

# 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 August 11 and 12, 1992, in Senate Room 22, State Capitol, Des Moines, Iowa.

**Members present:** Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice-chairman; Senators Donald Doyle, H. Kay Hedge, John P. Kibbie, and Dale L. Tieden; Representatives Ruhl Maulsby, Janet Metcalf, David Schrader and Jane Teaford.

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

**Call to order** Chairman Priebe convened the meeting at 9:05 a.m. and the following agenda was reviewed.

## HUMAN SERVICES

### HUMAN SERVICES DEPARTMENT[441]

Special Review—Patient abuse in care facilities, 81.13(7) Filed without Notice ARC 3069A ..... 6/10/92

Standards for services to persons with mental retardation, developmental disabilities, or chronic mental illness; mental health, mental retardation, developmental disabilities, and brain injury community services, ch 22 title, 22.1, 22.4, ch 23, Notice ARC 3141A, also Filed Emergency ARC 3140A ..... 7/8/92

Locations for filing Medicaid and ADC applications, 40.3, 40.4(2), 76.1(1), 76.1(3), Filed Emergency After Notice ARC 3121A ..... 7/8/92

Medicaid policy and rates mandated by the General Assembly, immunization replacement program, medically needy certification period, 54.3(15), 77.37(26)"d," 78.1(2)"e," 78.1(3), 78.22, 78.23, 78.41(1)"c," 79.1(2), 79.1(7), 79.1(9)"d," 81.6(16)"a" and "e," 82.5(11)"e"(4), 82.5(16)"c" and "g," 83.67, 86.1, 86.17, 86.18, Notice ARC 3133A ..... 7/8/92

Medicaid policy and rates mandated by the General Assembly, immunization replacement program, 54.3(15), 77.37(26)"d," 78.22, 78.23, 78.41(1)"c," 79.1(2), 79.1(7), 79.1(9)"d," 81.6(16)"a" and "e," 82.5(11)"e"(4), 82.5(16)"c" and "g," 83.67, Filed Emergency ARC 3132A ..... 7/8/92

Income eligibility guidelines for the Federal Surplus Food Program, 73.4(3)"d"(2), Filed Emergency After Notice ARC 3122A ..... 7/8/92

Mothers and Children (MAC) — exemption from establishing paternity for children covered by Medicaid, 75.14(1)"c," 75.14(4), 75.14(6), Filed ARC 3123A ..... 7/8/92

Application for Medicaid for child in foster care, 76.1, Notice ARC 3168A ..... 7/22/92 ..... 154

Review form for children in foster care and subsidized adoption, 76.7, Filed ARC 3124A ..... 7/8/92

Model waiver services program for the ill and handicapped, 77.30(4), 77.30(5)"b," 78.34(1)"b" and "c," 78.34(2), 78.34(4), 79.1(2), 83.2(1)"g," 83.2(2), 83.3(3)"c," 83.4(2), 83.5 to 83.7, 83.8(1)"b," 83.9, Notice ARC 3146A ..... 7/8/92

Amount, duration and scope of medical and remedial services; other policies relating to providers of medical and remedial care, 78.1(1)"a," 78.1(2), 78.1(2)"b" and "d," 78.1(3), 78.1(5), 78.1(9), 78.1(9)"d," 78.1(13)"c," 78.1(19), 78.2(1), 78.2(1)"b," 78.3, 78.3(18), 78.8, 78.10(1)"c," 78.10(2)"a"(1) and (5), 78.10(2)"b," 78.10(3), 78.10(3)"c"(1) and (2), 78.10(4)"b," 78.15, 78.28(5)"b" and "c," 78.28(6)"b," 79.1(5)"n" and "q," Filed ARC 3125A ..... 7/8/92

Medicaid providers supplying laboratory services, 79.13, Filed Without Notice ARC 3126A ..... 7/8/92

Nursing facilities — Iowa Veteran's Home, 81.6(16)"c" and "e," Notice ARC 3144A ..... 7/8/92

Intermediate care facilities for mentally retarded, 82.1, 82.2, 82.10(1), 82.15(1)"b," 82.16, Filed ARC 3127A ..... 7/8/92

Child support recovery program, 95.1, 95.11, 96.2, 96.13, 96.15(5), 98.3(2)"a," Notice ARC 3135A ..... 7/8/92

# HUMAN SERVICES (CONT.)

Collections, nonassistance child support recovery program, 95.11(4), 95.11(4)"a" and "b," 96.13,	
96.15(5), <u>Filed Emergency</u> ARC 3134A .....	7/8/92
Policy, rates, and income guidelines for social services, 130.3(1)"d"(2), 130.3(3)"z," rescind ch 132,	
150.1, 150.2(3), 150.2(4), 150.3(5)"a"(8), 150.3(5)"p"(1) and (2), 150.3(5)"r," 150.3(5)"u"(3),	
150.6, ch 153 title, 153.1, 153.2(4), 153.3(1), 153.3(3), 153.4(2), 153.5(2) to 153.5(6), 153.6,	
153.11 to 153.22, 153.51 to 153.59, <u>Notice</u> ARC 3130A, also <u>Filed Emergency</u> ARC 3131A .....	7/8/92
Purchase of adoption services, 130.3(1)"e," ch 157, <u>Notice</u> ARC 3145A .....	7/8/92
Mental illness, mental retardation, and developmental disabilities — local services,	
153.31 to 153.42, <u>Notice</u> ARC 3139A, also <u>Filed Emergency</u> ARC 3138A .....	7/8/92
Foster care, 156.6(1), 156.9(2), 156.12(1), 156.20, 202.3(1) and (3), 202.8(2) and (5), 202.17,	
<u>Notice</u> ARC 3137A, also <u>Filed emergency</u> ARC 3136A .....	7/8/92
Family development and self-sufficiency program (FaDSS), 165.3(3), 165.3(4), <u>Notice</u> ARC 3129A, also	
<u>Filed Emergency</u> ARC 3128A .....	7/8/92
Subsidized adoptions, 201.5(9), <u>Notice</u> ARC 3120A, also <u>Filed Emergency</u> ARC 3119A .....	7/8/92

In attendance from the Department were Mary Ann Walker, Policy and Procedures; Gary Gesaman, Bureau Chief; Bill Dodds, MH Specialist; Ronald J. Mahrenholz, Bureau Chief; and Larry Allen. Also present for the special review of 81.13(7)—patient abuse in care facilities—was Mary Oliver, Executive Assistant, Inspections and Appeals Department.

81.13(7)

Chairman Priebe called up amendment to 81.13(7) which had been delayed 70 days by the ARRC at their July meeting. He referenced the letter that Inspections and Appeals Department had received from the Federal Department of Health and Human Services regarding implementation and enforcement of federal regulations 42 CFR 483.13(c)(1)(ii) and 42 CFR 483.156. Oliver said this letter of explanation from the federal government was sent in lieu of a representative to this meeting. A copy of the letter is on file with the Administrative Code Editor. Oliver explained 42 CFR 483.13(c)(1)(ii) which prohibits employment of nurse aides who have been found guilty by a court of law of abusing, neglecting or mistreating residents of a nursing facility. In addition, aides who have had a finding entered into the State Nurse Aide Registry concerning abuse would also be precluded from employment. Regulation 483.156 deals with the Nurse Aide Registry and Oliver stated that the federal government was planning an immediate investigation of Iowa's Registry. Oliver did not anticipate a problem since DIA had followed the law in maintaining the Registry. At issue was whether those individuals listed on the Registry would be employable. Instructions to facilities require them to contact DIA if they want to hire anyone listed on the Registry.

Oliver then referred to the summary in the last paragraph of the letter which noted three areas of exposure for the Iowa Medicaid Program should the state fail to enforce CFR 483.13.

In response to Doyle, Oliver discussed a Supreme Court decision made several years ago which held that it was unconstitutional to impose a lifelong ban on employment without considering certain issues. Oliver continued that in response to this decision, the Child Abuse Program adopted rules that allowed for consideration of certain issues in making a determination as to whether or not to employ an individual. These issues have to do with the crime that had occurred, whether there was a chance for rehabilitation, and ultimately was it likely the individual would be an abuser again.

Schrader expressed concern for lack of flexibility for DIA to review a finding in cases involving adult abuse. Oliver noted that Iowa law, with respect to

**HUMAN  
SERVICES (Cont.)**

dependent adult abuse, does allow for preponderance of evidence. Schrader declared that an issue of this magnitude should be debated by the legislature—whether or not Iowa should comply with demands of the federal government when the department opposes the change. Oliver advised that the state could change the law to require a different standard of proof. Nothing in federal law addresses the level of proof—it is a state issue. Schrader was reluctant to lift the 70-day delay.

Gesaman thought the state's financial exposure was fairly limited and he saw nothing wrong with the manner in which the Registry was maintained. He saw the issue as more theoretical but suspected that federal officials would strongly encourage state conformance of the federal regulation.

There was discussion of referral of the matter to the legislature without a delay. Royce reviewed ARRC options. A general referral would provide the legislature a copy of the rule for their information. A delay until adjournment of the legislature would postpone the effective date until the adjournment. A delay would allow the DIA to continue to review individual cases and determine, on a case-by-case basis, whether the individual could ever work in a nursing home again.

**Motion**

Kibbie voiced objection to the rule and moved to refer 441—81.13(7)"c"(1) to the Speaker of the House and President of the Senate and to impose a delay until adjournment of the 1993 General Assembly.

Schrader spoke in support of the motion.

Oliver was not sure the Department (DIA) could support this motion. Raising the level of proof would make it extremely difficult to find anyone who would ever meet that standard.

Schrader reasoned there was some mechanism that would satisfy both the federal government and the department(s).

Oliver pointed out that an individual was not placed on the Nurse Aide Registry unless there was opportunity for all of the hearings desired. Individuals may be placed on the Child Abuse Registry without a hearing and then given the opportunity to have their names expunged.

Oliver informed Priebe that federal regulations preclude removal of a name from the Nurse Aide Registry. Priebe saw a need for an option to expunge names in some instances.

Doyle was supportive of the delay.

There was discussion of the impact of an objection to 81.13(7)"c" which would reverse the burden of proof and allow a test of constitutionality of the rule.

Schrader reasoned that delay of the rule into the General Assembly would preclude objection to it.

Oliver advised Kibbie there were 13 names on the Registry at the end of FY 1992 and only 4 in 1991.

**HUMAN  
SERVICES (Cont.)**

Doyle asked for clarification of Kibbie's motion and Kibbie stated that he wanted to object as well as refer the rule to the General Assembly. Royce interjected that when a rule is delayed, it is automatically referred.

Oliver advised Teaford that when there is an allegation of abuse an investigation is made and on the basis of that investigation the Department makes a finding. She confirmed Priebe's statement that once on the Registry, an individual has exhausted appeal rights.

**Motion**

Schrader moved to amend Kibbie's motion by striking reference to objection.

Priebe pointed out that the rule would be in effect immediately upon adjournment of the General Assembly if they take no action.

In response to Hedge, Oliver commented that the federal government was not clear, at this point, as to how Iowa would be sanctioned.

Teaford was not comfortable with the motion because of potential harassment by the federal authorities.

After further discussion with Oliver, Doyle preferred referral to the General Assembly and an objection.

**Motions Withdrawn**

Schrader and Kibbie withdrew their motions.

**Motion**

Doyle then moved that 81.13(7)"c"(1) be referred to the Speaker of the House and President of the Senate and that an objection be imposed on the grounds that the provision was unreasonable. Motion carried.

**Motion**

Pavich moved to remove the 70-day delay placed on 81.13(7)"c"(1) at the July meeting of the ARRC.

**Objection**

Royce prepared the following:

At its meeting held August 11, 1992, the Administrative Rules Review Committee voted to object to the amendments published in ARC 3069A on the grounds the amendments are unreasonable. This filing is published in IAB Vol. XIV No. 253 (06-10-92). It is codified as an amendment to paragraph 441 IAC 81.13(7)"c"(1).

In brief, this filing provides that care facilities shall not employ persons who have been found guilty in a court of law of abusing, neglecting or mistreating facility residents, or who have had a "finding" entered into the state nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property. Additionally, the filing eliminates a previous provision which allowed the Department of Inspections and Appeals some discretion in deciding whether the lifetime ban on employment should be applied.

This language originated in the federal government which mandated that the department adopt these provisions or possibly face sanctions. The Committee does not believe these amendments are an improvement to Iowa's system and has the following objection. The Committee believes that the amendments published in ARC 3069A are unreasonable because of the inconsistency in the burdens of proof and the levels of procedural safeguards in the two proceedings. A facility employee may either be found guilty in a court of law or have an administrative finding entered into the registry. In either case the result is the same, the employee is permanently banned from further

## Objection (Cont.)

employment in a care facility; however, the two paths to the result are significantly different. The first proceeding is a criminal tribunal in which the burden of proof is "beyond a reasonable doubt." The second proceeding is a simple administrative hearing in which the burden is "preponderance of the evidence." The two proceedings also differ in the level of many other due process protections accorded to the individual. A criminal proceeding provides the accused with the opportunity for a trial by jury, competent legal counsel, strict rules of evidence and many procedural protections not present in administrative hearings. It should also be noted that the penalty in this situation—a lifetime ban on employment—is more serious than is usually imposed in contested cases. In licensee discipline cases, a license can be revoked, but the possibility of reinstatement exists; under this new rule no reinstatement is allowed, the facility employee is banned from employment no matter how serious or minor the offense or how far in the past it occurred. Because of the magnitude of this penalty, the Committee believes that the accused should be provided with greater procedural protections than are generally found in administrative hearings.

The Committee also believes this filing is unreasonable because it eliminates the discretion accorded to the Department of Inspections and Appeals to not apply the lifetime ban on employment. Under the previous rule, the department's discretion in applying the employment ban acted as a safeguard against unjust results. It recognized that a person would make amends for past offenses and earn a second chance. The provision was a genuine improvement in the process; it recognized that flexibility was needed in government decision making and that some decisions should be made on a case-by-case basis. There does not appear to be any rational basis to justify the elimination of this safeguard and, therefore, the Committee believes this action to be unreasonable.

Ch 22, 23

Walker presented amendments to Chapters 22 and 23. No comments had been received.

Metcalf observed that legislation did not indicate the proportion of membership on the Planning councils, (i.e., providers, consumers, etc.) but this was reflected in the rules. Dodds responded that the rules describe the minimum requirements and the councils may choose the desired proportion within these requirements.

Hedge inquired if the distribution of funds from one county to another would make a difference financially. Dodds responded there were \$4.5 million additional state funds.

40.3 et al.

No questions or comments on ARC 3121 regarding locations for filing Medicaid and ADC applications.

54.3 et al.

Walker pointed out the two differences between Noticed amendments to 54.3 et al. (ARC 3133A) and the Emergency rules in ARC 3132A—implementation of immunization replacement program and change in certification period for certain medically needy clients.

Tieden asked about the rationale for the various approaches in setting fee schedules. Mahrenholtz responded they were trying to encourage more physicians to provide obstetrical and pediatric care for Medicaid patients.

73.4

No questions or comments on guidelines for the surplus food program, ARC 3122A.

- HUMAN SERV-ICES (Cont.) 75.14** In review of amendments to rule 75.14, Walker informed Maulsby that they were federal requirements.
- 76.1; 76.7** No questions or recommendations on ARCs 3168A or 3124A.
- 77.30(4) et al.** Amendments regarding model waiver services program for ill and handicapped in ARC 3146A were discussed. Walker responded to Hedge that the rules addressed transportation of disabled clients by personnel trained in health services. In order to participate in this program, the Iowa Foundation for Medical Care must determine that the person needs at least EITMFR level of care.
- 78.1(1)"a" et al.** Amendments to 78.1(1)"a" et al. (ARC 3125A). were before the Committee. Walker reported on behalf of the Council on Human Services that four of the seven council members opposed authority for physicians' assistants and registered nurse practitioners to prescribe drugs and supplies. The rule was reconsidered and passed because it was a federal compliance issue after the Iowa legislature enacted the prescriptive authority.
- 79.13** There were no recommendations on ARC 3126A—79.13.
- 81.6(16)** According to Walker, amendments to 81.6(16) provide that the per diem of the Iowa Veterans Home will not be used in determining the seventieth percentile of participating facilities' per diem rates for purpose of establishing the maximum reimbursement for nursing facilities.
- Gesaman responded to Priebe that this could effectively lower the reimbursement rate to nursing homes because of the higher cost of operating the Veterans Home. Since the maximum rate is established by ranking facilities from lowest cost to highest cost and setting the cap at the seventieth percentile, taking one facility off the top will influence where that seventieth percentile will go. It would never raise the cap. Gesaman noted that changes were made in the ICMFR reimbursement system a few months ago and at that time the state institutions were placed in a separate category from community-based ICMFRs. He spoke of the significant differences between state institutions and nonstate facilities. The legislature exercises some controls over state institutions which they lack for community facilities.
- Priebe opined that nursing homes were caught in the squeeze of not receiving enough state dollars.
- Kibbie asked why the Veterans Home took a larger reduction when the first across-the-board cuts were made (3.25 percent) and Gesaman said this was not a Medicaid issue. Gesaman estimated that cost per day at the Veterans Home was about \$100. Gesaman explained that the seventieth percentile was based on the actual reported cost of all of the nursing facilities which participate in the Medicaid program. They are ranked from the lowest cost to the highest cost. Gesaman continued that approximately 30,000 people reside in nursing homes in Iowa and 15,700 to 15,900 were under Medicaid in May. Facilities above the maximum rate could be impacted by the amendments.
- Walker agreed to convey ARRC sentiments to the Council at their meeting scheduled for August 12.
- Ch 82** No recommendations on ARC 3127A—amendments to Chapter 82.

**HUMAN  
SERVICES (Cont.)**  
95.1 et al.

Walker pointed out that only three of the amendments on child support recovery (ARC 3135A) were filed emergency in ARC 3134A. Maulsby complained about the lack of availability of the Child Support Recovery Unit by telephone. He had reports that telephones were answered only two hours a day. Maulsby had been waiting three weeks to have a call returned from the Fort Dodge office. No Committee action.

130.3(1) et al.

There was review of amendments in 130.3(1)"d" (2) et al. regarding policy, rates, and income guidelines for social services. Kibbie had received a question from his county auditor's office as to the reason for direct billing from the service provider rather than through Human Services. That office wondered who was checking accuracy of the figures. According to Allen, intent was to eliminate duplication in services. Walker agreed to ask Department officials to contact Kibbie for further clarification. No formal action.

130.3(1)"e"; Ch 157

After review by Walker, there were no questions or recommendations to ARC 3145A.

153.31-153.42

In review of ARC 3138A, rules 153.31 to 153.42, Hedge was informed regarding distribution of funds—the county pays and will be reimbursed by the state. Hedge had heard concerns about the state's ability to pay.

156.6 et al.

Regarding foster care in amendments to Chapters 156 and 202, Priebe was advised that implementation dates were included in the legislation.

165.3; 201.5(9)

No questions or recommendations on ARCs 3128A or 3119A.

**EPC**

David Wornson, Attorney for DNR, was present for the following agenda:

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

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

Administrative penalties, 10.1, 10.2, 10.2(4), 10.3, 10.3(2), Notice ARC 3162A ..... 7/8/92

NPDES permit program for storm water discharges, 60.1, 60.2, 60.3(2), 60.4(2)"b," 64.1(4), 64.2(8)"a,"

64.3(1)"f," 64.3(1)"h"(4), 64.3(4), 64.3(5), 64.3(7), 64.3(8)"c," 64.3(11), 64.4 to 64.18 Filed ARC 3153A 7/8/92

Underground storage tanks — financial responsibility, 136.2(4), Filed ARC 3163A ..... 7/8/92

Ch 10

Wornson reviewed revisions to Chapter 10 and it was noted that assessment of administrative penalties would be determined by the attorney drafting the order. The penalty must be approved by the division administrator.

Doyle and Wornson discussed the impact of the different penalties, on utilities, in particular.

60.1 et al; 136.2(4)

No questions or recommendations on ARCs 3153A or 3163A.

**NATURAL  
RESOURCE**

Steven Derrand and Michael Carrier were in attendance for the following:

**NATURAL RESOURCE COMMISSION[571]**

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

Boating safety equipment, 37.2, 37.6, Filed ARC 3184A ..... 7/22/92

Controlled deer hunting on the Lake Darling State Recreation Area, 105.4(1), Notice ARC 3185A ..... 7/22/92

37.2, 37.6; 105.4

There were no questions.

**ATTORNEY  
GENERAL  
9.25-9.33**

Marti Anderson, Crime Victim Assistance Director, presented revised rules 61—9.25 to 9.33 pertaining to crime victim compensation. The Noticed rules were published in IAB 7/8/92 as ARC 3150A.

Anderson explained that no legal fees are paid out of these funds, only out-of-pocket expenses related to injuries from the crime. There was discussion of 9.30(3)"c" which stated that lost income or wages would not be reduced by vacation pay. This has been state policy since 1983. Anderson stressed that reimbursement is made only for time missed because of an injury. There is no reimbursement for workers compensation or illness. No Committee action.

**Minutes**

Pavich moved that the minutes of the July meeting be approved as submitted. Motion carried.

**Recess**

Chairman Priebe recessed the meeting for lunch at 11:45 a.m.

**Reconvened**

Chairman Priebe reconvened the meeting at 1:30 p.m. and called up the following agenda:

**PUBLIC HEALTH**

**PUBLIC HEALTH DEPARTMENT[641]**

Special Review—Swimming pool regulation in rural Iowa, Ch 15 ..... IAC  
Swimming pools and spas, ch 15, Notice ARC 2633A Terminated ARC 3147A ..... 7/8/92  
Mammography, 38.8(1), 41.1(12), Notices ARC 3051A and ARC 3049A Amended ARC 3182A ..... 7/22/92  
Disciplinary hearings — fees and costs, 173.19, Notice ARC 3142A ..... 7/8/92

Representing the Department were Carolyn Adams, Department Rules Coordinator; Don Flater, Chief, BEH; Michael Magnant, Environmental Engineer; and Michael Coverdale.

**Special Review  
Ch 15**

As requested by Kibbie, there was special review of Chapter 15 governing swimming pools. Kibbie stated he had several constituents who contended that the rules were excessive for small cities.

Dan Stokes, swimming pool volunteer from Mallard, offered background on how their small city obtained funds to build, maintain and operate a swimming pool. His complaint focused on the cost of training for a Certified Pool Operator (CPO) and the liability involved. He questioned why it was more critical to have a CPO than to have a lifeguard on duty. He estimated that maintenance cost for the Mallard pool would escalate from \$2,000 to \$8,000.

Bruce Verink, Recreational Division Manager, Cedar Falls, had been privileged to be included in the development of these rules eight or ten years ago and he spoke of the vast improvement in them since that time. Verink recognized the need for uniform guidance for safe operation of pools but he took the position that inspection fees had become excessive—\$675 for Cedar Falls. He urged a compromise. Tieden reasoned that Cedar Falls had a much higher potential revenue source than some of the small cities represented.

Lori Jones, Grinnell Recreation Director, echoed concerns about the fees and inspections.

Jeanelle Stokes, swimming pool volunteer from Mallard, concurred with most of the rules. She continued that their pool was operated by volunteers with no help from the city or developers. Stokes cited liability as their biggest concern.



**Special Review  
(Cont.)**

Don Anciauz, Director of Parks and Recreation, Newton, registered complaint about being charged \$300 each for inspection of the swimming pool and waterslide when most information was a duplication. He had requested by letter to the Division of Disease Prevention that the charge for a waterslide be \$75 which was the charge for a wading pool. Currently, the rules impose a fee of \$300 for the first slide and \$75 for each additional slide.

**Motion to Refer**

Kibbie moved to refer 641—Chapter 15 to the Speaker of the House and President of the Senate for referral to the appropriate committee. He felt that valid concerns had been expressed by representatives of city swimming pools.

Coverdale spoke of the Department's mission to protect the health of all Iowans. In regard to specific issues, he indicated a willingness to review the rules which were developed with the help of a very broad-based, hands-on group. Coverdale said the Department was mandated by the legislature to pay for the cost of the program and fees were intended to cover the costs. He added that amendment to the law this year prohibits fees unless pools are inspected. Also the requirement for lifeguards at neighborhood pools was eliminated. Of the 40 drownings this year, only one or two of them occurred in pools. In conclusion, Coverdale was willing to work with small cities to provide variances.

Regarding Tieden's inquiry about liability, Coverdale emphasized the necessity for someone with whom the responsibility rests. Thus, the certified pool operator component was adopted. According to Coverdale, many variances in inspections relate to chemical balance in pools. He added that most of the disease and morbidity confronted by the Department could be attributed to viruses and infections caused by poor water quality.

There was discussion as to the need to clarify the rules with respect to liability. The CPO for a facility would be covered by the owner's liability under the Department's interpretation.

Magnant advised Teaford that the text of the rule regarding liability says that the certified pool operator is responsible to the owner for specific duties and responsibilities which are listed.

Doyle suggested that Department officials seek advice from the office of Attorney General for specific language on liability. Coverdale indicated that the rules were being rewritten and the Department would follow Doyle's recommendations.

**Motion carried**

Kibbie's motion to refer 641—Chapter 15 carried by voice vote.

38.8, 41.1; 173.19

The remainder of the Public Health agenda was presented by Adams and there were no recommendations.

**PROFESSIONAL  
LICENSURE**

Harriet Miller and Barbara Charls, Board Administrators, and Rose Vasquez, Assistant Attorney General, represented the Division for the following agenda:

**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Barber examiners — manicuring and artificial nails, 20.1(1), 20.1(2), Notice ARC 3143A ..... 7/8/92

Cosmetology, chs 60 to 68, Notice ARC 2911A Terminated ARC 3183A ..... 7/22/92

Dietetic examiners, 80.4(3), 80.4(4), Filed Emergency ARC 3204A ..... 7/22/92

**PROF. LICENSURE** Vasquez addressed rule 20.1 relating to manicuring and all aspects of artificial  
(Cont.) 20.1 nails at barber schools. No questions.

**Chs 60-68** There was discussion of the Termination of proposed rules on cosmetology. The rules would be revised and renoticed to reflect 1992 legislation.

**80.4** No questions or comments on dietetic examiners in ARC 3204A.

**BLIND** Present for the Department for the Blind were R. Creig Slayton, Director; Diann  
**Ch 7** Weinman, Program Evaluator; Roger Erpelding, Program Administrative Director; and Joe Van Lent, Vendor. Revised Chapter 7 was Noticed in IAB 7/8/92 as ARC 3164A.

Slayton gave a brief overview of the Business Enterprises Program and stated that the Department had worked very closely with vendors in rewriting the rules over a period of several months.

Pavich in the chair.

Metcalf questioned criteria for evaluation of applicants in 7.10(3). It was her opinion that the criteria would be more suitable for vendors. Slayton responded that first priority would go to vendors who were already displaced through no fault of their own operation of a facility. After that, priority would be vendors who had already demonstrated these qualifications. He thought Metcalf's point was well taken.

Erpelding interjected this rule was weighted for two reasons—one, vendors preferred it and two, by federal law it would be difficult to give priority to a trainee over a licensed operator without significant reasons.

Doyle asked for clarification of 7.16(601C) pertaining to income from vending machines. Slayton said this rule would apply to machines operated by the federal authority. When the income was significant, money would be given to the Department. The guidelines were copied from the federal requirements. Generally speaking, the low prices would leave little to distribute. In response to Doyle as to the significance of January 1, 1974, in 7.16(1), Slayton stated this was the last time the Randolph-Sheppard Act was amended by Congress. Federal regulations outline clearly how excess money is to be used—largely to equalize income of vendors on federal property that are below the national average. After that, the money can be spent on program items.

Erpelding pointed out that rules were verbatim from federal regulations.

Tieden inquired about the possibility of staggered terms for members of the State Committee of Blind Vendors. Erpelding reminded that federal regulations require biennial elections.

No Committee action.

**ECONOMIC** In attendance for the Department were Roselyn McKie Wazny, Community Rural  
**DEVELOPMENT** Development, Melanie Johnson, General Counsel and Bob Lipman who presented the following agenda:

## ECONOMIC DEVELOPMENT (Cont.)

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

Jobs training program, rescind chs 6 and 7, new ch 7, Notice ARC 3151A, also Filed Emergency

ARC 3152A ..... 7/8/92

Community development block grant nonentitlement program, 23.2, 23.4(3)"m," "x," and "z," 23.5(1),

23.5(1)"j" and "k," 23.6(2), 23.6(6), 23.6(8), 23.7(1)"a," "b," and "g," 23.7(2), 23.7(5)"e," 23.7(8)"a,"

23.8(2), 23.10 to 23.13, 23.13(7), Notice ARC 3156A ..... 7/8/92

Ch 6, 7

Lipman gave background information on Iowa Jobs Training Program in revised Chapter 7 (ARC 3152A) which was jointly developed by the Economic Development staff including staff from the 15 community colleges. The Department knew of no opposition to the rules.

Doyle questioned the words "without notice to the business" in 7.25(1) as well as language in 7.23"9" which seemed to be lacking due process. Johnson responded that this would be addressed in the contract terms that exist between the college and the business. Doyle requested that the Department's attorney review the provisions prior to final adoption.

In 7.29, relating to confidential records, Metcalf questioned use of "...will be kept confidential" and Department officials agreed to change the word "will" to "shall."

Lipman explained rule 7.7 which addressed disposition of earned interest.

Tieden referred to 7.11(6) and asked how new jobs were determined. Lipman admitted that this issue had been debated but the language had been in existence since the program was transferred to DED in 1987. No Committee action.

Ch 23

Wazny reviewed amendments to Chapter 23, Community Development Block Grant Nonentitlement Program, in ARC 3156A.

Metcalf questioned the term "unincorporated place" in the first paragraph of 23.6(8)"a" and Wazny responded that some subdivisions in unincorporated areas do not meet the status of "community."

With respect to 23.6(6), Wazny assured Priebe that the housing was owner housing rehabilitation programs set up so there would be no "double dipping" in funds. She also explained that "Barring Entrance" was a federal regulation—23.5(1)"k"(15).

Priebe in the chair.

## ELDER AFFAIRS

Ronald Bean briefed the Committee on the following amendments to comply with Older Americans Act:

### ELDER AFFAIRS DEPARTMENT[321]

Amendments to comply with Older Americans Act — use of Title III funds for prevention of elder abuse,

neglect and exploitation, 1.7, 6.4(2)"x," 6.8"21," 6.10(1), 7.7, Filed ARC 3165A ..... 7/22/92

1.7 et al.

There were no comments or recommendations.

Recess

Chairman Priebe recessed the meeting at 2:50 p.m.

**Reconvened**

Chairman Priebe reconvened the meeting at 9 a.m., Wednesday, August 12, 1992. All members and staff present.

**EPC Special Review**

Chairman Priebe announced special review of legislation [92 Acts, HF 2205], which mandated the Environmental Protection Commission to adopt rules prohibiting land application of petroleum contaminated soil on flood plains. Senator Michael Gronstal had contacted Senator Priebe of his concern that rules had not been adopted to implement this law.

Allen Stokes, DNR, was in attendance and he reported on their progress in developing various rules. He noted they were still trying to draft rules mandated by the legislature two years ago. Nearly all of their required rule making was in some stage of development and he anticipated having rules before the Commission (six separate sets) within the next two to three months.

Priebe recalled Gronstal's opposition to contaminated dirt being hauled to floodplains. Stokes indicated that rules were patterned after those for land application of animal wastes from confinement operations and land application of sewage sludge. Gronstal's amendment to HF 2205 addressed the importation of petroleum contaminated soils from outside their territory.

Royce quoted language from H. F. 2205, "The Commission shall adopt rules which prohibit the land application of petroleum contaminated soils on flood plains." He pondered whether rules were necessary to enforce this. Stokes reasoned that in a legal sense rules were unnecessary but in the spirit of fairness it would be advisable to apprise everyone of the requirements.

Priebe wondered if an emergency rule were in order until other rules could be adopted and Royce thought this was a reasonable approach.

Schrader took the position that the law was clear and could be enforced without rules. Stokes said a letter notifying violators of the new law and pending rules would be in order.

In response to Maulsby, Stokes said the rules limit the amount or thickness of soil which would be spread on top of the soil profile.

Pavich suggested sending copies of the letter to the county supervisors and county attorneys as well. No Committee action.

**UST BOARD**

Robb Hubbard, Administrator, and Robert Galbraith, Assistant Attorney General, represented the UST Board for the following agenda:

**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]**  
 Property transfer insurance, Ch 10 title, 10.1(5), 10.5, Notice ARC 3200A ..... 7/22/92  
 Installers and inspectors, 15.1, 15.4(4), Notice ARC 3201A ..... 7/22/92  
 Appeals — contested cases, ch 17, Notice ARC 3202A, also Filed Emergency ARC 3203A ..... 7/22/92

**Ch 10**

Amendments to Chapter 10 regarding property transfer insurance were addressed. Priebe inquired if governmental agencies other than the Iowa Department of Natural Resources and the U. S. Environmental Protection Agency could be involved. Hubbard responded in the affirmative and it was agreed that definition of "governmental agency" would be changed to include those that would have control over the regulated community.

**UST BOARD  
(Cont.)**

Hubbard advised Schrader that transfer insurance could be available to any property owner who has had a tank on their premises, whether or not it is still in existence.

Doyle and Hubbard discussed retroactive or "tail" insurance and its application to these rules.

**Ch 15**

Amendments to Chapter 15 were before the Committee. Kibbie was advised that the rate was set by the legislature per year per policy at \$250.

Hubbard noted these rules would be modified and renoticed to reflect public comment regarding better definition of activities to be included versus those that would not be covered by the policy.

**Ch 17**

Emergency rules filed in ARC 3203A regarding contested cases were discussed. In 17.3, Priebe inquired if anyone other than a party could be affected in a contested case and excluded from any other rule that the Board develops.

According to Galbraith, there would be no impact because of provisions that allow intervention in the proceeding.

In general response, Galbraith stated these rules were adaptations of the model rules which were tailored to the program last spring. Emergency rules were needed to process about 150 contested cases which were pending.

In response to Priebe's comments about waiver of the rule, Galbraith said it was his intent that "shorter, user-friendly rules" could be used if a party agrees.

Galbraith emphasized that in any decision by the Administrator, there was procedural ability for a hearing by the Board.

**PERSONNEL**

Clint Davis briefed the Committee on the following agenda:

**PERSONNEL DEPARTMENT[581]**

Early retirement incentive program, 11.1(3), Notice ARC 3191A, also Filed Emergency ARC 3192A . 7/22/92

Sexual harassment defined, discrimination complaint procedure, 20.1, 20.2(2), 20.6, Notice ARC 3189A,

also Filed Emergency ARC 3190A ..... 7/22/92

Iowa public employees retirement system, 21.1 to 21.24, Notice ARC 3188A,

also Filed Emergency ARC 3187A ..... 7/22/92

Davis advised Priebe that the rules before them were all filed emergency to meet statutory requirements effective July 1.

**11.1(3)**

In review of 11.1(3), Davis clarified that it focused on the early retirement program enacted by 1992 legislation in H. F. 2454.

There was discussion of the term "double-spouse contract" in 11.1(3)"f." Consensus was that this term was widely used in insurance contracts for state employees. It was suggested that a definition of "double-spouse" be included when the Noticed rules are adopted.

**Ch 20**

Amendments to Chapter 20 relating to sexual harassment was discussed. Davis distributed a revised definition of "sexual harassment" which would be substituted for the Noticed version. He reported that an extensive training effort had been undertaken for Executive Branch employees to enlighten them on the sexual harassment and anti-discriminatory harassment policy that the Governor issued

**PERSONNEL  
(Cont.)**

last March. To date, 16,000 of the 19,000 state employees in this Branch have been trained.

Metcalf suggested a manual or pamphlet for each employee. Examples could be included in the pamphlet and referenced in the rules.

Hedge inquired if there were a legal definition of "a reasonable person." Davis stated that the training speaks specifically to this and it was his understanding that it followed a California decision.

Schrader echoed concerns about the definition of "sexual harassment" and wanted the definition to mirror the quid pro quo concept. Davis clarified for Schrader how a complaint could be brought against a nonemployee by an employee of the state, e.g., a coffee vendor who made offensive remarks to an employee.

Doyle referred to 20.6(2) and suggested uniform procedural guidelines for complaints. Davis clarified that "department" in this reference means Department of Personnel and guidelines will be uniform for all departments. He continued that training was available for management personnel entitled "Preventing Sexual Harassment."

**Ch 21**

According to Davis, revisions in Chapter 21 would make bona fide retirement more stringent by requiring that a person must be off the payroll for four months and must have taken their final paycheck from the IPERS-covered employer before they could return to employment.

**INDUSTRIAL  
SERVICES**

Byron Orton, Industrial Commissioner, and Clair Cramer, Chief Deputy, addressed the following agenda:

**INDUSTRIAL SERVICES DIVISION[343]****EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"**

Contested cases, informal dispute resolution procedures, 4.28(5), 4.33, 4.40(3) to 4.40(5),

4.45 to 4.47, 8.2, 10.1(3) to 10.1(8), 10.3, Notice ARC 3159A ..... 7/8/92

Contested cases — applications for alternate care, 4.48, Filed Emergency ARC 3154A ..... 7/8/92

**Ch 4, 10**

In ARC 3159A, Tieden commented on 4.45, length of briefs. He wondered if this were common practice to limit the number of pages. Orton said this was an attempt to speed up the review of contested cases. Orton pointed out that no attempt has been made to limit the number of pages of evidence.

**4.48**

Orton briefed the Committee on contested cases on alternate medical care in ARC 3154A. In 4.48(8), Priebe asked if ordinary mail were sufficient for Notice of Hearing. Orton commented that an application for rehearing should be granted when a party contends the notice was not received.

**INSPECTIONS  
AND APPEALS**

Representing the Department for the following were Don Mendenhall, Gaming Manager; John Schaffner, Deputy Director; Rebecca Walsh, Administrative Rules Coordinator; and Jan Curtis, Targeted Small Business.

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

Iowa targeted small business certification program — bond waivers, 25.9, Filed Emergency ARC 3175A 7/22/92

Revocation or suspension of license if license holder is convicted of criminal offense in licensed food,

food service, home food establishment, hotel or motel, 30.2, 31.10, 32.5, 34.5, 37.10, Notice ARC 3173A 7/22/92

Annual game night, 100.60 to 100.63, Notice ARC 2979A Terminated ARC 3171A ..... 7/22/92

Requirements to be met by an individual or organization sponsoring an annual game night, 100.60 to 100.63,

Notice ARC 3172A, also Filed Emergency ARC 3174A ..... 7/22/92

I & A (Cont.)  
25.9

Walsh explained revision of 25.9 and Doyle was interested in means of recovery in case of default on bonds. Curtis noted that 25.9(2) provided that a waiver would not relieve contractual obligations.

Ch 30

In review of amendments to 30.2 et al., Doyle noted broad power for suspension or revocation in 32.5 and Walsh responded that they were within the statute.

Schrader observed that different establishments could have licenses revoked by the Department but he found no degree of criteria in the rules when the "may" becomes a "shall" relating to an aggravated misdemeanor. He voiced opposition to the rules.

Priebe suggested additional review by the Department while the rules were under Notice.

100.60-100.63

Walsh briefed the Committee on amendments related to requirements for sponsoring an annual game night. Mendenhall highlighted for Priebe the difference between social gambling and casino gambling.

## **PUBLIC SAFETY**

After a brief recess, Vice chairman Pavich called up the following:

### **PUBLIC SAFETY DEPARTMENT[661]**

Breath alcohol ignition interlock device, 7.8, Notice ARC 2372A Terminated, Notice ARC 3155A ..... 7/8/92

Michael Coveyou, Administrative Rules Coordinator; L. L. Rehburg, Crime Lab Administrator; and Calvin M. Rayburn, Criminalist; were in attendance for the Department. Also in attendance were Robert Kromminga, Attorney, and G. Stanton, President of Ignition Interlock Systems.

7.8

Coveyou provided background information on proposed rule 7.8.

Rayburn advised Tieden that an installer was a private sector company with a franchise from a manufacturer to install breath alcohol interlock devices.

It was noted that the alcohol concentration of .025 was a federal guideline. Doyle wondered if recalibration of the device would be required when the car battery was replaced, for example. Kromminga stated that the calibration of the unit should not be affected.

There was discussion of 7.8(10) and the methods on the device for notifying peace officers—for example, a horn blaring or lights flashing.

Doyle referred to 7.8(11) wherein a sticker would be placed on the rear window as a reminder that a device was in use. Kromminga said the transparent decal was a requirement of their company when they lease a device. However, new technology will eliminate the need for the stickers.

In 7.8(12), Tieden was advised that the installer maintains records and the units are calibrated every 60 days. Coveyou interjected that the county attorney would be added to the list of officials to notify of any violations in use of the device.

Hedge inquired how it was determined that the person driving was the one who breathes into this device. Rayburn admitted there were ways to circumvent the device but the new rules eliminate some of those.

**PUBLIC SAFETY  
(Cont.)**

Rayburn recalled the program had been in effect for about four years and latest statistics from DOT indicate 800 or more of these devices in use in Iowa. Installation costs are \$50 and there is a monthly leasing charge of \$60. Kromminga was aware of malfunctions in the devices but stressed that technology was improving. Three companies are on the list of manufacturers of approved devices. Units approved under the old rules will be reevaluated. No formal action.

Priebe in the chair.

**RACING AND  
GAMING**

Charles Patton, Director of Riverboat Gambling, addressed the following agenda:

**RACING AND GAMING COMMISSION[491]  
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"**  
Greyhound racing and thoroughbred racing — occupational license fees, 7.3(6), 10.4(1)"b,"  
Notice ARC 3167A ..... 7/22/92  
Rules of poker, 26.19, Notice ARC 3198A, also Filed Emergency ARC 3199A ..... 7/22/92

7.3(6), 10.4

In review of 7.3(6) and 10.4(1)"b," Priebe questioned the Department's authority for search and classification of fingerprints. Patton agreed to research the matter.

26.19

Regarding rules of poker in 26.19, Schrader said that the Commission was being criticized for being an advocate for the industry and less of a regulator. He noted the lack of regulation of maximum rake which he considered an absolute necessity. Patton cited competition as the reason—if the operator chooses to take less than the normal take, that would be acceptable or there may be cases where they may want to take more, for specific reasons. Currently, the only boat that conducts poker has a 5% rake. Schrader recommended inclusion of the proposed rake intended for takeout or the maximum rake in the rules.

Doyle was advised that Indian casinos are not subject to either Iowa law or the rules of the Iowa Racing and Gaming Commission. They are included in the compact negotiated with the state. Patton said that each of the three compacts contain a \$5 bet limit but there are no controls on rakes.

**REVENUE AND  
FINANCE**

Carl Castelda, Deputy Director, presented the following agenda:

**REVENUE AND FINANCE DEPARTMENT[701]**  
Conduct of appeals, rules of practice and procedure — authority of chairperson to enter prehearing and procedural orders, 2.12, renumber 2.12 to 2.22 as 2.13 to 2.23, Filed ARC 3195A ..... 7/22/92  
Increase in state sales and use tax, 12.1, 14.1, 14.2, 14.3(8) to 14.3(10), 15.4(3), 16.1, 19.2, 26.1, 32.3,  
Notice ARC 3197A, also Filed Emergency ARC 3196A ..... 7/22/92  
Determination of net income, allocation and apportionment, 53.2(6), 54.6(3), 54.6(6), 54.9, 59.2(6),  
Filed ARC 3193A ..... 7/22/92  
Apportionment of income derived from business other than the manufacture or sale of tangible personal property, 54.6, 54.6(1), Filed ARC 3194A ..... 7/22/92

Ch 2; 12.1 et al.;  
53.2(6)

There were no questions, comments or recommendations on ARC 3195A, 3196A or 3193A.

54.6

There was brief discussion of amendments to 54.6.

Priebe inquired about the mail order litigation and Castelda advised him there would be no sales tax refunds. A national study on this issue was taking place between the states and the direct marketers associations.



**REVENUE (Cont.)** Discussion focused on the collection and submission of taxes by the Indians. Registration and taxes on a car given as a prize or raffle on a reservation was also discussed.

In response to Priebe, Castelda said that the Department had considered imposing a tax on sales of used boats. He pointed out that if it is changed from a sales tax to a use tax, all the local option tax would be lost.

No Committee recommendations.

## **SOIL CONSERVATION**

The Division was represented by Ken Tow, Bureau Chief. There were no questions or comments on the Noticed amendments to 27—10.41, 10.41(1) and 10.41(2), appearing in IAB 7/22/92 as ARC 3166A, relating to appropriations to Iowa Financial Incentive Program for Soil Erosion Control.

## **AGRICULTURE**

In attendance from the Department were Ronald Rowland, Regulator Director; Dennis Plummer, Assistant Bureau Chief; Larry Lenz, Accountant, Grain Warehousing; and Lillian M. Moore, Dairy Trade Practices. The following agenda was reviewed:

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**  
 Dairy trade practices, 23.4(2)"b"(8), 23.8(1), 23.8(3), Notice ARC 3149A ..... 7/8/92  
 State licensed warehouses and warehouse operators; licensed grain dealers and bargaining agents,  
 chs 90 and 91, Notice ARC 3169A ..... 7/22/92  
 Bonded warehouses, licensed grain dealers and bargaining agents, 90.6, 90.7, 90.11(3), 90.15, 90.16, 91.7, 91.8,  
 91.9(3), 91.14, 91.25 to 91.27, Filed Emergency ARC 3170A ..... 7/22/92

23.4(2) et al.

Rowland told the Committee that amendments to 23.8 were acceptable to the dairy industry.

90.6 et al.

Rowland explained that the emergency amendments to Chapters 90 and 91 were necessary to implement 1992 Acts, Senate File 2347, and to prevent confusion and disruption of the trade, specifically with respect to credit sales contracts.

Tieden questioned the phrase "should have known" used several times throughout the rules and Plummer advised this was legal terminology. Plummer also explained the difference between "periodic partial delivery" and "partial delivery." Rowland advised Tieden that his local warehouse personnel should send their comments to the Department for consideration.

No Committee action.

## **DOT**

Dan Franklin, Bureau of Policy and Information; Michael Winfrey, Assistant Director, Mobile Vehicle Enforcement; and Valerie Hunter, Motor Vehicle Enforcement MCSAP; represented the Department for the following rules:

**TRANSPORTATION DEPARTMENT[761]**  
 Administrative rules and declaratory rulings, 10.2(2)"a"(3), 10.2(3)"a," Notice ARC 3177A ..... 7/22/92  
 Regulations applicable to carriers, 520.1(1)"a" and "b," 520.1(2)"b," 520.3 to 520.7, Notice ARC 3205A . 7/22/92

10.2

No questions or comments on ARC 3177A—10.2.

Ch 520

Winfrey explained amendments to Chapter 520 relating to transportation of hazardous materials and motor carrier safety which will comply with the Code of Federal Regulations.

## DOT (Cont.)

Winfrey summarized reasons for lifting the injunction against drug testing. Random sampling and post-accident drug testing will now be implemented. The Department met with the 14-member Industry Group prior to proposing the rules.

Kibbie's concerns regarding grain hauling across state lines would be referred to the Director of Motor Carrier Services. It was Priebe's understanding that Minnesota recognizes Iowa law relative to the special farm license.

ARRC members reported complaints from farmers regarding tire ratings and enforcement.

## UTILITIES

Allen Kniep, Assistant General Counsel, and Ray Vawter, Executive Secretary, were in attendance for the following agenda:

## UTILITIES DIVISION[199]

## COMMERCE DEPARTMENT[181]"umbrella"

Rescission of peak alert rule, 20.11, Notice ARC 2709A Terminated ARC 3180A ..... 7/22/92

Customer billing practices, 22.1(3), 22.4(2), 22.4(3)"c"(3) and (4), 22.4(3)"e," Notice ARC 3178A ..... 7/22/92

Local exchange utility certificates, 22.3(8), 22.4(1)"a"(1), 22.20, Notice ARC 3181A, also

Filed Without Notice ARC 3179A ..... 7/22/92

Terminating local access transport service, 22.14(2)"d"(7), Notice ARC 3160A ..... 7/8/92

20.11; 22.1, 22.4

No questions or comments on ARC 3180A and 3178A.

22.3 et al.

In reviewing amendments to 22.3(8), Kneip stated that everyone in the state would be served by a telephone utility when this process was completed.

22.14(2)

With respect to terminating local access transport service, Priebe wondered about the impact on small business. According to Kneip, the Board must determine capabilities of the local telephone company for routing long distance calls. If the interexchange carrier must be involved, the local company will receive less revenue. The Board plans to issue a regulatory flexibility analysis.

Schrader referred to ARC 3178A and expressed support for the partial payment disclosure on the bills.

LAW ENFORCE-  
MENT ACADEMY  
3.3

Chairman Priebe announced special review of Noticed amendment to 501—3.3(80B), published in 6/24/92 IAB as ARC 3098A. The rule was before the Committee in July.

The Academy was represented by William Callaghan, Legal Instructor; J. Scott Moline, Assistant Director, and John P. Stark, Chairman of the Academy Council. Also present were J. P. Bergman, Chief of Police, and Robert L. Curtis, Law Enforcement Coordinator, Hawkeye Institute of Technology in Waterloo.

Metcalf had requested further review of the rule which would eliminate the short certifying course of study and require the long course for all officers. Law enforcement personnel in small cities had voiced opposition to the proposal at this time citing budgetary restraints and insufficient time to plan.

Bergman was not opposed to upgrading law enforcement education but wanted additional time to budget.

Callaghan informed the Committee that the Academy Council recognized the problems of smaller cities and had deemed it reasonable to delay implementation of the rule to eliminate the short course until June 30, 1993, and voted last week to do so. Callaghan emphasized that the goal of the Academy was to have

**LAW ENFORCE.**  
(Cont.)

continuity in training and rather than expanding areas where courses can be given, they favor unifying or centralizing the location.

Responding to Teaford, Callaghan noted the advantages and possible advances in their profession resulting from advanced schooling.

There was Committee consensus that the Notice published 6/24/92 should be terminated and renoticed in 1993.

Kent Sovern, Director of Legislative Services for the League of Municipalities, spoke of his intent to meet with the Director of the Academy and the Iowa Police Executive Forum in September to address broad issues.

Curtis addressed the Committee briefly and indicated that Hawkeye Institute would be very happy to host an eight-week school.

Metcalf recalled comments from the Academy that they could "break even" with 16 students and Hawkeye would need only 11.

Callaghan emphasized that this issue also involved a dwindling number of students who attend the short course.

Curtis pointed out that the Academy and Hawkeye Institute were funded differently.

Callaghan pointed out that a number of courses, other than basic ones, were offered throughout the year provided by the federal government as well as the Academy and other entities.

Stark, who had worked in law enforcement for 45 years, rated Iowa's training academy as one of the finest in the United States and would hate to see the loss of continuity. He opined that it would not be the intent of the legislature to reduce training. In conclusion, Stark declared that officers need 10 full weeks to be qualified. No formal action by the Committee.

**Emergency Rules**

Tieden voiced opposition to the number of emergency filings. He was aware of legislative mandates but asked that staff review the problem.

**November meeting**

Because of Armistice Day, it was agreed that the November ARRC meeting would be scheduled for the 9th and 10th.

Barry alerted the Committee that three Bulletins would be reviewed at the September meeting.

**NO REPS**

No agency representative requested for the following:

**ALCOHOLIC BEVERAGES DIVISION[185]**

COMMERCE DEPARTMENT[181]"umbrella"

Annual dollar limitations adjusted, 16.1(7), Filed Emergency ARC 3148A ..... 7/8/92

**INSURANCE DIVISION[191]**

COMMERCE DEPARTMENT[181]"umbrella"

Motor vehicle service contracts — late filing fees, 23.10(2)"b," 23.12, Filed ARC 3186A ..... 7/22/92

**LABOR SERVICES DIVISION[347]**

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

OSHA rules for general industry, 10.20, Notice ARC 3158A ..... 7/8/92

OSHA rules for construction safety and health, 26.1, Notice ARC 3157A ..... 7/8/92

**TRANSPORTATION DEPARTMENT[761]**

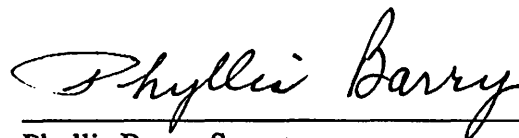
Air and transit division — change of address and telephone numbers, 1.8(2), 700.2, 710.4, 910.2,

920.2, 921.3, 922.1, 923.1, Filed Emergency ARC 3176A ..... 7/22/92

**Adjournment**

Chairman Priebe adjourned the meeting at 12:45 p.m. Next regular meeting was scheduled for September 8 and 9.

Respectfully submitted,



Phyllis Barry, Secretary  
Assisted by Mary Ann Scott

APPROVED:

