

**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, January 4 and 5, 1994, in Room 116, State Capitol, Des Moines, Iowa.

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

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

**Convened** Co-chair Metcalf called the meeting to order at 10 a.m. and recognized Ronald Rowland, Agriculture and Land Stewardship, for amendment to 21—68.12, Grade A milk, Filed Emergency After Notice, published in IAB 12/22/93 as ARC 4515A. No Committee comments or recommendations.

**AGRICULTURE**

**ATTORNEY GENERAL** Representing the AG office were Marti Anderson, William Brauch and Elizabeth Osenbaugh for the following agenda:

**ATTORNEY GENERAL[61]**  
Victim assistance program — administration, 9.1 to 9.10, Notice ARC 4479A ..... 12/8/93  
Price gouging, 31.1, Filed ARC 4505A ..... 12/22/931

**Ch 9** There was discussion relating to membership of the Crimes Victim Assistance Board and selection of the chair. It was noted that the statute created a 10-member board and Committee consensus was that even-numbered membership tended to create tie votes. Priebe questioned 9.3(2) with respect to additional reimbursement if a board member's income was less than 150 percent of the poverty level.

Hedge referenced 9.10(1)"e," relative to the crime crisis response services being funded by the Victim Compensation Fund. He wanted to ensure that this fund would not be depleted. Rittmer echoed concerns of Hedge and Priebe.

**Motion to Refer** Doderer agreed with Priebe's assessment of board reimbursement and reasoned they should receive the usual \$50 per diem.

Doderer moved to refer ARC 4479A (9.1 to 9.10) to the President of the Senate and Speaker of the House for referral to the appropriate committee. Motion carried.

Elizabeth Barnhill, Executive Director, Iowa Coalition Against Sexual Assault, addressed the Committee regarding their opposition to 9.10(1)"e" and the CVAD involvement in providing direct services to crime victims in Iowa. She also questioned whether the staff would have adequate victim counselor training. Barnhill's letter is on file in the Administrative Code Office.

**31.1** Brauch and Osenbaugh reviewed filed amendments to 31.1 regarding price gouging. No Committee action.

**COMMUNITY  
ACTION AGENCY  
Ch 24**

Rodney Huenemann gave a brief overview of 427—Chapter 24, Community Services Block Grant Flood Relief Program, Filed Emergency in IAB 12/22/93 as ARC 4506A. He advised there was \$2.6 million in flood funds for expenditures to be used retroactive to July 1993 through September 1994. Intent is to use the flexible funds to fill gaps in flood relief.

**DENTAL  
EXAMINERS**

Connie Price represented the Board for the following agenda:

**DENTAL EXAMINERS BOARD[650]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Special licenses — dental hygiene programs, 13.1(4), 13.2, 13.2(1), 13.2(2), 13.2(5),

Notice ARC 4491A ..... 12/8/93

Auxiliary personnel, 20.1, 20.2(1)"c" and "d," 20.2(2), 20.2(3), 20.3, Filed ARC 4492A ..... 12/8/93

Discipline — civil penalty, 30.2"9," 30.4, Notice ARC 4490A ..... 12/8/93

Ch 13

No questions or comments on Chapter 13 regarding special licenses for dental hygiene programs.

Ch 20

Price explained changes in amendments to Chapter 20 as a result of the public hearing. She noted that comments were received from various organizations.

The definition of "auxiliary personnel" was discussed briefly.

Kibbie was advised that these amendments do not broaden the scope of practice.

30.2, 30.4

No questions or comments on amendments to 30.2"9" or 30.4.

**ELDER AFFAIRS**

Ron Beane addressed the Committee in regard to proposed new Chapter 26, Elder Group Homes, published in IAB 12/22/93 as ARC 4507A.

Ch 26

Beane indicated that the rules would provide housing option for those who need some assistance with daily living but do not require skilled nursing care. The Department had worked closely with the fire marshal and interested citizens in developing the rules.

Priebe expressed concern as to the definition of "exception" which could provide variance from the rules by the Department—26.1.

Halvorson inquired if there was an increase in the number of applications and Beane advised that 19 have expressed interest in group homes. Halvorson thought that rule 26.2 would limit application for certification of a residence to existing residences and preclude new construction.

Doderer thought "single-family" house should be included in the definitions.

Rittmer referred to 26.6(2) and opined that these facilities should not be used for those who should be in a nursing home.

There was consensus that adequate protection for residents was important but that overregulation could defeat the purpose of the program.

**Motion to Refer**

Beane advised Daggett that the Care Review Committee was mandated by statute. Halvorson was supportive of the elder group home concept but felt that the proposed rules exceeded legislative intent. He moved that Chapter 26 be referred to the President of the Senate and Speaker of the House for proper committee referral. Motion carried.

**EPC**

Michael Murphy represented the Commission for the following agenda:

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Emission standards for contaminants — training fire notification requirements, 23.2(3)"g,"

Filed ARC 4487A ..... 12/8/93

Reuse of solid waste — foundry sand, 108.1, 108.2, 108.4, Notice ARC 4488A ..... 12/8/93

23.2

Amendment to 23.2(3)"g," regarding training fire notification requirements, was addressed and Priebe expressed concern about the requirement for asbestos removal before a school could be torn down (in reference to Ledyard). He favored provision for burial of asbestos. Murphy advised there were variance procedures.

Halvorson was concerned about input for small town fire departments.

**Motion to Refer**

Kibbie declared that the revision was overregulating and he moved to refer amendment to 23.2(3) to the Speaker of the House and President of the Senate for review by the appropriate committee. Motion carried.

Ch 108

Amendments to Chapter 108 were before the Committee. Murphy stated a public hearing would be held this afternoon. No Committee action.

Bill Behan, lobbyist for Deere & Co., stated that his company saw no problems with the proposed amendments.

**NATURAL RE-SOURCE COMM.**

Michael Murphy also addressed the following agenda:

**NATURAL RESOURCE COMMISSION[571]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Forfeited property, 10.5, 10.6, Notice ARC 4510A ..... 12/22/93

Boating safety equipment — flotation devices, 37.13(2), Filed ARC 4511A ..... 12/22/93

Boat motor regulations — Deer Creek Lake in Plymouth County, 45.4(2), Filed ARC 4512A ..... 12/22/93

10.5, 10.6

In review of 10.5, Priebe questioned whether the Department had the authority to dispose of forfeited property at public sale and he requested the Department to research the issue.

37.13(2); 45.4(2)

No recommendations on the remainder of the agenda.

**Recess**

Co-chair Metcalf called a five-minute recess after which representatives of the Banking Division were present for the special review of 9.2(5) relative to title insurance.

**Banking 9.2(5)  
Special Review**

Present were Richard Buenneke, Superintendent of Banking, Donald Senneff, Attorney for Banking, Steven Moser and James Forney. Also present were Pat Jury and Jule Andersen, Iowa Credit Union League, and Arthur Small, Iowa Land Title Association.

Buenneke offered background on the subrule which had been adopted emergency following Notice as ARC 4213A, 8/18/93 IAB. The provision allows state chartered banks to utilize title insurance versus title opinion, at their expense, as a method of guaranteeing the value of real estate collateral. Buenneke referenced a letter from Dean L. Whitford, law offices of Stuart, Tinley, Peters, Thorn, French & Hughes, Council Bluffs, to the ARRC wherein he contended the Division had exceeded its statutory authority. Buenneke maintained the Division merely wanted a "level playing field," since national banks were allowed to use title

**Banking - Special  
Review (Cont.)**

insurance. He defended the Division's procedure in filing this amendment in light of the flood last summer and urged the Committee not to object.

Senneff touched on the legal aspects of the rule making and disagreed with opponents who alleged violation of the Iowa Code.

Kibbie asked how many flood-related loans had been made by state banks and Buenneke indicated that the examiners were aware of the loans. Moser added that they had received calls after the flood.

Royce commented on the emergency process followed in adopting the subrule.

Daggett asked about economic impact. Buenneke could not provide dollar amounts but stated that a number of banks had requested a rule to allow use of title insurance in lieu of an attorney's opinion. Most banks are reluctant to rely solely on an attorney's opinion when a large loan is involved. A title company would be good for the amount of the loan. Daggett thought it appeared that an "end run" had taken place but Buenneke reminded that they had heard no objections from the Bar or anyone else in regard to this rule making during the comment period or when they appeared before the ARRC.

Priebe concurred with Daggett and recalled that title insurance had been and continues to be a controversial issue in the legislature and has never passed. Priebe admitted that he had missed the statement in the preamble of the rule making regarding title insurance.

Halvorson pointed out that opposition to title insurance was not at issue here and he defended the Banking Division. He described the subrule as an auditing provision to allow auditors to accept either a title insurance certificate or an abstractor's or attorney's opinion. He also recognized the inequity of allowing national banks and other lenders to use title insurance but state banks are excluded. Halvorson emphasized that the issue was not to allow title insurance. He continued that the Iowa Code does not prohibit anyone from securing a commercial loan outside of Iowa.

Dierenfeld reinforced Halvorson's remarks and reiterated that this rule does not authorize something that cannot already be done by state law.

Doderer asked if there were other differences between federal and state banks other than offering title insurance. Buenneke said lending limits differed but it would determine whether banks were regulated in Iowa or Washington D. C. In the last year and a half, 16 or 17 national banks have converted to state banks.

Buenneke clarified that this rule would not be used for the type of title insurance that the guaranty fund was utilized for—single-family residences. A lending institution cannot pass the cost of title insurance to a consumer who wants to mortgage their home. He continued to clarify for Doderer that the guaranty fund allows residential mortgages to be sold outside the state because it does guarantee the title but he understands it does not cover commercial property.

Hedge suspected that if this rule had been "more up-front" with more awareness by attorneys, there would have been opposition.

Kibbie was advised that the FDIC does not monitor national banks. Federal law requires a federal regulator if a bank has FDIC insurance. The Office of

**Banking - Special  
Review (Cont.)**

Controller of Currency is responsible for regulation and examination of national banks. The FDIC insurance fee is the same for both state and federal..

Rittmer was told there were approximately 450 state banks with approximately \$22 billion in deposits and 85 national banks with \$10 or \$11 billion. He felt it was unfortunate that the preamble to the rule making was deficient. He reasoned that the current system works at a reasonable cost.

In defense of the rule, Buenneke reiterated that this rule change was an audit procedure and did not authorize anyone to sell title insurance. Also, it would not affect one- and two-family residential property which makes up the bulk of mortgage activity in the state. Buenneke was concerned as to the impact of an objection since banks were already following the rule.

Schrader compared the previous language in this rule to the new language and noted a huge difference in the meaning—the new rule was more liberal and would take away the security. Buenneke opined that the only degree of risk would be dealing with a company that was not financially solvent.

Metcalf interjected that she saw no intent by the Banking Division of the Superintendent to maliciously circumvent the process.

Schrader stated his opposition to the emergency filing of 9.2(5).

Moser stressed that the rule was an attempt to allow banks to lend extra money, in excess of 75 percent of appraised value (for commercial property), for improvements.

Buenneke pointed out that this rule was a complete rewrite of the mortgage lending rule. Therefore, it would encompass the entire involvement of a state bank in real estate lending. He clarified that the rule was not rewritten because of the flood, but it happened to contain beneficial provisions.

Buenneke agreed with Doderer that two separate rules should have been written relating to residential and commercial loans.

Art Small, representing the Iowa Land Title Association abstractors, addressed the Committee. He recalled intent of the Administrative Procedures Act was to eliminate "surprises." He was unsure of the ramifications of this rule but would hope that 9.2(5) could be resubmitted under the normal rule-making procedures.

James Pray, Chair of the Administrative Law Section, Iowa State Bar Association, relayed their concerns on the administrative process by which this rule became effective and recommended an opportunity for public input.

Senneff responded that the preamble to the Notice published in IAB 7/7/93 stated that the rules of real estate would be completely changed. It stated that under the new language a state bank must develop a written real estate lending policy, use written real estate appraisals in conformance to minimum appraisal standards, establish internal loan-to-value limits for various categories of real estate loans, obtain written legal opinions or title insurance for certain real estate loans, as well as hazard insurance, and provide pertinent and timely disclosures. He noted that the rule was less than two pages in length in the Bulletin. He felt the Banking Division was forthright in indicating it would substitute a new rule in place of an old one and there was opportunity to attend a hearing.

**Banking - Special  
Review ( Cont.)**

Priebe admitted he was overly sensitive on the subject of title insurance and he requested the Superintendent to redo the rule by following the regular procedure.

Halvorson recalled discussion that he and Metcalf had when the rule was noticed. Halvorson advised her that it did not authorize title insurance for this state; it did not preclude abstractors from abstracting or attorneys from giving opinions; the rule did not deal with single-family housing—it merely authorized the Department of Banking to inform their auditors that they could accept what was presently being done in this state.

Schrader thought there were differing opinions—whether there may be some banks that have taken an opportunity to engage in practices which were not authorized previously or whether the rescission of this new language would cause problems. Schrader maintained that the emergency filing was beyond the authority of the emergency powers in Chapter 17A.

Bueneke asked for clarification as to the Committee's position.

Priebe reiterated his suggestion to leave the rule in effect but begin the Notice process to allow opportunity for input. The rule could be adopted following the normal process and the existing rule could be rescinded.

Bueneke wanted time to study the implications of such action.

**Motion to object**

Schrader moved to object to the language in 9.2(5) which changed the definition of title insurance. The impact of the objection would not rescind the rule but merely shift the burden of proof should there be a challenge in court.

Royce asked for clarification as to grounds for the objection. Schrader disagreed with the rationale used for the emergency filing—public interest.

Dierenfeld asked Royce if the objection were based on procedural grounds would the rule expire within 180 days. Royce thought, in this case, it would not since a typical emergency rule is filed without notice or public participation. This rule was Adopted Emergency after Notice. Dierenfeld suggested referral of the issue to the general assembly since it would be convening next week. An objection could be filed in February if concerns were not addressed.

**Defer**

Schrader saw no reason to postpone the objection but he was willing to defer until tomorrow. The Banking Division representatives were requested to return Wednesday, January 5, at 11:30 a.m.

Daggett was interested in knowing what implication this motion would have with respect to some important loans being jeopardized.

Jo Kline Cebuhar, Iowa Association of Realtors, spoke in support of the rule. The majority of their concerns came from the position of residential transaction. Before this rule, Iowa banks were forced to add an additional layer of costs to their transactions because the secondary mortgage market required a form of title insurance before they would purchase a loan. Now banks have a choice without the extra cost.

Lorelei Brewick, representing the Iowa State Bar Association, thought that discussion today confirmed that the impact of this rule on title insurance and its availability was unknown. She urged careful consideration of the issue by the entire legislature.

**Recess** Metcalf asked the Division to return tomorrow at 11:30 a.m. to resume this discussion after which she recessed the Committee for lunch at 12:40 p.m.

**Reconvened** Co-chair Metcalf reconvened the meeting at 1:30 p.m. The following Human Services rules were reviewed. Those attending from the Department included Mary Ann Walker, Douglas Howard, Sally Nadolsky and Norma Hohlfield.

## **HUMAN SERVICES**

### **HUMAN SERVICES DEPARTMENT[441]**

Welfare reform — family investment agreement, 7.5(8), 41.7(2)"d"(1), 41.24, 41.27(2)"d"(1), 41.27(7)"ag," 42.24(1)"b" and "e," 42.24(2), 42.24(3)"b" and "c," 42.24(4), 43.22(1)"b," 49.25(1), 49.25(3), 58.24(5), 75.1(31)"i"(2), ch 93 division I preamble, 93.2, 93.3, 93.5(3), 93.5(3)"b," 93.6(1), 93.6(3), 93.8, 93.9, 93.9(1)"c" and "d," 93.10, 93.10(1), 93.10(1)"e," 93.10(6), 93.10(7), 93.10(8)"a," 93.11 to 93.13, 93.14(1)"a," 93.14(6), 93.14(12) to 93.14(14), 93.15 to 93.20, 93.21(1), 93.21(10), 93.22, 93.22(1), 93.22(5)"a," 93.35, 93.35(2)"d," 93.35(3), 93.41(1)"e," 93.41(2), 93.41(3), 93.43, ch 93 division II preamble, 93.101 to 93.104, 93.105(2), 93.105(3), 93.105(3)"b," 93.106, 93.108 to 93.110, 93.110(1), 93.110(1)"e," 93.110(6), 93.110(7), 93.110(8)"a," 93.111 to 93.113, 93.114(1)"a," 93.114(6), 93.114(10)"b," 93.114(11)"d," 93.114(12) to 93.114(14), 93.115 to 93.120, 93.121(1), 93.121(10), 93.122, 93.122(1), 93.122(2), 93.122(3)"b," 93.122(5)"a," 93.129 to 93.135, 93.135(2)"d" and "e," 93.135(3), 93.135(4), 93.136 to 93.138, 93.140(2), 93.140(4), 93.141 to 93.143,

Notice ARC 4470A, also Filed Emergency ARC 4466A ..... 12/8/93

Medicaid coverage — pregnant women, 76.7, Filed ARC 4463A ..... 12/8/93

Provision of services by certified addiction counselors, addition of day treatment and partial hospitalization for persons aged 20 and under to general prior authorization reference, 78.16(7)"b"(1)"5," 78.28(8), Filed ARC 4464A ..... 12/8/93

Supported employment services, 78.41(7)"m," Notice ARC 4500A ..... 12/22/93

Skilled nursing facility (SNF) rates, percentile cap on free-standing facilities, Medicaid-eligibles on ventilators — \$50 a day incentive, 79.1(9)"a," "b," "d," "e," and "i," Filed ARC 4465A ..... 12/8/93

Licensing of psychiatric medical institutions for children, 85.21, Filed ARC 4467A ..... 12/8/93

Eligibility for group care and foster care — unaccompanied refugee minors aged 18 and older, 156.20(1)"b"(3), Filed ARC 4468A ..... 12/8/93

Adoption services, ch 200, Filed ARC 4469A ..... 12/8/93

7.5(8) et al.

Howard updated the Committee on the welfare reform recommendations from the December meeting. He said the limited benefit plan for the two-parent household segment was being reviewed by the working group and they have several options. In discussions with key legislators, Committee Chairs and Council members, there were reservations about moving away from the policy. Consideration of options would continue. Howard could see no problems with making adjustments regarding the appeal process. He reminded that a public hearing was scheduled for January 29.

Metcalf was assured that Royce would be provided results of the hearing.

Priebe had reports from nursing home operators who hire ADC recipients. Many of these employees will work only long enough to avoid loss of benefits. Howard suspected this problem was more prevalent before the recent policy changes but he would refer the matter to the Council.

Schrader was advised that Representative Brand's concerns were being addressed under the different options being considered.

Metcalf asked that Howard report on any progress at the February meeting of the ARRC.

76.7

No recommendations on amendments to 76.7.

DHS (Cont.)  
78.16, 78.28

In 78.16(7)"b"(1)"5," Hedge questioned the authority to certify addiction counselors and Walker agreed to research and report to him.

Ch 200

Priebe was told that Chapter 200, Adoption Services, would not interfere with the work being done by an interim committee to revise adoption laws. Brief discussion on involvement of race or religion with regard to adoption and also parental rights.

No recommendations by the Committee on the remainder of the Human Services agenda.

Committee Business  
ARRC Meeting dates

Metcalf announced that the next ARRC meeting would be held on February 7 and 8 at 7 a.m. and the March meeting would also be the 7th and 8th at 7 a.m. Doderer suggested that the Co-chairs contact the Speaker of the House and request that the House delay their Monday session until 11 a.m. Metcalf stated she would so request.

## EDUCATION

Kathy Collins represented the Department for the following agenda:

### EDUCATION DEPARTMENT[281]

Organization and operation, 1.1(1), 1.1(4)"c," 1.1(5)"a" and "c," 1.3, 1.3(1), 1.3(1)"b" to "h," 1.3(3), 1.3(4),

Filed ARC 4478A ..... 12/8/93

Petitions for rule making — legal consultant's title, 2.3, Notice ARC 4481A ..... 12/8/93

12/8/93 ..... 1224

Declaratory rulings, agency procedures for rule making — legal consultant's title, 3.3, 4.5(1),

Filed ARC 4482A ..... 12/8/93

Open enrollment, 17.3(1), 17.3(2), 17.5, 17.6(1), 17.6(2), 17.8(5) to 17.8(7), 17.8(10), 17.10(8), 17.11,

Filed ARC 4480A ..... 12/8/93

School fees, ch 18, Notice ARC 4005A Terminated ARC 4483A ..... 12/8/93

Extracurricular interscholastic competition — physical examination, transfers, 36.14(1), 36.15(3)"b"(4),

Notice ARC 4498A ..... 12/8/93

Authority of state department of education to administer school lunch program in nonpublic schools, 58.1,

Filed ARC 4484A ..... 12/8/93

SPECIAL REVIEW - Special Education, 41.10(9) and 41.30(2)

1.1 et al.;2.3; 3.3, 4.5 No question on amendments to 1.1 et al., 2.3, 3.3, 4.5(1), ARCs 4478A, 4481A and 4482A.

Ch 17

Filed amendments relating to open enrollment were reviewed. The resident district and receiving district pertaining to renewal of an open enrollment agreement were defined for Priebe, found in 17.8(4), last paragraph. Discussion followed on this policy issue.

Ch 18

With respect to school fees, Collins advised that proposed Chapter 18 was terminated to allow time for study of the issue. Daggett suggested that the Department pursue legislation because of the money involved.

Chs 36; 58

No questions or recommendations on amendments to Chapters 36 or 58.

Special Review  
Special Education

Royce provided background on the special review of 281—41.10(9) and 41.30(2) relative to district plans for special education and adjusted program reports. The concerns of a Sioux City resident (Vicki Brown) regarding special education curriculum were addressed in her letter to Royce dated October 24, 1993, and the letter is on file in the Administrative Code Office. It was Royce's understanding that the particular program addressed by the rules had been dropped several years ago.



**Special Education Spec. Review (Cont.)** Frank Vance, Chief of Special Education Bureau, Jeananne Hagen, and Joseph Freiling from the Bureau were present to respond to Brown's concerns. Vance reported that in 1985 the Division of School Administration promulgated rules requiring districts to submit plans (including special education) for Department approval. There were four specific provisions—one dealing with the least restrictive environment or whenever possible a child with special education needs would be educated in the regular program with special assistance; two, they would specify the curriculum for each of the special education children; three, they would define evaluation criteria; and four, they would define graduation criteria. In summer of 1988, the Division of School Administration was changed to the School Accreditation and Administration and consequently, this rule was rescinded. However, the Department failed to rescind the special education rule that corresponded and defined for special education that particular circumstance. Vance continued that many of the intended requirements were still accomplished by different procedures. Each district was required to have a board policy dealing with the least restrictive environment and to the extent that special education children would be integrated into the general education program.

School districts were also required to have a board policy relative to the curriculum and graduation requirements for special education students which must be specified in each student's individual education program plan. Model policies were submitted for districts to follow. With respect to curriculum for each youngster in special education, Vance stated that federal regulations preclude a district from prescribing a curriculum for a whole class of students. The child's curriculum must be developed by the child's individual education program planning staff to be very specific to each special education pupil in the program. Local districts are required to have a policy to reflect this. Districts are not required to submit the plan to the Department—they address this by other mechanisms relative to compliance monitoring.

Vance noted that the Department was in the process of a massive revision of their rules which included special education. They plan to reinstate the district plan, which would be submitted to the Area Education Agency. The AEA would be in a position to approve a plan in relationship to the needs of the children and the Department, in turn, would receive a plan from each AEA.

Brown and Vance also discussed adjusted program reports.

In response to Priebe, Vance indicated that the rules in question were not being enforced by the Department. The Department has received input from advocacy groups, practitioners, etc. with respect to the proposed new rules which will be submitted to the State Board this month. In February they will follow the hearing process.

Vicki Brown expressed frustration with being unable to rely on the published rules.

Barbara Renfro echoed remarks made by Brown and had reservations as to proper monitoring of the adjusted program reports waiver system.

Metcalf asked that the Department send Brown and Renfro copies of the proposed rules when they are Noticed. Brown acknowledged that she did have a copy of the first draft and planned to participate in the public hearing.

Royce clarified that although the rules remain in place, the underlying framework to administer them was dismantled.

**Special Education** Royce advised Priebe against referring this matter to the General Assembly since  
**Spec. Review (Cont.)** it would be somewhat confusing at this time.

Brown made reference to her packet of information wherein she cited a situation in the Sioux City school district where adjusted program reports could not be located for students requiring APRs.

There was continued discussion with Brown and Renfro reiterating criticism of the Department.

Metcalf asked about possible negative impact on the children of Brown and Renfro. Renfro responded that class size, program model, disability and age span could create a situation where it becomes educationally harmful for a child. She also complained about lack of files for adjusted program reports.

Daggett attributed some of the fault of overcrowding of classes to the legislature in their underfunding of special education. Vance advised Daggett that the federal government had not questioned them in this regard.

It was noted that the federal government monitors every state department of education and every local education agency every five to seven years and would be in Iowa in February for public hearings and in April for the actual monitoring.

There was consensus that the Committee lacked power to find the Department in violation of the APA as suggested by Brown. However, Schrader encouraged Brown and other interested persons to be involved in the process.

**Pharmacy**

On another issue, Metcalf announced that AccuScript Pharmacy had sent letters from their employees protesting proposed pharmacy rules on consultation with their customers. These letters were to be entered on record and filed with the Administrative Code Editor.

**Recess**

Co-chair Metcalf recessed the Committee at 3:30 p.m.

**Reconvened** Co-chair Metcalf reconvened the meeting Wednesday, January 5, 1994, at 9 a.m. All members and staff were present.

## **INSPECTIONS AND APPEALS**

Rebecca Walsh and Nancy Ruzicka, Health Facilities Division, were present for the following:

### **INSPECTIONS AND APPEALS DEPARTMENT[481]**

Hospitals — hospital privileges for certified health service providers in psychology, criteria for granting clinical privileges, construction standards, 51.4(2)"c" and "d," 51.7 to 51.13, 51.15 to 51.18, 51.24, 51.50, Filed ARC 4501A ..... 12/22/93

Ch 51

Responding to Daggett, Ruzicka stated that the original construction standards for hospitals were written in 1947 and were updated in the early 70's. The amendments to Chapter 51 would be applicable to new construction or renovation after January 26, 1994.

No Committee recommendations.

## **PROFESSIONAL LICENSURE**

Carolyn Adams reviewed the following agenda with no comments or recommendations:

### **PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

200.2, 202.2;  
300.5, 300.7

Physical therapy and physical therapist assistant examination passing scores, 200.2(3), 202.2(3),

Notice ARC 4497A ..... 12/8/93

Speech pathology and audiology — out-of-state licensure, penalty fee for failure to submit continuing education

report on time, 300.5(2), 300.7(9), Notice ARC 4496A ..... 12/8/93

## **MEDICAL EXAMINERS BOARD**

Dennis Carr represented the Board for the following Filed rule:

### **MEDICAL EXAMINERS BOARD[653]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Licensure requirements, 11.1(3), 11.1(7), 11.31, 11.31(4), 11.31(5), 11.32(4), Filed ARC 4485A ..... 12/8/93

11.1 et al.

No recommendations.

## **PUBLIC HEALTH**

Representing the Department were Carolyn Adams, Judy Solberg, and Donald Flater.

### **PUBLIC HEALTH DEPARTMENT[641]**

Acquired immune deficiency syndrome (AIDS), rescission of rules relating to programs no longer available through the department of public health, rescind 11.1 to 11.12 and 11.70 to 11.78,

Filed ARC 4474A ..... 12/8/93

AIDS — division of health protection, Centers for Disease Control and Prevention, 11.17, 11.18(2), 11.30(1),

Filed ARC 4473A ..... 12/8/93

Mobile tattoo establishments, 22.1, 22.2, 22.3(1), 22.5(5), 22.7(2), 22.7(4), 22.9(1), 22.9(3), 22.9(11),

Filed ARC 4472A ..... 12/8/93

Quality of mammograms, inspection fees, 38.8(1), 41.1(12)"b"(8), Filed Emergency ARC 4471A .... 12/8/93

WIC program, 73.2, 73.5(5) to 73.5(7), 73.7(2)"c," 73.7(4)"a"(3) and (4), 73.7(4)"b"(2), 73.8(2), 73.8(3),

73.15, 73.22, Notice ARC 4495A ..... 12/8/93

Ch 11

No questions on filed amendments to Chapter 11 appearing in ARCs 4474A and 4473A.

**PUBLIC HEALTH**  
(Cont.) Ch 22

In review of ARC 4472A, it was noted there was a specific medical standard being followed with use of the word "cleanliness" instead of "sterility" in 22.5(5) as it applies to tattoo machines.

Daggett questioned the cleanliness of mobile tattoo units and Adams indicated that these units were inspected. Adams also added that prior to moving a mobile unit, application must be made to the Department.

38.8, 41.1

Flater briefed members on inspection fees of radiation machines and quality of mammograms (ARC 4471A). He explained that they were in the process of writing a request to become an accrediting body with the federal government which would enable them to accredit all facilities in Iowa instead of losing about 50 percent of them. He continued that the amendments were needed prior to this request.

Ch 73

In addressing amendments relating to the WIC program, Adams advised that the representative for this program was not present to answer technical questions. In 72.7(2)"c"(2), Priebe asked how often the food package formula was changed and Adams thought this would depend upon the status of the individual needs.

No Committee action.

**REVENUE AND  
FINANCE**

Carl Castelda, Deputy Director, explained the following agenda:

**REVENUE AND FINANCE DEPARTMENT[701]**

Interest rate for calendar year 1994, 10.2(13), Filed ARC 4508A ..... 12/22/93

Computation of minimum tax, 52.5(2), 58.5(2), Filed ARC 4486A ..... 12/8/93

20.10

Barry distributed a copy of 701—20.10, relating to sales and rentals covered by Medicaid and Medicare, which was formally objected to by the ARRC December 2, 1992. The rule has been amended (IAB 1/19/94) and Barry requested authority to delete the objection from the IAC.

Castelda stated that the governing statute was completely rewritten during the 1993 session and Revenue completely rewrote their rules. Schrader asked that Committee action be deferred until February. Castelda assumed this objection was no longer valid but would research it before the next meeting.

10.2

Daggett and Castelda briefly discussed interest rates and penalties on unpaid taxes (ARC 4508A).

Rittmer was advised that the pension money (refunds) would be paid about the middle of January but payment of attorney fees was not resolved.

**PUBLIC SAFETY**

The Department was represented by Michael Coveyou, Michael Rehberg, State Crime Laboratory and Darwin Chapman, Director of DCI, for the following:

**PUBLIC SAFETY DEPARTMENT[661]**

Weapons — permits, disposition of seized and forfeited weapons and ammunition, 4.1, 4.6(4), 4.51 to 4.59,

Notice ARC 4476A ..... 12/8/93

Ch 4

Amendments to Chapter 4 were explained by Coveyou. Doderer was advised that the rules specify the weapons be returned to DCI. Coveyou then referred to the last sentence of 4.57. Chapman stated that these weapons were destroyed by grinding and chopping at a scrap metal facility in Black Hawk county. Priebe thought more money would be generated if they were sold (possibly for antiques)

**PUBLIC SAFETY  
(Cont.)**

rather than being destroyed. Rehberg stressed that most of the guns they receive were essentially worthless.

During a brief recess, the Committee reviewed the Banking issue relative to title insurance.

**TRANSPORTATION  
922.1**

Brenda Schumann, Federal Funds Coordinator for the Air Transit Division, briefed members on amendments to 922.1, federal transit assistance, Noticed in IAB 12/22/93 as ARC 4499A. She advised Hedge that this resulted from federal mandate.

605.26

The 70-day delay of criteria for renewal of noncommercial drivers licenses by mail, 605.26(2)"a" and "d," ARC 4448A, was before the Committee. Shirley Andre and Terry Dillinger were present from the Motor Vehicle Division to discuss Committee concerns with the rule making and seek compromise language. Andre asked if raising the age limit from 55 to 65 would be acceptable. She also offered a proposal on the driving record issue which stated that a person would be allowed to renew by mail if the license were not under suspension or revocation. Copies of the specific language were distributed.

Halvorson was advised that a two-year license was issued after age 70 and below that age a two- or four-year license was optional. Metcalf advised that if the Committee was agreeable with age change, DOT could file an emergency rule immediately and the 70-day delay could be lifted.

Doderer and Dillinger discussed driving records which could be reflected by physical changes in persons over age 55 and 65.

Priebe reasoned that aged 70 would be consistent with the two-year license provision. Andre recalled that the Committee had previously expressed their preference for aged 65.

At Rittmer's request, Dillinger cited statistics on the number of licensees requested to have a vision test. There was considerable increase for those over the age of 55.

Priebe asked Palmer for input from the insurance standpoint. Palmer said that some companies look at a 55-year old as a preferred risk and will offer a discount for those with clean driving records and this discount increases up to aged 65. Halvorson agreed with this assessment and added that after age 65 their number of accidents increase based on the number of miles driven. He thought aged 65 was a good compromise.

Priebe was informed there would be no reduction in state employees if the age limit for renewal by mail were raised to 65. Records would still need to be updated and processed and validation cards would need to be mailed.

The Committee was agreeable to changing the age to 65 in 605.26(2)"a."

The second concern related to paragraph "d" and the Department was willing to allow renewal by mail if the driver's violations did not exceed two in a one-year period.

Metcalf was opposed to broadening the rule to this extent.

**Motion**

Priebe moved to lift the 70-day delay imposed on 761—605.26(2)"a" and "d." Motion carried with one "no" vote.

**UTILITIES**

Diane Munns, Vicki Place and Gary Stump represented the Division for the following:

**UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181]"umbrella"

Clean Air Act amendments — allowance transactions, 20.1(3), 20.9(2)"b," "e," and "f," 20.13(1)"d" to "k,"

20.13(2), 20.17(7)"c," 20.17(8), 20.17(9), 20.17(13), Filed ARC 4503A ..... 12/22/93

Energy adjustment clause, 20.9(2), 20.9(4), Notice ARC 4502A ..... 12/22/93

Nonutility activities — record keeping and cost allocations, ch 33, Filed ARC 4462A ..... 12/8/93

- Ch 20                    Filed rules to implement the Clean Air Act were addressed and Priebe was assured that any further changes in these rules would come before the ARRC.
- 20.9                    No questions or comments on amendments to 20.9
- Ch 33                    In review of Chapter 33, Schrader and Priebe expressed their opinions that "... 3 percent of a utility's operating revenues" in definition of "Filing threshold," was too high—33.2. No recommendations.

**INSURANCE**

The following agenda was reviewed by Susan Voss, Deb West, Jerry Wickersham, Kevin Conley, Klete Geren, Roger Strauss and Mike Smith.

**INSURANCE DIVISION[191]**

COMMERCE DEPARTMENT[181]"umbrella"

Licensing of insurance producers, ch 10, Filed ARC 4493A ..... 12/8/93

Continuing education for insurance producers, ch 11, Filed ARC 4494A ..... 12/8/93

Credit life and credit accident and health insurance rates, 28.7(1)"a" to "c," 28.8(1)"a,"

Notice ARC 4477A ..... 12/8/93

Long-term care insurance, 39.6(6), 39.15(1)"g," 39.22, Filed ARC 4509A ..... 12/22/93

- Ch 10                    No Committee recommendations on Chapter 10.
- Ch 11                    In review of Chapter 11, it was noted that the term "producer" was used instead of "agent" to reflect new language used in NAIC model legislation.
- 28.7, 28.8              West explained that credit life and credit accident and health insurance lower rate changes in Chapter 28 resulted from a hearing held in November at which about 40 representatives of credit insurance industry and auto dealers attended. The rates have been determined to be very actuarially sound. A hearing for oral presentation will be held in February.
- Halvorson relayed comments from a banker who wrote a great deal of credit life and credit accident and health. The banker's company intended to reflect the decreased rate in his commission—the agent would take the reduction, not the insurance company
- Defer                    Gary Thomas, Iowa Auto Dealers Association, advised the Chair that a group of people were on their way to address the Committee on these revisions and Metcalf deferred ARC 4477A.
- 39.6 et al.              Long-term care insurance was reviewed and Halvorson disagreed with the last paragraph of 39.22(1), stating that because of the age of those involved, limiting the right to change designation to once every two years could create a problem.
- Strauss replied that the provision requires the insurer to notify the insurer of the designated individual. Halvorson thought this could be done with the premium notice. Strauss agreed this was a possibility but pointed out this language does

## INSURANCE (Cont.)

not limit the right of the individual to change designees. Halvorson reiterated that situations may change rapidly at that age and he favored notification with the premium notice.

Strauss spoke of additional administrative burden and cost to the insurance companies but Department officials were willing to review the matter.

## HISTORICAL DIVISION

Patricia Ohlerking, Mark Peitzman, Executive Assistant in Cultural Affairs, and Jerome Thompson were in attendance for the following agenda:

### HISTORICAL DIVISION[223]

#### CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"

Amendments to reflect reorganization of the historical division of the department of cultural affairs; historic sites; collections committee; transfer of Terrace Hill Commission rules to department of general services, 1.2, 1.4(2), 1.5(1), 1.5(4), 1.5(6)"b" to "j," 1.6(2)"b," 1.6(5), 3.1, 3.2(2), 3.3(1), 4.10(2), 13.3, 13.4(1), 13.4(2)"a"(1), (6) and (10), 13.4(2)"d"(1) to (4), 13.5(1)"h" and "i," 13.5(2), 13.6(5)"a," 13.7(1)"a," 13.8(1), 13.8(1)"b" to "d," 13.8(2), 13.8(3), 14.1, 14.2, 14.5(8), 14.5(9), 15.6, 15.7(2), 21.2, 22.2, 23.3(1), 35.2, 35.3, 35.4(3), 35.5(1), 35.5(3), 35.5(4), 35.5(6), 35.5(7)"b," 35.6(1), 35.6(3), 35.6(4), 35.6(6)"b"(3), 35.6(6)"g"(6), 35.7, 35.7(1)"b"(1) and (5), 35.7(2)"b"(1) and (6), 35.7(3)"c"(1), (2) and (4) to (7), 35.7(3)"d"(1), 35.8(1), 35.8(4), 36.1, 36.2, 36.4, 36.6, 37.2, 37.4(5), 37.5(2), 37.6(1), 38.3, 38.4(1), 38.4(2), 38.5, ch 39 title, 39.1 to 39.3, 40.1 to 40.3, 41.3(1), 41.3(3) to 41.3(5), 41.4, 41.6, 41.7(1), 41.7(4), 42.1 to 42.3, 43.2, 43.3, 47.1, 47.2, 47.3(1), 47.5(1), 47.5(2)"d," 47.5(3), 47.5(5), 49.2, 49.6(1)"b," transfer 223 — Chapters 55 to 57 to 401 — Chapters 14 to 16, Notice ARC 4513A ..... 12/22/93

Amendments to reflect reorganization of historical division, 1.2, 1.4(2), 1.5(6)"b" to "j," 3.1, 3.2(2), 3.3(1), 13.3, 13.4(1), 13.4(2)"a"(1), (6) and (10), 13.4(2)"d"(1) to (4), 13.5(1)"h" and "i," 13.5(2), 13.6(5)"a," 13.7(1)"a," 13.8(1), 13.8(1)"b" to "d," 13.8(2), 13.8(3), 14.1, 14.2, 14.5(8), 14.5(9), 15.6, 15.7(2), 21.2, 22.2, 35.2, 35.3, 35.4(3), 35.5(1), 35.5(3), 35.5(4), 35.5(7)"b," 35.6(1), 35.6(3), 35.6(4), 35.7, 35.7(1)"b"(1) and (5), 35.7(2)"b"(1) and (6), 35.7(3)"c"(1), (2) and (4) to (7), 35.7(3)"d"(1), 35.8(1), 35.8(4), 36.2, 36.4, 36.6, 37.4(5), 37.5(2), 37.6(1), 38.3, 38.4(1), 38.4(2), 38.5, ch 39 title, 39.1 to 39.3, 40.1 to 40.3, 41.3(1), 41.3(3) to 41.3(5), 41.4, 41.6, 41.7(1), 41.7(4), 42.3, 43.2, 43.3, 47.1, 47.2, 47.3(1), 47.5(1), 47.5(2)"d," 47.5(3), 47.5(5), Filed Emergency ARC 4514A ..... 12/22/93

## Emergency 1.2 et al.

In review of the emergency filing intended to reflect agency reorganization, Royce noted that the preamble lacked language citing Code section 17A.4. He stated that an Emergency filing must always cite from 17A.4 to state why notice is impractical and from 17A.5 regarding the effective date. Royce advised that the omission of 17A.4 would render the rules invalid and they should be refiled with the correction.

Regarding the transfer of Terrace Hill rules, Priebe was informed that they would be under the Department of General Services—Code Supplement section 18.8A. According to Thompson, the nonsubstantive revisions were intended to reflect internal organization changes in the Historical Division such as Collections and Exhibitions Policies. For example, there was clarification as to the procedure for borrowing materials from the collection. Requests will now be made to the chief curator of the museum.

Ohlerking noted changes made to reflect ownership of two additional historic sites operated by the Division. A public hearing was scheduled for January 11, 1994.

Metcalf asked that the Committee be apprised of hearing results.

Kibbie was informed that the emergency process was followed because the Division had implemented structural reorganization without realizing the need to change the administrative rules. There was no reduction in RTEs but reassignment of tasks. Their budget request had not changed. Kibbie relayed

**HISTORICAL DIV. (Cont.)** concerns he had heard regarding job description changes and he wanted the Appropriations Subcommittee on Education that he and Daggett chair to have an opportunity to review the reorganization structure.

It was noted that the emergency rules went into effect January 2.

Royce advised that rules of organization and operation differed from other rules since agencies have the authority to reorganize as they choose. Iowa law requires this to be reflected by rule and it was his opinion that reorganization could precede the rules.

Pietzman communicated to Kibbie and Daggett that the Department would work with the appropriations subcommittee and review the reorganization and structure.

With respect to the availability of archaeological resources and confidentiality of the site information, Peitzman said these rules would open those records but create conflict with rules of state archeologist. This was an oversight and the Division plans to work with the archeologist for satisfactory resolution.

## **INSURANCE**

Metcalf returned to review of ARC 4477A, 28.7(1) and 28.8(1), under Insurance Division and recognized Walter Runkle, Consumer Credit Insurance Association. Runkle said he and expert witnesses appeared and testified at the November hearing on the rules with regard to the claim cost of this particular coverage used to determine the rate charged to the consumer. He provided background on how the Division determines these rates and adjustments every three years.

Runkle spoke in opposition to the new rates being published in the rules—they should be published separately as done previously. He declared that the formula set forth in 1990 would be undermined. The 1990 version considered lost cause and expenses of insurers and provided a 50 percent loss ratio standard for determining how much would be available to the insurance companies for all of their expenses. Runkle maintained that changing the rate from 58 cents to 47 cents would have the effect of causing this formula to no longer allow insurers the margins necessary to successfully provide the product.

West stated that the Division believed that because the rates were published in the rule, no order from the Commissioner could override them. If this Committee disagreed, she wanted to know, but it was their position that an existing rule could not be changed by order.

Royce advised a temporary waiver or minor exception could be granted by waiver but a rule could not be amended without a formal rule making.

West cited a 50 percent loss ratio rule against which the reasonableness of these rates was judged. She was aware that industry disputed that as the benchmark for a proper rate but it was contained in the rule and their actuary and the Division's actuary agreed that, even with the published rate, using the formula in the rule, they would not reach 50 percent. The Division actuary estimated only 38 to 40 percent loss ratio.

Metcalf pointed out that the amendments were under notice and she encouraged all interested parties to confer before the final adoption. Another public hearing was scheduled for February 9 after which time the ARRC would have another opportunity for review.



## PERSONNEL Special Review, 3.4

Clint Davis appeared before the Committee for the Department for two areas of special review. Employee contact with public officials and position classification review, 3.4. At the request of the ARRC, Davis had gathered information from various state agencies to determine what, if any, policies might exist with regard to instructions to employees on the subject of contacts with members of the legislature or their staff. Responses indicate a number of departments have no policy in this regard to the extent that they have discussed it with their employees. They simply request the employees to exercise due diligence in terms of responding to requests and in the event questions arise, follow-up or investigation is made through the department to eliminate "loose ends" to any inquiries.

Davis said some departments do have written policies which are a formalization of what he described as unwritten advice. Those departments have a contact report form which provides them a framework. Davis continued that some of the policies he had reviewed made it very clear to employees to exercise their rights as individual citizens of Iowa at any time they so desire to express their personal opinions or share their personal point of view with their legislator. Employees are asked to distinguish clearly when they are representing their own personal point of view as opposed to the official position of the department.

With respect to rule 3.4, position classification review, Davis was not aware of origin of this review.

Schrader pointed out that the issue was a reference in the Code to an employee's opportunity to ask for an appeal of a classification. He stated that the rules did not preclude that opportunity but were silent on the employees rights.

Betty Buitenwerf, Legal Counsel, AFSCME/Iowa Council 61, indicated that some state employees thought the new rule implemented on 4/14/93 basically eliminated request for a job classification review. She then read the new 3.4(3) and noted that old language read, "...an appointing authority or incumbent of that position. . ." Buitenwerf contended that removal of "incumbent" was a direct conflict with statutory language. She then referred to Iowa Code section 19A.9, paragraph 1, which states "Any employee or agency officials affected by the allocation of a position to a class shall, after filing with the director a written request . . . ."

Davis assured the Committee there was no intent to circumvent the law by rule. He added that the rule revisions last spring in no way changed the appeal process to the director for persons (either agency, management or employees) with regard to having the opportunity for due process before the classification appeal committee when the initial allocation of position had been decided and communicated to them.

Davis indicated that Department personnel, representing both the rule making and classification process, met yesterday afternoon and concluded that these rules do need some clarification and this will be done. He was willing to submit a progress report in February and have a proposal for March review.

## BANKING

At the request of the ARRC, Division of Banking officials returned to continue discussion of subrule 187—9.2(5), title insurance. Those in attendance were R. H. Buenneke, Superintendent Steve Moser and Donald Senneff. Buenneke distributed to the Committee a copy of the Noticed rule in question that appeared in the IAB 7/7/93 (ARC 4086A) with areas of importance highlighted. He reiterated there was never intent "to do an end run, go around the Committee."

**BANKING (Cont.)** The Division wanted to provide the state banks the same status held by national banks as explained in the preamble to the rule making. He emphasized that they were not in collusion with any other group and no other associations were involved. Buenneke also pointed out that appropriate notice was given and opportunities were granted for comment before the emergency adoption. He felt confident that had they not followed emergency provision, the rule would have gone into effect on October 6 because there were no comments received. Because the rule was approved by the Banking Board, Buenneke took the position that the Board would have to make any decision to modify the rule. He would present the issue to them at their January 19 meeting.

**Motion to Object** After further discussion, Schrader moved to object to 9.2(5) and said he would be willing to lift the objection if the Banking Board reconsidered paragraph "b."

Halvorson defended the Division stressing they had done nothing to promote title insurance. The rule allows the auditors to pick up either the title insurance or the opinion from the attorney. Halvorson addressed what he described as "the real problem existing in real estate transactions of commercial property"—property in more than one county. He commented on differences in abstractors and how they work. Halvorson added that for consumer protection consideration should be given to a title insurance certificate versus an abstractor or even an attorney's title opinion.

Halvorson opposed the objection but would propose, at the proper time, a substitute motion to refer the issue to the legislature.

Rittmer expressed doubt as to the effect of such a motion and had no problem with deferring until next month. He wanted time to study the matter.

Metcalf opposed the motion but was willing to defer until next month to allow time for study.

**Substitute Motion** Halvorson moved a substitute motion to refer subrule 9.2(5) to the Speaker and President of the Senate for consideration by appropriate legislative committee.

It was clarified that if Halvorson's motion passed, Schrader's motion would be out of order.

Priebe indicated he would vote against the substitute motion. He opined that the Board should start a normal rule-making procedure to give opportunity for more input.

It was pointed out that an objection could be imposed at any time.

Halvorson was willing to withdraw his substitute motion if Schrader would accept Buenneke's assurance.

Schrader was not willing to withdraw his motion and reasoned that Halvorson's motion would complement his motion. He asked that they be voted on in reverse order, however. Schrader asked Halvorson to consider withdrawing his substitute motion until Schrader's motion was voted upon.

Halvorson consented to withdraw but emphasized if there were concerns that this rule had changed Iowa law in any way, the proper action would be referral to the legislature.

**BANKING (Cont.)**  
**Motion Withdrawn**

There was unanimous consent for Halvorson to withdraw his substitute motion.

**Motion to object**  
**carried**

Schrader made closing remarks on his motion, after which his motion passed on a show of hands, 6 to 4. Royce prepared the following:

At its meeting held January 5, 1994, the Administrative Rules Review Committee voted to object to subrule 187 IAC 9.2(5) as published in ARC 4213A on the grounds that it was beyond the authority of the Banking Division to make that particular subrule effective on an emergency basis. This provision is published in IAB Vol. XVI No. 5 (9-01-93). The committee takes this action pursuant to the authority of Iowa Code section 17A.4(4)"a."

This filing was initially published as a Notice of Intended Action on July 7, 1993. Following the completion of the notice portion of the rule-making process, it was Filed Emergency After Notice on August 11, 1993, pursuant to the provisions of Iowa Code section 17A.5(2)"b"(2), citing as grounds:

*that the normal effective date of this amendment, 35 days after publication, should be waived due to the fact that this amendment removes a restriction on real estate lending by state chartered banks and confers a benefit to creditworthy flood victims. The amendment is in the public interest, as state banks will be granted greater flexibility to accommodate individuals, families and businesses struggling to recover from the disaster.*

It was the opinion of the Committee that subrule 9.2(5) should not have been made effective on an emergency basis because that portion of the filing did not relate to the grounds cited as justification for early implementation. The subrule relates to the ability of state chartered banks to utilize title insurance to guarantee the title on real estate and the validity and enforceability of the banks mortgage or similar security in that real estate.

The Committee members concluded that subrule 9.2(5) did not confer a benefit on flood victims or provide greater flexibility in dealing with their problems. For that reason the members believed that this portion of ARC 4213A should have been filed separately, using the "regular" implementation process set out in Iowa Code section 17A.5(1).

**Motion**

Halvorson moved to refer subrule 9.2(5) to the Speaker and President of the Senate for review by the appropriate committee.

Further discussion with Royce advising that the burden of proof would remain with agency with or without an objection. He also pointed out that an objection was totally independent of any other action the Committee could take.

Bueneke had a real concern from the standpoint of court costs. If the Department lost because of Schrader's motion, they could be forced to lay off up to 10 or more examiners.

In response to Bueneke, Royce stated the date a court case is instituted is the date that affixes the rights, duties and responsibilities.

Schrader interjected that he would support Halvorson's motion to refer.

Halvorson then called up his motion to refer 9.2(5) to the general assembly.

Royce pointed out that the objection would not be filed for a few days.

**Motion carried**

Halvorson's motion passed by a show of hands, 6 to 2.

## Banking (Cont.)

Dierenfeld expressed concern of the economic consequences of the objection and sending a negative message to banks.

Bueneke sought guidance as to the appropriate procedure to inform banks of the potential problem. Priebe was interested in the number of loans where title insurance was used other than for the flood. Bueneke indicated they would have to survey 450 banks.

Halvorson concurred with the survey approach. He suggested that the Division send correspondence to all banks in the state and ask them if, because of the adoption of this rule, the use of title insurance had increased, and, if so, how many cases.

Bueneke agreed to the request.

Responding to Doderer's remarks that the Department had said there was no change regarding these rules, Bueneke clarified that he had reference to procedures. Under the old rule there was nothing specifically that allowed banks to utilize title insurance.

As a precautionary measure, Bueneke thought they should advise banks to continue to use abstractors and attorneys.

Bueneke has no problem with what banks have already done but he does not know what to tell them to do in the future.

Priebe then asked Bueneke to report to him and Metcalf after the Board meeting on the 19th.

## Minutes

Priebe moved to approve the minutes of the December meeting as submitted. Motion carried.

## No Reps

No agency representative requested to appear for the following:

**LABOR SERVICES DIVISION[347]**

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

Fees, 75.1(1), 75.1(2), 75.2 to 75.5, Filed Emergency After Notice ARC 4504A ..... 12/22/93

**LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]**

Professional Licensing and Regulation Division[193]

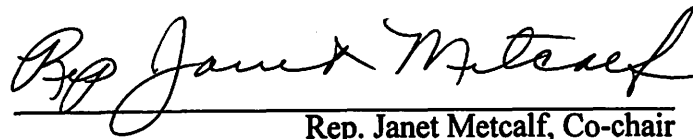
COMMERCE DEPARTMENT[181]"umbrella"

Examinations and registration, 2.5, 2.5(1), Filed ARC 4489A ..... 12/8/93

## Adjournment

Priebe moved that the meeting be adjourned at 12:15. Motion carried.

Respectfully submitted,

  
Rep. Janet Metcalf, Co-chair

  
Phyllis Barry, Secretary  
Assisted by Mary Ann Scott