORTATION DEPARTMENT[761]</b>	
Interest on retained funds, ch 27. Notice ARC 1417A .....	11/14/90
General requirements for highway construction, 125.1. Filed ARC 1466A .....	11/28/90
RISE program, 163.1, 163.4(2)"a" and "g," 163.7(2)"a" and "i," 163.8(2)"i," 163.8(6)"d"(1), 163.9(2)"h," 163.9(6), 163.11(2)"a" and "d," Notice ARC 1476A .....	11/28/90
Front windshields, windows or sidewings, 450.7. Filed ARC 1465A .....	11/28/90
Regulations applicable to carriers, 520.1(1)"a" and "b," 520.1(2), 520.4. Filed ARC 1467A .....	11/28/90
Commercial driver licensing, 520.4, 605.1(2), 605.3, 605.4, 605.5(3), 605.5(4), ch 607. Notice ARC 1416A, also Filed Emergency ARC 1423A .....	11/14/90

Ch 27 Juelfs advised that proposed Chapter 27 was a joint effort on the part of the Department and Associated General Contractors who held numerous meetings over the last few months. No questions.

125.1 Hocker reviewed adopted rule 125.1 and called attention to modification recommended by the ARRC to identify the location of publications referenced in the rule. No Committee action.

450.7 Ehlert told the Committee that rule 450.7 was intended to clarify the federal regulation concerning the amount of light that must be transmitted through the front windshield and left and right front windows of a motor vehicle. This rule was adopted in August under emergency provisions and this version was adopted under regular rule-making procedures to supersede the emergency filing.

Motion Doyle moved to object to 450.7 as exceeding the Department's statutory authority in the interpretation of the federal law which is 70-30 light transmittance. Schrader could not support an objection. Royce commented on the rule which he viewed as ANSI Standard 78 which the Department had translated into "plain English." The only problem area he could see was that the standard was not in federal rules but was, in fact, a private standard published in the state of New York. Royce added that the federal standards simply adopt the ANSI standards and the rule paraphrases Standard 78.

Ehlert stressed that the Department was not changing the 70-30 standard but clarifying by rule where the public can find what the federal standard says and means. Doyle noted that it was a federal safety standard and other states use registration standards.

Motion Doyle was hopeful for an agreement with Transportation  
 Withdrawn and Public Safety for more realistic standards. Although

DOT  
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he still opposed the rule, he asked to withdraw his motion to object. He felt strongly that the issue should be addressed by the legislature.

Schrader emphasized that it was not his intent to stall compromise and he suspected that the next General Assembly would be looking at the statute. He did not believe the Department was violating the statute at this time. Doyle mentioned a possible delay for further study. Schrader could not support a delay.

Ehlert said that this issue had been discussed at the DOT commission meetings, and they believed there was a lack of safety information that would support changing the standard at this time. The federal government through the National Traffic Safety Administration has been petitioned to review the federal standard but have not issued a report. The Department opted to go ahead with rule 450.7 until the study is completed. The Transportation Commission has directed its staff to review and research the regulation.

Doyle reiterated his preference for a registration statute to cover the tinted window issue. Ehlert responded that the Department had not decided the approach to follow. With regard to the registration, Ehlert thought the Code clearly gave them authority to adopt these rules under a safety issue but he did not believe there was authority to set up another registration process to approve equipment. No further discussion.

Ch 163 RISE Program MacGillivray offered detailed explanation of proposed amendments to Chapter 163. No formal action.

520.1, Winfrey stated that amendments to Chapter 520 adopt the  
520.4 October 1989 revised Code of Federal Regulations as it pertains to motor carrier safety and hazardous material. Extensive comments were received from industry and associations on the emergency rule making. No Committee action.

520.4 MacDonald explained their reason for the emergency adop-  
et al. tion of amendments to 520.4 et al. which are intended to implement the commercial drivers license program administration. The Department was required to submit the rules to the federal government for approval prior to enforcement. Testing and issuance of CDLs commenced on November 1 based upon these rules and the law. Identical rules were published under Notice and will be adopted under the normal rule-making process.

607.17 MacDonald called attention to rule 607.17, relative to the hazardous materials, transportation endorsement and an age 21 limit. The rule will be emergency amended to change the age limit to 18 to comply with Iowa Code section 321.450.

MacDonald told Doyle that the minimum age requirement for a CDL was 18. For Interstate operations, the driver must be 21. All endorsements under the proposed change to

DOT  
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607.17 will be at age 18. Use of those endorsements will depend upon the type of operation of the vehicle.

MacDonald told Pavich that the law requires the federal regulations to be adopted to a date certain. He had not identified problems with the law as yet. The CDL Act calls for an Interim Study following this session. Pavich wondered about the status of the retina check. MacDonald said that the positive biometric identifier was created under the '88 Truck and Bus Regulatory Reform Act. The Federal Highway Administration should look at positive biometric identifier, physically tied in with the individual and their driving record. The U.S. DOT must make a report by December 1990.

Royce questioned MacDonald as to why the wording for the various classes of licenses differed from the statute. MacDonald responded that the statute addresses the concept of what Class A, B and C allows a driver to operate in toto. The rule defines the vehicle. No formal action.

450.7

Royce reminded that representatives from the Window Tinters Association wanted to say a few words concerning window tinting.

Pavich recognized Elverson who summarized his position on the tinted window issue. His firm had reason to believe that DOT would allow the 35 percent level of tint but instead they decided to affirm the rule as it was published for public comment but then assigned a study committee. Elverson reiterated comments from previous ARRC meetings that the industry does not favor blackout tint. He continued that resolution to the controversy is moving so slowly that the tinting industry is being affected economically. In conclusion, Elverson urged negotiation and a delay of the rule into the legislative session.

Schrader reiterated his position on any action to delay or object to rule 450.7. He recalled that this issue had been before this Committee for some time and they did find fault in the double referencing. That problem was corrected. Schrader maintained that the rule had not been the catalyst that made tinted windows an issue in Iowa. In his opinion, it was the device that measured light transmittency through the windows. Regardless of his likes or dislikes for the rule, Schrader maintained that the Department had full authority to act as they did. Elverson understood completely but thought a recommendation by the ARRC would end the stalemate.

Pavich favored review by the entire legislature. Doyle pointed out that anyone could petition for an administrative rule change. Doyle requested that proposed bill drafts on the tinted window issue be considered at the January ARRC meeting. No formal action.

PER BOARD

Appearing for the Board were Jan Berry and Susan Bolte who presented the following:

**PUBLIC EMPLOYMENT RELATIONS BOARD[621]**  
Fees of neutrals, amend and transfer 7.2 to 1.8. Filed ARC 1411A..... 11/14/90

1.8

Berry was hopeful that increased compensation from \$300 to \$425 per day of service would curb a mass exodus of qualified neutrals. Bolte said that currently there were 76 neutrals. No Committee recommendations.

REVENUE AND FINANCE

Appearing for the Department were Carl Castelda and Dennis Meridith. Also appearing: Ray Armel, Fayette County Assessor; Carl Tiecke, Muscatine County Assessor; Roger Paulsen, Hancock County Assessor; Mary Pat Mitchell, Pottawattamie County Assessor; Don Freeman, Warren County Assessor; Marcella Thompson, Appanoose County Assessor; Marva Benningsdorf, Ida County Assessor; Paul Coates, Association of Counties. The agenda follows:

**REVENUE AND FINANCE DEPARTMENT[701]**  
Penalty and interest provisions, 10.2, 10.5 to 10.111, 12.10, 12.11, 30.10, 37.10, 44.1 to 44.3, 44.7, 44.8, 46.5, 52.4(7), 52.5(3), 52.6, 58.4(3), 58.5(3), 58.6, 63.8 to 63.10, 81.8 to 81.10, 81.15, 86.2(14) to 86.2(20), 87.8(9) to 87.8(12), 88.3(14), 88.3(15), 89.6, 89.7, 104.8, 104.9. Notice ARC 1483A..... 11/28/90  
Adjustments to computed tax, 42.9(3), 42.9(4). Filed ARC 1481A..... 11/14/90  
Seed capital income tax credit, 42.10, 46.3(2)\*a, "46.3(2)\*b," 52.4, 52.6 to 52.10. Filed ARC 1482A..... 11/28/90  
Administration of marijuana and controlled substances stamp tax, ch 91. Notice ARC 1480A..... 11/14/90

Pavich noted that several County Assessors were in the audience. They had appeared at the November 13 meeting of the ARRC when Noticed amendments to Revenue rules Chapters 71, 73, 74, 75 and 80 [ARC 1342A, 10/17/90 IAB] were considered. At that time, Armel had presented several concerns with the legislative changes in 1990 and the rules. Armel reiterated some of the problem areas.

Castelda indicated a willingness to work with the assessors on these specific issues. He asked them to put their recommendations in writing to the Department. He pointed out that the adopted version would be before the ARRC in January and those rules reflect some changes.

It was noted that the rules and statutory changes had been referred to the Legislature. Armel expressed interest in working with the Ways and Means Committee and Tieden suggested that the group contact the Ways and Means Chair. No action taken.

Penalty & Interest 10.2 et al.

Castelda told the Committee that the amendments proposed in 10.2 et al. will restructure penalty and interest rules on all taxes administered by Revenue and Finance and condense them in Chapter 10. Legislative changes will also be reflected in an endeavor to simplify for the researcher what penalty and interest rates are and under what conditions they will be assessed. The revision reflects that interest rate is now prime as provided by law. A committee of practitioners, business representatives and others involved in the legislative proposal, assisted in development the rules. There had been no public input or comment on the Notice. In response to question by Doyle, Castelda did not believe that the legislation addressed the situation when a taxpayer

REVENUE  
AND  
FINANCE  
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relied on erroneous information from a third party. Castelda and Doyle discussed instances when an individual with large investments discover that they have underreported. Castelda said that if the taxpayer reports the error first, the Department would waive the penalty. With respect to extensions, Castelda stressed that the position of the Department and the IRS had always been that an extension was granted for filing returns not for paying taxes.

42.9

There were no questions regarding amendments to 42.9 or 42.10 et al.

Ch 91

Meridith reviewed proposed Chapter 91 which will implement new Code chapter 421A. Approximately 20 other states have adopted a similar drug tax in an attempt to assist law enforcement by providing a criminal sanction for being in possession of illegal drugs--drugs without stamps.

Castelda added that two protests were filed challenging the constitutionality of the statute and these will be handled by the Attorney General. He stated that a minimum sale of \$245 was made to a stamp collector. Castelda continued that as of December 11, 35 cases had been referred to them by local law enforcement involving 65 individuals. Seven of these were assessed \$234,000--the largest assessment was \$160,000, and the lowest was \$750. They have been involved in three searches and seizures in Charles City, Burlington and Cedar Rapids, one sheriff's sale which netted \$2,000 and \$1,000 was collected from other sources. The Department has a statewide coordinator and they have made arrangements with the Attorney General staff for litigation and prosecution. Promotional and explanatory materials were sent to all county attorneys and law enforcement officials prior to September 1. Castelda concluded by pointing out that the legislature did not fund the program and the Department's budget was cut \$940,000. No formal action taken.

No Rep

No agency representatives requested to appear for the following:

**CITY FINANCE COMMITTEE[545]**

MANAGEMENT DEPARTMENT[641] "umbrella"

Reimbursement of subcommittee members, 1.4. Notice ARC 1421A ..... 11/14/90

**PUBLIC HEALTH DEPARTMENT[641]**

AIDS - home- and community-based services, 11.70 to 11.78, Notice ARC 1508A,

also Filed Emergency ARC 1506A ..... 11/28/90

WIC program - staffing of local agencies, education, 73.5, 73.9. Filed ARC 1505A ..... 11/28/90

Office of rural health - vacancies and terms of office, 110.4(4), 110.4(6), Filed ARC 1504A ..... 11/28/90

Administrative divisions of the department, 170.4. Notice ARC 1439A ..... 11/14/90

**STATUS OF BLACKS, COMMISSION ON THE[484]**

HUMAN RIGHTS DEPARTMENT[481] "umbrella"

Organization, public records and fair information practices, chs 1, 2, Notice ARC 1493A ..... 11/28/90

**WALLACE TECHNOLOGY TRANSFER FOUNDATION[851]**

General provisions, operations, petitions for rule making, declaratory rulings, industrial technology access

program, technology services support activities, Filed Emergency After Notice ARC 1487A ..... 11/14/90

12-12-90

Next Meeting      The next meeting was scheduled for January 8 and 9, 1991.

Adjourned      Vice Chairman Pavich adjourned the meeting at 3:25 p.m.

Respectfully submitted,

*Phyllis Barry*  
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Phyllis Barry, Secretary  
Alice Gossett, Admin. Asst.

\_\_\_\_\_  
Chairman