

**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, June 8 and 9, 1993, in Senate Room 22, State Capitol, Des Moines.

Members present: Senator Berl E. Priebe, Co-chair; Representative Janet Metcalf, 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; Mary Ann Scott and Kim McKnight, Administrative Assistants; Caucus Staff and other interested persons. Not present: Phyllis Barry, Administrative Code Editor.

Convened Co-chair Priebe convened the meeting at 10 a.m., announcing a quorum present.

DOT The following Transportation Department agenda was reviewed by George F. Sisson, Acting Chief Engineer; John M. Smythe, Assistant Construction Engineer; R. A. Birkinbine and Carol Crouse, Office of Motor Carrier Service.

TRANSPORTATION DEPARTMENT[761]
Route of travel for overweight axles to or from a construction project, 128.1, Filed ARC 3960A 5/12/93
Motor vehicles, motor carriers, amendments to chs 410, 500, 505, 511, 523, 525, 528,
Delayed 70 days at the May ARRC meeting 4/28/93

128.1 No questions or recommendations on amendment to 128.1.

**70-day Delay
Motor carriers
Chs 410 et al.** The 70-day delay placed on amendments to Chapters 410, 500, 505, 511, 523, 525 and 528 at the May ARRC meeting was before the Committee.

Priebe was advised that the Department had not received any comments from carriers regarding these amendments.

At Rittmer's request, the proposed rule changes were reviewed item by item.

Clarification was requested by Committee members regarding power units in 500.1, mileage records in 500.20(2), mobile homes in 511.7(2) and auditing.

Delay Lifted Upon motion by Metcalf and Schrader, the 70-day delay was lifted.

**HUMAN
SERVICES** Representing the Department were Mary Ann Walker, Gary Gesaman, Tim Brand, Michael Murphy, Dennis Sibert, James Chesnik, Marcia Stark and Sally Nadolsky for the following:

HUMAN SERVICES DEPARTMENT[441]

Mental health, mental retardation and developmental disabilities special services fund, 39.1, 39.2, 39.3(1)"c," 39.3(2), 39.6(1), 39.10, 39.21, 39.22, 39.23, 39.23(4), 39.23(4)"b," "g," "h," and "o," 39.23(5), 39.29, <u>Filed</u> ARC 3979A	5/26/93
Payment to new residential care facilities and new owners of residential care facilities, 54.3(11)"e"(3), 54.3(11)"n," 54.3(13), 54.3(14), 54.4, <u>Notice</u> ARC 3984A	5/26/93
SSI program's "conditional eligibility" policy, 75.13(2), 76.2(3), <u>Notice</u> ARC 3946A	5/12/93
Personal needs allowance — surviving spouse of veteran, 75.16(2)"a," <u>Filed</u> ARC 3947A	5/12/93
Waiver programs — ill and handicapped, elderly, AIDS/HIV, 77.33(7) to 77.33(11), 78.37(7) to 78.37(11), 79.1(2), 83.2(1)"e"(1), 83.3(4)"b," 83.3(5), 83.4(1)"a" to "d," 83.22(1)"b," 83.22(1)"g"(1), 83.22(2)"b," 83.23(4)"a," 83.23(5), 83.24(1)"a" to "d," 83.26, 83.43(5), 83.44(1)"a," 83.62(5), 83.63(1)"b," <u>Notice</u> ARC 3959A ..	5/12/93
Payment for treatment of root canals, 78.4(5)"c"(1), 78.28(2)"d"(1), <u>Filed</u> ARC 3948A	5/12/93
Payment for case management services for children under 18 years of age receiving HCBS/MR or HCBS/MR/OBRA waiver services, 78.33(1)"c," <u>Filed Emergency After Notice</u> ARC 3949A	5/12/93
Hospital reimbursement, 79.1(5), <u>Filed</u> ARC 3950A	5/12/93
Per diem determination rate methodologies for intermediate care facilities for the mentally retarded, 82.5(3), 82.5(5), 82.5(14), 82.5(15), 82.5(16)"c" to "e," and "i," 82.17(1)"a" and "b," <u>Notice</u> ARC 3974A	5/26/93
Social services block grant and funding for local services, 153.53(4), 153.56(1)"c," 153.56(3), <u>Notice</u> ARC 3983A	5/26/93
Abuse of children — multidisciplinary teams, 175.1, 175.13(1), 175.13(2), <u>Notice</u> ARC 3975A	5/26/93
Nursing facilities, fiscal year change, 81.6(3) — 70 day delay	3/31/93

Walker gave brief overview of amendments to Chapter 39 (ARC 3979A).

39.1 et al.

Metcalf in the Chair.

Responding to Daggett, Chesnik further explained the grant application process in 39.23.

Kibbie and Doderer discussed with Chesnik the six letters of support required in 39.23(4)"h." He replied that the Mental Health Division was responsible for the change from three to six letters.

54.3 et al.

No questions on amendments to 54.3(11) et al.

75.13(2), 76.2(3)

The Social Security Income program (ARC 3946A) was before the Committee.

Responding to Daggett, Walker advised that a loan could be taken out against the resident's house while the Medicaid eligibility was being determined for a nursing home resident. The Department had suspected the revisions would generate controversy. However, only sites in Des Moines and Council Bluffs offered comments and no one attended the public hearings. No comments were received from Legal Services or the nursing home industry. Walker surmised that nursing homes would support this because they would receive private pay rates instead of Medicaid rates until property was liquidated.

Payment of nursing home costs was discussed relative to death of a resident prior to the sale of property. Metcalf and Daggett expressed their concern.

Rittmer reminded that these amendments were in compliance with federal requirements.

Walker explained to Doderer that when the Medicaid program is administered by the state, the state can adopt provisions that are more liberal than the SSI program on the federal level. To date, the state had not chosen to do this. Walker advised

HUMAN
SERVICES (cont.)

Doderer there were two different Medicaid coverage groups—mandatory and optional.

In response to Kibbie, Walker noted that when a spouse is in a nursing home, the homestead continues to be exempt.

Priebe in the Chair.

75.16(2)"a":
77.33(7) et al.

No questions or recommendations on amendments to 75.16(2)"a" or 77.33(7) et al. (ARCs 3947A and 3959A).

78.4(5)"c"(1),
78.28(2)"d"(1)

Amendments to 78.4(5)"c"(1) and 78.28(2)"d"(1) regarding payment for root canals were reviewed.

Metcalf explained that the dentist who reviews these rules was her constituent and he recommended this change on the basis that the open-ended canal procedure was outdated and more costly than current procedures.

78.33(1)"c"

No comments or questions on amendment to 78.33(1)"c."

79.1(5)

The filed amendments to 79.1(5), regarding hospital reimbursement, were discussed.

Daggett was advised that the rebasing and recalibration did fall within the level of the appropriation.

Stark responded to Rittmer that the Department does not expect error rates set by the Iowa Foundation for Medical Care to be controversial.

Daggett and Stark discussed identification of the problem providers and the problem cases.

Doderer requested the Department to provide names of members of the Iowa Foundation for Medical Care (IFMC).

Regarding 79.1(5)"m" and in response to Halvorson, Stark highlighted the payment procedure to out-of-state hospitals which involved mostly border states. Halvorson referenced Rochester and LaCross hospital officials who have complained about Iowa having a lower reimbursement policy.

No Committee action.

82.5(3) et al.;
153.53(4) et al.;
175.1 et al.

There were no questions on amendments found in ARCs 3974A, 3983A or 3975A.

70-day Delay
81.6(3)

The 70-day delay imposed on 81.6(3), relating to fiscal year change for nursing facilities, was before the Committee. Gesaman explained the delay resulted from concerns expressed by Metcalf and Kibbie. The Department did not think this would be controversial because previous rules contained nothing about how often a nursing facility could change its fiscal year. It was discovered that a few facilities changed their fiscal year rather frequently to leverage the reimbursement system to their advantage. The Department thought it reasonable to limit this change to every two years.

HUMAN SERVICES (cont.)

Gesaman responded to Kibbie that if a facility sets its fiscal year for tax purposes it would be the same for benefits. He opined that previous rules had no limit and this change was more restrictive.

Halvorson thought that IRS had no restrictions on how often a fiscal year was changed and agreed that this rule change was more restrictive.

70-day Delay lifted Rittmer moved to lift the 70-day delay. Motion carried.

AGRICULTURE

The following agenda was reviewed by Walter Felker, State Veterinarian:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Waiver of negative testing requirements for goats from class "free" states (brucellosis and tuberculosis) for exhibition and extension of eligibility for exhibition on negative test from 75 to 90 days, 64.34(3), Filed ARC 4000A5/26/93

Pseudorabies disease — program areas, Iowa monitored feeder pig herds, 64.153(1), 64.156(2),

Notice ARC 3999A 5/26/93

64.34(3); 64.153(1); 64.156(2) No recommendations made by the Committee.

COMMUNITY ACTION AGENCIES

Deb Capaldo, Administrative Intern with the Department of Human Rights, represented the Division for the Filed amendments to 421—23.5 relating to eligible use of funds by the emergency community services homeless grant program published in IAB 5/12/93 as ARC 3956A.

23.5 Capaldo explained the changes were filed to comply with federal regulations and require no additional funds.

Responding to Halvorson. Capaldo explained that "near-homeless" were people at risk—possibly by receiving an eviction notice or families who are "doubled up." She said there was specific criteria to make this determination.

EMERGENCY MANAGEMENT

Ellen Gordon, Administrator, addressed the following agenda:

EMERGENCY MANAGEMENT DIVISION[605]

PUBLIC DEFENSE DEPARTMENT[601]"umbrella"

Amend and transfer Disaster Services Division[607] to Emergency Management Division[605],

Filed ARC 3961A 5/12/93

Criteria for awards or grants, ch 8, Notice ARC 3977A, also Filed Emergency ARC 3976A 5/26/93

Rule transferred Regarding ARC 3961A, Metcalf was informed that the written comment received was for clarification purposes.

Rittmer was advised that some locals had been operating under Emergency Management rather than Public Defense already and Gordon was hopeful there would not be another name change in the near future.

Ch 8 No Committee action on new Chapter 8 filed emergency.

Education deferred The Education agenda was deferred until 2:30 p.m to allow time for an agency representative to be present.

Minutes Upon motion by Schrader, the minutes of the May meeting were approved.

EPC

The following Environmental Protection Commission agenda was before the Committee:

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Sales of goods and services, 1.11, Notice ARC 3969A 5/12/93

Well contractor certification, rescind ch 37, amend 38.1, 38.8(3), 39.3, 39.6(2), 50.2, 54.5(3), 54.6(1),

Filed Without Notice ARC 3968A 5/12/93

Unregulated contaminant defined, inorganic chemicals, volatile organic chemicals, synthetic organic chemicals, performance evaluation samples for laboratories seeking certification from the state to analyze new proposed

contaminants, new source water monitoring, 40.2, 41.2(1)"e"(3), 41.3(1), 41.4(1)"g"(1), 41.5(1), 41.6,

41.10(1)"a," 41.10(2)"e"(53) to (75), 41.11, 41.11(1)"b," 41.11(1)"c"(5) and (7), 41.11(1)"d"(1) and (2),

..... 41.11(2)"b," 42.4(4), 42.4(6)"a," 42.4(6)"b"(2)"2," 42.4(6)"c," 43.3(7)"b"(2), 43.3(7)"c,"

43.7(1)"b"(3), 43.7(2)"a"(1), Notice ARC 3970A 5/12/93

Water supplies — technical corrections, 41.3(1)"b"(2)"3," 41.3(1)"c"(2)"4," 41.3(1)"c"(3)"6" and "10," 41.3(1)"c"(8),

41.4(1)"d"(5)"4," 41.5(1)"a," 41.10(7)"a"(3), 41.11(2)"a," 41.11(2)"c"(4) and (5), Notice ARC 3967A 5/12/93

1.11

Randy Clark gave a brief explanation of proposed new rule 1.11 and there were no questions.

The remaining EPC agenda was delayed awaiting the arrival of their representative.

Committee Business Royce brought up the following issues.

Parking Regulations The first was a request by several state employees to have the ARRC review state parking regulations. Royce briefed members on genesis of the request, which centered around state employees parking in the visitor lot north of the Lucas Building. On Thursday morning, June 2, General Services towed away 14 state employees' vehicles. These employees thought a vehicle must be ticketed before it could be towed away. Royce said although the rules in this area were somewhat vague, they were clearly within the authority of General Services. The ARRC agreed not to become involved.

State Plumbing Code Backflow prevention The second issue related to the State Plumbing Code which was amended last fall. In this amended Code, cities with over 15,000 population were required to enact a backflow prevention program with containment no later than January 1, 1996. This requirement did not distinguish between new and existing facilities which means individual homes would be involved. Royce noted that the most complicated device would cost commercial establishments over \$200 for installation plus a \$25 yearly inspection fee and the simplest vacuum device would cost a homeowner \$15. Royce inquired if the ARRC wished this to be placed on the July agenda.

Rittmer indicated that legislation was passed a year or two ago which was to apply only to cities. Priebe stated that it may not have passed both houses.

Members noted this was also discussed when these rules were before them last fall.

Daggett made reference to problems this might cause in rural areas.

Royce added there were concerns that backflow as well as sprays and chemicals used on yards were polluting water supplies.

The ARRC agreed this would merit further review and any legislation on backflow would be researched.

DNR - Carrying loaded clips

Priebe had a situation brought to his attention relating to carrying loaded clips for guns in a vehicle. A \$40 fine was imposed by DNR because a loaded clip was on the vehicle cashboard. The clarity of this rule was discussed and Priebe advised he would bring this up again when DNR representatives were present for their agenda.

EPC - continued
Ch 37 et al.

The ARRC resumed consideration of the EPC agenda with Darrell McAllister reviewing amendments to Chapter 37 et al. There were no recommendations.

40.2 et al.

McAllister related that amendments to 40.2 et al. were made to comply with federal changes.

Water monitoring

Responding to Priebe, McAllister noted that the state or federal government does not provide funds to the public water suppliers to pay for analysis. The state receives a grant of 75 percent from federal EPA and the state contributes 25 percent. Priebe was also advised there were 16 FTEs working on this program. McAllister reported that if DNR runs the program, they are allowed to issue a nine-year waiver if contaminants are not found so the cost of monitoring to the water suppliers would be about \$10 million. If the federal government runs the program, they will not issue any waivers and would monitor once every three years and the cost over this nine-year period could be as high as \$27 million. McAllister noted that approximately \$260,000 of state money goes into this program each year.

In Item 7, Schrader was advised this composite sampling did not include lead sampling which must be taken at the tap after the water has stood in the pipe for at least six hours.

McAllister responded to Hedge that the federal government rules state that the samples taken to detect lead would be taken from private dwellings or businesses. The water suppliers must make arrangements with private homeowners to collect the sample. McAllister also explained that if the water quality exceeds the lead action level the homeowner would be advised of procedures to follow to prevent their water from being contaminated—for example, run tap water a few minutes before using.

Many concerns were expressed by the Committee including costs of contaminant sampling to individual cities; costs to small, rural communities; smaller water systems joining with larger ones; and effect on other types of housing such as nursing or retirement homes, federal property, or nonprofit housing. The federal definition of public water supply is one servicing more than 25 individuals.

Priebe suggested that a letter be drafted and sent to the congressional delegation stating that the water sampling should be taken from the source. He also advised that it be referred to the appropriate committees in the general assembly. McAllister interjected that the federal Safe Drinking Water Act was to be reauthorized this year.

Schrader would like the referral made without prejudice. He was not sure the lead issue was included in these proposed amendments.

MOTION
Congressional dele-
gation notified and
Referred to GA

Kibbie made a motion that the congressional delegation be notified of the Committee's concerns without prejudice and that it be referred to the appropriate committees of the House and Senate. Motion carried. *Was never done.*

41.3 et al.

The technical corrections in ARC 3967A were covered in the previous discussion.

Recess

Chairman Priebe recessed the ARRC for lunch and resumed the meeting at 1:30 p.m.

INSURANCE

Craig Goetsch and Roger Strauss from the Division reviewed the following agenda:

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

Life insurance policies sold to applicants aged 60 or over, 15.69(5)"a," Filed ARC 3966A 5/12/93

Regulation of securities offerings and those who engage in the securities business — books and record-keeping requirements, 50.3(1), 50.3(1)"d"(7), 50.3(1)"e" and "h," 50.3(1)"l"(8) and (9), 50.3(1)"n,"

Filed ARC 3973A 5/26/93

15.69(5)"a"

In 15.69(5)"a," Metcalf was advised that additional information was required on the form to allow the consumer to understand what they are purchasing.

Palmer questioned the significance of the age group (60 or over) and felt that any age group should be well informed of insurance purchases and making wise investments.

Halvorson interjected that 60 was decided upon because that age group would have the potential of paying higher premiums on ordinary life policies than the actual cash value. He noted that 60 was being used nationwide.

Ch 50

In the Filed amendments to Chapter 50, Halvorson and Goetsch discussed the markup and commission in the trading of penny stock.

The term "broker-dealer" was defined.

Palmer was informed that the Division does respond to complaints or they coordinate with the SEC on examinations. They make no compliance regulations on brokerage firms.

JOB SERVICE

Steven Beasley, Chief Administrative Law Judge of the Appeals Section, and Max Noe, addressed the following agenda:

JOB SERVICE DIVISION[345]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

Claims and benefits — voice response, method of reporting and payment of benefits, eligibility review form, 4.1(25)"b"(22), 4.2(1)"b"(9) and (10), 4.2(1)"e," 4.2(1)"g," 4.2(1)"g"(2), (3) and (6), 4.23(39),

Filed Emergency ARC 3963A 5/12/93

Claims and benefits, benefit payment control — work search, partial claimants, recovery, voluntary quits, overpayments, 4.2(1)"c"(1) and (3), 4.2(2)"e," 4.6, 4.24(12), 4.25(35), 4.25(36), 4.25(39), 4.26(6),

4.26(17), 4.26(19), 5.7(6)"g," Notice ARC 3962A 5/12/93

4.1(25)"b"(22) et al.

Regarding Metcalf's inquiry re emergency filing, Noe responded that this was information the Bureau Chief felt should be made available to the public as soon as possible. Metcalf did not feel this fit the Committee's criteria for emergency filing and stated her opposition.

**JOB SERVICE
(Cont.)**

Priebe suggested that these adopted amendments, if approved by the ARRC, be put under Notice of Intended Action for public input and that the emergency version be rescinded in six months. The Division would be so advised.

Royce and Noe discussed the methods of identification used to minimize fraud. No Committee action.

4.2 et al.

Amendments to 4.2 et al. were explained by Beasley.

Discussion focused on the Iowa Supreme Court's decision relating to leaving a job due to illness, injury or pregnancy and the Agency not properly analyzing these cases. Beasley advised Doderer that the previous rules were not in compliance with the court decisions.

**LABOR
SERVICES**

Walter Johnson, Deputy, reviewed the following agenda:

- LABOR SERVICES DIVISION[347]
- EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"
- General industry safety and health rules — occupational exposure to cadmium, 10.20, Notice ARC 4014A5/26/93
- Construction safety and health rules — occupational exposure to cadmium, 26.1, Notice ARC 4015A .. 5/26/93
- Occupational safety and health standards for agriculture — occupational exposure to cadmium, 28.1, Notice ARC 3985A 5/26/93
- Child labor, 32.8(1) to 32.8(12), 32.8(14) to 32.8(16), 32.8(21), Filed ARC 4001A 5/26/93

10.20; 26.1

No questions or comments on 10.20 or 26.1 found in ARC 4014A or 4015A.

28.1 – Place on July Agenda

There was general consensus that amendment to 347—28.1(88) relating to occupational safety and health standards for agriculture – occupational exposure to cadmium, should be placed on the July agenda to allow Johnson time to provide additional information.

32.8(1) et al.

Amendments Filed to 32.8(1) et al. were before the Committee with no recommendations made by the ARRC.

OSHA Fines

Priebe brought up OSHA fines and stated he had received complaints regarding fines assessed on minor infractions rather than being allowed to correct them. Johnson replied this was not a change in policy. He advised there was a consultation service available if requested.

Johnson responded to Hedge that the amount of the fine depends on the violation. The statute states the Division is to consider size, good faith and past history in calculating OSHA penalties and Johnson cited an example. A gravity-based penalty was also explained.

ENGINEERING & LAND SURVEYING K. Marie Thayer introduced Pat Peters who gave an overview of the following agenda:

- ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]
- Professional Licensing and Regulation Division[193]
- COMMERCE DEPARTMENT[181]"umbrella"
- Rule making and declaratory rulings, 1.2, 1.3, Notice ARC 3981A 5/26/93
- Sales of goods and services, ch 6, Filed Emergency ARC 3980A 5/26/93

1.2, 1.3

In amendments to 1.2 and 1.3, Priebe was informed that the long form was used because the Board decided it would be more beneficial to both the Board and the

**ENGINEERING
(Cont.)**

public to have more specific guidelines in these areas and it was also recommended by the Attorney General's office.

Ch 6

In reviewing new Chapter 6, the subparagraph relating to a board member selling goods or services was discussed briefly. Royce explained the unique makeup of the Department of Commerce which is composed of several boards and divisions that have little in common, yet are under the same umbrella. He felt the law did not work very well for this Department.

Kibbie suggested that Chapter 6 (ARC 3980A) be submitted as Notice of Intended Action to allow for public comment and Thayer said they would comply with the request.

**LANDSCAPE
ARCHITECTURE**

K. Marie Thayer briefed members on the following agenda:

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Written examination, 2.5, Notice ARC 3958A 5/12/93

Sales of goods and services, ch 6, Filed Emergency ARC 3957A 5/12/93

2.5

No questions or comments on amendments to 2.5.

Ch 6

Thayer agreed to submit Chapter 6, ARC 3957A, under Notice of Intended Action.

REAL ESTATE

The following agenda was before the Committee:

REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Prelicense education and continuing education requirements, 3.2, 3.2(1), 3.2(2), 3.2(4), 3.2(5), 3.3(5),

3.3(9), 3.3(9)"a," 3.4(1)"e," Notice ARC 3982A 5/26/93

Ch 3

Susan Griffel explained amendments to Chapter 3 to increase the salesperson prelicense course from 30 to 60 hours. Metcalf noted this was a substantial change. Griffel stated that this recommendation was the result of a year-long study by an eleven-member advisory committee. Candidates who took the 30-hour course concluded that the required information could not be covered in that amount of time. Additional environmental rules and regulations were another consideration.

In response to Metcalf, Griffel did not know the cost for the longer course. The 30-hour course costs from \$95 to \$165, depending on the provider. The failure rate of the examination was debated as well as the number who retake the course. Thirteen of the community colleges offer the prelicense course, as well as several private providers.

Responding to Doderer, Griffel explained that the length of time required for the course varied with the provider—community colleges usually offer it over a semester while private providers offer it in a shorter time. Most candidates chose the private provider with little cost difference.

Priebe expressed the opinion that these rules would tend to eliminate those who want to sell real estate on a part-time basis.

REAL ESTATE
(Cont.)

Griffel declared to Schrader that this proposed change does not impact the continuing education requirements except that the first three years after licensure a hands-on training would be required. Also, the Commission would specify the content of the continuing education of newly licensed agents for the first three years. Schrader would express his objection to this approach when the rules were Filed.

Regarding the function of a real estate brokers, Royce was advised that part of their role was to supervise new licensees.

Griffel informed Hedge that if this rule were adopted, possibly five or six new categories would be added to the licensing examination.

Requirements of a real estate license were discussed in comparison with other licenses issued by the Division such as accountants, landscape architecture and architecture, which require four- or five-year college degrees.

Halvorson cited changes made in the real estate industry in recent years and he thought it should not be made up of people seeking part-time employment. He was in agreement with proposed changes since he was doubtful brokers were administering proper supervision.

The content and length of the examinations were discussed.

Kibbie expressed concern that a public hearing was not held. Discussion also focused on whether the industry was aware of these proposed changes.

Metcalf asked that the Committee's concerns be shared with the Commission for possible consideration of modifications to these proposed amendments. Thayer agreed that public hearings could be held in various areas.

DNR

Attending from the Natural Resource Department were Steven Derman, Daryl Howell, Kevin Szcodronski, James Bulman and Richard Bishop. The following agenda was before the Committee:

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

General licensee regulations, 15.6(1), 15.6(2)"a," 15.6(3), 15.6(3)"a"(7) and (18) to (21),

15.6(3)"b"(4) and (20) to (24), 15.6(5), 15.6(7), <u>Notice</u> ARC 4002A	5/26/93
REAP program — project selection criteria and grant ceilings, 33.30(4), 33.40(3), <u>Filed</u> ARC 3998A ...	5/26/93
Speed restriction on Crystal Lake in Hancock County, 40.37, <u>Notice</u> ARC 3994A	5/26/93
Nursery stock sale to public — prices, 71.3, <u>Filed</u> ARC 3991A	5/26/93
Ginseng harvesting and sale, ch 78, <u>Filed</u> ARC 4003A	5/26/93
Common snipe, Virginia rail and sora, woodcock and ruffed grouse hunting seasons, 97.1 to 97.4,	
<u>Filed</u> ARC 3997A	5/26/93
Wild turkey fall hunting, 99.1, 99.4, <u>Filed</u> ARC 3990A	5/26/93
Crow season, 100.1, <u>Filed</u> ARC 3995A	5/26/93
Deer hunting, ch 106, <u>Filed</u> ARC 3996A	5/26/93
Rabbit and squirrel hunting, 107.1 to 107.3, <u>Filed</u> ARC 3992A	5/26/93
Mink, muskrat, raccoon, badger, opossum, weasel, striped skunk, fox (red and gray), beaver, coyote, otter and	
spotted skunk seasons, 108.1 to 108.4, 108.5(2), <u>Filed</u> ARC 3988A	5/26/93
Trapping limitations, 110.1, <u>Filed</u> ARC 3993A	5/26/93

15.6(1) et al.

Amendments to 15.6(1) et al. regarding general licensee regulations were reviewed. Priebe restated the complaint (from Decatur County) made to him about the \$40 fine imposed by DNR for carrying a loaded clip on the dashboard of

- DNR (Cont.) a vehicle. Dermand noted that cases had gone through the court systems to substantiate these fines. A loaded clip was considered part of the gun. Brief discussion followed.
- 33.30(4), 33.40(3) Szcodronski gave brief remarks re amendments to REAP program in 33.30(4) and 33.40(3). No Committee recommendations.
- 40.37 Dermand gave brief overview of proposed amendment to 40.37 to place a speed restriction on Crystal Lake. Hedge was advised this was a shallow, 240-acre lake.
- 71.3 Amendments to 71.3 were reviewed by Bulman of the Forestry Division. No written or oral comments were received. He advised Halvorson that the increase in nursery stock prices was about 10 percent.
- Ch 78 Howell briefed members on new Chapter 78, Ginseng Harvesting and Sale.
- Clarification of the dates a harvester or dealer may sell ginseng was made at Daggett's request.
- Halvorson inquired about restrictions in 78.7.
- Howell answered Rittmer that wild ginseng sold last year for \$230 to \$240 a pound while dried and cultivated ginseng was approximately \$40 a pound. Collection was reported in 52 counties.
- 97.1-97.4;
99.1,99.4; 100.1 No questions or recommendations on Filed amendments found in ARCs 3997A, 3990A and 3995A.
- Ch 106 Bishop highlighted three major changes from the Notice in Chapter 106 regarding deer hunting.
- Priebe reiterated his concern on the number of deer in Kossuth County.
- Hedge expressed concern about deer stands being built by driving nails into trees and inquired if a rule could be written in this regard. Bishop felt the property owner should deal with this problem.
- Halvorson reported the concern of nursery owners who would like the deer depredation permits extended to the first of April, at a minimum. Bishop advised that their concerns had been discussed and the Department was working with the private landowner as to the amount of damage to their nursery stock. They hope to come up with a way the landowner can officially request these permits from the Department.
- The damage experienced by farmers and nursery owners was discussed at length, but Bishop indicated that DNR would also hear from those who wanted to protect the deer.
- Priebe suggested that depredation permits be valid to March 20.
- Bishop agreed that DNR would take the Committee's concerns under advisement.
- Shirley Peckosh, Iowa Horticulture Society, added that they had been working with the DNR regarding their concerns and hoped they would be able to continue making progress. She reiterated many reports of damage by deer.

107.1-107.3;
108.1 et al.; 110.1

No questions or recommendations on the remainder of DNR agenda.

EDUCATION
Ch 18

Kathy L. Collins, Legal Consultant, reviewed proposed new Chapter 18 regarding school fees and waiver of school fees for needy or indigent families, Noticed in IAB 5/26/92 as ARC 4005A. The rules had been deferred at the morning session. Collins indicated these rules were proposed to avoid litigation that could be brought against individual school districts or the Department.

Priebe inquired about a fiscal impact statement. Collins indicated that a survey was made in 1988 on types of fees and charges made by various school districts.

In response to Kibbie, Collins acknowledged that school boards had been notified of the public hearing June 15 on these proposed rules but human services agencies and other interest groups had not. A minimal amount of concern had been expressed by those who were notified. Kibbie was concerned about the fee being set before a school district would know how many might qualify for the waiver or reduction of fees.

Schrader made reference to fees for extracurricular activities such as band trips. Collins advised that most districts have fund raisers for such activities and these proposed rules do not include extracurricular activities.

Collins interjected that many schools charge fees which were not allowed by statute and these rules were intended to prevent this practice.

Daggett questioned the authority of the Department under statute to set fees for school districts. Collins responded that the proposed rules were only specifying permissible fees and requiring the districts to provide a waiver to indigent or needy families.

Recess

Priebe announced that Collins would return in the morning after Daggett had an opportunity to research the Code. The Committee was in recess until 9 a.m. on June 9.

06-09-93

NURSING BOARD Lorinda Inman, Executive Director, presented the following agenda:

NURSING BOARD[655]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Disciplinary hearing costs, ch 13, Filed ARC 3952A 5/12/93

Ch 13

New Chapter 13, Disciplinary Hearing Costs, was addressed. The costs of witness fees and expenses were discussed briefly.

PHARMACY

Lloyd Jessen, Executive Director, Pharmacy Examiners Board, gave a brief overview on the following agenda:

PHARMACY EXAMINERS BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- General pharmacy — reference library, records, 6.3"5," 6.8, Notice ARC 4006A 5/26/93
- Hospital pharmacy — reference library, 7.3"5," Notice ARC 4007A 5/26/93
- Reinstatement of delinquent pharmacist license when pharmacist has been licensed and practicing for five years in another state which requires continuing education, 8.7(7)"b"(4), Notice ARC 4008A 5/26/93
- Discipline — circumvention of patient counseling, 9.1(4)"w," Notice ARC 4009A 5/26/93
- Controlled substances — disposal procedures, temporary designation of aminorex, exempt anabolic steroid products, 10.10(7), 10.20, 10.23, Notice ARC 4010A 5/26/93
- Drugs in emergency medical service programs, ch 11, Notice ARC 4011A 5/26/93
- Wholesale distribution — exemption for intracompany sales of prescription drugs, 17.1, Notice ARC 4012A5/26/93

6.3"5," 6.8; 7.3"5"; 8.7(7)"b"(4);9.1(4)"w" No questions on amendments Noticed in ARC 4006A, 4007A, 4008A, or 4009A.

10.10(7) et al. Amendments to 10.10(7), 10.20 and 10.23 were addressed and Daggett was advised that the steroid products referred to in 10.23 were not the type used by athletes.

Ch 11 In proposed new Chapter 11 under definitions, Priebe inquired if a physician designee had the same duties and responsibilities as a physician assistant. Jessen advised that this and several other definitions were the same as EMS definitions in the statute and IAC.

17.1 No questions or comments on amendments to 17.1.

PERSONNEL Clint Davis, Assistant to Director, represented the Department for the following:

PERSONNEL DEPARTMENT[581]

- Early retirement incentive participants, 11.1(3)"h," Filed Emergency ARC 3972A 5/26/93

11.1(3)"h" In opening remarks, Davis stated that this emergency filing was to comply with an attorney general's opinion on this subject. The AG opinion indicated the Department had exceeded its rule-making authority in attempting to include independent contractors in the prohibition from future employment with the state under provisions of the legislation adopted.

Kibbie expressed approval of this rule making.

Brief discussion focused on the two cases that were brought before the media during the 1992 legislative session.

Metcalf understood that an independent contractor could contract with the state and continue their work which circumvents the legislative intent. Royce pointed out that under this subparagraph (11.1(3)"h," employment could be with a county or local government.

Davis interjected that the status of an independent contractor was not the same as an employee and that was why this change was recommended.

PERSONNEL
(Cont.)

Halvorson agreed with Metcalf and felt the intent of this rule making was to allow someone to come back as an independent contractor and still work for the state even though they take early retirement. He disagreed with Royce's assessment. Halvorson observed that the Department was reacting to the AG opinion that one could not be prevented from coming back as an independent contractor. Davis agreed.

Davis responded to Doderer that "independent contractor" was not defined in the rule. He said they rely on the IRS definition which is a list of 20 questions which would lead toward a conclusion of an independent contractor.

Davis explained that the Department made the assumption when this rule was originally written that the intent of the legislature was that persons who had been employed by state government in the executive branch, who retired under this program, were not intended in any way to be able to come back and receive salary dollars out of the general fund to continue working for the state. This is why both conditions were covered in the original rule. The AG is of a different opinion regarding status of an independent contractor saying they are not employees in the meaning of the legislation. Therefore, they may come back and they cannot be prevented from doing so under this particular law.

Hedge recalled that one of the 20 questions on an independent contractor was whether or not persons work at their discretion or for the person paying the salary. Hedge felt it would be difficult to meet that criteria when working for the state.

Davis interjected that as the system presently exists, you can only be one of two things—an employee on the payroll or an independent contractor. If a person fails the test, the state would take care of its primary obligation to collect federal and state payroll taxes, the same as for a regular employee. Regarding Doderer's inquiry about social security, vacation, or sick leave, Davis said the person would not have any of those rights or privileges. He acknowledged that the Department's rule-making authority applies only to state employees, not local or county.

Metcalf in the Chair.

No Committee action taken.

PROFESSIONAL
LICENSURE

Carolyn Adams was present from Public Health to review the following agenda:

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Mortuary science examiners — educational requirements, 101.1(3), 101.2(5) to 101.2(8), 101.2(11), 101.98(1) and (2), 101.102(4), 101.205, Notice ARC 3978A 5/26/93
- Optometry examiners — conduct for licensure examination, method for reexamination, passing scores, statements made in advertising, 180.4, 180.5(3)"c" and "e" to "g," 180.115(6), Filed ARC 4004A 5/26/93
- Optometry — prescription, 180.9, Notice ARC 3360A Terminated ARC 3989A 5/26/93
- Podiatry examiners — U.C.C.R. fees, yearly report, 220.5(3)"a" and "c," Filed ARC 3965A 5/12/93

101.1(3) et al.; 180.4 No questions or recommendations on amendments to 101.1(3) et al. or 180.4 et al.

PROF. LICENSURE (Cont.) 180.9 Regarding the Notice of Termination on ophthalmic or contact lens prescriptions, Adams did not know when the rule would be resubmitted. Metcalf urged Committee members to visit with their local optometrists or ophthalmologists.

220.5(3)"a" and "c" Filed rules regarding podiatry examiners were reviewed without comment or questions.

EDUCATION
Cont. from previous afternoon
Committee resumed consideration of new 281—Chapter 18 regarding school fees. Daggett expressed concern regarding the fiscal impact on the school districts. He indicated that 25 percent of students in Iowa schools were on reduced school lunch costs. He also stated that local schools presently exempt needy families from book fees and other fees associated with learning. Collins declared that their research found that only 20 or 21 percent of school districts actually had a policy of waiving text book and supply fees for indigent families. The Department felt that inconsistencies existed statewide in this regard.

The subject of school districts charging activity fees was again discussed.

Collins reported that because of the budgeting time frame for the districts, this would not go into effect until the 1994-95 school year. She was not familiar with school districts' budgeting process, however.

After researching the statute, Daggett questioned whether the state board had the authority to implement rules regarding fees and waiver of fees since this would have a financial impact.

Collins agreed to do an economic analysis of different schools as to the number of needy or indigent families. This analysis would be distributed to the ARRC before being placed on the August agenda for further discussion.

Kibbie felt the public hearing should be delayed until more information was made available. Collins indicated this Notice could be terminated and possibly renoticed later.

SUBSTANCE ABUSE

Mike Guely gave a brief overview on the following agenda:

SUBSTANCE ABUSE COMMISSION[643]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Criteria for awards or grants, ch 2, Filed ARC 3971A 5/26/93

Ch 2

Daggett was advised that schools could apply for these grants as well as private, nonprofit groups. No Committee action.

RACING AND GAMING

Representing the Commission was Lou Baranello for the following:

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Commission approval of contracts and business arrangements, change of custody when drug testing a licensee, greyhound and thoroughbred racing, 4.1, 4.27(2), 4.28, 4.29, 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), 10.4(16)"a"(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 ARC 3955A 5/12/93
Steward control over patrons violating commission rules, first-aid room during simulcasting, 4.3"1," 7.8(4)"e," 10.2(6)"a"(1), 10.2(6)"b"(4), 10.6(1)"g," 10.6(2)"i," 12.12, Notice ARC 3953A, also Filed Emergency ARC 3954A 5/12/93

Priebe in the Chair.

4.1 et al.

Baranello explained to Metcalf the reason that the proposed amendment to Chapter 22 was not adopted since the rule in its original form was adequate. However, he noted this was not his area of expertise.

Baranello explained to Daggett that a schooling race was one taking place in the morning with no spectators present and no wagering— for training purposes only.

Baranello could not offer any details on Priebe's concern with 4.28, pertaining to approval of contracts and business arrangements by the Commission, but he would bring it to Jack Ketterer's attention.

4.3"1" et al.

Amendments filed emergency to 4.3"1" et al. were before the ARRC. The certificates for use of lasix and "bute" and reciprocity with other states were discussed .

Doderer brought to Baranello's attention in Item 4 that "power" was not changed to "authority" to regulate as in the other items. He noted this was an oversight.

No Committee recommendations.

TREASURER OF STATE

After a brief recess, Priebe recognized Karl Koch for the following agenda:

TREASURER OF STATE[781]

Deposit and security of public funds in credit unions, ch 14, Notice ARC 3773A Terminated ARC 3951A 5/12/93

Ch 14

No comments or questions.

UTILITIES

Vicki Place and Gary Stump, Assistants General Counsel, presented the following agenda:

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Filing of revised revenue requirement in proposed settlements, 7.2(11)"a," Amended Notice ARC 4013A 5/26/93

Interest on customer deposits, 19.4(3), 20.4(4), 21.4(2)"e," 22.4(2)"b," Notice ARC 3964A 5/12/93

7.2(11)"a"

No questions or comments on amendments to 7.2.(11)"a."

19.4(3) et al.

At Metcalf's request, Stump elaborated on the three options for determining interest rates to be paid on customer deposits.

Schrader was not in agreement with the rate changes.

Metcalf in the Chair.

REVENUE

Carl Castelda, Deputy Director, presented the following agenda:

REVENUE AND FINANCE DEPARTMENT[701]

Iowa sales tax exemption for purchases from certain organizations that are instrumentalities of the federal

government, 17.5, 17.7, Notice ARC 3987A 5/26/93

Assessments qualifying for abatement, voluntary withholding of state income tax from payments of deferred

compensation, pensions, and annuities to nonresidents, 43.5(1), 46.4(7), Notice ARC 3986A 5/26/93

REVENUE (Cont.) No questions or amendments to 17.5 and 17.7.
17.5, 17.7

43.5(1), 46.4(7) Amendments to 43.5(1) and 46.4(7) were addressed.

Priebe in the Chair.

Regarding an issue not on the agenda, Daggett inquired about the status of the pending federal pension lawsuit. Castelda responded that the Hagge Case was argued before the Iowa Supreme Court on Monday (June 7) and they expect a decision any time on the Harper Case from Virginia which is before the U. S. Supreme Court. Castelda did not believe the Iowa Supreme Court would issue its ruling until after the U. S. Supreme Court decision. He explained the issue before the court was whether the state refunds retroactively. Castelda reported that the Department had been holding about \$50 million in refund claims since 1989. The decision should have no impact on whether the state can tax pension income.

Halvorson and Castelda discussed status of federal legislation that prohibits states from collecting income tax on pensions.

Castelda provided extensive information on taxing of nonresident pensions. General discussion followed. [This subject matter will be before the ARRC at the July meeting.]

Health
Backflow prevention Priebe again recognized Shirley Peckosh, Iowa Horticultural Society, who had researched the backflow prevention issue.

Peckosh acknowledged that this issue had just recently been brought to her attention. A Cedar Rapids landscaper and installer of irrigation systems had been to the public hearing on the requirement of backflow prevention systems. Copies of a proposed Cedar Rapids ordinance were distributed to the Committee and are on file in the office of the Administrative Code Editor. She noted that all irrigation systems were considered to be high hazard, meaning a backflow prevention system would be necessary on all irrigation systems. The landscaper was also advised at the public hearing that the state was requiring Cedar Rapids to include single-family homes as "high hazard" and these backflow devices were being required on all water systems because of possible contamination of public water supply. Peckosh understood that the Department of Health would certify individuals who were able to repair these backflow systems and they would require yearly inspection by a certified individual. Homeowners who have irrigation systems would be required to install a reduced pressure backflow at a cost of \$250 to \$350 for the device, plus possibly \$250 installation costs. Water pressure would be reduced by 8 to 15 pounds requiring a booster pump so the sprinklers would operate properly. This could cost another \$600 to \$1000 plus installation as well as yearly inspection.

Priebe interjected that this came about through a building code not by rule. He felt that this should be placed on next month's agenda for selective review. It is not an issue that can be delayed or referred to the general assembly. An objection could be placed on it, which shifts the burden of proof. Priebe also felt the Committee should request a fiscal impact statement.

Halvorson opined that the plumbing code passed by the legislature made it applicable to cities of 15,000 or over. Therefore, rural water districts would not be involved.

Backflow prevention Schrader felt the Committee should review the statewide requirements and not just a Cedar Rapids ordinance. He emphasized that a backflow prevention program was already in place in Iowa that did include golf courses and irrigation systems. Schrader felt that the UPC Code that was passed included new language and that Cedar Rapids had drawn up a comprehensive plan and had defined a very stringent program. He thought the argument here was between Cedar Rapids residents and their city council.

Peckosh indicated that Des Moines was developing a model ordinance which Cedar Rapids was copying. She did not know if it was in place.

Backflow prevention on July agenda The Committee agreed to review the entire program and it would be placed on next month's agenda.

NO REPS No agency representative requested for the following:

VETERANS AFFAIRS COMMISSION[801]
Contested cases, ch 8, Notice ARC 3806A Terminated ARC 3945A 5/12/93

Adjournment Priebe advised the July meeting would be held on Thursday and Friday, July 8 and 9. The August meeting would be on Monday and Tuesday, August 2 and 3. Co-chair Priebe adjourned the Committee at 11:45 a.m.

Respectfully submitted,

Mary Ann Scott
Mary Ann Scott, Secretary Pro Tem

Berl E. Priebe, Co-chair