

**MINUTES OF THE REGULAR MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE**

**Time of meeting** The regular meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, June 14, 1994, in Room 22 and Wednesday, June 15, 1994 in Room 24 and Senate Chambers, State Capitol, Des Moines, Iowa.

**Members present:** Senator Berl E. Priebe and Representative Janet Metcalf, Co-chairs; Senators H. Kay Hedge, John P. Kibbie, William Palmer and Sheldon Rittmer; Representatives Horace Daggett, Minnette Doderer, Roger Halvorson and David Schrader. Senator Hedge excused on Wednesday, June 15.

**Also present:** Joseph A. Royce, Legal Counsel; Paula Dierenfeld, Administrative Rules Coordinator; Phyllis Barry, Administrative Code Editor; Mary Ann Scott and Kimberly McKnight, Administrative Assistants; Caucus staff and other interested persons.

**Convened** Senator Priebe convened the meeting at 10 a.m. and recognized Kay Williams and Lynette Donner for the following Ethics agenda:

**ETHICS**

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]**  
Complaint, investigation, and resolution procedure, ch 1, rescind 4.7, Notice ARC 4812A ..... 5/25/94  
Contested case procedures, ch 7, Notice ARC 4813A ..... 5/25/94

**Ch 1, 4.7** At Priebe's request, Donner explained the last sentence in 1.2(2).

Halvorson expressed concern with the attention given anonymous complaints. Donner stated that this procedure had been followed by the Commission for several years. She added there was a great difference between a complaint and a formal complaint. Williams further explained that they try to settle all complaints informally and she took exception to Halvorson's inference that formal complaints were encouraged.

Rittmer complimented Williams on her credibility and dedication to the job.

Discussion then focused on placement of campaign signs on corporate property and the numerous methods used to circumvent the law. Williams reported that this would be on the agenda for their June 15 meeting. Campaign fund debts were also discussed.

**Ch 7** Contested case procedures proposed in Chapter 7 were then reviewed. No formal action.

**PUBLIC SAFETY** Michael R. Coveyou, Carroll Bidler, and M. L. Rehberg were in attendance for the following:

**PUBLIC SAFETY DEPARTMENT[661]**  
Weapons, 4.1, 4.6(4), 4.51 to 4.59, Filed ARC 4798A ..... 5/11/94  
Access to criminal history files, taking of fingerprints, destruction of fingerprint records, fees, 11.3 to 11.5, 11.8, 11.10, 11.11, 11.15, 11.18, Filed ARC 4797A ..... 5/11/94  
Governor's traffic safety bureau, 20.1 to 20.5, Filed ARC 4809A ..... 5/25/94

**Ch 4** The disposition of seized and forfeited firearms was reviewed. Rehberg emphasized that very few were suitable for use. Doderer's concern on the sale of firearms was addressed in the last sentence of 4.57.

**PUBLIC SAFETY  
(Cont.)**

Responding to Priebe, Rehberg said that weapons and equipment confiscated by DNR must be auctioned.

**Ch 11**

No questions or recommendations on Chapter 11.

**20.1-20-5**

In review of amendments to the Governor's Traffic Safety Bureau, Coveyou pointed out that recommendations of the ARRC had been incorporated in the final rules relative to allocation criteria—20.4(1). Rehberg replied to Daggett that legislation passed last session indicated eight areas to consider for funding. He added that the deadline to apply for the transfer of the public road allocation funds from DOT had been extended to June 1. Rehberg explained to Doderer how the funds were allocated to the counties.

**LAW ENFORCE-  
MENT**

Fran Trotter represented the Academy for the following:

**LAW ENFORCEMENT ACADEMY[501]**

Fee schedules for administering and evaluating psychological and cognitive test or tests mandated by the academy, 2.2(6), Notice ARC 4783A ..... 5/11/94

No questions by the ARRC.

**LIBRARIES**

Sharman B. Smith, State Librarian, and Linda Robertson, State Law Librarian, were present from the Division for the following:

**LIBRARIES AND INFORMATION SERVICES DIVISION[286]****EDUCATION DEPARTMENT[281]"umbrella"**

Organization and programs, rescind 224—chs 1 to 6, adopt 286—chs 1 to 3 and 6, Filed ARC 4817A . 5/25/94

**Chs 1 to 6**

Smith explained minor changes made following the Notice. The rules essentially state existing policies. No Committee action.

**AGRICULTURE**

The Department was represented by Walter Felker, State Veterinarian, Charles Eckerman, Ronald Rowland and Jake Wakefield. The following agenda was reviewed:

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Pesticide applicator recertification, 45.22(2)"a" and "c," 45.22(3), 45.22(4)"b," 45.22(5), 45.22(6), 45.22(16), 45.52, 48.7, Filed ARC 4781A ..... 5/11/94  
Livestock importation, 65.1(2), 65.11, 65.11(1)"a," Notice ARC 4804A ..... 5/11/94  
Dairy — antibiotic testing, 68.36, Notice ARC 4821A ..... 5/25/94

**45.22 et al.**

No Committee recommendations.

**65.1, 65.11**

Felker assured Priebe that the Iowa Poultry Association had indicated their support for amendments to Chapter 65.

**68.36**

These proposed amendments are intended to implement antibiotic testing requirements set out by federal rule (Pasteurized Milk Ordinance). Rowland said the only deviations were in 68.36(7) and (8) dealing with third and fourth violations. Priebe was informed that the Department had not heard from the Amish community on this proposal.

The Department advised that they were considering a labeling requirement applicable to PST (an additive to increase milk production). Rowland confirmed that it was an injection given biweekly but he did not think it was used very extensively in Iowa, if at all.

**CREDIT UNION** Tom Sarvis, Credit Union Review Board, represented the Division for the following agenda:

**CREDIT UNION DIVISION[189]**

**COMMERCE DEPARTMENT[181]"umbrella"**

Real estate lending, rescind chs 9, 10; new ch 9, Notice ARC 4796A ..... 5/11/94  
Corporate central credit union, ch 10, Notice ARC 4795A ..... 5/11/94

Ch 9 Priebe felt that clarification was needed in 9.2(4), the last entry in the Loan Category table, by including "in combination with cannot exceed 90 percent."

Ch 10 In review of Chapter 10, Royce asked how a state-chartered credit union had powers based on federal legislation (as stated in 10.1). Sarvis thought that Iowa Code chapter 533 was somewhat silent as to the powers but under the federal share insurance there was provision for federally chartered credit unions to enter into expanded investment arenas. Sarvis believed that the state superintendent intended this rule to interface requirements for federal share insurance. Royce indicated he would visit with the superintendent.

Patrick Jury, President, Iowa Credit Union League, interjected that any financial institution is federally insured, compliance must be made with federal rules and regulations (Ch 704 of NCUA).

**BANKING** Steve Moser, Deputy Superintendent, briefed the Committee on the following filed rule and there were no Committee recommendations:

**BANKING DIVISION[187]**

**COMMERCE DEPARTMENT[181]"umbrella"**

Real estate lending requirements for state-chartered banks, 9.2(5), Filed ARC 4784A ..... 5/11/94

**EPC** Darrell McAllister reviewed the following:

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**NATURAL RESOURCES DEPARTMENT[561]"umbrella"**

Water quality standards, 61.3(3), Table 1, Notice ARC 4800A ..... 5/11/94  
Public water supply systems and wastewater treatment plants, 81.1, 81.2(3) to 81.2(8), 81.6(1), 81.6(2), 81.7, 81.8(1), 81.10(8), 81.10(10), 81.10(11), 81.12(2), 81.13(1), 81.14, Notice ARC 4799A ..... 5/11/94

61.3 Daggett was advised that there were no concerns expressed at the recent public hearings on revision of 61.3(3). McAllister clarified that these rules address surface water quality rather than drinking water. He indicated to Metcalf that, in most cases, these rules would be less stringent than federal regulations because some of the aquatic species being tested was not found in Iowa.

The definition of "nitrate" and "nitrite" parameters and use designations were discussed.

Ch 81 In review of proposed amendments to Ch 81, Kibbie was advised that the fees had not been changed since 1983.

Priebe suggested that EPC schedule future hearings in different locations throughout the state. He observed that many had been conducted in Elkader, for example.

**DOT**

John Hocker introduced Tom Cackler, Development Division Director, and Mark Nahra, Cedar County Engineer. The following agenda was reviewed:

**TRANSPORTATION DEPARTMENT[761]**

General requirements and covenants for highway and bridge construction, 125.1 to 125.3,

Notice ARC 4770A ..... 5/11/94

Hocker informed the Committee that the Federal Highway Administration had issued a mandate for the DOT to prepare plans using the metric system of measurement beginning September 30, 1996. DOT proposes to issue some plans in metric and some in U.S. measure beginning late 1995. The Department has also been advised by the AG Office not to use the word "dispose" or "disposal" in any of their terminology because a new definition uses these words only in the context of destruction of toxic radioactive or other wastes. The words "remove" and "place in a given waste area" would be substituted. The term "haul road" was also explained.

In response to Rittmer, Hocker indicated that although many changes were made in terminology, the procedures would be similar. Hocker felt that contractors would not oppose these changes to provide common terminology for a project or a contract.

Hocker responded to Hedge that change to the metric system should not be costly to the state since specification manuals were updated about every four or five years. He added that decision to change road signs had not been made. These rules pertain to equipment calibrated in metrics used to construct a highway.

Priebe suggested avoiding excessive printing costs by correcting "dispose" or "disposal" only when other revisions are necessary.

**ECONOMIC  
DEVELOPMENT**

Melanie Johnson, Kathy Berry, Miriam Ubbes, Ken Boyd and Mike Miller were present from DED for the following agenda:

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

Community economic betterment program, 22.2, 22.6(1), 22.6(2), 22.7, 22.8(3)"f," 22.9(3),

22.14, Notice ARC 4806A ..... 5/11/94

Rural leadership development program, ch 68, Notice ARC 4807A ..... 5/11/94

Rural action training program, ch 69, Notice ARC 4805A ..... 5/11/94

**Ch 22**

Johnson explained proposed amendments to the CEBA program which include new wage threshold requirements. At the May 31 hearing, Johnson said that most of the comments received dealt with this requirement and the impact on rural communities and she indicated that recommended changes would be made to the Board.

Schrader focused on new language in 22.6(1)"h" relative to wage threshold. He expressed concern that small competitive businesses in rural Iowa wishing to expand might be at a disadvantage if a new business could qualify as a business start-up. Miller responded that this would relate to a company that competes with other companies in the same area of business, not if it were a business start-up. Other portions of the rule cover this area. Schrader wondered why a new business (2 years) should be held to a lower level of wage payments in order to be eligible for tax dollars than the business that had been helping the community for 20 years. Miller said his point was well taken but that the problem was with the cut-off point. Miller and Schrader continued to discuss this concern.

DED (Cont.)

Johnson advised Metcalf that these rules would be filed emergency to be in effect by July 1. Metcalf and Halvorson would support this since CEBA funds were limited.

Hedge asked how the prevailing county wage scale was obtained and was told that the Department of Employment Services published this quarterly. However, DED manipulates these figures by removing agriculture, mining and government wages since they would not likely be funded under CEBA.

Halvorson noted that "business start-up" was a new definition in 22.2(15). He then questioned Miller on the time table for rural revitalization rules and funding for feasibility studies.

Miller stated that feasibility studies were not viable and Johnson added that a Notice of Intended Action had been prepared for the Board's agenda this week.

Schrader and Miller resumed discussion of 22.6(1)"h." Miller concurred that project positions and jobs to be created were the same. Management positions were included in the average. Schrader preferred language to include the method for determining the average. In regard to business startup, Schrader would not favor awards to a company that was creating jobs 25 percent below average. He opined that a dollar amount should be set. There was discussion of counties whose residents work in another county and how this would affect the average wage. Miller stated that the law does require a threshold. Schrader was opposed to spending state dollars to fund salaries paying no more than \$12,000 per year. Miller explained that the law would preclude DED from funding a company if the wage were substantially below the average for that area. "Substantially below" was determined by these rules to be below 85 percent of the average. Miller would not argue that it should be higher and suggested a possible law change.

Hedge was supportive of proposed rules and failed to see how an average for the state would help counties with low average wages—the unemployment in those areas would increase by not attracting new businesses. No Committee action.

Ch 68 and 69

Berry, from the Division of Community Rural Development, reviewed new Chapter 68 and pointed out that Chapters 68 and 69 were created from the old Chapter 68. New Chapter 69 dealt with agricultural groups. Berry provided Schrader with an explanation of the \$50 fee requirement per participant for the rural leadership program, which was not required in the rural action training program. She said the rural leadership development program had been in existence for several years and participant fees seemed logical. However, the agricultural program was in its early phase and the Department had been easier on the match. She anticipated moving to a fee in this program in a year or so.

Ch 69

Berry then provided background on the rural action training program (ARC 4805A). No questions.

Recess and  
Reconvened

Chairman Priebe recessed the Committee for lunch at 12:15 p.m. and reconvened it at 1:30 p.m.

**HUMAN  
SERVICES**

The following agenda was reviewed.

**HUMAN SERVICES DEPARTMENT[441]**

Unemployed parent, 42.24, Notice ARC 4815A ..... 5/25/94  
 Medicaid reimbursement policy, 57.1, 75.8, 75.15(2)"b," 80.6, Filed ARC 4771A ..... 5/11/94  
 Automatic redetermination, 76.11, Filed ARC 4773A ..... 5/11/94  
 Medically needy, 86.3(5), Filed ARC 4772A ..... 5/11/94  
 Certification of adoption investigators, purchase of adoption services, 107.3(2), 107.8(1)"d," 157.1, 157.3(1)"d,"  
Notice ARC 4790A ..... 5/11/94  
 Abuse of children, ch 175, Notice ARC 4791A ..... 5/11/94  
 Respite care services, family-centered services — allocation of funds, 180.10, 182.11,  
Notice ARC 4789A ..... 5/11/94  
 Special Review - IQ level for "person with mental retardation," discrepancy in Ch 22 and Ch 24 ..... IAC

Present from DHS were Mary Ann Walker, Elaine Monaghan, P. C. Keen, Lucinda Wonderlich, Deloris Conner, Maya Krogman, Kathi Kellen, Marno Cook and Charlie Parrish.

42.24 In review of amendment to 42.24 regarding eligibility for assistance by unemployed parents, Krogman explained differences from the previous rule.

Hedge was informed that the term "common child" was defined to mean that both parents were biological.

Doderer requested statistical background on the program.

57.1 et al. In review of amendments to 57.1 et al., Doderer commented that the cost per day under this program was \$87.13 while the cost per day under ICF/MR program was \$254 per day. The level of care required for patients in each of these facilities was discussed.

76.11; 86.3(5) No questions or recommendations on ARC 4773A or 4772A.

107.3 et al. Priebe felt that further clarification was required in the new language in 107.3(2) and the Department agreed to further research.

Palmer excused to attend another meeting.

Ch 175 Walker gave a brief overview of the complete revision of Chapter 175, Abuse of Children.

Rittmer was advised that 175.14, regarding research on child abuse, was not changed.

Priebe referred to 175.3, relative to withholding of medical care to certain fragile children, and asked who made the determination. He was advised this was a medical decision, not one made by the Department.

Walker informed Daggett that comments made at the public hearings had not yet been reviewed.

With respect to withholding of medical care due to religious beliefs, Doderer was advised that 175.2 had not been changed from previous rules. Cook was not aware of any recent comments from religious groups on this subject.

DHS (Cont.)

Priebe suggested that the DHS public hearings be held in different locations throughout the state.

Chairman Priebe recognized John Harvey who represented a group called VOCAL (Victim of Child Abuse Laws). In his remarks, Harvey attributed low attendance at the public hearings on Chapter 175 to very poor publicity. He lacked time to check the proposed new chapter with the previous rules or the statute. Harvey said that House File 2261 recommended a complete study of this area and he contended that should have preceded the rule making, thus, the rules appear to be "presumptuous and counterproductive."

Harvey pointed out several areas he considered to be controversial and far removed from the original intent of the child protection laws of 1962 and the early '70s. He cited some examples from the text of his handout.

Harvey contended there was no statutory authority for the registry of rejected reports. Cook interjected that these reports were maintained for six months in the office where they were received. They may be reviewed to learn how a decision was made.

Harvey then addressed issues which, in his opinion, should be included in the rules. Rigorous tests applied to Rules of Evidence 702 should be reflected in current administrative rules. A centralized intake unit could be utilized. He claimed that DHS would not expunge reports even if the courts find a person innocent of child abuse charges.

In response to Kibbie, Cook said a decision was made in 1988 to keep rejected intakes for six months so these cases could be reviewed to determine why an investigation did not occur.

Royce interjected that the burden of proof was significant because in a criminal case, the state must prove a person guilty beyond a reasonable doubt. In a civil case, such as a traffic accident, it would be 51 percent. Doderer noted that lack of evidence precludes a guilty verdict many times. Royce disagreed with this assessment. In an assault case, for instance, a person could be found not guilty in a criminal court because of the "beyond a reasonable doubt" clause, but a victim could sue in civil court and get a verdict based on preponderance of evidence—51 percent.

Doderer maintained that the child abuse law had worked well and that the court needed some leeway in these cases. She saw no prohibition against record retention for 6 months.

Cook viewed the Department's responsibility as one to create a middle of the road policy that would protect the children as well as parental rights. She admitted there would always be controversy in this program.

Priebe expressed his concern about unjustified accusation of child molestation.

Priebe advised Harvey to go before the Human Services Council with his concerns.

180.10, 182.11

No questions or comments.

**Special Review**

It was announced that the special review of rules concerning IQ of the mentally retarded was postponed because supporting information had not been received from the counties.

**SUBSTANCE  
ABUSE****Methadone, 3.35**

Filed rule 643—3.35 on methadone treatment centers which was under a 70-day delay was before the Committee. The Commission on Substance Abuse was represented by Janet Zwick, Dean Austin and Jeff Gronstal and Carolyn Adams, Public Health. Also present were Daniel Murphy, Cedar Falls physician; Felicia Jackson, CADS, Rock Island office; Julie Dorothy Reckinger, CADS, Davenport.

Zwick reported that the Division of Substance Abuse held a conference with Murphy on June 2 to discuss a compromise. Murphy felt that any compromise would prohibit him from effectively serving and caring for his clients and he opposed any rules other than the federal regulations. Zwick added that she met with Mark Purino, President of the American Treatment Association, clinical director of a nationally known methadone treatment program, and the author and chair of the State Methadone Treatment Guidelines of which Murphy spoke highly. Purino was supportive of specific state standards since the federal regulations were considered to be minimal requirements. At Zwick's request, Purino reviewed Iowa's standards which he described as comparable to other states but in many areas, not as stringent. He suggested that Iowa further clarify standards on the results of urinalysis to consider length of time and progress in treatment. Purino was supportive of the central registry as the first step in diversion. He suggested a regional registry in Iowa since two programs border other states. Purino explained the importance of a blood count and a white cell differential. He maintained the lab work was necessary because heroin addicts have multiple medical problems.

Zwick also clarified for the Committee that, according to DEA, Murphy had two registrations—one as a practitioner which authorizes him to prescribe methadone for pain and act as a medical director for a methadone program. This registration was not required to be approved by the Commission. Murphy was also registered with DEA as a narcotic treatment program. It was through this registration that the state and the Commission, in accordance with Iowa Code section 125.21, has the approval authority over Murphy's program. This had been affirmed by a court decision.

Zwick referenced a handbook on Substance Abuse Treatment which addressed approval and monitoring of narcotic treatment programs and it clearly showed the role of federal agencies and the state authority. She continued that federal regulations were already in place relating to Murphy's program and she reviewed the differences between state and federal regulations.

Metcalf suggested lifting the 70-day delay on rule 3.35. Schrader wanted to hear Murphy's comments before action was taken.

Murphy expressed frustration in attempting to follow the federal register by providing a great service but being seen as an adversary by the state. He said that neither he nor his attorney was present or had input when the Division talked with Purino.

Mike Sellers, Attorney representing Murphy, contended that the statute clearly exempted Murphy. He declared that rule 3.35 was written specifically in an attempt to control Murphy's program.



SUBST. ABUSE  
(Cont.)

Doderer was interested in a possible compromise and Zwick stated that she was willing to ask the Commission on Wednesday to rescind the rule with the exception of 3.35(3), central registry system. Although the federal regulations do not require this, other states (Illinois for one) have them. It can be determined through the register if a patient has already enrolled in another program. Zwick added another exception would be 3.35(10)"a, b, d, and f" and rewording of "e" to ensure that a client's length of treatment was taken into consideration. She said that programs in Davenport (Rock Island), Des Moines and Omaha were also inspected by the Commission. Zwick was willing to ask Mark Purino to provide technical assistance for all the programs and reassess other standards.

There was discussion of the expiration of the 70-day delay on June 29 at which time the rule would be effective.

Kibbie suggested more dialogue on the exemption from the rule issue. Royce advised that section 125.13 exempts a physician from licensure and section 125.21 gives the Department exclusive authority to approve all methadone programs and makes reference to section 125.13. Royce concluded that the statutes provided for an exemption and an approval process.

Sellers took the position that the Commission's approval authority had nothing to do with this issue but gives them the right to monitor the program to ensure compliance with all federal, pharmaceutical and medical society regulations. It does not give the Commission authority to add another layer of rules.

Schrader reasoned that the Committee's authority was limited to the appropriateness of the rule. They could not resolve the question of law as to whether Murphy falls under the rule. Schrader was disappointed that a compromise had not been reached. He suggested continuing the delay.

Priebe suggested delay of 3.35 until adjournment of the 1995 session.

Motion

Doderer so moved the Priebe suggestion.

Dierenfeld thought the Department should respond to Murphy as to the applicability of the rules. She was quite sure the Department had received advice on this issue.

Maurine McGuire for the Attorney General's office, said their office had advised the Substance Abuse Commission of their authority to regulate persons who were operating methadone treatment programs even though they were exempted from the license for substance abuse. She pointed out that the statute which exempts a number of practitioners, exempts them from a license for substance abuse treatment. That statute goes on to say that for methadone programs, the Commission has the authority and must regulate all methadone programs, even those that are operated by exempted programs. So to the extent that Murphy wanted to operate a substance abuse treatment program, he was absolutely correct—the Commission would have no authority over him, unless or until he wanted to use methadone.

Royce questioned McGuire as to the distinction between licensing and approval. McGuire responded that in Code chapter 17A, the definition of licensing meant any approval required by statute. A license was not issued for methadone but approval was required—same meaning. Murphy interjected that in the federal regulation, you must have state approval before functioning under an FDA license.

**SUBST. ABUSE  
(Cont.)  
Motion**

Priebe called up the Doderer motion to delay rule 3.35 until adjournment of the 1995 General Assembly. Motion carried with one negative vote.

**Minutes**

Schrader made a motion that the minutes of the May meeting be approved. Motion carried.

**Recess**

Priebe recessed the Committee at 3:20 p.m.

Hedge asked to be excused for tomorrow's meeting.

06-15-94

**Reconvened**

Hedge excused.

Chairman Priebe reconvened the meeting at 9 a.m. and called up the following:

**EDUCATION**

**EDUCATION DEPARTMENT[281]**

Shared time, rescind ch 14, Filed ARC 4780A ..... 5/11/94  
Community colleges, 21.2(3), 21.10 to 21.12, Filed ARC 4779A ..... 5/11/94  
Competency development for vocational education programs, 46.7(2), Filed ARC 4778A ..... 5/11/94  
Vocational education council, ch 47 title, 47.1, 47.2, Filed ARC 4777A ..... 5/11/94  
Child development coordinating council, 64.15"5" and "6," 64.20, Filed ARC 4776A ..... 5/11/94  
Innovative programs for at-risk early elementary students — grant criteria, 65.9(4) to 65.9(7),  
Filed ARC 4775A ..... 5/11/94  
Updating and corrective amendments to chs 94 and 95, Filed ARC 4774A ..... 5/11/94

The Department was represented by Kathy Collins and Donna Eggleston.

There were no Committee recommendations on the Education agenda. Collins indicated they were attempting to go through their rules for "cleanup" purposes.

**Ch 65**

Brief discussion focused on how legislation passed last session might affect this as well as other programs. Also, Metcalf was informed that the same number of grants were not awarded in each category (in 65.9(6)).

**LABOR SERVICES** Walter Johnson, Deputy, represented the Division for the following and there were no questions or recommendations.

**LABOR SERVICES DIVISION[347]**

**EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"**

General industry safety and health — electric power generation, transmission and distribution;  
electrical protective equipment; hazard communication, 10.20, Filed Emergency After Notice ARC 4785A/5/11/94  
General industry safety and health — personal protective equipment, 10.20, Notice ARC 4787A ..... 5/11/94  
Construction safety and health — cadmium, hazard communication, 26.1,  
Filed Emergency After Notice ARC 4786A ..... 5/11/94  
Occupational safety and health standards for agriculture — hazard communication, 28.1,  
Filed Emergency After Notice ARC 4794A ..... 5/11/94

**REAL ESTATE**

Marie Thayer and Susan Griffel represented the Real Estate Commission for the following:

**REAL ESTATE COMMISSION[193E]**

**Professional Licensing and Regulation Division[193]**

**COMMERCE DEPARTMENT[181]"umbrella"**

Continuing education records, 3.3(5) to 3.3(10), 3.4(3), 3.7, Notice ARC 4818A ..... 5/25/94

## REAL ESTATE (Cont.)

Griffel stated that the Commission proposed to modify the procedure by which real estate continuing education was verified. They felt this proposed method would be more efficient, professional and more in line with other professions regulated by the Division. Griffel explained to Priebe the auditing procedure in 3.3(5)"a" and why licensees must retain documentation of their credits for a period of six years.

A brief explanation of "state specific courses" was provided to Daggett (In 3.4(3)"a").

Metcalf was advised that they had not been able to track the effect of these more stringent requirements in education because they were so new but the number of licensees had actually increased. Griffel agreed to provide statistics when available.

Griffel stated that the Commission wanted to avoid barriers for licensees but still protect the buyer. Every effort has been made to reciprocate with other states. Doderer asked for documentation relative to reciprocity with bordering states.

## UTILITIES DIV.

The Division was represented by Gary Stump and Vicki Place. The following agenda was before the Committee:

### UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Interest on customer deposits, 19.4(3), 20.4(4), 21.4(2)"e," 22.4(2)"b," Filed Emergency ARC 4788A .. 5/11/94

Schrader recalled that interest on customer accounts had been controversial previously and was delayed into the general assembly. In his opinion, the previous methodology used in determining the rates was preferable to this proposal. Stump said this issue would be revisited as interest rates change significantly.

## PROFESSIONAL LICENSURE

Carolyn Adams was present to review the following:

### PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Board of examiners for the licensing and regulation of hearing aid dealers, 120.2(2), 120.5(5), 120.9, 120.13(1), 120.13(6), 120.13(7), 120.205, Notice ARC 4816A ..... 5/25/94

No recommendations.

## Recess

Chairman Priebe announced a 10 minute recess.

## PHARMACY

The Board was represented by Lloyd Jessen for the following agenda:

### PHARMACY EXAMINERS BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Pharmaceutical care — patient counseling, 8.20, Notice ARC 4801A ..... 5/11/94

Patient counseling, 8.20(3), Notice ARC 4318A Terminated ARC 4803A ..... 5/11/94

Controlled substance accountability, 10.10(6), Filed ARC 4802A ..... 5/11/94

Also present were Pat Staub, Attorney and Pharmacist, and Steve Konsin, America's Pharmacy; Jenelle Soboth and Susan Anderson, Iowa Pharmacists Association; and John Gustopson, Value Health.

Jessen announced that the Board had term terminated its previous proposal (ARC 4803A) on patient counseling regarding a new prescription and submitted another (ARC 4801A). He noted that the revision placed more emphasis on the

PHARMACY  
(Cont.)

pharmacist's professional judgment to determine if oral counseling were the best form for the patient. It was noted that the statute required counseling but the method was to be set out by rule making. Jessen clarified that this related to new prescriptions and could be on refills if there were reason to counsel.

Staub distributed information to the Committee and spoke on the adverse impact the rule would have on the financial ability of America's Pharmacy to compete in the marketplace. His concern focused on the requirement for prospective telephone counseling by pharmacists who do not have face-to-face dispensing. Staub continued that their mail order pharmacy had a toll-free number available 24 hours a day, 7 days a week, for counseling. Their interpretation of the rule would require them to telephone customers prior to mailing the prescriptions to ask if they wanted counseling. Staub pointed out that Iowa was unique in such a proposal. Their average monthly telephone bill was currently \$55,000. She referred to the last page of her handout which indicated that only one percent of their business was from Iowans.

Staub described America's Pharmacy as the largest employer of Iowa pharmacists and the 5th largest in the country—350 Iowans employed. He pointed out that other mail order pharmacies which ship into the state were governed by the state in which they are licensed, so possibly only one percent of their business would require telephone counseling rather than the current 100 percent. She disagreed that mail order operations which dispense maintenance drugs were encroaching on rural retail pharmacists. According to Staub, the "playing fields" were different and there would always be room for acute care pharmacies.

Staub's second argument was that prospective telephone counseling by pharmacists was not required by OBRA (the federal law requiring counseling).

Staub summarized reasons they believed the proposed rule was unacceptable:

1. American's Pharmacy was an Iowa-based company but could not compete in the national market.
2. The retail pharmacist would not be benefited.
3. A fair and reasonable rule was already in place and was consistent with other states and the federal law.
4. Privacy was being violated by this rule.

Doderer opined that the rule was confusing and poorly written.

Steve Konsin, General Manager and Vice President of America's Pharmacy, stated that he had appeared before the Committee previously. He spoke of a lack of understanding of mail order pharmacies in prescription benefit management and explained the term "managed care" which resulted from health care reform. Konsin said that their company managed the prescription purchasing and outcome and health care of employers groups through managing prescription drugs—they compete with the "giants" and write 1.4 million prescriptions a year. He offered details of their operation and contended that this rule would adversely affect them. He requested a study to assess the impact on his business.

Rittmer reasoned that the rule should be applicable only to the one percent of business that America's Pharmacy had in Iowa and not for prescriptions sent out of state.

Konsin interpreted the statute to apply to all prescriptions.

**PHARMACY  
(Cont.)**

Daggett was advised that AARP Pharmacy would operate under the rules of the state where they were domiciled.

Soboth expressed strong support of the rule by the Iowa Pharmacist Association, as well as the American Pharmaceutical Association, National Association of Boards of Pharmacy, and other pharmacy associations. Because their interest was in quality of patient care, they favored oral counseling over written information.

Jessen clarified that if an out-of-state mail order services Iowa residents, that out-of-state company must have a nonresident pharmacy license (Iowa Code §155A.13A).

Kibbie was informed that Wal Mart stores were domiciled in Arkansas but must abide by Iowa rules.

Jessen offered that Iowa had about 100 nonresident pharmacy licenses and the Division had contacted about 500 companies regarding the rule. Disciplinary action could be taken against a nonregistered company that ships into Iowa.

Staub suspected that the Interstate Commerce clause eventually would be constitutionally tested.

Schrader commented on counseling in general.

It was noted that a waiver appears on the reverse side of a receipt which could be signed that counseling was not requested. In response to Priebe, Royce indicated that further research on the federal laws would be necessary before he could advise the Committee.

Jessen responded to Halvorson that the model language of the National Association of Boards of Pharmacy on counseling exceeds OBRA standards and encourages states to ensure the patient's care. Jessen agreed with Halvorson that the current rules meet and exceed OBRA requirements. Jessen pointed out that the Board was attempting to achieve a higher standard of care.

Konsin reiterated his concern about the competitive disadvantage being imposed on the mail order companies. Halvorson concluded that health care reform with lower costs and business as usual were not possible and he favored an Economic Impact Statement request.

Gustopson responded to Priebe that their company employed 250 people in the Davenport facility and approximately 70 in Cedar Rapids. Gustopson agreed with concerns expressed by Staub and Konsin.

Soboth understood the financial implications facing these companies but added that drugs were both dangerous products and very effective, if used appropriately. At issue was new prescriptions coming into a home via mail without consultation with a pharmacist.

Doderer commented on the role of the doctor in issuing the prescription and his involvement in counseling.

Schrader asked Jessen if other states interpreted counseling to mean face-to-face. Jessen responded in the negative. Staub interjected that in meetings she had attended, counseling was interpreted to be prospective telephone counseling or face-to-face.

**PHARMACY  
(Cont.)**

Priebe announced that an Economic Impact Statement must be requested while a rule was under Notice.

Doderer viewed such a request as a delaying tactic.

Jessen wasn't sure how the necessary information could be accessed.

Metcalf asked if the law could be changed so it would affect only the Iowa business of these companies. Royce said this is a federal law (OBRA).

Jessen referred to an informal opinion from the Attorney General which stated they could not have one standard for Iowa residents and a different one for other states.

Jessen advised Priebe that the proposed rule was in sync with what was advocated by the National Association of Boards of Pharmacy. Individual states have not risen to this level, however.

Staub was willing to share results of detailed research by the AMCPA which had been provided to the Pharmacy Board.

Priebe then suggested that this issue be held in abeyance until all information was available.

Doderer requested the Medical Board's written opinion as to the necessity of the rule.

**Motion  
October agenda**

After further discussion, it was noted that there would be a public hearing on the rule in September and Doderer moved that rule 8.20 be placed on the October ARRC agenda for a special two-hour review. Motion carried.

**10.10(6)**

No Committee recommendations.

**Substance Abuse**

Metcalf announced that Dean Austin had advised her that the Substance Abuse Commission voted 6 to 0 to rescind rule 643—3.35, discussed at yesterday's meeting.

**Motion  
See p. 5666**

The rule will be rewritten as a new Notice of Intended Action. Metcalf then moved to lift the session delay on the rules because it was now a moot point. Motion carried. Royce advised there were only six members present and seven affirmative votes were necessary. Halvorson arrived and cast the seventh vote.

**INSURANCE**

The following agenda was addressed by Susan Voss:

**INSURANCE DIVISION[191]**  
**COMMERCE DEPARTMENT[181]"umbrella"**  
 Medicare supplement insurance — prohibition against using SHIP prepared materials,  
 37.12(1)"c," 37.23, Filed ARC 4811A ..... 5/25/94  
 Small group health benefit plans, 71.11(8), 71.11(9), Filed ARC 4810A ..... 5/25/94  
 Long-term care asset preservation program, ch 72, Filed ARC 4769A, 70-day delay ..... 4/27/94

37.12, 37.23; 71.11 No questions or recommendations on ARC 4811A or 4810A.

**Ch 72**

Discussion of Chapter 72 was deferred.

Substance Abuse  
643—3.35

Priebe called for further discussion of the action taken on Substance Abuse rule 3.35. It was noted that the 70-day delay would expire on June 29 and the rule could go into effect if the Commission failed to file an emergency rescission by that time.

After discussion, there was Committee consensus that the Session Delay should be reinstated.

Motion  
Session Delay

Doderer moved to rescind the previous motion to lift the Session Delay and further moved to reimpose a Session Delay on 643—3.35. Motion carried.

Metcalf in the Chair.

Insurance - Ch 72  
July agenda

Review of Chapter 72 of the Insurance Division was resumed. Voss said the 70-day delay was placed on the rules to allow time for more information to be provided to the Committee. She also provided other information to Palmer. Voss indicated that the rules would probably not affect people in a lower income bracket because they would not have the assets to preserve. Because of the questions Palmer had raised on this issue and due to his absence (Council meeting), it was decided to leave the delay in place and include the rules on the July agenda.

**PETROLEUM  
UST BOARD**

Metcalf announced that the meeting would be moved to the Senate chambers because of the number of people wishing to make comments on UST Board rules.

Priebe in the Chair.

Representing the UST Fund Board were Pat Rounds, Board Administrator, and Robert Galbraith, Assistant Attorney General, for the following agenda:

**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]**  
Prioritization of remedial account benefits and expenses, 11.7, Filed ARC 4822A ..... 5/25/94  
Remedial account prioritization, 11.7(1)"c" and "f," Notice ARC 4820A ..... 5/25/94

Ch 11

Rounds explained that the prioritization rules were before the ARRC earlier this year and the Board had given these rules final approval. Claims would be prioritized so that the first order of prioritization would be for Board issues such as settlements and administrative costs. The second level would be for a completion of site cleanup reports for every site involved in the Fund. The third level would address high-risk sites. Rounds stated that these rules were based on the Board's assessment of legislative intent and the determination that there were insufficient funds to settle all claims.

Dave Smitherman, Iowa Petroleum Council, addressed the Committee. He stated that the UST Task Force which had been working on this problem for over a year had questions as to the validity of numbers being used to justify prioritization. It was Smitherman's understanding that, after September 1, only high-risk sites owned by small business would be eligible for payment. Chairman Priebe pointed out that the adopted new rule 11.7 was before the Committee first. Amendments to 11.7(1)"c" and "f" were under Notice.

Daggett asked about the relationship between the two documents.

11.7

Round responded the Board's position was that the first order of prioritization, which received no public comments, established a priority consistent with the

UST BOARD  
(Cont.)

legislative mandate: To take care of the environment, i.e., high-risk sites and to follow up on agreements. No questions.

11.7(1)

Chairman Priebe announced that amendments to 11.7(1) were now before the Committee.

Smitherman noted that \$62 million had been set aside for SCRs which he contended would be absolutely and physically impossible to spend in the next year if only 825 sites had been approved. He suspected the balance would be placed on reserve and consequently not available for remediation. It was Smitherman's understanding that approximately 1600 SCRs had never reached DNR for the first time. Based on DNR's statement that approximately 42 percent of all sites (3484) were anticipated to be high-risk sites, a shortfall of \$266 to \$351 million was projected. Smitherman continued that the Iowa Petroleum Council and the USDA had advocated a risk-based assessment for site classification, i.e., if a site affects human health and safety, it should be given full cleanup.

Smitherman suggested delay of amendments to 11.7(1)"c" and "f" to give industry opportunity to work with them. He stressed that the Petroleum Council supported site reclassification as well as increased funding.

Rounds responded that the Board agreed with some of the statements made regarding risk-based corrective action and spending money for greatest needs.

Galbraith emphasized that sites would be prioritized with small businesses as first priority. Those with more ability to pay, such as governmental entities and larger businesses would be second in line for the same dollars. The approval process for determining eligibility would remain the same for everyone. The Board was aware of the expense of remediation and had projected figures. Iowa's data base and tracking system exceeds those of other states. Some information had been obtained on every eligible site. The SCRs were not complete but had been started on nearly all sites. The regulators were working on the enforcement issue to ensure compliance. The trends from DNR indicating high-risk, low-risk and no-risk sites were pretty consistent across the boards—42 to 46 percent high-risk sites in need of corrective action and not enough money. Iowa pays its claims on a 30-day basis, unlike any other state in the country where some wait as long as two years.

Rounds and Halvorson discussed projection of total costs. He commented that reduced costs, through risk-based corrective action would not eliminate a very large deficit. Rounds continued that the Board looks at the 46 state funds and the EPA works with them to determine the soundness of the assurance through various guidelines. Iowa was viewed as the leading state for cost containment in their programs but the fact remains—out of 3500 sites, 40 percent were high-risk.

Rittmer wondered if the priority list could be redone.

Rounds could foresee that, even with this current level of prioritization, there may be insufficient funds for every low-risk site. Additional prioritization on a ranking system may be needed—only the worst high-risk sites. Another option would be direction from the legislature.

Galbraith referred to a letter from David Lyons, Chairman of the Fund Board, sent to the ARRC, which set forth the position of the Board. In summary, Lyons addressed lack of funding for all eligible sites in the state and a law that required



UST BOARD  
(Cont.)

prioritization. During 1993, representatives of the Fund made it clear that they would move forward with rules unless the legislature acted to the contrary. The legislature did not, and rule 11.7 was initially published as Notice in October 1993 setting as the first priority, high-risk sites requiring remediation. The Board intentionally delayed adoption of that rule throughout the '94 Legislative Session to allow time for the Legislature to act. For many reasons, the Legislature did nothing and the Board adopted the rule. Even with that rule and prioritization, they lacked funds for all of the highly prioritized sites. Therefore, the Board proposed the amendments in ARC 4820A to draw the line at small businesses. In his letter, Lyons concluded that the issue was clear—the effect of the rule would be to favor small business; a delay would favor big business over small.

Priebe advised that official Committee action could not be taken on a Notice of Intended Action.

Ed Kistenmacher, Managing Director of Petroleum Marketers of Iowa, said that his organization represented over 2000 petroleum retailers in the state who participated in the Iowa Million Dollar Insurance Program. Although they were supportive of the amendment to 11.7, their industry did not like prioritization and most of their members were above the definition of the small businessman. They viewed prioritization as the lesser of two evils and agreed that the worst thing for their industry would be for this program to become insolvent. This would have a direct relationship on the soundness and viability of their only access to the million dollar insurance program. Kistenmacher recommended approval of prioritization to aid small businesses.

Scott Young, Attorney with Smith, Gill, Fisher and Butts, felt that the discussion was being inappropriately defined as a battle between big and small business. He questioned the appropriateness of prioritization if there were current claims that could not be paid today. Young cited a situation of two retired teachers who had owned a site where a gas station existed. The gas company had gone bankrupt. With prioritization, the teachers would have to pay for the cleanup of the site rather than the copayment obligation. Young declared the Legislature should establish and provide adequate funding for these problems.

Smitherman disagreed that this was a confrontation between big and small business. If prioritization were necessary, they would support it. Smitherman reiterated his request to allow opportunity for the Legislature to address areas that would place this Fund on a sound basis.

Although Kent Bro, Bro Oil Co., Inc. owned 36 sites, he did not consider his operation to be "big business." He knew of many in this business with more than three gas stations but fewer than 300. He claimed that the contamination in the ground was a consumer issue. He viewed the prioritization as just the beginning of separating big and small businesses and he urged time to work with the Legislature next session. Bro spoke in support of one cent per gallon or larger increase to fund the cleanup.

David Cisiewski, Attorney representing Quik Trip Corporation, addressed the Committee. He suspected that the real controversy would be between petroleum marketers who would be eliminated from this funding and the DNR. This would subvert the basis of the legislation intended to protect the environment. He urged focus on the reality of the legislation.

Galbraith was firm in his belief that the issue was "small versus big."

UST BOARD  
(Cont.)

Metcalf requested Galbraith to expand on the Code interpretation of the words "immediate" and "all." He wasn't sure that the Board took the Code "word by word." They have a subcontractor who does the claims work and places reserves on each claim. These reserves were their best estimate of total cost of a claim. These figures led the Board to determine lack of sufficient funds. Conservative figures—\$182,000 per high-risk site may be far less than actual cost to remediate each site.

Phillip B. Straub, Amoco Oil Company, did not think that Metcalf's question was answered and he referred to Lyons' letter. He took exception to the Board's interpretation of the statute. Straub thought the legislation was intended to address problems similar to those in Illinois, where claims were submitted but held up for as long as two years. It was a cash flow issue but that was not the case in Iowa.

Straub spoke of the potential advantage of legislation for risk-based corrective action levels.

Straub and Rounds discussed funding and payment of claims generally. Rounds indicated the Board had been actively involved in the development of these risk-based corrective action standards outside this program. This would help in reducing costs but would not provide a balanced fund. Rounds explained that claims were adjusted as information was updated and he indicated that these adjustments increase faster than they decrease. Straub concluded by urging resolution of the issue by the General Assembly.

Kibbie expressed frustration that proposed legislation to increase gas tax by one cent per gallon was never brought to a vote in the '94 Session even though two Senate committees approved this increase unanimously. He reasoned that the Board drafted a rule which followed the statute. Kibbie concluded that if as much effort had been devoted to lobbying for the one cent increase as had been put forth today in recommending a delay, this issue would be moot.

Ray Briggs, Coastal Corporation, urged a delay of the issue to allow legislative intervention and to encourage the industry to lobby for the increased tax.

Rounds explained for Rittmer that after September 30, under the current rules, costs incurred for corrective action at a high-risk site by anyone who owns three or more sites, 12 or more tanks, or has a net worth of more than \$400,000, would be prioritized.

Galbraith pointed out that the Board had utilized the statutory definition of "small businesses"—". . . independently owned, has two or fewer stations with 12 or fewer tanks and a net worth of \$400,000 or less."

In response to a question on why payments were made in 30 days instead of waiting 60, 90 or 120 days, Rounds said that other states have experienced problems when payment was delayed. Delay may have an adverse impact on ability to operate. In Iowa, about 60 percent of all sites were owned and operated by small businesses. He added that Iowa's program was not a direct payment program but one of reimbursement which meant that owners have incurred the costs. The Board reasoned that the larger companies could be less affected by delayed payment. Rounds readily admitted that many who fall into the category of big business were really not big business, but the Board just deferred to the legislature's language.

UST BOARD  
(Cont.)

Mark Highland, Krause Gentle Corporation, focused on the issue of immediately settling all claims and what is meant by "immediate" and "all claims." He had heard there was money in the Fund to pay all incurred costs through next July.

Smitherman wished to clarify that the "one cent" proposal was not a gas tax but would be mandated to be paid by the owner/operator.

Priebe emphasized that the Committee could take no action until a rule had been adopted and Filed and that they could not change the statute. He encouraged the industry to continue their line of communication.

August meeting

Priebe announced that the August meeting would be held on the 9th and 10th.

NO REPS

No agency representative was requested to appear for the following:

**EDUCATIONAL EXAMINERS BOARD[282]**

EDUCATION DEPARTMENT[281]"umbrella"

Issuance of practitioner's licenses and endorsements, special education endorsements, 14.13, 14.17, 14.20(14), 14.24, 15.4, Filed ARC 4808A ..... 5/25/94

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

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Fee schedule for administration of the uniform national examination, 2.10, Notice ARC 4782A ..... 5/11/94

**NURSING BOARD[655]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Continuing education, 5.2(2)"b," Notice ARC 4688A Terminated ARC 4814A ..... 5/25/94

**PUBLIC BROADCASTING DIVISION[225]**

CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"

Transfer 225—chs 1 to 10 to 288—chs 1 to 10, amend 1.1, 1.2, 2.1, 2.1(3)"a," "b," and "e," 3.1,

Notice ARC 4793A ..... 5/11/94

Heating and cooling temperatures and humidity percents for Iowa communications network educational sites,

10.1(1)"e," Filed Emergency ARC 4792A ..... 5/11/94

**SECRETARY OF STATE[721]**

Ballot forms for alternative telephone surcharge to fund emergency telephone service, 21.810(4),

Notice ARC 4819A ..... 5/25/94

Adjournment

Halvorson moved that the Committee adjourn at 12:15 p.m. Carried. The next meeting was scheduled for July 12 and 13.

Respectfully submitted,

*Phyllis Barry*  
Phyllis Barry, Secretary  
Assisted by Mary Ann Scott

APPROVED BY:

*Berl E. Priebe*  
\_\_\_\_\_  
Senator Berl E. Priebe, Co-chair