MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting — The regular meeting of the Administrative Rules Review Committee was held Monday and Tuesday, September 11 and 12, 1989, in Senate Committee Room 22.

Members Present — Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; Representatives Betty Jean Clark and David Schrader were present. Staff present: Joseph A. Royce, Counsel; Phyllis Barry, Administrative Code Editor; Vivian Haag, Executive Secretary. Also present: Barbara Burnett, Governor's Administrative Rules Coordinator; Evelyn Hawthorne, Democratic Caucus.

Convened — Chairman Priebe convened the Committee at 10:02 a.m. and called up the following rules of Public Safety Department:

State of Iowa building code — sprinkler systems. 16.140(1)"t." Notice ARC 97A.
also Filed Emergency ARC 98A ..... 8/9/89.

PUBLIC SAFETY

Special Review--Above-ground storage tanks.....IAC 5.306(9)

Present for the discussion were Michael Coveyou, Manager of Research and Statistics; Roy Marshall, Fire Marshal; and Jen Worthington.

16.140(1)t — Coveyou explained that 16.140(1)t was a minor amendment updating the Building Code. In response to Tieden, Marshall said that sprinkler systems would be required in three-story or more apartment houses and that no one attended the August public hearing.

5.306(9) — Chairman Priebe called for discussion of rules relative to aboveground storage tanks. The matter had been before the committee at their August meeting.

Coveyou distributed copies of amendments adopted after the Notice. These amendments which included modifications following the Notice would be published in the 9/20/89 IAB.

In response to Schrader, Coveyou offered background on amendments to Chapter 5 relative to storage tanks. Amendments had been published under Notice and Emergency in 7/26/89 IAB.

Discussion focused on 5.306(9) which was intended to clarify that kerosene tanks no larger than 120 gallons could be located inside a service station. Marshall explained that the language on kerosene tanks was less restrictive than either the emergency or noticed version. He added that the petroleum marketers had been involved with the revisions.

PUBLIC SAFETY (Cont'd)

There was discussion of the definition of "service station," and rules for disposal of underground tanks. Coveyou pointed out petroleum marketers were involved in drafting the definition. Department officials recommended that the Department of Natural Resources be contacted for procedure to follow for removing tanks.

Priebe expressed concern for service stations in small unincorporated areas. Worthington stated that their legal counsel advised that the rules were applicable to cities. Royce interjected that "cities" as a legal term meant "incorporated." Priebe mentioned a draft of legislation which he had requested to address the small unincorporated communities. Royce suggested a law to define "unincorporated population centers." No formal action.

HUMAN SERVICES

Present for Human Services were: Mary Ann Walker, Daniel W. Hart, Assistant Attorney General, Kathy Ellithorpe, Joe Mahrenholz, Cynthia Tracy, Gary Gesaman, Nanette Foster Reilly, C. S. Ballinger, and Harold Poore. The following agenda was considered:

Fair hearings and appeals, collections, 7.1, 95.13. Filed Emergency After Notice ARC 81A	8/9/89
Public records and fair information practices, 9.12(2)"b"(8). Notice ARC 143A	8/23/89
Payment, 45.4, 45.4(1), 45.6(2)"a" and "c," 45.5. Notice ARC 90A	8/9/89
Model waiver services program, 54.9, 75.1(18), 75.1(21), 75.1(29)"b," 75.5, 75.16, 75.25, 75.30(1)"i," 77.30, 78.3(17), 78.12(6), 78.31, 79.1(2), 80.2(2)"ee," 80.5(3), 81.1, 81.3(2), 81.6(4), 81.9(11)"h"(4) to (6), 81.10(3), 81.13(1), 81.13(1)"h," 81.13(29), 82.2(22)"m," 82.2(45), 82.3(1)"h," 82.5(11)"e"(4) to (6), 82.9(2), 82.14(3), ch 83, 85.4, 86.9(2), 86.9(3), 130.2(6), 130.3(4), 130.5(1)"h," 130.5(2)"j" to "m," 130.7(2)"h," 150.3(4), 150.3(8), 156.6(3), 177.5(5), 177.12, ch 180, 202.2(6), ch 207 preamble, 207.1. Filed ARC 82A	8/9/89
Conditions of eligibility, application and investigation, medically needy, 75.1(15)"a," "c," and "e," 75.1(20), 75.1(22), 75.1(26)"c" and "g," 75.1(28)"a" and "g," 75.13(1), 75.1(12), 86.8. Notice ARC 120A	8/23/89
Medicaid patient management, 76.6(2), 78.3(12)"c," 79.1(6), 79.1(16), ch 88 preamble, 88.1, 88.3(1)"b," 88.4(4)"b," 88.21, 88.24(4)"b," 88.41 to 88.51. Notice ARC 141A	8/23/89
Certified registered nurse anesthetists, Medicaid transportation claims, 77.31, [illegible]12), 78.35, 79.1(2), 80.2(2)"ff." Notice ARC 80A	8/9/89
Medicaid coverage of optometric services, 78.2(5), 78.6, 78.7(1)"b," 78.7(2), 78.7(3)"[illegible]" 78.28(3). Notice ARC 142A	8/23/89
Amount, duration and scope of medical and remedial services, 78.16(6), 78.28(8), [illegible]28(9), 78.31(4)"a"(8), 78.31(4)"b"(7), 78.31(4)"c"(8), 78.31(4)"d"(10), 78.31(4)"e"(7), 78.31(4)"f"(6), 78.31(4)"g"(7). Notice ARC 121A	8/23/89
Licensing and regulation of foster family homes, foster parent training, payments for foster care and foster parent training, 113.8(1), 113.8(3)"a" to "d," 117.1(2)"g," 117.3, 117.3(2) to 117.3(5), 117.4(1), 117.4(2), 117.6, 117.5(1) to 117.5(3), 117.6, 117.7(1), 117.7(2)"a," 117.7(2)"b"(3) and (4), 117.7(2)"c," 117.7(2)"d"(3), 117.8, 156.18. Filed ARC 79A	8/9/89
General provisions, child day care services, 130.7, 170.4(1), 170.4(6). Notice ARC 89A	8/9/89

Ch 45

No recommendations were offered for 7.1, 95.13, or 9.12(2). In review of amendments to Chapter 45, Priebe voiced concern as to cost for making corrective payments to underpaid ADC clients retroactive to 10/1/81. Previously, this was optional to states but will be mandated by federal regulations in the near future. Corrective payment for agency errors has always been made.

Priebe could foresee the need for additional staff to implement the rules. Walker advised that "information reported in error" would be substituted for "false and misleading information."

54.9 et al

Walker reviewed amendments to 54.9 et al. which combined four Notices. She stated that in addition to the model waiver program, the payment system was updated from purchase of service to Medicaid. Walker explained the various amendments, including limits on income of facility employees who have an ownership interest in the facility or who are related to an owner. Also, the rules address income and resources for institutionalized persons who have spouses in the community.

HUMAN SERVICES (Cont'd)

In response to Clark, Tracy explained that provision in 75.5(1)a relative to nontrust property was from the Medicare Coverage Act.

75.5

Clark asked about the exception for resources in 75.5(3)c(1)--"The home in which the spouse or relatives as defined in subrule 41.2(3)a live (including the land that appertains to the home)." She was interested in how this applied to a farmstead--what part of the farm pertains to the home. Tracy responded that it would be contiguous to the homestead. Clark wondered if there were a definition of "farmstead" as opposed to "farm." Priebe recalled 40 acres was the guideline for homestead exemption. He reasoned that "contiguous could run for miles in southern Iowa." Tracy pointed out that SSI Regulations do not contain a 40-acre limitation.

With respect to 75.5(3)d, method of attribution--Walker advised that the legislature took no action so the Department relied on the $12,000 budget figure. Clark and Walker discussed respite care and homemaker services. Clark wondered about hiring teenagers and RSVPs for these services. Walker indicated there was sentiment for individual providers but the model waiver requires home-health agencies.

Gesaman added that the federal Medicaid program mandates protection for the client and provides that participants must meet certain standards.

81.6

Walker reviewed amendments to 81.6 pertaining to a maximum salary which can be used as allowable costs to determine the per diem rate in ICFs for Medicaid purposes.

Schrader raised questions in 81.6(11)h(4)to (6), dealing with maximum allowed compensation for administrators and others in ICFs. He was concerned about new restrictions on the "amounts for administrators who are also owners, assistant administrators who are also owners" and "all others who are also owners." He interpreted subparagraph (6) as the major change.

Schrader quoted from subparagraph (5) and questioned its accuracy: "The maximum allowed compensation for an assistant administrator who is involved in ownership of the facility or who is an immediate relative of an owner of the facility in facilities having a licensed capacity of 151 or more beds is 60 percent of the amount allowed for the administrator..." It appeared to him that there were no restrictions on assistant administrators in facilities of less than 151 beds. Schrader reasoned that the maximum earnings for an administrator of a 60-bed facility, who is also a relative of the owner, would be $23,000. If it were a family operation, there would be a cap for reimbursement at $13,867 for the others. Schrader suspected that family-owned ICFs would be at a distinct economic disadvantage and wondered if similar restrictions were imposed on a corporate operation. He was aware that the nursing home business had

HUMAN SERVICES (Cont'd)

not gained notoriety for high wages, but it appeared to him that higher pay was necessary to attract leadership personnel in a 60-bed operation.

Gesaman saw the issue as (1) whether the maximum limits are set at an appropriate level and (2) whether these limits are fair to...."family-owner" facilities.... Gesaman pointed out that family members have access to other benefits, e.g., equity in the business as well as profit. Gesaman explained that the amendments merely established a maximum salary which can be used to determine the per diem rate for the Medicaid program. Schrader understood the sharing of the profits but contended there might be no profit if reimbursement rates were not paid on the same basis. He recognized the need for limits on abuse. Schrader asked if there were a maximum reimbursement rate. Gesaman responded in the negative. Gesaman mentioned the possibility of a study of the industry regarding the costs.

There was discussion of the fact that the Department had received two comments from Paul Roman, Iowa Health Care Association, regarding the change requiring the facility to submit a correction plan within ten days of receipt of written deficiencies.

Schrader reiterated his opposition to the inequity created by the 60-bed figure because that includes everyone who is not incrementally increased because of each bed over 60. Schrader commented on Gesaman's willingness to research the averages and mentioned the possibility of corrective legislation. He saw the need for cost containment on the industry as a whole. Priebe stated he would have no problems with that approach.

Motion to Object 81.6

Schrader moved to object to 81.6(11)h(4) to (6) on grounds that this rule would tend to have a significant adverse effect on only one portion of the industry, that being the family-owned portion, not the corporate-owned industry.

Discussion followed with Royce pointing out that the previous rule was even more restrictive. Schrader expressed a willingness to support lifting of the objection if the Department provides figures which are more representative of the industry.

Schrader asked Gesaman to estimate reimbursement rate, all other services being equal. If the caps were raised to reflect the likely maximum without exceeding the reimbursement rate, would that be a significant increase in these dollar amounts? Gesaman stated that at this time, 65 to 70 percent of the facilities have the full cost covered by a maximum rate of $40.11. If the limits on owner-administrator compensation were changed, it would be difficult to compute the number exceeding the maximum rate. Gesaman pointed out that costs continue to increase and the tax rate is the same.

HUMAN SERVICES (Cont'd)

The Schrader motion carried unanimously.

The following objection was prepared by Royce:

> At its September 11th, 1989 meeting the committee voted to object to subparagraphs 81.6(11)"b"(4) through (6). These provisions appear as part of ARC 82A, published in IAB 03 (8-9-89).
>
> In essence these provisions place limits on the income that can be paid to care facility employees who also have an ownership interest in the facility or who are related to an owner. The rules establish a maximum salary which can be used as allowable costs to determine the per diem rate for medicaid purposes. The salaries can be higher than the limit, but only the specified amount can be used in the rate. The purpose of this limitation is to ensure that profits are not hidden away as part of the expense of the facility. It is the committees' opinion that these limitations are unreasonable in that there is no evidence to demonstrate that the specified limits are within the range of salaries paid to facility administrators as a whole. It is the understanding of the committee that the limits were simply set by applying an inflation factor to an earlier set of salary limits. The committee believes that a more accurate method of setting the rate would be to survey the salaries of all facility administrators, categorized by size, and set the average of those amounts as the salary limit.

75.1 et al. Walker described amendments to 75.1 et al. as clarifying that an application must be filed for a newborn child as part of the automatic redetermination process. Medicaid will be administered in the same manner for refugees and nonrefugees. The earned income disregards allowed by the ADC program shall not apply when determining eligibility for ADC-related Medicaid only coverage groups unless the person with earned income received ADC assistance in one or more of the previous four months. No questions.

76.6 et al. With respect to patient management, Walker stated that the rules would be implemented in an 11-county project area. As a result of legislation, the client must choose between the physician manager or an HMO. Walker informed Clark that the patient manager must have personal contact with the patient. Reilly assured Clark "emergency" care, under any circumstances, was always available without authorization. "Urgent" care situations require preauthorization unless the patient manager cannot be reached. The provider must obtain authorization after the fact from the patient manager in order to bill for the Medicaid service. No action.

77.31 Walker stated that amendments to 77.31 et al. add certified registered nurse anesthetists as Medicaid providers. Medicaid transportation claims with a date of service within the three-month retroactive period for Medicaid eligibility will not be subject to the three-month time limit for submittal of claims.

78.2(5) et al. Under amendments to 78.2(5) et al. optometrists will be paid on the same basis as ophthalmologists. Payment for routine eye examinations will be limited to once in a 12-month period.

Tieden and Royce discussed fee schedules. Royce stated that there is no exemption from the rule-making process

HUMAN SERVICES (Cont'd)

for fee schedules. An alternative to unmanageable listings would be a description of how the fee is determined.

No recommendations were offered for amendments to 78.16(6) et al., 113.8 et al. or 130.7.

ATTORNEY GENERAL 9.25-9.36

Jackie McCann, Deputy Administrator and Amy Anderson, Assistant Attorney General, appeared for rules 9.25-9.36 on victim reparation. The rules were published under Notice as ARC 128A and Filed Emergency as ARC 127A in the 8/23/89 IAB and are intended to implement House File 700.

Emergency adoption of the rules prevented any interruption in services to the recipients of this program. A public hearing was scheduled for October 12.

Priebe referred to the definition of "eligible claimant" and questioned paragraph 7--"A provider of immediate and short-term medical services or counseling services when the victim is a child and the crime is not required to be reported to the department of human services' child abuse registry." McCann clarified that it is not required to be reported to a law enforcement agency but it must be reported to the Department of Human Services. The language was taken from existing rules of the Department of Public Safety. Doyle offered examples of a crime against a child which would not be considered child abuse. McCann described "pecuniary loss" as designed to compensate victims of crime for out-of-pocket expenses which are not covered by any other source. This would not include property loss. Eye glasses, hearing aids and dentures taken or destroyed during the crime would be covered. In response to Doyle regarding the limit of 20 cents per mile, McCann stated that it would be changed to 21 cents per mile in the final rules. No Committee action.

JOB SERVICE DIVISION

The Division of Job Service was represented by Paul Moran and Joseph Bervid and the following agenda was considered:

EMPLOYMENT SERVICES DEPARTMENT[341] "umbrella"
Employer records and reports, employer's contribution and charges, claims and benefits, placement, public records and fair information practices, 2.3(6), 3.3(3)"e," 3.36, 4.2(1)"c"(2), 4.2(4), 4.9(2)"b," 4.34(7), 7.2(19), 8.10(2)"d," Notice ARC 144A 8:29:89

2.3(6) et al.

Bervid summarized the amendments. He called attention to 4.34(7) which was amended as the result of the Supreme Court case regarding violence and hostility on a picket line. Individuals who are not involved in the labor dispute who are subject to violence are unemployed involuntarily and would be eligible for unemployment insurance.

In response to question by Doyle as to cash value of personal use of an automobile, Bervid said they would use the Internal Revenue standard unless specified otherwise.

ECONOMIC DEVELOPMENT

JoAnn Callison presented revised rule 261--14.5 relative to Youth Affairs--Iowa corps, published in 8/9/89 IAB as a Notice in ARC 102A. Under legislation passed last session, [H.F. 375] the Volunteer program of the Iowa

ECONOMIC DEVELOPMENT (Cont'd)

Conservation Corps will be renamed the "Iowa Corps." Priebe questioned the 130-hour duration for eligible projects in 14.5(3)a. Callison stated that this was based on the new minimum wage effective January 1, 1990--$500 tuition credit; divided by $3.85. Callison stated that most quality projects would be at least 130 hours.

14.5

Pavich noted that criteria for participation in the program was either 14 or 15 points and he reasoned there should be a priority--14.5(5). Priebe took the position that the 14 points in paragraph (2) "impact of project on the unemployed, low-income or handicapped persons" should be greater than paragraph (4) "...project to gain career experiences, work skills...," etc. Callison contended that the criteria had equal importance. Priebe concurred with the assessment by Pavich and reiterated his concern for the 130-hour minimum and suggested 100 hours. Callison stated that two related projects could be combined to total 130 hours. She was willing to clarify the rules. Pavich recommended elimination of the point system. No formal action.

EDUCATION DEPARTMENT
17.4-17.9

Dave Bechtel was in attendance for review of new rules 281--17.4 to 17.9 pertaining to open enrollment. The rules published under Notice as ARC 96A in 8/9/89 IAB will implement 1989 Acts, S.F. 59, as amended by H.F. 774, section 81. Chairman Priebe commented th : open enrollment seemed to be working well in his district. Bechtel indicated that the Department would make recommendations for clarification of the law next year.

17.7

Tieden raised question with respect to bus routes--17.7. Bechtel admitted that the rule needs clarification. He continued that the Department is attempting to comply with the law that prohibits the receiving district from sending buses into the resident district to pick up students. There are specialized routes and nonpublic school routes that go into resident districts. Bechtel and Tieden discussed the qualifications and financing for transportation assistance. Bechtel assured Priebe that contiguous lines had nothing to do with open enrollment but was relevant to the parent's ability to receive transportation aid. He continued that it is the parent's obligation to get the child to a point on the established bus route for the receiving district. He was unsure how a nonpublic school could assume that parent obligation. Priebe asked if a private school student could ride the public school bus the same as if they lived in the district. Bechtel replied in the negative. Under open enrollment, within the resident district or until the student reaches the border of the receiving district, transportation is the parent's obligation. Bechtel stated that the resident district can either reimburse or provide transportation. It is the public schools that have to reimburse the parents for nonpublic school transportation.

EDUCATION DEPARTMENT (Cont'd)

Bechtel reiterated that a parent is entitled to nonpublic transportation to be provided by the district of residence. Bechtel indicated that Dwight Carlson of the Transportation Division of the Department would be able to answer technical questions on this subject.

Bechtel advised that the state average for transportation reimbursement was approximately $248. The parent could receive that amount to transport the student to the border of the district.

Schrader expressed his objection to the legislation in general and discussed the provision of the Act with Bechtel. It was Schrader's interpretation that open enrollment doubles the cost of transportation. Bechtel thought intent was to provide equity for parents with low income. He added the $248 figure was minimal but could vary by district. Schrader pointed out the inequity for students who live in cities.

Bechtel clarified that there was no 4-year limitation on transferring. He cited Code provisions--parent moves out of the district, student graduates, or parent petitions for an alternative district. Those provisions were contained in H.F.774 adopted on the last day of the session.

17.6

Schrader was of the opinion that the rules reflect the legislation except for 17.6(4), second paragraph, which seems to contain conflicting language by use of "may" and "shall." Bechtel agreed to research that matter.

Recess

Chairman Priebe recessed the meeting for lunch at 11:55 a.m. It was reconvened at 1:30 p.m.

REGENTS BOARD

9.4

Chairman Priebe called up for special review rule 681--9.4 relating to competition by Regents institutions with private enterprise. Representing the Board were Ann M. Rhodes, Assistant Vice President, University of Iowa, Charles V. Anderson, Director, Speech and Hearing Clinic, University of Iowa, and Cynthia Eisenhauer, Director of Business and Finance.

Eisenhauer stated that the rule which was under 70-day delay was promulgated for the purpose of protecting private business from unfair competition by Regents institutions. It was noted that controversy had focused on marketing of hearing aids at the University of Iowa. The Audiology Department as well as the College of Medicine fit hearing aids. Regents officials have contended that services provided to patients at the clinic and hospital were exempt from the Act.

Jim Pribyl, Director of Government Relations, U. S. West Communications, appeared before the Committee with his concern relative to communication services. Anderson spoke of the exemption created in Iowa Code section 23A.2(2)f for telecommunications systems at the Regents Institutions.

REGENTS BOARD (Cont'd)

The exemption allows the institution to provide communication services within the institution's "community of interest." Anderson maintained that this included the Regents institutions throughout the entire state, not just the campuses. He asked for an opportunity to work with the Board to limit, in some fashion, their offering of communication services. He pointed out that they do this on behalf of all communication providers both regulated and unregulated in Iowa, because there are numerous long distance carriers in a competitive market, equipment vendors, and 154 local state companies, all of whom could find themselves facing competition from one of the Regents institutions.

Anderson responded to Tieden that under Iowa law and rules of the Iowa Utilities Board, the campuses of Iowa can create their own telephone system or company. Both the University of Iowa and Iowa State University have chosen to do so. Anderson wanted to ensure that the exception in the rules would not allow or encourage the Universities to offer those services or products beyond the campus boundaries.

Pribyl pointed out the absence of a commonly accepted definition of "community of interest." He recalled that legislative intent was to limit the competition with the private sector.

Doyle asked for recommended language from Mr. Anderson. Anderson favored a clarification that suggested campus boundaries.

It was Royce's opinion that the Board intends to limit the application of the telecommunication system to Regents institutions and the attached facilities.

Dave Brasher, State Director for the National Federation of Independent Business, spoke on the rules. He mentioned that Ken Lauder, hearing aid dealer, had filed an appeal with the University of Iowa to test that process. He spoke of private law suits and the interest on the part of the Federation in seeking a better way to serve the interests of all Iowa taxpayers.

9.4(1)

Brasher quoted from 9.4(1)a and b and requested that language be "tightened down somewhat." He favored delay of rule 9.4 into the next General Assembly. Brasher concluded that the law was very vague.

Eisenhauer emphasized that the Board opposed any situation which would encourage the institutions to compete with private business and the rule was written in that spirit. She urged the ARRC to allow the rule to become effective so that the appeal can be processed in accordance with the rule.

Discussion of ARRC options with respect to rule 9.4 with it being noted that the rule would go into effect on October 12.

REGENTS BOARD (Cont'd)

Doyle suggested, in the absence of Committee action, that Pribyl and Brasher suggest compromise language by the next ARRC meeting. Eisenhauer was of the opinion that the question of communications could be resolved to the satisfaction of Pribyl. However, she was less confident about a compromise with Brasher, since the Board's "interests are much broader than his."

Priebe urged the various factions to work together to resolve the matter by the October meeting.

INSURANCE DIVISION

Martin Francis appeared on behalf of the Insurance Division for the following:

COMMERCE DEPARTMENT[181] "umbrella"
Administrative hearings of contested cases, 3.5, 3.6. Notice ARC 137A 5-27-89
Regulation of insurers — general provisions, 5.7 to 5.9. Filed ARC 91A 8-9-89
Life reinsurance agreements, ch 17. Filed ARC 92A 8-9-89

3.5,3.6

No questions were raised re 3.5 and 3.6.

5.7 to 5.9

According to Francis, amendments 5.7 to 5.9 were in response to the adoption of Proposition 103 in California. Iowa's Commissioner will be permitted to order the withdrawal of a domestic insurer from a given state or a regulatory environment in the state.

Ch 17

Francis explained that Chapter 17 contains the method for policing insurer practices. A reinsurance agreement cannot be used to write off liabilities. There must be some value to the insured.

In 17.5(5), Doyle recommended deletion of "1988 annual statement" and inclusion of "annual report in the preceding year." Francis was amenable.

PERSONNEL DEPARTMENT

Clint Davis represented the Department for the following:

Classification; pay; recruitment, application and examination; probationary period; leave; benefits; iowa public employees' retirement system, 3.1(3), 3.3(2), 3.3(3), 3.4, 4.5(2)"b"(1), 4.9(1), 4.11, 4.13, 5.2(1)"b""7," 11.7, 11.8(1), 14.8(3), 14.9(4), 14.15, 15.1(1)"b" and "c," 15.1(3)"b"(4), 15.2(2), 15.2(3), 15.3(2), 15.3(3), 15.4(2), 15.6(3), 15.6(7)"c," 21.6(9), 21.6(9)"c." Notice ARC 123A 8-23-89

3.1(3) et al.

According to Davis, there was no change from the previous process. Priebe expressed concern that the Director in 3.1(3), might gain more authority. It was Tieden's opinion that some areas addressed in the rules had been determined by collective bargaining. Davis responded, to the extent anything in Personnel rules is covered by the collective bargaining agreement, that agreement prevails.

Also, compensatory time must be used before the end of the fiscal year or it must be paid off. Tieden was told that while temporary employees do not accrue vacation time, compensatory time is accrued for overtime.

There was further discussion of 3.1(3)--classification process--Royce commented that the time allotted for completion of an action on a classification process was 60 days. On an evaluation, there will be no upper time limit for response. Davis stated that the employee would still have access to an appeal procedure and may request appearance before an appeal board.

PERSONNEL DEPARTMENT (Cont'd)

Royce saw no problem withhaving a 70- to 75-day period of time to complete the review. He continued that it would take a bit of courage to file a classification appeal in the first place--albeit, "a little snip at one's employer." The next step would be for the employee to file an appeal in 60 or 70 days which Royce viewed as placing a burden on the employee.

Davis viewed it "as a snip against the Department of Personnel" since, many times, management and the employee are of one mind in these matters. He continued that simply looking at one job would give rise to taking a look at other jobs and thought additional days would be helpful. Davis indicated the process could result in three or four evaluations.

21.6(9)

Doyle was advised that the contribution rates had been modified and a protection occupation group had been created with a different withholding rate for those under IPERS. There is a higher contribution for both employee and employer. Also, rules further define that the law regarding correctional officers will be implemented December 22, 1989.

Responding to Doyle, Davis said that a county employee would not be under the authority of the correctional officer "protection occupation." Doyle wondered if that were clear as stated in 21.6(9)c(3), new language. Davis replied that any time an employee becomes the incumbent of a position that is identified for a "protection occupation," at that point the employee participates in withholding set-aside at a higher rate and begins to accrue rights toward earlier retirement.

Vic Kennedy, Natural Resources, commented on the point by Royce that the rules seem to shorten the amount of time in which the employee is able to make any kind of notification to the department and to extending the Department's time granted. In the interest of fairness, Kennedy thought 30 days was a preferable time frame for all.

19A.9(1)

Kennedy called attention to Code section 19A.9(1) which requires that after an employee files a written request for reconsideration, a reasonable opportunity must be given to be heard by the Director--the rules do not address this. Also, the rules seem to indicate that it is the Director who appoints the Committee for the appeal process which Kennedy contended was contrary to statute. He urged the ARRC to seek a wholesale revision of Chapter 3. Doyle suggested that Kennedy offer input at the public hearing scheduled for September 28.

NATURAL RESOURCES DEPARTMENT EPC

The following agenda was before ARRC:

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Scope of title — definitions — forms — rules of practice, water quality standards, effluent and pretreatment standards; other effluent limitations or prohibitions, 60.2, 61.2(1), 61.2(2)"b," "c," "d," and "f," 61.2(4), 61.2(5), 61.2(5)"c," 61.3(1) to 61.3(4), 62.8(2). Notice ARC 103A 9/9/89

Criteria for award of grants, 91.7(2)"a." Notice ARC 100A 8/9/89

Technical standards and corrective action requirements for owners and operators of underground storage tanks, financial responsibility for underground storage tanks, ch 135 title, 135.3(3)"d"(3), ch 136, Filed ARC 104A 8/9/89

NATURAL RESOURCES DEPARTMENT EPC (Cont'd)

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561] "umbrella"
Sand and gravel permits, ch 19. Notice ARC 99A 9/9/89
Wildlife habitat promotion with local entities program, 23.5(1), 23.6(3), 23.7(3), 23.13. Notice ARC 101A 9/9/89
Nonresident deer hunting, ch 94. Notice ARC 149A, also Filed Emergency ARC 148A 9/23/89
Nonresident wild turkey fall hunting, ch 95. Notice ARC 151A, also Filed Emergency ARC 150A 9/23/89

Vic Kennedy, Diana Hansen, Mark Landa, Lavoy Haage, Director, Revision of Water Quality Standards, Allen E. Stokes, Administrator, Richard Bishop and Arnold Sohn were present on behalf of the Department of Natural Resources.

61.3 Hansen gave brief overview of amendments to Chapters 60, 61 and 62 and informed the Committee that comment period had been extended to October 16. Doyle wanted assurance that 61.3(3)b(5)(1)--relative to temperature of interior streams or the Big Sioux River--would not change rules in place relative to warming the termperature of the Missouri River. According to Stokes, this was a restatement of rules that have been in existence for a number of years and no mechanism would change. The major impact would be in setting additional chemical water quality parameters and establishing additional standards for use designation of streams and water bodies.

Priebe was advised by Stokes that most comments, the majority negative, had been received from municipalities. The rules tighten water quality standards which would require a number of facilities to improve plant performance. Communities want justification for what they consider to be increased costs, especially when communities continue to have impaired water quality due to nonpoint source pollution. They would prefer that nonpoint source pollution be addressed first.

Priebe was interested in the economic impact on municipals. Stokes responded that a first-phase economic impact statement was in process with an estimated compliance cost of $750 million to $1 billion over the next 15 to 20 years. General discussion.

Schrader and Stokes discussed Criteria for Chemical Constituents. Schrader mentioned the fact that two years ago, there were reports of chlordane found in catfish from the Des Moines River and at that time, a federal health advisory level was determined--and, as he recalled, it was 300 parts per billion. According to Stokes, that would be in the actual fish flesh. The Department uses Federal Food and Drug Administration guidelines which would apply to fish sold in interstate transport for commercial purposes. The figures in Table I pertain to the stream water quality. Stokes said these rules establish both acute and chronic water quality standards or in-stream concentrations for 14 additional substances.

NATURAL RESOURCES DEPARTMENT EPC (Cont'd)

Schrader was curious about the range between chronic and acute and wondered what action would take place. He was told it would apply to point source discharges and what comes out of the effluent stream of a municipal or industrial wastewater treatment plant. If chlordane were identified as a component of the wastewater discharge through the permit issuance process, EPC would use a system of computerized mathematical modeling to compute what the in-stream values would be at a discharge of "X" concentration from that particular facility. Appropriate controls would be placed on the discharger to ensure that the combination of volume and strength of waste effluence would not deposit any substance in a value from this list that would cause the measured value in the stream water itself to exceed these numbers at set points in the stream. "Acute value" would apply at the boundary of the zone of initial dilution. Further on down the stream would be the mixing zone itself and "chronic values" must be met at the boundary and beyond of that mixing zone as defined in these proposed rules.

Schrader was advised that EPC would need to consider the background values in the stream and, in the definition of mixing zone, an overlap would not be allowed. Various conditions apply and the background levels are studied when setting those kinds of controls. Stokes continued that with fecal coliform, because of some runoff from nonpoint sources, there could actually be dirtier water upstream from a discharge.

61.2(2)b

In 61.2(2)b, chemical integrity, Priebe asked for a definition of "...justifiable economic and social development...". Stokes said it was a fairly subjective decision to be ratified by the nine-member Environmental Protection Commission--there is no definition. Hansen reminded that the language had been in the previous rule.

Priebe referred to 61.2(2) and reasoned any body of water could be designated as significantly exceeding levels necessary to protect water quality without reason. Hansen clarified that the provision refers to the 20-30 page list in 61.3(5)e (not in this Notice) where they are already referred to as high quality resource water.

Priebe questioned deletion of "through broadly based public participation" in 61.2(2)c. Hansen explained that the rule making process will be followed once the initial water quality standards are finalized.

Stokes said they had attempted to "clean up the rules" at the same time they were modified. As a matter of course, in addition to all the procedures involved with rule making, the Commission holds a public hearing in the city or area where the change in use designation is proposed.

NATURAL RESOURCE DEPARTMENT EPC (Cont'd)

Motion Economic Impact Request

Published IAB 2/7/90

Priebe stressed the importance of public involvement. Priebe and Stokes discussed mixing and assimilation of the waste effluent in streams or rivers. Priebe moved that a broad economic impact statement be prepared for ARC 103A. Schrader expressed concern for the time frame that such a study would take. He saw the importance of action on point sources of pollution. Stokes stated that the Department had been working with EPA for a number of years on this matter and 95 percent of the information needed was available. Schrader continued that farmers he represents believe that much is being done about non-point source of pollution. They favor focusing on point source pollution. Stokes advised that costs to communities would be escalated--over and above the amount needed just to comply with today's standards. Schrader asked if Des Moines' new plant under construction would meet the criteria and Stokes indicated it was difficult to answer precisely on any given facility. He added that there is a high degree of probability that these rules would require almost any treatment plant to make some improvements in order to operate at its maximum capacity.

Vote

Priebe's motion carried unanimously.

Priebe resumed the Chair.

91.7(2)a

According to Kennedy, amendment to 91.7(2) contained a change in criteria for award of grants for construction of municipal wastewater treatment facilities. No questions.

Chs135,136

Landa presented amendments to Chapters 135 and 136. No questions.

Ch 19

In review of revised Chapter 19, Doyle noted use of "royalty" fee--19.5(1)--and Kennedy described it as a "tonnage" fee.

Ch 23

No questions re 23.5(1).

Chs 94 and 95

Bishop provided an update on nonresident deer and wild turkey hunting. He anticipated a possible waive of applications from Michigan. Iowans have picked up most of the applications for friends and family living out of state. Whether or not out of state applicants are licensed in their own state is not relevant. Doyle was advised that Zone 3 was limited to Iowa land and Iowa rules would apply. Iowa land on west side of the Missouri River is hunted with an Iowa deer license in regular season.

Priebe and Bishop discussed process for receiving a second license on one license application. No action.

AGRICULTURE AND LAND STEWARDSHIP

Daryl Frey, Laboratory Division Director, and Chuck Eckermann, Pesticide Bureau, represented the Department for the following:

Pesticides, 45.1, 45.22, 45.49. Notices ARC 8155, ARC 8154, ARC 8153, ARC 8152 Terminated. Notice ARC 131A 8-23-89
Pesticides, 45.3(1) to 45.3(6). Notice ARC 130A 8-23-89
Pesticides — reporting of sales, dealer license fees, 45.17, 45.18. Notice ARC 129A 8-23-89
Pesticides — notification requirements for urban pesticide applications, 45.50. Notice ARC 132A 8-23-89
Organic food production, ch 47. Notice ARC 147A 8-23-89

Also present: Shirley Peckosh, Cedar Rapids; Robert Williams, Des Moines Pest Control; Ken Moore, Iowa Recreation; Bernie Koebernick, Iowa Association of Electric Cooperatives; Daryle Johnson, President, All American Turf Beauty; Kevin A. Johnson, All American Turf Beauty; Brian Erickson, Chemlawn; Sharon Edwards, President, Lawn of Leisure; and Arlo McDowell, President, Iowa Pest Control Association. Frey reported on the many changes since the rules were first before the ARRC. In re 45.3(2), pertaining to annual sales data which must be maintained by the registrant, Priebe suggested inclusion of a 3-year time frame. Frey was amenable. Frey pointed out that pending legislation addresses several areas concerning pesticides. Frey was amenable to Priebe's suggestion that warning signs should be higher than 18 inches--45.50(1)a.

Eckermann informed Tieden that the farmer was not required to meet CE requirements but must take a test every three years. Priebe emphasized the importance of calibration and commented that proper mixing of pesticides should be part of the education process and he recommended possible changes in the test.

Eckermann spoke of the federal test standards required for private certification. Therefore, state standards have been expanded with a test consisting of 100 questions. Priebe viewed the rule as increasing fees.

Frey responded that the rules were designed to determine the total cost to the industry. Responding to Priebe, Frey said that annual dollar collection estimates which include registration, license, applicator, private and commercial certifications--would be approximately $2.2 million; an estimated $700,000 would remain in the Agriculture Department; DNR would receive the balance. Personnel costs would be in the range of 70 percent of the budget.

45.1

Peckosh opined that use of "applying" pesticides in the definition of "certified operator " was confusing. She recommended that "diluting and mixing" be substituted for "applying"--45.1. Eckermann saw no problem.

Peckosh saw no need for 21--45.49 since pesticide use recommendations are covered by federal law. Eckermann said that this was a compromise for the original draft which required those who make recommendations on pesticide use to be certified. The employer has a responsibility to ensure that his employees have the necessary knowledge.

AGRICULTURE AND LAND STEWARDSHIP (Cont'd)

Eckermann thought Peckosh had been in agreement with this rule.

45.49

Schrader spoke in support of the language. However, he suggested adding "other than label instructions..." after "recommendations" in 45.49, last sentence. Responding to Tieden, Royce said the rule was intended for a licensing discipline.

Priebe suggested the following substitute language for 45.49: "Persons selling pesticides shall not make any recommendations which are contrary to label instructions. The employer or licensee shall be responsible for all changes in recommendations made by their employees." Frey agreed to consider the language but the Department's position is that some measure of control is needed. Clark wondered what would be the point of including instructions on the label if they aren't used.

Frey commented they were trying to establish a level of control that is less than outright certification. He would attempt to phrase it to afford protection to employer and consumer.

45.47

In response to comment by Peckosh relative to 45.47--reporting of pesticide sales, Frey was willing to correct error by substituting "all types" of pesticides for "each type." Peckosh complained about costly reporting requirements. Frey had contacted the AG office on the point of establishing ranges on sales as opposed to an exact amount based on gross annual sales and was advised that statutory change would be necessary. Clark and Priebe recommended keeping track of purchases for reporting purposes.

Motion

Schrader moved to notify the respective Legislative committees of the recordkeeping problem for small businesses. Motion carried.

Williams addressed prior notification to occupants of adjoining property when pesticide will be used. He supported a move to the point where professionals apply

45.50

pesticides. Priebe thought that verbal prior notification was very inhibiting to a professional applicator as it could slow the operation--45.50(1)d. Schrader and Williams discussed the pros and cons of prenotification. Schrader saw no problem with the law.

Johnson was bothered by the fact that professionals are asked to perform to higher standards than is expected of untrained individuals.

Frey interjected that the Department would implement any certification or posting provision on private homeowners which the statute directs but currently, there is no law.

In response to Peckosh, Frey agreed to extend public comment time period on the rules. Priebe suggested an additional public hearing be held.

AGRICULTURE AND LAND STEWARDSHIP (Cont'd)

Ch 47

Schrader was advised by Frey that the Legislative directive on exemptions was extremely broad without guidance.

There was brief discussion of Chapter 47. Clark asked why beef and pork were not included in the definition of food product. According to Frey, the 1988 organics legislation specifically exempted beef and pork. General discussion of 47.3(3). No action taken.

SOIL CONSERVATION

The following agenda was presented by Kenneth Tow of the Division.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21] "umbrella"
Iowa financial incentives program for soil erosion control. 10.41.
10.42. Filed Emergency After Notice ARC 83A 8/9/89

According to Tow, the amendments implement the cost share appropriations made available last spring. No recommendations.

Recess

Chairman Priebe recessed the meeting at 4:55 p.m.

Tuesday Sept. 12 Reconvened

Chairman Priebe reconvened the ARRC at 9:02 a.m., Tuesday, September 12, 1989, Committee Room 22. Members and Staff were present. Also present: Evelyn Hawthorne, Democratic Caucus.

REVENUE AND FINANCE DEPARTMENT

Chairman Priebe called for review of Revenue and Finance rules as follows:

Filing and extension of tax liens and charging off uncollectible tax accounts; interest, penalty, and exceptions to penalty; administration of the environmental protection charge imposed upon petroleum diminution, 9.1"4" and "5," 10.1"3," ch 37. Filed ARC 138A 8/23/89
Administration, filing return and payment of tax, determination of net income, assessments and refunds, withholding, estimated income tax for individuals, 38.2(2), 38.9, 38.9(4), 38.11, 39.3(5), 40.1, 40.4, 40.21, 40.33 to 40.37, 43.3(12), 46.4(6), 49.1(1), 49.3(4), 49.4(1), 49.4(2)"b," Notice ARC 135A 8/23/89
Administration; filing returns, payment of tax and penalty and interest; determination of net income; administration; determination of net income; assessments, refunds, appeals, 51.2(2), 51.2(3), 52.4(4), 53.11, 56.6, 57.1(2), 57.2(2), 57.2(3), 59.8, 60.4, 60.5, Notice ARC 140A 8/23/89
Declaration of estimated tax for corporations, declaration of estimated tax for financial institutions, ch 56 title, 56.1 to 56.4, ch 61 title, 61.1 to 61.4, Notice ARC 139A 8/23/89
Administration, motor fuel, special fuel, administration, cigarette tax, 63.2, 63.8(6), 63.22, 64.8, 65.7, 66.9, 81.1(2), 81.16, 82.4(1), 82.11(1), Notice ARC 134A 8/23/89
Inheritance tax, 86.2(2)"c,"86.3(3), 86.3(6), 86.9(4)"a," Notice ARC 133A 8/23/89

Carl Castelda, Deputy, was present for the Department. He gave brief overview of the Revenue amendments and there were no questions.

LOTTERY DIVISION

Nicky Schissel, Assistant Commissioner, and Steve King were present for consideration of:

REVENUE AND FINANCE DEPARTMENT[701] "umbrella"
Iowa lotto, 10.2, 10.3, 10.6(1), 10.6(2), 10.13(1)"j," 10.15(1), 10.15(2), 10.20, Notice ARC 77A,
also Filed Emergency ARC 78A 8/9/89

According to Schissel, changes were made because the Lottery matrix was revised from 6 of 36 to 6 of 39. There was lengthy discussion of situations when a ticket does not print but a play registers in the system.

According to Schissel, lottery requires the customer to be responsible for checking the ticket to ensure that numbers are printed.

Priebe recommended a change in the rules but Schissel explained that these address jackpot funding only, not

LOTTERY DIVISION

validation. Doyle asked if Iowa law permitted having football as a lottery game and Schissel responded that the Code permits Lottery Division to establish any kind of game.

MANAGEMENT DEPARTMENT

Lawrence T. Bryant represented the Department for the following:

Targeted small business interim guidelines, ch 10. Notice ARC 112A, also filed Emergency ARC 111A 3/9/89

Ch 10

He explained that Chapter 10 was filed emergency and Notice simultaneously since the Legislature mandated the Department to establish guidelines as a result of a Supreme Court decision.

10.2

Priebe discussed the selection process in 10.2(2)a(3). According to Bryant, Inspections and Appeals maintains a vendor list, which may contain 20,000 names. There may be some targeted small businesses which could bid on janitorial supplies and so identification is made of those who can reasonably bid. Priebe had received complaints about the bidding process and recommended removal of subparagraph 3.

Schrader commented that it appeared the largest impact on minority contractors, suppliers and businesses would be from prime contractors. He preferred that the state make a good faith effort and "put some teeth" in 10.2(3)--construction--to comply with constitutional muster. Responding to Schrader, Bryant said a task force was created to suggest legislation.

Tieden called attention to use of "shall" in subrule 10.2(3)c and use of "may" in 10.2(3), line 1. Bryant responded that this is another option purchasing authorities might use--if they use the subcontract document, then these procedures are followed. Tieden wondered if it were more specific than the supreme court ruling allowed. Priebe thought, under this proposal, there was a chance for "cozying up" of the companies which place bids. Bryant said that the process was considered as protection for the subcontractor. General discussion.

In 10.2(3)c, Priebe recommended that "Prime contractors shall select specific TSB contractors..." be amended by substituting "offer to" for "select specific." He suspected that use of "select specific" could eliminate a new business.

Doyle inquired as to whether there were rules to require purchasing from Prison Industries. Bryant clarified that the rules would apply to all purchasing authorities, including Prison Industries. Doyle and Priebe alluded to the fact that over the years, General Services had been reluctant to buy from Prison Industries. Bryant agreed to comply with ARRC comments.

INSPECTIONS AND APPEALS

Robert Haxton; Carol Rice, Chief, Support Service Bureau; Sherry Hopkins; John Barber, Chief, OPR; and Mary Oliver represented the Department for the following:

Iowa targeted small business certification program, 25.1, 25.2, 25.3(3), 25.8(3), 25.10. Notice ARC 81A 8/9/89
Field survey administration, food establishment inspections, food service establishment inspections, 30.3(1), 31.2, 32.3(4). Notice ARC 145A 8/23/89
Licensing requirements for temporary food service establishments, three-compartment sink exemption, 30.6, 32.1, 32.3(3). Filed ARC 86A 8/9/89
Violation level of standards for infection control in health care facilities; use of enteral feeding bags and urine collection bags, amendments to chs 57, 58, 59, 63. Filed ARC 85A 8/9/89
Recoupment section, ch 71 title, 71.1, 71.5(1), 71.5(2"b," 71.7. Notice ARC 146A 8/23/89

No questions were posed with respect to 25.1 et al.

There was discussion of 30.3(1) et al. and Priebe raised question as to why on-premise restrooms were not required in malls or shopping centers. Haxton commented that some mall restaurants do not have seating and the mall provides restrooms. Pavich pointed out that Valley West Mall in West Des Moines has only one restroom which is located on the upper level. He thought the rule should address that fact and Haxton reminded that the Department has no jurisdiction over malls per se, only on restaurant inspection.

Responding to Tieden, Haxton said a license is not refundable once it has been used. Sometimes, licenses are renewed in advance and not used, the individual would receive a refund. Responding to Royce, Haxton admitted there were areas in noncompliance.

Hawthorne suggested the following language: "On-premise restrooms are not required in licensed premises when the licensed premise has no on-premise seating and restrooms in the mall or shopping center are convenient and available to patrons and employees at all times." Haxton was willing to consider the question. Chairman Priebe asked that the issue of restaurant inspection be carried over to the October meeting. This would allow time for Department officials to check some malls.

30.6 et al. Licensing requirement, temporary food service establishments--no questions were posed for amendments to 30.6 et al.

Amendments to Chs. 57, 58, 59 and 63 were deferred temporarily.

Ch 71 Barber told the Committee that amendments to Chapter 71 would automate notification of ADC overpayment in the food stamp or ADC programs.

Chs 57 et al. Oliver gave brief overview of amendments to Chapters 57, 58, 59 and 63. There were no questions.

Recess The Committee was in recess for ten minutes.

DISASTER SERVICES

Ch 10 David Miller appeared for special review of 601--Chapter 10, "Emergency 911 Telephone Service." The rules were delayed for 70 days at the July 11 ARRC meeting. Also present: Kenneth J. Hartman, Hartman and Associates; Diane Kolmer and Louanne Wedeking, US West Communications.

DISASTER SERVICES (Cont'd)

Miller addressed the Committee with respect to six minor compromises to be made in the rules. The Department was planning to adopt the changes on an emergency basis. Schrader indicated a reluctance to support lifting of the delay until he had an opportunity to review the compromises. He took the position that a document showing the changes should be reviewed by the ARRC. Discussion followed. Clark was told that the rural address system provides basic information to identify each address to assist when an E911 call is placed--each county or each 911 service has its own address system and that creates problems.

Priebe thought Schrader had made a good point and recommended that the amendments be published before the 70-day delay could be lifted.

Hartman addressed the Committee and praised the administrative rules system. He continued that the Division of Disaster Services had been given an almost insurmountable task in trying to coordinate development of enhanced 911 in the state and he commended the staff. Hartman recommended that the Legislature work toward implementation of the E911 service throughout the state. Funding of the program was considered a big obstacle. No formal action.

Minutes

The August minutes were approved.

CORRECTIONS

Fred Scaletta presented the following rules of Corrections Department:

Publications, 20.6(4)"a" to "c." Filed Emergency ARC 95A 8/9/89
Jail facilities, 50.1, 50.24, 50.25. Filed ARC 94A 8/9/89
Temporary holding facilities, 51.5(8). Filed ARC 93A 8/9/89

20.6

Clark brought up the fact that language in 20.6(4)b, paragraphs 3 to 6 seemed repetitive. She was advised that it was taken from the Code. Priebe questioned the necessity of publishing Code language in rules and Scaletta was informed this approach should be avoided. He commented that the Department had a standard which was taken partially from the Code and a court case prohibited its use, therefore, the Department adopted the state statute. Doyle thought 20.6(4)b(7) was limited to lascivious acts. Scaletta agreed to make any necessary revision.

50.1

There were no questions re 50.1 or 50.24.

PUBLIC HEALTH PROFESSIONAL LICENSURE

Barbara Charls, Gerd Clabaugh, Pierce Wilson, Jane Schadle, Richard Welke, David J. Fries, Joyce Bawdish, and Ronald Eckoff appeared on behalf of the Department of Health. The agenda follows:

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Cosmetology examiners, sanitary conditions for beauty salons and schools of cosmetology, cosmetology continuing education, 60.1 to 60.8, 60.8(7), 60.8(9), 60.9(1), 60.10 to 60.14, 60.14(12), 60.14(13), 60.14(17), 61.2, 62.2(6), 62.3(2), 62.3(3), 62.4(1), 62.6, 62.8, 62.11(2)"b," 62.12(1), 62.13, Filed ARC 126A 8/23/89
Electrologists and manicurists, 60.10, 60.14(9), 60.14(10), 60.14(18), 60.14(19), 60.15, Notice ARC 125A 8/23/89

PROFESSIONAL LICENSURE (Cont'd)

PUBLIC HEALTH DEPARTMENT[641]
Radon mitigation credentialing, minimum requirements for radon mitigation, 38.13(9), ch 44. Notice ARC 105A 8/9/89
Anesthesia services, 51.14. Notice ARC 9537 Terminated. Notice ARC 107A 8/9/89
Maternal and child health programs, 76.4, 76.5(3) to 76.5(6), 76.6(2), 76.14. Notice ARC 114A, also Filed Emergency ARC 108A 8/9/89
Well elderly screening clinics, ch 83. Filed ARC 113A 8/9/89
State emergency medical board, ch 84. Notice ARC 106A 8/9/89
Disinterment permits, 101.7(1). Notice ARC 124A 8/23/89
Financial assistance to eligible end-stage renal disease patients, 111.6(1), 111.6(2), appendix 1, 2. Filed Emergency ARC 109A 8/9/89

60.1

Clark recommended that "by a person" be stricken following "operated" in the definition of cosmetology school--60.1. Under 60.4(1), paragraph c, Priebe questioned who would decide if a room were "large enough." Charls said that cosmetology schools are inspected by Board members and a complete layout must be submitted to the Board. Charls commented that the number of students was on the decline.

Committee Business

Short recess.

Meetings

Meeting dates were tentatively set for October 10 and 11, 1989; November 8 and 9, 1989 and December 5 and 6, 1989.

PUBLIC HEALTH
Radon
38.13, Ch 44

Chairman Priebe called for review of amendment to 38.13(9) and new Chapter 44. John Eure and Jack Kelly were present. Also present: C. E. Wasker, Home Builders Association of Iowa; Robert Minkler, Inspections and Appeals.

According to Eure, the rules had been Noticed, hearing had been held, comments had been considered and many were incorporated in the rules which would be presented to the Board of Health for adoption.

Wasker provided history of the legislation [1989 Acts, S.F. 522] and reminded that requirement for a performance bond was not enacted. Wasker expressed his opposition to an irrevocable letter of credit. He thought a negotiable instrument which could be deposited to cover fines, etc., would be acceptable. Also, Wasker opposed the fact that any misstatement in the application would be cause for revocation. He declared that recordkeeping for five years was burdensome. As to continuing education, he would favor six hours in order to complete it in one day. He was advised that this was done. In conclusion, Wasker said some clarification would be helpful.

In response Eure read the second sentence of the statement of purpose and scope. There was general discussion.

According to Kelly, the issue was not just one of public health but also of consumer protection. If the builder does not make false statement that a house is radon free, the contractor has no problem. On the other hand, if the builder purports to install a device which will reduce radon below 4 picocuries on an annual average in that home, then proof is required. Kelly added that the mechanism was not as simple as most would like, but the

PUBLIC HEALTH (Cont'd)

device was relatively inexpensive. There was further discussion.

Priebe was advised that a sub-slab ventilation system has been shown to be effective.

It was noted that a public hearing had been scheduled for August 31 but the deadline for written comments was August 1, 1989. In addition, numerous changes would be made. After some discussion, there was consensus that the rules should be renoticed to allow a minimum of 20 days for written comments as well.

In response to question by Clark, Kelly said the law requires defraying the cost of administering the program, and ensuring that consumer protection activities occur. Spot checks will be made by the Department.

44.10

Doyle referenced rule 44.10 with respect to penalties. He questioned whether violation of the radon testing and abatement Act would be a serious misdemeanor. Doyle moved that Royce seek an Attorney General's opinion regarding penalties set out in 44.10. Motion carried. There were no recommendations made for 51.14, 76.4 et al., Chapter 83 or 101.7(1).

Motion OAG

Ch 84

In review of Chapter 84, Tieden requested that 84.6 be amended to require a vote of two-thirds of the members to take an action.

111.6(1) et al. Renal Dialysis

Wilson provided background on Chapter 111 which was adopted initially to implement a cut in legislative appropriations for the renal disease program. The cut eliminated 71 patients from the program and generated much opposition, including protest from legislators. Wilson distributed copies of emergency amendments which were effective September 1, 1989 and will reinstate categories of 3 and 4 to the program. [9/20/89 IAB] The matter had been referred to the Fiscal Committee of the Legislature also.

Tieden was told that the program would stay within budget. Wilson and the ARRC discussed budgeting and funding of the end-stage renal disease program. Wilson admitted it was difficult to project but figures were based on the claims for the most recent six months. If the program were to experience a shortfall, emergency rules would be necessary. Also, a new pharmaceutical may cause increased costs, causing delay in processing of claims. Approximately $150,000 would be involved with a potential for $200,000. General discussion of proper procedures to follow while trying to save time in the budgeting process. There was Committee consensus that legislative action would be needed in 1990.

HEALTH DATA COMMISSION

Pierce Wilson presented the following:

Uniform hospital billing form, submission of data, 5.5, 5.5(1), 5.5(6), 6.3(6). Notice ARC 110A 8/9/89

He stated that the purpose of the rule was to clarify reporting procedures with respect to severity codes on uniform hospital billing and to change the implementation date to January 1, 1990. Wilson said that two vendors applied for approval and the one not chosen has an appeal pending.

MEDICAL EXAMINERS BOARD

Cheryl Brinkman represented the Board for the following and no questions were posed:

PUBLIC HEALTH DEPARTMENT[641] "umbrella" Discipline, 12.5(2), 12.5(8)"c," 12.5(38). Filed ARC 88A 8/9/89

DENTAL EXAMINERS BOARD

Constance Price presented the following rules and there were no questions:

PUBLIC HEALTH DEPARTMENT[641] "umbrella" Utilization and cost control review, ch 32. Notice ARC 119A 8/23/89

DEPARTMENT OF TRANSPORTATION

SPECIAL REVIEW 119.4

At the request of Chairman Priebe, Steve Westvold and Dennis Burkheimer appeared for special review of tourist signing--761--119.4. Priebe questioned statutory authority of 119.4 which requires the businesses to be open a minimum of eight hours a day for six days a week.

Westvold explained that the signing program is authorized by the Manual on Uniform Traffic Control Devices and DOT sets criteria and qualification for the signing. Tourist signing is motorist information signing as opposed to business registration signing and directional signing--which is federal intent.

DOT conducted a 2-year experimental program within limits of federal requirements to promote tourism and economic development. Westvold reviewed the history of logo signing which has been scaled back from 16 hours a day with different hours for motorist, agricultural and commercial businesses.

Priebe pointed out that the Code read "reasonable hours" and he did not believe 48 hours was reasonable when a 40-hour work week was so common. He favored an objection.

According to Westvold, this signing was not specifically addressed in the Code and there is no minimum-hour requirement in the Manual. The rules were developed in cooperation with Department of Economic Development, Agriculture and Land Stewardship and representatives from the Iowa Travel Council. Westvold posed the question, "If a business is closed 30 percent of the time, will people take advantage of the signing?" Pavich moved to object to 761--119.4 on the basis that Department of Transportation had exceeded statutory authority.

Motion to Object

Motion carred.

DEPARTMENT OF TRANSPORTATION (Cont'd)

The following language was drafted by Royce:

At its September 12th, 1989 meeting the committee voted to object to 761 IAC subrule 119.4 on the grounds that it is beyond the authority of the department. This provision is currently in effect and is published in the Iowa Administrative Code.

Rule 119.4 generally establishes the eligibility criteria for commercial and agricultural enterprises who wish to place a business sign along a primary highway. Those portions at issue relate to the requirement that those businesses be open for eight hours a day, six days a week. It is the opinion of the committee that the department does not have the authority to impose such a restrictive limit. The committee notes section 306C.11(5) lists hours of business as one of the items of information that may be placed on a sign. The committee does not believe that this section empowers the department to actually set the hours of business.

NO AGENCY REPS

No agency representatives were requested to appear for the following:

GENERAL SERVICES DEPARTMENT[450]
Amend, renumber and transfer 450—chs 1 to 11 to 401—chs 1 to 11. Notice ARC 136A 8/23/89

PHARMACY EXAMINERS BOARD[657]
PUBLIC HEALTH DEPARTMENT[641] "umbrella"
Wholesale drug license — fees, 3.5. Notice ARC 116A 8/23/89

TRANSPORTATION DEPARTMENT[761]
Vehicle registration and certificate of title, 400.3(12)"b" and "c," 400.3(13), 400.4, 400.4(2), 400.41(2)"d"(2), 400.50(1)"b." Notice ARC 115A 8/23/89

UTILITIES DIVISION[199]
COMMERCE DEPARTMENT[181] "umbrella"
Notice of rate increase, 7.3(1)"f"(2) and (3). Filed ARC 87A 8/9/89
Directory listing in Iowa exchange, 22.3(2)"j." Filed ARC 122A 8/23/89

LAW ENFORCEMENT ACADEMY[501]
Organization and administration, jailer training, 1.1, ch 9. Notice ARC 117A, also Filed Emergency ARC 118A 8/23/89

Adjourned

Chairman Priebe adjourned the meeting at 12:50 p.m. Next meeting was scheduled for October 10 and 11, 1989.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Vivian Haag, Executive Secretary
Alice Gossett, Administrative Asst.

APPROVED:

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CHAIRMAN