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 on Tuesday and Wednesday, May 11 and 12 in Senate Room 22, State Capitol, Des Moines.

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

Convened — Co-chair Metcalf convened the meeting at 10 a.m. and announced that a quorum was present.

Minutes — Halvorson moved to approve the minutes of the April meeting as submitted. Motion carried.

GENERAL SERVICES — Representing the Department were Dale Schroeder and Kathy Williams for a new rule 401—1.8(18), state vehicle dispatcher vehicle assignments, Noticed in IAB 4/14/93 as ARC 3903A. Other interested persons included: Wayne Richey, Executive Secretary, Board of Regents and representatives from University of Iowa and Iowa State University.

1.8 — Schroeder provided background information on the proposal and noted that no one had attended the public hearing on May 5. However, a letter was received from the Board of Regents addressing the same concerns they had expressed in January during the drafting of this rule. These concerns included the initial zero tolerance language, additional record keeping requirements and inclusion of cargo vans.

In response to Halvorson, Schroeder stated that the Department's goal was to increase mpg from 23.5 to 25 by 1997, excluding law enforcement and special purpose vehicles.

In the definition of "primary use of a vehicle," Priebe reasoned that 50 percent should be at least 75 percent. He also favored better coordination of state vehicle use.

Kibbie was advised that this rule would govern all state vehicles dispatched through General Services. He spoke of the number of state vehicles he had observed traveling to the same destination with one person in each vehicle. Kibbie was also aware of criticism by the public for the personal use of these vehicles. The Department would take these concerns under advisement but did not believe intent of the legislation was to address this issue.

Schroeder explained to Priebe his concerns when adopting the 50 percent figure. In cargo vans and pickup trucks, the agencies may require a vehicle capable of towing a 6000 pound trailer 25 to 40 percent of the time or they may need the gross vehicle weight vehicle available to handle cargo volumes. Priebe interjected

GENERAL SERVICES (Cont.)

that he had reference to 80 percent of the fleet which was not cargo vans. He suggested a special rule for cargo vans or passenger vehicles.

Rittmer was advised that the mileage was charged to the department using the vehicle. He could understand why the rules could not be made too stringent. He took the position that the department head should monitor use of these vehicles and he mentioned possible budget restraints.

Schroeder informed Daggett that 2120 state vehicles include enforcement vehicles, vans, pickups, cars and station wagons. This figure did not include DOT (just under 2000) and Regents (1100 to 1300).

In 1.8(4), vehicles for temporary assignment, Schrader suggested substitution of ". . . a larger classification may be substituted" for the words "the next larger classification . . ."

Richey introduced representatives from the Motor Vehicle Operations of the U of I and ISU who had concerns about the rule. Richey complained that the statutory requirement for General Services to consult with the Board of Regents and other agencies had been very minimally met on the issue. He continued that the 50 percent utilization in the definition of "primary use of a vehicle" had provided more flexibility to deliver services. Without this provision, Richey could foresee decision making to be extremely time consuming and costly. He cited the wide range of purpose and use of vehicles by Regents institutions—from farm operations to transporting students. Richey pointed out no allowance was made for transporting a large but lightweight article.

Schroeder disagreed with Richey's contention that the Board of Regents was excluded at the drafting stage of the rule as required by legislation. He recalled correspondence and numerous conversations with staff from the U of I and UNI and the Regents office in Des Moines. Schroeder stressed that DOT, Regents or the Commission for the Blind had no representatives at the public hearing on the proposed rule which could be adopted in late May for June publication.

Richey urged deletion of cargo vans from the rule. He also cited potential problems without a permanent car assigned to his office. Priebe voiced opposition to furnishing cars which were driven less than 12000 miles per year. He favored mileage reimbursement for personal vehicle use.

Halvorson recognized the impetus for the rule but thought it was regrettable that the Board of Regents was not represented at the hearing.

MOTION

Priebe moved the ARRC recommend to the Legislative Council that a study be conducted on the use of state vehicles. Motion carried.

AGRICULTURE

The Department was represented by David Werning, Lillian M. Moore, Robert L Cox and Walter Felker. The following agenda was reviewed:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Apiary — American foulbrood disease, three new exotic parasites, Africanized honeybees, 22.2 to 22.8, Filed **ARC 3922A** 4/28/93

Dairy trade practices — monthly promotional filings, 23.8(4), Filed **ARC 3892A** 4/14/93

Pseudorabies disease, 64.156(2)"d," 64.157(2)"c," 64.157(5), 64.158(2)"f," 64.158(3)"c," 64.158(4), 64.158(6), 64.159, 64.162(4)"b," Filed **ARC 3921A** 4/14/93

AG (Cont.)
22.2, 22.8

Hedge and Cox discussed the widespread infestation of Varroa mites and their control. No Committee recommendations.

23.8(4)

Moore explained the purpose of the promotional price filings in 23.8(4), which were required by the Dairy Trade Practice Law. No Committee action.

Ch 64

No questions or recommendations on amendments with respect to pseudorabies disease which were acceptable to pork producers.

LIVESTOCK HEALTH ADV. BOARD
Ch 1

Mark Truesdell, Attorney, briefed the ARRC on recommendations for expenditure of the annual appropriation for livestock disease research. Noticed Chapter 1 was published in IAB 4/14/93 as ARC 3908A. Priebe recommended that $20,000 be set aside for a special study to address an emergency situation. He also questioned why paragraphs 9 and 17 relative to mystery swine disease were not combined. No formal action.

CAMPAIGN FINANCE
1.16 et al.

Kay Williams, Executive Director, and Lynette Donner, Assistant Attorney General, were in attendance for Commission amendments to 121—1.16, 4.2, 4.6(7), and 4.18 regarding complaint procedure and reporting requirements, Noticed in IAB 4/28/93 as ARC 3924A. In an opening statement, Williams noted that House File 144 would necessitate extensive rule changes.

Discussion focused on 4.6(7) regarding the $25 limit for fund-raiser meal tickets. Schrader clarified for Palmer that the $25 would apply only to fund-raiser tickets for a candidate to contributions to political party committees. Williams explained that a transfer of funds could not be made to another candidate or a PAC under current law but funds could transfer to the county or state political party. Under current statute, the candidate is limited to one ticket to a fund-raiser and must attend.

Williams assured Schrader that language in 4.2(56) would not preclude making copies of campaign finance disclosure report forms. Schrader and Doderer questioned the need for reporting in chronological or alphabetical order and Williams agreed to refer the matter to the Commission.

Halvorson asked for interpretation of "meal" and Williams cited a fund-raiser where food was provided, such as a luncheon, chili supper, picnic, breakfast, barbecue, wine and cheese party. Williams acknowledged that the rules could be expanded to define "meal."

Daggett suggested that the language in 4.6(7) could read ". . . actual cost of the meal or ticket is not greater than $25".

Williams had received three favorable comments on the amendments.

COLLEGE STUDENT AID
Ch 10

Laurie Wolf gave brief explanation of 283—Chapter 10, Federal Family Education Loan Programs, appearing under Notice of Intended Action in IAB 4/14/93 as ARC 3897A. No questions.

CORRECTIONS

Fred Scaletta represented the Department for the following agenda and there were no recommendations:

CORRECTIONS DEPARTMENT[201]

Community corrections compliance with specific program requirements developed by the department of corrections 40.2(4)"c," 40.2(4)"e," Filed **ARC 3920A** 4/14/93

ECONOMIC DEVELOPMENT

Stacie Palmer, International Division, and Melanie Johnson, General Counsel, were in attendance for the following:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
Export trade assistance program, 61.2, 61.3"2," 61.5(1), 61.5(5), 61.6, Filed **ARC 3904A** 4/14/93

Ch 61

Palmer advised Priebe that no changes were made in the Trade Mission but new language clarifies which Trade Missions qualify for assistance. The only expense would be for staff time. Priebe suspected that staff compensation would exceed any promotion and he asked that his sentiments be reported to the Commission.

ELDER AFFAIRS

David Ancell and Jim Corbett addressed the following filed amendment:

ELDER AFFAIRS DEPARTMENT[321]
Use of federal Title VII funds as match for state funds allocated for care review coordinators, 5.9(4),
Filed **ARC 3893A** 4/14/93

5.9(4)

There were no recommendations by the ARRC.

NATURAL RESOURCE COMMISSION

The following agenda was reviewed:

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Use of firearms, Badger Creek area, 51.3(1)"f," Notice **ARC 3939A** 4/28/93
Ice fishing shelters, 55.1, Notice **ARC 3940A** 4/28/93
Nonresident deer hunting, 94.1, 94.2, 94.5(1), 94.8, Filed Emergency After Notice **ARC 3941A** 4/28/93

55.1

Co-chair Metcalf called up amendment to 55.1 and Steven Dermand presented a brief overview. Kibbie inquired about the term "for a period of time" and was advised this would be overnight or 24 hours. Dermand advised Priebe that the rule would be limited to structures built over ice. Priebe then expressed the opinion that use of "over state-owned land" was confusing. Dermand reiterated that intent was to address shacks built on the ice for fishing.

Halvorson expressed concern about the change of "overnight" to "unattended" in 55.1(3) as to potential problems from an enforcement standpoint as well as from a use standpoint. Dermand said intent was to address in more depth unattended lines which may also be in the shack or in the water. Halvorson opined that "overnight" was more definitive and Dermand agreed to refer the matter to the Commission.

51.3(1)"f"

Richard Bishop and Donald Paulin discussed use of firearms at Badger Creek set out in new 51.3(1)"f." Bishop explained that the Department was petitioned for the rule making and that a berm would be constructed in the target shooting area to shield a home located one-fourth mile from the target shooting area as well as the gravel road.

Daggett questioned the wisdom of promoting such an area where population will continue to grow in years to come. Bishop responded that shooting has been taking place in this area and the Department had assumed responsibility for some safety control. He admitted that DNR lacked staff to police this area at all times but was hopeful the rule would help.

Bishop continued that the area was currently open to hunting and fishing under state rules. There were two elements of public use—sportsmen utilize the area for hunting and other groups want to shoot clay pigeons and target practice. The DNR was focusing on the latter group by providing a controlled target shooting

DNR (Cont.)

area. Bishop advised Metcalf that other such areas in the state were also being considered by the Department.

Bishop spoke of the difficulty in policing irresponsible shooting—violators move from area to area. Doderer inquired about imposing a fee to which Bishop responded that those who were willing to pay would not be the irresponsible ones.

In response to Halvorson, Bishop indicated that DNR was proceeding with as safe shooting ranges as possible without full supervision. He stressed that the program at Badger Creek had been greatly improved. Discussion focused on the berm and how it was being constructed at Badger Creek.

Palmer inquired about the Waukee Gun Club firing area and Bishop thought that was private with controlled access. Palmer suggested similar areas could be established by the state. Bishop mentioned the state-operated shooting range near Bid Creek Lake by a private concessionaire. However, he was doubtful of economical feasibility for the Badger Creek area.

Dr. Robert Winchell told the Committee that his home was 1/4 mile from the Badger Creek shooting range. He described the area as hazardous and contended the shooting range should be prohibited. A count of vehicles revealed that 75 to 100 persons per week enter the area. On a Saturday in February Winchell counted the number of shots in an hour which amounted to one every seven seconds. He was concerned that the rule would not fully address the problem. Winchell continued that stray bullets were common near his home. Parents of children who ride the school bus have confirmed instances of stray bullets near the children. Winchell wondered about liability of the state in event of an accident or tragedy.

Paulin and Winchell discussed the petition which Winchell contended was misinterpreted. The petition had been signed by every local resident who requested that target shooting in a highly concentrated area be stopped for the following reasons:

1. Area not adequately patrolled.
2. Target shooting posed a threat to livestock and prevented others from using the area.
3. Children living adjacent to the area were afraid to play in their own yards.

Dr. Dennis Roleh, home owner in the area, had heard high powered rifle bullets near his buildings and witnessed a red-tailed hawk being shot in the air.

Paulin continued that complaints from Winchell had resulted in plans to construct the berm.

Bishop advised Doderer that the penalty for breaking the rule would be a simple misdemeanor. She reasoned that DNR should acquire more property in the Badger Creek area since current residents would not be happy there without strong law enforcement.

Metcalf concluded that DNR was proposing some solution to a problem which won't go away. She suggested that the berm be tried this summer and that the Committee review the situation next spring.

Winchell suggested that DNR construct something further away from any residents in an attempt to decrease risk.

DNR (Cont.)

Bishop maintained that the proposed location for the berm was the safest spot.

Halvorson urged DNR to continue the search for a safer place before a child is injured.

Harold Jensen, Winchell's neighbor, spoke of problems with irresponsible shooting around the lake area and expressed the opinion that a berm would not resolve the problem.

Cindy Winchell expressed great. concern for the safety of her children and wondered why surrounding property owners were not consulted before this project was started.

Rittmer saw no problem with the rule but asked DNR to review these comments from the residents.

Metcalf urged all concerned to attend the public hearing on this rule scheduled for May 19.

Priebe was advised that Winchell's house has been lived in continuously since 1921 except for a few months in the spring of 1990. Priebe indicated that he planned to view the area after this meeting. He was concerned that a precedent was being set which could cause future problems and concurred with those who favored another location for controlled target shooting.

Bishop reiterated that shooting would still take place in the Badger Creek area.

No formal action.

Ch 94

Discussion moved to nonresident deer hunting, amendments to Chapter 94. Priebe asked why these rules were filed emergency and Bishop responded that DNR had been requested to start their application period earlier to coordinate with other states.

Recess

Co-chair Metcalf recessed the Committee for lunch at 12:45 p.m. and reconvened it at 1:30 p.m.

HUMAN SERVICES

Metcalf called up the following Human Services agenda:

HUMAN SERVICES DEPARTMENT[441]

Developmental disabilities basic grant program, 1.7, ch 38 title and preamble, 38.1, 38.2, 38.3, 38.3(1), 38.3(3), 38.4, 38.5, 38.5(1)"c," 38.5(2), 38.5(3), 38.6 to 38.8, 38.10 to 38.12, Notice **ARC 3884A** 4/14/93

ADC eligibility — stepparent's resources not considered, 41.6(2)"c," Notice **ARC 3930A** 4/28/93

Income eligibility guidelines for Federal Surplus Food Program, 73.4(3)"d"(2) Notice **ARC 3929A** ... 4/28/93

Statewide average cost to private pay person for nursing care, 75.15(2) Notice **ARC 3928A** 4/28/93

HCBS/MR and HCBS/MR/OBRA waiver services, 77.37(3)"c"(3) to (5), 77.37(3)"d"(3), (5), 77.37(5)"d," 77.37(6)"b"(4), 77.37(7), 77.37(7)"b, 77.37(8), 77.37(8)"a"(2), 77.37(8)"d," 77.37(9)"b," 77.37(10), 77.37(11), 77.37(11)"a"(2), (3), and (9), 77.37(11)"b," 77.37(11)"b"(2) and (4), 77.37(11)"c," 77.37(12)"b," "c," "d," and "f," 77.37(13), 77.37(13)"a"(1), (4), (11), and (12), 77.37(13)"b"(2), (4) to (7), 77.37(13)"c," 77.37(13)"c"(1) and (2), 77.37(13)"d,"(1), (3), and (4), 77.37(13)"e" to "i," 77.37(14), 77.37(14)"a," 77.37(15) to 77.37(17), 77.37(21)"b"(16), 77.37(21)"d"(1), (2), and (4), 77.37(22), 77.37(22)"f"(2), 77.37(22)"g," 77.37(23)"a," 77.37(24)"b"(1) to (3), 77.37(25)"e," 77.37(26)"d"(1) to (3), 77.37(28)"a," 77.37(28)"a"(1), 77.37(29)"b," 77.37(31)"a"(1) and (2), 77.37(32), 78.41, 78.41(1), 78.41(1)"b" and "c," 78.41(1)"e"(3), (6), (11), and (13), 78.41(1)"f"(1) to (3), 78.41(1)"g," 78.41(1)"g"(2) to (5), 78.41(1)"h"(1) to (3), (5), 78.41(1)"i," 78.41(1)"i"(1) and (3), 78.41(1)"j" and "n," 78.41(2), 78.41(2)"b," "c," "e," and "i," 78.41(3)"a"(4), 78.41(3)"b," 78.41(4), 78.41(4)"a," 78.41(5),

HUMAN SERVICES (Cont.)

78.41(6), 78.41(6)"a," 78.41(7)"a," 78.41(7)"a"(2) and (3), 78.41(7)"c" to "k" and "m," 79.1(1)"c," 79.1(2), 79.1(15)"a," "b," "d," and "e," 83.60, 83.61(1)"b" and "c," 83.61(1)"c"(1), 83.61(1)"e," 83.61(1)"g"(4), 83.61(1)"h," 83.61(2)"a" and "b," 83.62(3)"c," "e," and "f," 83.62(4)"d," 83.63, 83.63(1), 83.65, 83.67, 83.68(3)"c" and "f" to "h," 83.69, 83.70, Notice **ARC 3932A** 4/28/93
Standards for providers of services to persons with mental illness, mental retardation, and developmental disabilities, rescind chs 24, 25, 33, 35, and 36; new ch 24, Notice **ARC 3933A** 4/28/93
Differential reimbursement for certain auxiliary personnel of a physician, 79.1(2), 79.1(7), Notice **ARC 3338A** Terminated **ARC 3883A** 4/14/93
Medicaid — repayment of identified overpayments or other erroneous payments, 79.2(2)"u," 79.2(3)"j," Notice **ARC 3931A** 4/28/93
PROMISE JOBS program, 93.10(6), 93.10(8)"b," 93.11(9)"c," 93.12(2), 93.14(7), 93.14(10), 93.14(10)"c," 93.15(1), 93.15(1)"e," 93.19(1) to 93.19(3), 93.21(9), Notice **ARC 3896A** 4/14/93

Present from the Department were Mary Ann Walker, Ruth Schanke, Roberta Harris, Shirlee Haines, Kim McMiller, Julie Dettmann, Gary Gesaman, Kathi Keller, P. C. Keen, Norma Hohlfeld, Barbara Russell and Harold Templeman.

1.7 et al. — No questions or comments on amendments to 1.7 et al. regarding developmental disabilities basic grant program.

41.6 — With respect to determining ADC eligibility for the parent in 41.6(2), Walker explained that the stepparent's resources would no longer be considered. The Department had been misinterpreting federal policy for some time. According to Russell, the fiscal impact would involve approximately 60 cases per year.

Schrader could not understand why a stepparent would not assume responsibility for the children as part of a new family unit. Russell explained that previously the Department considered the stepparent's income but now it was the resources they were establishing—money in bank accounts, automobiles, property, etc. If the stepfather has low income, resources would be ignored. Schrader questioned whether this exemption was appropriate.

Rittmer assumed that the stepparent could not claim the children as an income tax deduction. Royce interjected that would be a matter of court order because parents would have first choice at dependency.

73.4 — No questions on amendment to 73.4(3)"d"(2).

75.15(2) — In review of amendment to 75.15(2) on Medicaid eligibility, Daggett inquired how Iowa handles assets when property settlement has not been made. Walker said this occurs most often with homes and at present, if attempt is being made to sell the property, the Department disregards that resource until it is sold. Federal Government has ruled against such practice and a proposed rule next month will require the resource to be sold prior to Medicaid eligibility. Daggett cited extenuating circumstances which make it difficult to sell some homes—underground storage tanks, for example. Walker said that on the other side, some were not trying to sell since the home would revert to the family instead of the state when the person dies. The lien law no longer exists.

Regarding the weighted average for all nursing homes, Rittmer was advised that one year an actual survey was done and the next year an inflation factor would be applied. This relates to cost for private pay.

77.37 et al. — No questions on amendments to 77.37 et al.

DHS (Cont.)
Ch 24

Regarding proposed new Chapter 24. Metcalf was advised there would be public hearings starting May 19 to 25.

Schanke responded to Daggett that Chapter 24 set out standards for adults in mental health centers or community-supervised apartment living. They would not affect the school setting.

In 24.23(7)"b"(1) and "c," Priebe pointed out a possible inconsistency in providing technical assistance within 90 calendar days but requiring program correction within 45 days. Schanke said that 90 days would be the maximum amount of time allowed to the Department which has one person to cover each of the areas. Forty-five days would be allowed to submit a corrective plan, not make the correction.

Ch 79

The Notice of Termination of amendments to Chapter 79 was discussed. Reimbursement for auxiliary personnel (physicians assistants) would remain at 100 percent of the physician's fee rather than being reduced to 85 percent.

No questions or comments on the remainder of the agenda.

INSPECTIONS AND APPEALS

Rebecca Walsh and Robert Haxton were in attendance for the following agenda:

INSPECTIONS AND APPEALS DEPARTMENT[481]
Food and food service establishments — fees, utility sinks, storage temperature for shell eggs, minimum cooking temperature for ground beef, toilet facilities, 30.3(5), 31.1"9" and "10," 32.1"10" to "12," 32.3(5), Notice ARC 3894A 4/14/93

30.3(5) et al.

Priebe questioned inclusion of shell eggs as potentially hazardous food and Haxton cited problems with salmonella. The required storage temperature for certain foods would be 45 degrees or less according to certain FDA codes adopted by reference. Haxton pointed out these recommendations were adopted by reference in the Code of Iowa by the Legislature in 1979 and 1986. The recommendations used by the Department were in the 1976 Edition of the Federal Food and Drug Administration National Standard Ordinance.

Royce explained that under Iowa law, the Department adopts the federal Food Standards National Standards Ordinance. He clarified that the amendments adopt exceptions to the national provisions that have been adopted in the Code of Iowa. Priebe was not sure that this was the appropriate course of action. Haxton agreed that the amendments were not taken from the Code of Federal Regulations. Priebe voiced opposition and Haxton was willing to withdraw the rulemaking.

Halvorson quoted from 32.3(5) which would require separate toilet facilities for men and women in food service establishments which seat 50 or more people or places which serve beer or alcoholic beverages. Halvorson contended substituting "or" for "and" would be a major change for the small licensed facilities. Haxton emphasized that the Department had always interpreted the provision as "or" even though it was not written that way.

Royce and Barry referred to the Administrative Code and noted that Chapter 31, first sentence, adopted a 1982 Edition of the Retail Food Store Sanitation Code and the remainder of the chapter was a commentary as to the segments of that ordinance which were enforced. Haxton clarified for Priebe that the Food Service Ordinance and the Retail Food Code were adopted in the Iowa Code chapters 137A and 137B.

INSPECTIONS & APPEALS (Cont.)

Haxton advised Hedge that "potentially hazardous food" was defined in the Food Service Ordinance and the Retail Food Code. He said this was basically food such as milk, meat or poultry that, without being refrigerated or heated, would allow bacteria to grow and potentially cause illness.

With respect to Halvorson's concern, Rittmer took the position that use of the word "places" was the key factor.

Haxton again attempted to explain the Department's interpretation of 32.3(5)"a," and he assured Kibbie that the rule did not pertain to fair food stands.

Metcalf referred to subrule 30.3(5) which required information on gross sales of licensed food establishments and asked if confidentiality language could be included. Discussion followed on contents of Iowa Code in relation to confidentiality of tax records.

Halvorson reiterated his opposition to 32.3(5) in Item 4.

STATE PUBLIC DEFENDER

William Wegman, State Public Defender, was present to address questions on the following agenda:

STATE PUBLIC DEFENDER[493]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Indigent defense advisory commission, requirements for private attorneys who contract to provide legal defense representation, 1.4(1), 10.1, 10.3, 10.4, 10.6(3), 10.7, 10.8, 10.10, 10.11, Notice **ARC 3895A** 4/14/93

10.4

In review of 10.4 relative to contract approval, Wegman explained that they will no longer contract with the lowest bidder. This will be accomplished at the judge's discretion.

Priebe questioned Wegman's authority to require publishing of the Notices of available contracts in the Bar Association Newsletter. Wegman responded that he had authority as a member of the Bar but he was willing to strike this language. No Committee action.

RACING AND GAMING

The following agenda was reviewed by Lou Baranello.

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Organization and operation, practice and procedure before the racing and gaming commission, applications for track licenses and racing dates, greyhound racing, thoroughbred racing, riverboat operation,1.2(2), 4.4, 5.15(3), 5.15(4), 6.3, 7.1, 7.2(10), 7.4(1)"a," 7.8(4)"a" and "b," 10.1, 10.2(6)"a"(1), (3), (4) and (6), 10.3(13), 10.4(6)"b" and "e," rescind 25.16(2)"a," Notice **ARC 3888A**, also Filed Emergency **ARC 3887A** 4/14/93
Commission approval of contracts and business arrangements, change of custody when drug testing a licensee, greyhound and thoroughbred racing, stockholder reporting, 4.1, 4.28, 5.8, 7.1, 7.5(9), 7.6(18), 7.7(6), 7.9(4)"e" and "f," 7.10(3), 10.4(1), 10.4(1)"d," 10.4(16)"a"(8) and (12) to (15), 10.4(16)"c"(7), 10.4(16)"d"(1) and (6), 10.4(17)"b"(6) to (11), 10.5(1)"g," 10.5(2)"h" and "k," 10.5(6)"b," 10.5(16)"f," 10.5(17)"a"(1)"2," 10.5(17)"f," 24.14(7), Filed Emergency **ARC 3891A**..... 4/14/93
Mutuel department, ch 8, Filed Emergency **ARC 3889A**, also Filed **ARC 3890A** 4/14/93

Royce cautioned Baranello that the Commission's reasons cited for the emergency adoption were inadequate. This deficiency makes the rules vulnerable to challenge in court. Royce emphasized that this was aside from the merits of the rules.

RACING AND GAMING (Cont.)

Schrader echoed Royce's remarks and observed that emergency adoption could not be justified for many of the rules. He also questioned as to why the Commission limited themselves to 30 days to determine racing dates 6.3(99D)(Item 5). Baranello explained that the Commission must be aware of the length and breadth of enforcing greyhound meetings for budget projections. Schrader asked if a simulcast were suspended at one track could a meet be simulcast from another location. Baranello thought this rule was limited to live racing. Baranello pointed out that simulcasting contracts could be approved by the administrator of the racing commission. A letter would be submitted citing the circumstances and another contract would be offered for approval.

Priebe inquired, in Item 9 [7.8(4)], why a steward was required on the premises during simulcasting. Baranello said the Commission wants one regulatory person at the receiving site. He cited potential problems with receiving signals, or lost data from the computer in the mutuel department. A regulatory person on the premises could verify the correct order of finish in spite of the fact there were no television signals. Priebe considered this to be an unnecessary additional cost since there would be verification before the payoff. Baranello clarified there would be only one steward present regardless of the number of simulcasting races being transmitted. Stewards receive $65 to $210 per performance depending on their seniority.

Priebe took the Chair.

4.1 et al.

There was brief review of 4.1 et al. No action.

Ch 8

Metcalf resumed the Chair and called up Chapter 8 which Baranello described as establishing uniformity in pari-mutuel rules on a nationwide basis.

Schrader again expressed concern that this rulemaking was an abuse of the emergency provisions of the law.

Priebe voiced opposition to the emergency adoption. Baranello agreed to refer Committee concerns to the Commission.

No formal action taken.

REVENUE AND FINANCE

Carl Castelda, Deputy Director, reviewed the following agenda:

REVENUE AND FINANCE DEPARTMENT[701]
Determination of taxable income — reduction in state itemized deductions for certain high-income taxpayers, reduced state deduction for home mortgage interest for taxpayers with mortgage interest credit, 41.11, 41.12, Filed **ARC 3918A** 4/14/93
Determination of net income — consolidated Iowa corporation tax returns, 53.15(1)"a," Filed **ARC 3937A** 4/28/93

41.11, .12

Amendments to 41.11 and 41.12, pertaining to individual income taxes, were before the Committee. Castelda advised that a case in court regarding taxing of nonresident income pensions was decided by an administrative law judge and may be appealed by the Director of Revenue and Finance. The law judge ruled that as a nonresident, the pension income was subject to tax but the earnings associated with that pension income were not. However, the state had a constitutional right to impose its tax on the nonresident. The Department would take the position that while that person was a resident, those earnings would be subject to taxation but once the individual became a nonresident, since the earnings would not be considered business income, they would not be subject to tax. This would require a change in the rule. If the decision were favorable, the

REVENUE (Cont.) taxable amount would have to be determined. The other party in the case has offered the Department a settlement which has been rejected and a meeting has been scheduled to discuss modifications to the settlement. Castelda said that until this is worked out, the Department wanted to hold this rule in abeyance. According to Castelda, the Department had considered asking the general assembly to debate the issue of taxation of nonresident pensions. The amount of money received voluntarily was less than $1 million each year. Many organizations, such as the Iowa Association of Business and Industry, Iowa Taxpayers Association and Iowa Bar Association, oppose the state's taxation of nonresident pensions.

53.15 No questions or recommendations on amendments to 53.15(1)"a."

CIVIL RIGHTS Don Grove, Acting Executive Director, Richard Autry, Assistant Attorney General, and Ronald Pothast were present for discussion of the 70-day delay imposed on amendments to Chapters 1 to 3, 8 to 11 and 15, relating to contested case proceedings, found in IAB 2/17/93 as ARC 3760A.

Grove introduced those in the audience who were in support of the rules: Jonathan Narcisse, publisher of the Communicator; Laurie Jones, Director of Des Moines Human Rights Commission; Lionel Foster, Director of Mason City Human Rights Commission and President of Iowa Association of Local Human Rights Agencies; Tim Terina, Director of Commission on Latino Affairs; Victoria Herring, Civil Rights Attorney; and Gene Faucett.

In opening remarks, Autry saw the legal question today as whether or not the Commission rules were arbitrary, capricious and somehow beyond the legal authority granted to the Iowa Civil Rights Commission. He took exception to allegations by the Iowa Association of Business and Industries (ABI) that the Civil Rights Commission had lost its neutrality. In other words, neutrality is their stock in trade. It was clear to Autry that ABI was not speaking from personal knowledge—they do not attend Civil Rights Commission meetings or have any contact with the investigators. He then addressed concerns of ABI which were set out in their summary on file in the office of Administrative Code Editor. Autry noted that the rules were taken directly from the federal EEOC regulations. Regarding reopenings, Autry said they were willing to reopen a case when the decision was induced by fraud or material misrepresentation.

Comments from the audience were received.

Tom Iles, Iowa Association of Business and Industries, introduced Russ Sampson from Dickenson Law Firm, and Ron Peeler, representing Iowa Association of School Boards. Iles distributed copies of documents substantiating their position which are on file with the Administrative Code Editor.

Sampson summarized his opposition to the rules and discussed the background of the Civil Rights Commission and EEOC. He distributed a handout and asked the ARRC to consider whether the Civil Rights Commission maintained a balanced neutral position.

In Sampson's remarks on 3.12, he referred to a questionnaire which was then handed out by Iles (also on file in ACO).

Autry pointed out that neither the complaint procedure nor the standard for screening a case had been changed.

CIVIL RIGHTS (Cont.)

Regarding reopening a case, Autry advised that the rule states whenever justice requires, a case could be reopened during the period when the complainant could obtain a right to sue letter. A finding of no probable cause bars the right to sue letter so this rule would not give CRC power to reopen a case because of justice once no probable cause has been found. It could be reopened based on fraud or material misrepresentation. By statute, the complainant may obtain a right to sue letter within two years after administrative closure.

Motion to Delay

It was obvious to Priebe that controversy could not be resolved today and he moved that ARC 3760A be delayed until adjournment of the next general assembly for referral to the appropriate committees of the House and Senate.

Motion

Schrader suggested that the 70-day delay imposed on the Civil Rights rules should be lifted. He referred to Royce's summation of the issue wherein he opined that initial allegations and responses turn on fine points of common law and validity of procedures should be tested by judicial process. Schrader moved that the 70-day delay on ARC 3760A be lifted.

Motion failed

Kibbie asked about any other options for the Committee. The Chair announced that if neither motion passed, the 70-day delay would expire on June 2. The Schrader motion failed on a show of hands.

Royce explained that if Priebe's motion carried the rules would be delayed through the 1994 session. If no legislative action occurs, the rules would become effective on the day following adjournment.

Autry asked that the ARRC hear from supporters of the rules before further action was taken.

Priebe then asked to defer his motion. No opposition.

Victoria Herring, a plaintiff's attorney in private practice, distributed copies of her letter to the ARRC (on file with ACO). She offered her view as to the role of the ARRC. In reviewing the amendments and various statements on both sides, she reasoned the rules were intended to address old problems and they seek to modernize the process by addressing some issues which have arisen. Herring urged that the Commission and the courts be allowed to deal with these problems and issues and that their expertise be trusted.

Ron Peeler, Iowa Association of School Boards, shared Herring's hope that there would be fewer complainers and more cooperation to resolve problems. He emphasized that rules were needed for the small business and employers to follow. Peeler referred to written comments to the Commission (on file with ACO) and offered recommendations to the rules which he described as lacking a user friendly procedure.

Narcisse, former chairman of Iowa Commission of Status of Afro-Americans, took a less technical approach. He commented on the great number of people in the state who lack resources to seek appropriate legal council and perhaps their only option was the Civil Rights Commission. He thought the attitude of the Commission was one of cautious optimism and in many ways, the Commission was viewed as an extension of the law enforcement community of the courts. He urged that the rules be allowed to stand.

Lionel Foster, a civil rights director for 18 years, spoke in support of the rules.

CIVIL RIGHTS (Cont.)

Iles expressed a willingness to work with the Commission on both legislation and administrative rules in a cooperative venture. He concluded that ABI does not oppose everything that Civil Rights proposes.

In response to Hedge, Grove said that when a complaint was received, a questionnaire was sent to both parties. The questions would be relevant to the type of case. The employer has the option of answering the questionnaire or providing a position statement. Grove described the questions, which were computerized, as a "work of art." Because of their effectiveness, they have been used in Maryland and Connecticut as well as EOC has been using them in their automatic intake charge system. Grove said the Commission has nine investigators and over 1700 complaints each year. The questionnaire system was approved by the legislature several years ago. About 60 percent of the time cases are closed based on the information received from the employer and complainant. Thirty-five to 40 percent received further investigation and there are over 400 cases waiting to be assigned to investigators. Grove emphasized that the rules implement current law.

It was clarified for Hedge that the last page of the questionnaire was a copy of the original complaint that was just copied here for convenience and was not a part of the questionnaire. Grove clarified a complaint form was the first material sent to the employer and the questionnaire was the second part of the process.

Daggett and Autry entered into a lengthy discussion concerning the Commission's procedure regarding filing of evidence.

Metcalf brought up the Priebe motion which had been temporarily deferred. Schrader took the position that the rules before them were reasonable and should go into effect. He emphasized that the 70-day delay was imposed at the March meeting as a matter of convenience for the Committee to understand this complex issue.

Doderer viewed the session delay as the Committee's way of avoiding a decision. She asked the ARRC to pinpoint their opposition. It was explained that all amendments to existing rules would be delayed if the motion carried.

Motion to Delay carried

Priebe gave closing remarks on his motion to delay ARC 3760A until adjournment of the 1994 GA. Motion carried with Doderer and Schrader voting "nay."

EPC

Present from the Environmental Protection Commission were Anne Preziosi, Christine Spackerman, Michael Murphy and Darrell McAllister. The following agenda was reviewed:

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Volatile organic compound (VOC), 20.2 Notice **ARC 3938A** 4/28/93
Laboratory certification, 42.2(1)"b"(9) and (10), Filed **ARC 3914A** 4/14/93
Well contractor certification, 82.1 to 82.3, 82.6, 82.10(5), 82.10(8), 82.13(1)"g" and "h," Notice **ARC 3910A**, also Filed Emergency **ARC 3911A** 4/14/93
Solid waste management and disposal — special waste authorization, 100.2, 100.3(2), 100.3(2)"a," 102.15, 102.15(2), Notice **ARC 2803A** Terminated, Notice **ARC 3909A** 4/14/93
Waste oil, use of recycled oil for road oiling, dust control, and weed control, rescind 119.3(2) and ch 143, Notice **ARC 3913A** 4/14/93
Prohibition against land application of petroleum-contaminated soils on flood plains, 121.3(3), Notice **ARC 3912A** 4/14/93

EPC (Cont.)
20.2

Preziosi explained amendment to 20.2 re volatile organic compounds. No questions by the ARRC.

42.2

McAllister gave brief overview of amendments to 42.2 The $300 increase in laboratory fees certification was explained.

Ch 82

In reviewing the emergency amendments regarding well contractor certification, McAllister noted that rules on the subject published in 12/9/92 IAB had been under a general Session delay. Classification of pump installers, provisional pump installers, and pump services were deleted from the alternate language. Language was added to clarify that persons performing well services on their own property would not need certification. In addition, education requirements for the well contractor and provisional well contractor were removed.

Schrader thanked the Department for their efforts in drafting acceptable rules. He brought up a minor problem regarding the pitless adapter installation. County sanitarians were concerned that with these changes, a pump installer could not become qualified to install pitless adapters. It was suggested that this could be addressed when the Department adopts the rules following the Notice process.

100.2 et al.

Murphy explained the proposed amendments regarding solid waste management and disposal. A significant change would shift issuance of special waste authorizations from the department to landfill operators. This was proposed because of limited staff in DNR.

Sue Cosner, League of Municipalities, could appreciate the Department's limited resources but she was concerned about lack of qualified personnel in landfill operations to handle and analyze the special waste authorization.

Craig Duffy, Director of Iowa Society of Solid Waste Operations, representing Marshall County Landfill, challenged the authority of the Department to place this burden on landfill operators. He referred to Iowa Code §455B.303 which provides for variances to be issued to the county board of health. It does not mention solid waste agencies or county sanitarians. He added that DNR issued the variance about March 10 and landfills were notified about the second week of April. There was no training or knowledge of this program which lacks consistency. A big concern was the health factor at the landfills as well as an enormous expense to the small landfills.

Rod Van Dusseldorf, City of Newton, echoed remarks of Cosner and Duffy, noting it would be very expensive. He thought this proposal was counter to the statute in chapter 455D regarding the government's role in monitoring and controlling under the Recycling Act.

Bob Mulqueen, Iowa State Association of Counties, was in agreement with previous remarks and very concerned about the environmental impact.

Motion -
Economic Impact

Schrader could foresee an economic and environmental impact and moved that the ARRC request an Economic Impact Statement on ARC 3909A. He urged the Department to seek resolution of this problem administratively.

Metcalf reminded that an Economic Impact Statement must be published in the IAB at least 14 days prior to adoption of the rules.

Priebe was hopeful that the Department would reconsider these rules so the Statement would not be necessary.

EPC (Cont.) Royce agreed to research the statutory requirements that prompted this rulemaking.

Schrader clarified that the Impact Statement would not have to be prepared if the Department decided against adopting the rules.

Motion carried The Schrader motion carried.

119.3, Ch 143 There was brief discussion of 119.3 and Chapter 143 regarding use of waste oil. In response to Schrader, McAllister indicated it had been difficult to get information from EPA on use of waste oil for dust control. The regulations on handling recycled oil was very lengthy.

121.3 No comments or questions on amendment to 121.3(3).

Recess Metcalf recessed the Committee at 5:10 p.m. until 8:15 a.m., Wednesday, May 12.

05-12-93

PERSONNEL The following agenda was reviewed by Clint Davis, Assistant to the Director of Personnel:

PERSONNEL DEPARTMENT[581]
Definitions; classification; pay; recruitment, application and examination; appointments; promotion, transfer, temporary assignment and voluntary demotion; separations, disciplinary actions and reduction in force; performance planning and evaluation; leave; benefits, 1.1, 3.2(1), 3.4, 3.5(4), 4.1, 4.4(1), 4.5(1), 4.5(1)"e" and "i," 4.5(2)"f," 4.5(4)"b" and "c," 4.5(8) to 4.5(10), 4.5(18), 5.2(4)"b"(8), 8.3, 8.6, ch 10 title, 10.2, 10.6, 11.1(3)"h," 11.3, 13.2(1), 14.2(2)"o," 14.3(10), 14.15, 14.17, 15.6, 15.9, Filed **ARC 3915A** 4/14/93

Davis advised Daggett that nearly 360 state employees took advantage of the latest early retirement offering and approximately twice that number were eligible. No Committee action.

REAL ESTATE In attendance were K. Marie Thayer, Professional Licensing Division, and Roger Hansen, Executive Secretary of the Commission. Also present were William B. Serangeli and R. Michael Hayes, First Realty; Ned Chido, Robert Sharp and David Nelson, Iowa Realty. The following was before the Committee:

REAL ESTATE COMMISSION[193E]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Business conduct — prohibited practices, 1.31, Notice **ARC 3464A** Terminated, Notice **ARC 3853A**
Carried over from April meeting 3/31/93

1.31 Hansen provided history on proposed amendment to 193E—1.31. The revision was initiated in ARC 3464A and published in 10/14/92 IAB. The Commission was terminating that Notice and resubmitting a revised version to address numerous comments from the hearing in November. Only one concerned firm submitted comment on the second version which was intended to clarify the Commission's position with respect to prohibited tying arrangements and to address indirect and direct requirements and differential pricing.

REAL ESTATE (Cont.)

Ned Chido, representing Iowa Realty, introduced David Nelson and Robert Sharp who would speak to specific concerns.

Sharp, an attorney with the Belin, Harris firm, recalled that the rule-making process started in 1990 because of incentive programs offered by two realty companies. The Real Estate Commission sought an Attorney General's opinion as to the legality of these programs. The opinion stated that the program violated the Commission's rules relative to tying arrangements and informal advice cautioned that, in certain circumstances, the programs might be in violation of the Iowa Competition Law, Chapter 553 of the Iowa Code. Iowa Realty had taken exception to the declaratory ruling filed and it was litigated. The court remanded to the Iowa Real Estate Commission for the purpose of allowing the Commission to determine whether rules should be promulgated with respect to this issue. Sharp spoke of Iowa Realty's opposition to the rule which they contended was unnecessary. Sharp was critical of the commission certificate program which he maintained was not a tying arrangement but involved the sale of undeveloped lots to builders who build homes on them.

Sharp noted that the rule presumed that a multiple listing service was always used. He concluded that the rule was pointed to regulating competition between realtors which, in his opinion, was not part of the Commission's mission. The rule would hinder competition and provide differing application to the same type of marketing program.

Chido urged the ARRC to encourage the Commission to seek middle ground.

Michael Hayes, General Counsel, First Realty and Hubbell Realty, distributed a letter to the ARRC and highlighted two major points. They viewed the practice that the proposed rule addressed as being directly harmful to the buying public—not merely a matter of competition between firms. He spoke of problems created by dual contracts on the actual price of a house which interferes with appraisal practices as to value of homes and fair lending practices and the statute which prohibits dual contracts—§543B.45.

Palmer and Hayes continued a discussion of the program as it relates to the developer, builder, realtor and the impact on competition. Hayes would have no problem with full disclosure by both buyers and sellers of the existence of the commission certificate.

Halvorson was advised that incentives were allowed for sales and he concluded that the argument centered on the type of incentives and to what degree and time they could be used.

Responding to Doderer, Hayes was hopeful there would be negotiations as to who receives the commission and what is a reasonable profit for the builder or developers.

Bill Suangeli, outside counsel for First Realty, stated that the definition of the fair market value for a home was the amount a willing buyer and willing seller would pay with full information, neither one acting under duress. He added that the home market system was dependent, from appraisal to lending to buying to selling, on full information and that was what First Realty was requesting. In his opinion, the proposed rule did mandate full disclosure. No formal action.

SOIL CONSERVATION
10.20 et al.

Kenneth R. Tow reviewed amendments to 10.20, 10.51(1), 10.5(1)"a" to "e," regarding financial incentive program for soil erosion control—state soil survey data base, Filed in IAB 4/14/93 as ARC 3916A. There were no Committee recommendations.

DOT

The following Transportation Department agenda was before the Committee:

TRANSPORTATION DEPARTMENT[761]

Special mobile equipment, interstate registration and operation of vehicles, interstate motor vehicle fuel permits, special permits for operation and movement of vehicles and loads of excess size and weight, truck operators and contract carriers, motor carriers and charter carriers, liquid transport carriers, 410.3(2), 500.1, 500.2, 500.3(1), 500.3(3)"a" and "c," 500.3(4)"a" and "c," 500.3(5)"a"(2), "b"(2), 500.3(6), 500.6 to 500.12, 500.14, 500.17, 500.20, 505.2, 505.3(2), 505.3(4) to 505.3(7), 505.4(12)"b," 505.6(2)"b," 511.2, 511.2(1) to 511.2(5), 511.4(1)"a," 511.4(2)"a" and "b," 511.5(1), 511.5(6)"b"(3), 511.7 to 511.10, 511.11(2), 511.14(2)"g" and "i," 511.14(3)"e," 523.1(4)"a," 523.3, 523.3(1), 523.5(2), 523.7, 523.8(3), 523.8(4), 523.8(13)"c" and "d," 525.1(7), 525.3(4), 525.4, 525.4(1), 525.5, 525.5(1), 525.5(4), 525.7, 525.12, 525.14(3), 525.14(4), 525.14(12)"c" and "d," 525.15(2), 525.15(3), 528.1(1), 528.2(1), 528.3, 528.3(1), 528.4(1), 528.4(6), 528.7, 528.11(3), 528.11(4), 528.11(11)"c" and "d," 528.13(2), 528.13(3), Filed **ARC 3927A** 4/28/93

Safety and hazardous materials, 520.1(1)"a" and "b," Notice **ARC 3926A** 4/28/93

Royce advised the members that Ruth Skluzacek could not be present to review the first item on the agenda relating to heavy equipment but would be willing to appear at the June meeting.

Motion - 70 Day Delay

Upon advice from Barry that these rules would become effective on June 2, Priebe moved a 70-day delay on ARC 3927A to allow time to consider these rules before they become effective. Discussion followed.

Halvorson inquired about potential problems with the delay—potential costs in printing IAC, for example. It was noted that the rules were identical to the Notice. Priebe was concerned that the lengthy rules had not been reviewed sufficiently during the Session.

Schrader voiced opposition to the motion since he knew of no complaints on the proposed rules.

Motion carried

Priebe's motion carried viva voce.

520.1

Valerie Hunter gave a brief overview of amendments to 520.1(1)"a" and "b."

Metcalf was informed that there were no changes made in random drug testing—520.1(1)"a." Interstate carriers must meet the random requirement. Intrastate carriers that had previous exemptions by law would continue to be exempt. No Committee action.

UTILITIES

Vicki Place and Allan Kniep were present for the following agenda:

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Tariffs filed and revision of Chapter 35 — energy efficiency programs, 7.4(4), 35.1"6" to "10," 35.2, 35.4(1) to 35.4(4), 35.8(3) to 35.8(8), 35.8(12), 35.9(6), 35.9(7), 35.10(4), 35.12, 35.12(1)"b," 35.12(2)"a," 35.12(3)"b"(2) to (4), 35.12(3)"c," Filed **ARC 3944A** 4/28/93

Deferral of SFAS 106 expenses and transition costs, 7.11(5), 7.11(6), Notice **ARC 3902A** 4/14/93

North American numbering plan change—toll dialing patterns, 22.21 Notice **ARC 3943A** 4/28/93

UTILITIES (Cont.)
7.4(4) et al.

No questions or comments on amendments to 7.4(4) et al.

7.11

Kniep explained amendments to 7.11(5) and 7.11(6). Priebe asked about the difference between cash basis and accrual basis with reference to post-employment benefits. Kniep explained that the utility was recovering the amount actually paid each year to retirees but was planning for future benefits to present employees. This was reflected in current collections by the utilities.

In response to Hedge, Kniep stated that utilities were required to segregate these additional funds into trust accounts. The Division wants these accounts to be set up as currently nontaxable.

Kniep responded to Schrader that there was not enough revenue to create a "spike."

Rittmer was advised that a trust fund for present employees would be building to pay benefits to future employees.

22.21

No questions on a proposed new rule 199—22.21.

PUBLIC HEALTH

Carolyn Adams briefed members on amendment to 1.2(1)"a" and "b," notification and surveillance of reportable diseases, published as Notice of Intended Action in IAB 4/28/93 as ARC 3936A. The Department has the support of the Iowa Medical Society, Iowa Osteopathic Association, and Hospital Association. No action by the Committee.

SUBSTANCE ABUSE

Mike Guely and Dean Austin represented the Commission for the following agenda:

SUBSTANCE ABUSE COMMISSION[643]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Licensure standards for substance abuse treatment programs, 3.1, 3.3, 3.5(1)"i," 3.5(3), 3.7(1), 3.7(1)"a," 3.22(5)"a"(15), 3.22(5)"k"(3), 3.22(5)"m," 3.22(6), 3.22(10)"a," 3.22(11), 3.22(12)"b" to "d" and "g," 3.22(13)"a," 3.22(14) to 3.22(16), 3.22(17)"g" to "o," 3.22(19)"c," 3.22(24)"a"(6), 3.22(24)"b"(1), 3.22(25), 3.24(11), 3.24(14)"c"(8), 3.24(14)"d," Notice **ARC 3919A** 4/14/93

3.1 et al.

Metcalf reported concern with 3.22(6) from a substance abuse agency in Des Moines as to the 14-day time frame for laboratory examinations. Austin explained this was related to 14 days after admittance to the treatment program.

Austin highlighted comments made at the public hearing. Request had been made to retain the stricken language in 3.22(5)"m," as an additional requirement for certification.

Metcalf and Austin discussed the definition of "concerned family member or concerned person" in 3.1(125).

Austin clarified that revision in 3.22(17) was intended to reflect federal regulations on confidentiality of alcohol and drug abuse patient records. Confidentiality was also addressed under the old language.

The Committee took a brief recess.

LAW ENFORCEMENT ACADEMY J. Scott Moline, Acting Director, and William Callaghan, Legal Instructor, reviewed the following agenda:

LAW ENFORCEMENT ACADEMY[501]

Definitions of facility and jailer, 1.1, Filed Emergency **ARC 3899A** 4/14/93

Salvage vehicle theft examinations and examiners, 1.1, ch 11, Filed **ARC 3901A** 4/14/93

Color vision tests for law enforcement officers, 2.1(9), Filed Emergency **ARC 3900A** 4/14/93

Standard certifying course for approved law enforcement facilities, 3.3, rescind 3.4 and 3.6, Filed **ARC 3886A** 4/14/93

Curriculum for long course, 3.5, Filed **ARC 3885A** 4/14/93

1.1 — Callaghan told the Committee that amendment to 1.1(80B) was adopted under emergency provisions to coincide with the definitions of "facility" and "jailer" used by Corrections. Callaghan was not aware of an economic impact but would investigate.

1.1, Ch 11 — Further amendments to 1.1 and Chapter 11 were before the Committee. In 11.1(2), Priebe asked if a private investigator could conduct a salvage vehicle theft examination. Callaghan thought the current law required peace officers to perform this examination and research of the statute confirmed this. The law did not affect the rule other than to eliminate the component parts review. Priebe questioned why "by the Iowa law enforcement academy" was new language in 11.1(2) if it were that way before. Royce was directed to research the statute.

2.1(9) — In review of amendment to 2.1(9), Callaghan stated that this language would broaden the requirements but would not make the test more difficult. Michigan's definition on color vision was used.

Ch 3 — The rule to eliminate the Academy's "short course" for law enforcement officers was before the Committee. Callaghan reported that the Council had decided to await the appointment of the new Academy Director before rescinding the rule. Royce referenced 1993 Acts, SF 232, §15 which mandated continuance of the short course.

Motion to Delay — Priebe moved to delay rule 501—3.3, 3.4 and 3.6 until adjournment of the 1994 General Assembly.

Kibbie observed that 3.5 in ARC 3885 would require 417 hours for the long course. According to Callaghan, Rule 3.5 addressed changes made by the legislature relating to domestic abuse and other mandated training.

There was discussion as to the impact of delaying the rules which would preclude the Academy from offering any short courses.

Motion carried — The Priebe motion carried.

3.5 — In further review of 3.5, Doderer was doubtful that required hours for some areas of training were sufficient to cover all the categories listed. No additional action taken.

LABOR SERVICES

Walter Johnson, Deputy, reviewed the following Division agenda and there were no questions or recommendations.

LABOR SERVICES DIVISION[347]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"
Permit-required confined spaces for general industry, 10.20, Filed Emergency After Notice ARC 3898A..4/14/93
Storage and handling of liquefied petroleum gases, explosives, and blasting agents, 10.20 Notice ARC 3934A4/28/93

INSURANCE

Amendment to 50.57, North American Securities Administrators Association (NASAA) guidelines Noticed in IAB 4/14/93 as ARC 3917A, was explained by Dennis Britson from the Securities Bureau of the Insurance Division. Britson distributed a handout which contained the text of each of the three statements of policy—periodic payment plans, master fund/feeder funds, and registration of oil and gas programs as set by NASAA. Because of the size of the NASAA Statements of Policy, the Division plans to adopt by reference.

Daggett and Britson discussed oil and gas programs as they relate to insurance.

Britson explained to Palmer that the term "investment advisory licensee" originated at the federal level of the Insurance and Exchange Commission. There was further discussion of registration of securities; involvement of the Bureau in approving or denying oil and gas registrations; form and disclosure; and marketing of the securities.

Halvorson was advised that the periodic payment plan was quite stable. However, in recent years the typical investment companies no longer have the minimum purchase requirements which prompted creation of the periodic payment plans.

EDUCATIONAL EXAMINERS BD.

Orrin Nearhoof represented the Board for the following agendum carried over from the April meeting.

EDUCATIONAL EXAMINERS BOARD[282]
EDUCATION DEPARTMENT[281]"umbrella"
Conviction of crimes, child abuse, sexual and other immoral conduct with or toward children or students, alcohol or drug abuse, 12.2, Carried over from April meeting, Notice ARC 3831A.....3/17/93

12.2

Nearhoof stated that 12.2(1)"c" which addressed sexual involvement with a minor had been deleted upon advice of the Attorney General that statutory language was adequate.

EDUCATION

Kathy Collins, Edith Eckles and Ted Stilwill were present for Chapter 91, Phase III, educational excellence program Filed in IAB 3/17/93 as ARC 3826A. Collins encouraged the Committee to lift their 70-day delay voted at the March 8 meeting.

It was Priebe's understanding that the Department anticipated modification of the rules because of public comment. Collins responded that the references to outcomes and transformation in the rules were reflected in the Phase III statutory language.

Stilwill, Administrator for Elementary and Secondary Education, spoke of the Director's decision to allow local districts discretion on implementation of student outcome-based programs. Districts will be asked to consider areas for decision making such as student expectations, kind of learning environment they wish to provide, and how they will assess and report student achievement.

DPE (Cont.) Motion

Halvorson moved to lift the 70-day delay on 182—Chapter 91.

Linda Kinney, Board member for the Iowa Education Coalition, distributed a handout as well as a stack of signed petitions indicating opposition to Comprehensive School Transformation to Outcome-Based Education and Portfolio Assessments. She recalled their previous appearance before the ARRC where they requested that Comprehensive School Transformation be defined by the legislature. This was not done this Session. Kinney contended that Phase III money was intended for performance pay.

Motion carried

The motion to lift the 70-day delay carried.

In response to Priebe, Stilwill advised that comprehensive transformation was defined by statute and they had no plans to expand on it.

Stilwill continued that these rules were the result of a legislative study by the North Central Regional Laboratory whose recommendation was to narrow the focus at the local level—supplemental pay as well as performance-based pay.

Daggett expressed concern about use of Phase III money.

No further action.

Committee Business

Metcalf announced the June meeting would be held in Room 24 on the first day rather than Room 22.

Soil Conservation

There was discussion of the need for the Soil Conservation Division to file emergency rules to implement an incentive program which will be effective July 1. The Governor had not signed the current law.

The rationale for placing agencies under "No agency representative requested to appear" category on the agenda was discussed. Priebe reasoned that fewer agencies should be under this category during the interim.

Meeting Dates

Committee meeting dates were agreed upon for July 8 and 9 and tentatively August 2 and 3.

Motion

Relocation from Room 22 to Room 24 for the June ARRC meeting was discussed. Doderer moved that the ARRC retain Room 22 which had been reserved several weeks earlier. Motion carried.

NO REPS

No agency representative was requested to appear for the following:

BANKING DIVISION[187]
COMMERCE DEPARTMENT[181]"umbrella"
Application procedures — hearings, 2.4(3), 2.12(1), 2.12(10)"a," Filed **ARC 3925A**.....4/28/93

HISTORICAL DIVISION[223]
CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"
Historic resource development program, 49.2, 49.5(1), 49.5(3), 49.5(4)"a," 49.7(1)"b"(6), Filed **ARC 3923A**4/28/93

REAL ESTATE APPRAISER EXAMINING BOARD[193F]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Sales of goods and services, ch 11, Filed Emergency **ARC 3942A**.....4/28/93

NO REPS (CONT.) **SECRETARY OF STATE[721]**
Signature requirements for ward seats in certain cities, 21.15 Notice ARC 3935A..... 4/28/93 2178

TREASURER OF STATE[781]
Deposit and security of public funds in savings and loans, ch 3, Notice ARC 3776A Terminated ARC 3905A4/14/93
Deposit and security of public funds in savings and loans, ch 3, Notice ARC 3906A, also
Filed Emergency ARC 3907A 4/14/93

Adjournment — Metcalf adjourned the meeting at 11:30 a.m.

The next meeting was scheduled for June 8 and 9, 1993.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Assisted by Mary Ann Scott

APPROVED BY:

Janet Metcalf

Representative Janet Metcalf, Co-chair