

MINUTES OF THE REGULAR MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of  
Meeting

The meeting of the Administrative Rules Review Committee (ARRC) was held on Tuesday and Wednesday, May 14 and 15, 1991, in Senate Committee Room 22, State Capitol, Des Moines, Iowa.

Members  
Present

Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senators Donald V. Doyle and Dale Tieden; Representatives David Schrader and Ruhl Maulsby.

Staff present: Joseph A. Royce, Counsel; Phyllis Barry, Administrative Code Editor; Mary Ann Scott, Administrative Assistant. Also present: Paula S. Dierenfeld, Administrative Rules Coordinator; Stephen Conway and Theresa Kehoe, Democratic Caucus Staff.

ATTORNEY  
GENERAL

Vice Chairman Pavich convened the meeting at 9:30 a.m. and called for the following rules:

ATTORNEY GENERAL[61]

Record retention requirements under motor vehicle service trade practices Act,

ch 29. Small Business Regulatory Flexibility Analysis .....5/1/91

Ch 29

Present from the Attorney General's Office was William Brauch, who reviewed the Small Business Regulatory Flexibility Analysis. Brauch explained that Chapter 29 requires motor vehicle suppliers and repair facilities to retain for nine months copies of all written repair estimates and estimate disclosure forms required under Iowa Code chapter 537B. He pointed out that the Automobile Dealers Association and the Automotive Service Association had no problem with the rules. In response to Priebe, Brauch referenced a requirement in Iowa Code chapter 537B that mandates the disclosure of after-market parts by the dealer, garage, body shop or other person who undertakes the repair. With respect to the procedure followed by State Farm Insurance, Brauch advised Pavich that if an estimate were provided by the company making the repair, chapter 537B would apply. Otherwise it would be questionable.

NATURAL  
RESOURCE  
COMMISSION

The Commission was represented by the following: Marion Conover, Michael Carrier, Arnie Sohn, Steve Dermand and Victor Kennedy. The following rules were presented:

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Wildlife habitat promotion with local entities program, 23.1, 23.7(1), 23.7(3), 23.8.

Notice ARC 1920A .....5/1/91

Mussel regulations, 87.1, 87.1(2), Filed ARC 1919A .....5/1/91

Boat motor regulations—Otter Creek Lake, 45.4(1)"b," Notice ARC 1848A .....4/3/91

Wildlife refuges, state parks and recreation areas—Mines of Spain, 52.1(1), 61.2, 61.6(2).

61.7, Notice ARC 1846A .....4/3/91

State parks and recreation areas—fees, 61.2, 61.3, 61.4(1), 61.5(8)"b," 61.5(9)"c" and "f,"

Filed ARC 1869A .....4/3/91

Falconry regulations, ch 101, Notice ARC 1847A .....4/3/91

NATURAL  
RESOURCE  
COMMISSION  
Cont'd.

Sohn summarized changes in Chapter 23 and commented that amendment to 23.1, regarding wildlife habitat stamps, was intended for clarification. No Committee action.

87.1

Conover stated that revision in rule 87.1 was identical to the Notice and was for clarification purposes. No Committee recommendations.

45.4(1)

Dermand explained the amendment to 45.4(1)b which would allow boats on Otter Creek Lake to operate with unrestricted horsepower at no-wake speed.

Priebe took the chair and questioned why the public hearing was not held in Tama County rather than in Des Moines. Dermand emphasized that the Commission followed standard practice. Priebe had received complaints that hearings were not being held in areas impacted by rules. Royce wondered if this type of hearing could be held at the local park ranger's office.

Motion

Pavich moved that the Committee send a letter to the agency requesting that, whenever possible, hearings be conducted in the affected areas. Motion carried.

52.1 et al.

\* Carrier reviewed amendments to 52.1 et al. which would open the Mines of Spain Recreation Area in Dubuque County to limited firearm hunting. Two public informational meetings were held in Dubuque on December 10, 1990, which generated much public comment and opposition.

Priebe was informed that deer hunting would not be allowed in the permanent refuge area of the Julian Dubuque Monument.

Doyle questioned the prohibition of "possession" of handguns and rifles in the Mines of Spain area. He suspected an exception would be needed for police officers. Carrier recalled that Iowa Code chapter 111 prohibits the discharge of firearms in state parks and recreation areas but he would research the matter.

Priebe asked about the status of the rule making and Carrier indicated that intent was to submit it to the Commission for final action and filing.

In conclusion, Carrier admitted that there was a strong anti-hunting movement on this issue.

Ch 61

Carrier presented amendments to Chapter 61 and discussion focused on local option taxes on fees imposed in recreation areas. Carrier commented that fees were increased in whole dollar amounts for easier administration.

NATURAL  
RESOURCE  
COMMISSION  
Cont'd

Priebe reasoned that the state should be excluded by statute from some of these local options. According to Carrier, there had been minimal complaints regarding the increased fees.

Priebe referred to 61.3(3) regarding the enclosed shelter rentals. He took the position that by striking "100 persons" there could be unlimited capacity in these facilities. Carrier thought the point was well taken. Carrier clarified that the tax was extra. Fees amounted to about \$250,000 and with the increases the Department estimated an additional \$62,500.

Ch 101

According to Dermand, Chapter 101 on Falconry had been rewritten to be compatible with recent changes in the Federal regulations. The revision was requested by the Falconry Association. A major change will allow a nonresident to capture passage birds. In response to Priebe's question as to why nestlings could be taken only between May 21 and June 30, [101.3(2)], Dermand was unsure. Tieden asked about enforcement and Dermand said that all falconry birds must be banded and "self-enforcement" is in place. Priebe wondered about hatching of eggs in captivity and Dermand replied that eggs cannot be taken. With a propagator's permit, an incubator and hatching facility can be licensed by both the state and federal government. Captive birds can be sold.

In response to Maulsby, Dermand commented on the reintroduction of the peregrine falcons.

BANKING  
DIVISION

Steven Moser, Deputy Superintendent, and Don Senneff, General Counsel, represented the Banking Division regarding cash out merger, proposed subrule 2.3(7), published in 4/3/91 IAB as ARC 1836A. According to Moser, this amendment, which was requested by the State Banking Board, was noncontroversial.

COLLEGE  
STUDENT AID

The College Student Aid Commission was represented by Laurie Wolf who reviewed the following:

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]"umbrella"

Eligibility restrictions for Iowa tuition grant moneys,

12.1(8), Notice ARC 1911A

Iowa Stafford loan program--late disbursement, 10.17(2), Notice ARC 1845A

5/1/91

4/3/91

Wolf discussed life experience credit in 12.1(8). She advised Maulsby that it would be for a nontraditional student who had worked in the community for 10 to 15 years, possibly doing volunteer work or work experience in management or supervisory skills. Credit by examination would be by advanced placement testing or CLEP testing.

COLLEGE  
STUDENT AID  
Cont'd.

10.17(2)

Wolf stated that revised 10.17(2) would bring the rules into compliance with federal law and provide relief for the students by allowing them time to apply for a loan near the completion of their education. No committee recommendation.

Minutes  
Motion

Representative Pavich moved to approve the minutes of the special meetings of March 28, and April 8, 1991, as submitted. Motion carried.

## EDUCATION

21.1 et al.

The Education Department was represented by Robert B. Yeager, Harriet Custer, Cheryl Roland and Carol Alexander Phillips and the following agenda was considered:

EDUCATION DEPARTMENT[281]

Child development coordinating council, 64.2, 64.9, 64.11, 64.18, 64.22 to 64.24,  
Filed ARC 1914A ..... 5/1/91  
 Area community colleges, 21.1, 21.35 to 21.39, 21.45(2), Title III heading,  
Filed ARC 1863A ..... 4/3/91  
 Quality instructional center initiative, 21.57 to 21.63, Notice ARC 1859A, also  
Filed Emergency ARC 1860A ..... 4/3/91  
 Schools, programs and support services for dropouts and dropout prevention,  
 61.1(1), 61.1(2), 61.2, 61.5(2)"d," 61.5(3)"a" and "h," 61.5(4)"a" and "d,"  
 61.5(10), 61.5(10)"a," 61.7, Notice ARC 1207A Terminated ARC 1857A ..... 4/3/91  
 Educational support programs for parents of at-risk children age birth through three  
 years, 67.6, 67.8, 67.14, 67.18 to 67.20, Notice ARC 1861A, also  
Filed Emergency ARC 1862A ..... 4/3/91

Yeager presented the changes to Chapter 21, Area Vocational Schools and Area Community Colleges. He stated that references to "Jobs Now Capitals Account" was being rescinded as it was removed from the Lottery funds.

There was discussion of revised 21.45(2) relative to reporting of contact hours of enrollment by community colleges in conformity with an instruction manual available through the Department. There was ARRC consensus that the manual should be updated to a date certain and this should be reflected in a rule making.

Royce asked that this matter be deferred until he could confer with David Bechtel of the Department. So ordered. Yeager commented that they do work with community colleges in developing changes which are submitted to the State Board for approval. It is standard procedure to send changes to each of the community colleges. In response to Tieden, Yeager said they meet with the Regents Education Relation Committee which deals with articulation and they have set up a study committee involving secondary institutions.

21.57 - 21.63

Robard presented new emergency rules 21.57 to 21.63 relating to quality instructional center initiative. The program was to have been funded by the Excellence 2000 Account as of July 1, 1991, but it has since been delayed one year by statute. It was noted that the rules had also been published simultaneously as Notice of Intended Action. The committee agreed that if no comments were received on the Notice, it would be acceptable to terminate the Notice and allow the emergency version to remain. This would save publication costs.

EDUCATION  
Cont'd.

Chs 64,67

Phillips and Clary presented amendments to Chapters 64 and 67 regarding the child development coordinating council and educational support programs for parents of at-risk children, birth through three years. Phillips told the committee that a public hearing was held on March 26 on Chapter 64 but no one attended and no written or oral comments were received. She defended the emergency adoption which had been recommended by the Department's legal counsel to insert new appeal language and the definition of "at-risk student."

Priebe and Phillips discussed disposition of the appropriation and she clarified that rules in Chapter 65 (not before the Committee) had generated much public comment but those before the Committee today had not. Clary added that Chapter 65 dealt with percentage of free and reduced lunches as weighting factors.

Schrader inquired about the date set out in the preamble and Phillips replied that the request for proposals (RFPs) were sent out with a cover letter with explanation that notification of any change would be made. She emphasized that primarily, the language change related to the appeals process which would come after the request for proposals were awarded. Schrader also observed the absence of grant awards criteria points for the different categories. Phillips stated that the Department preferred not to include the number of points. This would be a cost- and time-saving measure but points would be listed on the request for proposals.

Royce called attention to ARRC proposed Rules of Procedure which will require any point system to be set out in the rules. Phillips explained the procedure which the Department had followed. They had obtained copies of rules and RFPs from the Department of Health and the Department of Human Services and noted that points were not included. Phillips reiterated that points are clearly set out in all the applications.

Motion

Pavich moved to request the Department of Education to include points in the grant awards criteria. Motion carried.

Royce asked if it would be appropriate to send a letter to the Departments of Public Health and Human Services regarding their point systems and there was Committee concurrence.

Schrader referred to 64.23 and 67.19 concerning the refusal of the director to issue a decision on Request for Reconsideration upon good cause. He took the position that a response was necessary. Maulsby concurred. Phillips stated that the provision was drafted by the Department's legal counsel. Priebe asked Royce if there were precedent for this and

# EDUCATION Cont'd.

Royce had not seen this wording previously. He was willing to visit with the counsel on the issue. Priebe stated that of the \$11.2 million, there are four programs and he contended that consistency was important.

Schrader reasoned that more time was needed to prepare for these complicated new education programs and perhaps funding should follow two years later.

Phillips stressed that amendments in Chapters 64 and 67 were basically improvement to the appeals language. Priebe recommended that the Department work with Royce to make necessary changes to include the point system in the rules. There was Committee consensus that emergency adoption of such amendment would be justified since the grant process had begun.

Schrader pointed out that their legislative colleagues believe that points placed on the different criteria make a significant impact on distribution of grants. Phillips made the point that just one constituent raised concern about those particular rules [Chapter 65]. Priebe declared that the person performed a real service to the educational system of the state by apprising schools of these points. In reply to Priebe, Phillips stated that the department was down about 20 staff.

# CULTURAL AFFAIRS

Ch 7

Mark Peitzman represented the Department of Cultural Affairs for revised Chapter 7, "Museum Property," which governs the disposition of property that is loaned to museums within the state. The rules were published as adopted and filed in IAB 4/17/91 as ARC 1891A. There were no questions.

# INSPECTIONS AND APPEALS

31.1 et al.

Representing the Department of Inspections and Appeals were Rebecca Walsh, Pearl Johnson, Don Mendenhall and Robert Haxton. The following agenda was before the committee:

## INSPECTIONS AND APPEALS DEPARTMENT[481]

Requirements for sinks in new or remodeled food establishments and food service establishments; vending machine licensure exemption; training cost recovery; Code reference updates, 31.1"7" and "8," 32.1"8," 33.1, 35.4(1), chs 30 to 37 Code updates. Filed ARC 1921A ..... 5/1/91

Administration, social gambling, bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"c," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Filed ARC 1922A ..... 5/1/91

Care facilities, 56.10, 57.15(5), 57.19(2)"m"(1), 57.22(3), 57.23(3)"e"(2), 57.24, 57.38(5), 57.38(6), 57.45(4), 57.45(5), 58.14(5), 58.21(11)"c," 58.27, 58.42(5), 58.42(6), 58.49(4), 58.49(5), 59.17(6), 59.26(11)"c," 59.32, 59.47(5), 59.47(6), 59.54(4), 59.54(5), 62.14(4)"b"(12), 62.17(1)"c" and "f," 62.22, 62.23(19)"d"and"e," 63.15(5), 63.22, 63.36(5), 63.33(6), 63.43(4), 63.43(5), 64.4(6), 64.4(7), 64.35, Filed ARC 1873A ..... 4/3/91

Walsh explained the amendments to 31.1 et al. and there were no questions.

100.3 et al.

There were no questions concerning amendments to 100.3 et al.

56.10 et al.

Walsh described amendments to care facilities rules in Chapters 56 to 59 and 62 to 64 as general clarification. In response to comments received from



**INSPECTIONS  
AND APPEALS  
Cont'd.**

Department of Elder Affairs and Protection and Advocacy Agency, language was added to strengthen the rules pertaining to resident's personal funds or property. No action taken.

**COMMUNITY  
ACTION**

The following amendment was presented by Sue Downey and John Burnquist from Community Action Agencies Division:

11.3

**COMMUNITY ACTION AGENCIES DIVISION[427]**

**HUMAN RIGHTS DEPARTMENT[421]"umbrella"**

Affordable heating program--eligibility, 11.3, Filed Emergency ARC 1877A ..... 4/17/91

Burnquist spoke on changes in the percentage of poverty guidelines for eligible applicants for the affordable heating program--100 to 110 percent.

Downey commented that the program uses \$4.5 million of energy assistance funds and approximately 5,000 clients will be served. The average award is \$600 to \$650. No Committee action.

**CRIMINAL AND  
JUVENILE  
JUSTICE**

Criminal and Juvenile Justice Planning Division was represented by Richard Moore who explained the following:

**CRIMINAL AND JUVENILE JUSTICE PLANNING DIVISION[428]**

**HUMAN RIGHTS DEPARTMENT[421]"umbrella"**

Functions, public records and fair information practices, chs 1, 2, Filed ARC 1874A ..... 4/3/91

No questions.

**PERSONS WITH  
DISABILITIES  
DIVISION**

The following agenda was presented by Don Westergaard:

**PERSONS WITH DISABILITIES DIVISION[431]**

**HUMAN RIGHTS DEPARTMENT[421]"umbrella"**

Organization, advisory council on head injuries, chs 1, 3, Notice ARC 1835A ..... 4/3/91

Chs 1, 3

Priebe referred to quorum requirements in 1.3(2)"a" which allowed a position by a vote of a majority of the members present. He asked that the word "present" be stricken when the rules are adopted.

**ELDER  
AFFAIRS**

The Elder Affairs Department, represented by David Ancell, who explained the following:

**ELDER AFFAIRS DEPARTMENT[321]**

AAAs-planning and administration; service delivery, 6.1(5), 6.4, 6.5(1)"e" to "g," 6.5(2)"g," 6.6(1), 6.6(2)"f" and "g," 6.6(3) to 6.6(6), 6.7(1)"f," 6.7(1)"j," 6.7(1)"o" to "q," 6.7(2), 6.8"8," 6.10(1), 6.12(1), 7.1(1), 7.1(3)"b," 7.1(4)"b" and "c," 7.2, 7.2(1), 7.2(1)"a," 7.2(2)"c" and "f," 7.3(19)"b," 7.4(1), 7.6, Notice ARC 1908A ..... 5/1/91

Ancell said that the revisions would conform to federal regulations--the Older Americans Act. Tieden and Ancell discussed subrule 6.6(2) pertaining to service delivered by AAAs.

**Committee  
Business  
AARC Rules**

Pavich moved that the Committees' Rules of Procedure, which were published under Notice in the 1/23/91 IAB, be adopted as published and filed with the Governor's Administrative Rules Coordinator for inclusion in the IAC.

**Printing  
costs**

There was discussion of increasing costs of printing rules. Barry cited the renumbering of statutes as one of the problems. Numerous Code citations are

Printing  
costs  
Cont'd.

used throughout the Administrative Code and when these citations change, agencies must revise their rules accordingly. She recalled a recent filing by the Pharmacy Examiners, whose enabling legislation was repealed in Code chapters 203 and 203A and the revised version was numbered as 203B. This involved 42 pages in the IAC. It was her understanding that renumbering of the Code was to accommodate the computer program. Barry had visited briefly with the Code editor, JoAnn Brown, who was willing to study the problem. Priebe suggested that the Legislative Council should be made aware of the issue and Barry agreed to send a memo to Diane Bolender, Director of Legislative Service Bureau.

AUDITOR  
OF STATE  
  
Ch 21

It was noted that Chapter 21 of rules of the Auditor of State regarding filing fees would be included in the June agenda. The rules were carried over from the April meeting of the ARRC.

Midwest  
Conference

Royce informed the Committee of a Council of State Governments rules review meeting sponsored for Midwest legislators and staffs to be held in Omaha July 13 and 14. Interest was expressed and final plans will be made at the June meeting. Chairman Priebe recessed the meeting at 11:45 a.m. for lunch and reconvened the meeting at 1:30 p.m.

Recess  
Reconvened

HUMAN  
SERVICES

The following rules of the Human Services Department were considered:

#### HUMAN SERVICES DEPARTMENT[441]

Granting assistance, conditions of eligibility, 41.7(5)"b," 41.7(7)"z," 41.7(8), 41.7(8)"c,"  
41.8(2)"b"(2), 75.19(1)"e," Filed Emergency ARC 1871A ..... 4/3/91  
Transitional child care assistance program, 49.6, Filed Emergency After Notice ARC 1872A ..... 4/3/91  
Disability determinations for Medicaid eligibility, 50.1, 75.20, 86.3(6), 86.4, Filed ARC 1842A ..... 4/3/91  
Refugee services program, conditions of eligibility, Options 1 to 10, 60.7, 60.7(1), 75.1(21)"c,"  
75.1(32)"f," Notice ARC 1890A ..... 4/17/91  
Conditions of eligibility, medically needy, 75.1(7), 75.1(11), 75.1(19), 86.14(4),  
86.15(1), 86.15(3), Notice ARC 1837A ..... 4/3/91  
Conditions of eligibility—determination of countable income and resources for  
persons in a medical institution, 75.5(3)"a"(1), 75.5(3)"d" and "f," 75.5(4)"a,"  
75.5(4)"a"(1), 75.16(2)"d"(2), Notice ARC 1844A ..... 4/3/91  
Conditions of eligibility, 75.15(2), 75.16(2)"d"(4), Notice ARC 1840A ..... 4/3/91  
Federally qualified health centers, 77.35, 78.39, 79.1(2), 80.2(2)"aj,"  
Filed ARC 1843A ..... 4/3/91  
Hospital reimbursement, 79.1(5)"a," 79.1(5)"o," 79.1(5)"v," Notice ARC 1839A ..... 4/3/91  
Foster care services—department approval of need for PMIC, 202.16, Notice ARC 1838A ..... 4/3/91  
Public records and fair information practices, conditions of eligibility, managed  
health care providers, 9.7(1)"b""6," 75.21, 75.25, 88.4(4)"c," 88.24(4)"c," 88.47(1)"c"(6),  
Notice ARC 1933A ..... 5/1/91  
Duplication of assistance, 41.5(2), 41.7(6)"x," 41.7(7)"e," Filed Without Notice ARC 1936A ..... 5/1/91  
Transitional child care assistance program—payment, 49.10, Filed ARC 1929A ..... 5/1/91  
State supplementary assistance policy, 51.1, 51.3(3) to 51.3(5), 52.1(3)"a" and "d,"  
Filed ARC 1934A ..... 5/1/91  
Refugee services program, 61.1, 61.15, Notice ARC 1927A ..... 5/1/91  
Electronic benefit transfer—food stamps; treatment centers and group living arrangements,  
65.4, 65.9, 65.36, Filed ARC 1931A ..... 5/1/91  
Conditions of eligibility—widows and widowers, 75.1(27), 75.1(27)"c,"  
Filed Emergency ARC 1928A ..... 5/1/91  
Medicaid coverage under the mothers and children coverage group;  
presumptive eligibility for pregnant women, 75.1(28), 75.1(30), 76.6(5),  
Filed ARC 1932A ..... 5/1/91  
Skilled nursing policy, 77.12, 79.1(9)"h," 81.3(2), 81.6(16)"g," 81.21,  
81.22, Notice ARC 1935A ..... 5/1/91  
Payment for drugs dispensed by podiatrist, 78.5(3), Filed ARC 1930A ..... 5/1/91  
Dependent adult abuse treatment and protection services, 130.3(1)"e," 176.6(7),  
Notice ARC 1923A ..... 5/1/91  
Gamblers assistance program, ch 162, Filed ARC 1924A ..... 5/1/91



HUMAN  
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Cont'd.

Those present were Mary Ann Walker, Don Gilbert, Vivian Thompson, Lucinda Wonderlich, Elaine Monaghan, Mike Murphy, Kathy Ellithorpe, Deb Ozga, Wayne Johnson, Jim Overland, Joann Sheeley, Bob Schoene, Marcia Stark, Carol Stratemeyer, Gary Gesaman, and Daniel Hart, Assistant Attorney General.

41.7, 41.8,  
75.19; 49.6

Walker gave a brief overview of amendments to 41.7 et al. and 49.6. There were no Committee recommendations.

50.1 et al.

There was discussion of amendments to 50.1, 75.20, 86.3 and 86.4 with respect to Medicaid eligibility, and 60.7 and 75.1(21) and 75.1(32) regarding refugee services. No Committee action.

75.1(7)  
et al.

There were no questions on proposed amendments to 75.1(7) et al.

75.5(3), (4);  
75.16(2)

In review of 75.5(3) et al., Walker provided background information on the Department's proposal for allocation of income for a person whose spouse is institutionalized. Hart described the process of attribution of resources. Chairman Priebe recognized Dwight Saunders, retired Economics Professor and member of AARP and its State Legislative Committee, who took exception to the definition of "income" as it related to the rules. He indicated that AARP was supportive of allowing the community spouse to receive sufficient income to bring it to allowable level. Saunders declared that the rule was requiring a spouse to destroy assets. He concluded that the rule essentially redefined "income." Hart informed Saunders that the economist's definition of "income" was too narrow for this purpose. After further discussion, Walker reminded the Committee of the Human Services Council meeting scheduled for May 15 and Saunders was welcome to attend.

Doyle expressed concern about the impact of the rules on prenuptial agreements. Schrader raised question as to "protected assets" and was informed that the home and household goods, regardless of value, were exempt for the spouse. Saunders reasoned that the example was rare. It was noted that a farm would also be exempt if the spouse resided there. Hart mentioned a pending court case on the issue.

Pavich took the Chair.

75.15, 75.16;  
77.35 et al.

There were no questions on 75.15, 75.16 or amendments to 77.35 et al.

In review of amendments to 79.1, Stark informed Doyle that every hospital pays for Medicaid malpractice insurance.

202.16

Priebe took the Chair. No questions were posed on 202.16.

HUMAN  
SERVICES  
Cont'd.

Discussion of amendments to 9.7(1) et al. regarding pay for health insurance premiums for Medicaid-eligible persons who have private health insurance available to them. In reply to Tieden, Smith stated that the Department was building a Matrix Table to determine the average Medicaid utilization. Doyle asked if HMOs were included and Smith responded that if a private policy were available that would be more cost-effective, the Department would disenroll the recipient from the HMO and purchase the private health insurance.

Priebe referred to 75.21(1), last paragraph, which stated that Medicaid benefits of a child shall not be terminated due to failure of the parent to cooperate. Smith clarified that a child would never be sanctioned because of parents failure to cooperate.

41.5, 41.7 Walker proceeded with amendments to 41.5 and 41.7 which were mandated by OBRA of 1990. They exclude a child who receives state-funded foster care from the ADC eligible group and a child who receives subsidized adoption payments from the ADC eligible group unless exclusion of this payment would reduce the family's ADC benefits. No Committee action.

49.10 No questions were posed regarding 49.10.

51.1 et al. Walker summarized amendments to 51.1, 51.3 and 52.1 regarding state supplementary assistance. Priebe questioned calculation of income eligibility in 51.3(3). Walker stated that for a residential facility the income must be less than 31 times the daily rate. For partners, it would be less than twice the amount allowed for one. For nursing facilities, it would be three times the SSI benefit.

61.1, 61.15 Walker told the Committee that revision of Chapter 61 establishes a fee and payment schedule for the cost of providing interpretation and translation services in bilingual legal proceedings by the Bureau of Refugee Services. In response to Tieden, Johnson responded that the client may pay for the services if the court assessed the cost. He added that about 90 percent of the refugees in Iowa are self-sufficient.

Chapter 65 Walker explained that amendments to Chapter 65 combined two Noticed rules to establish the application of electronic funds transfer for delivery of food stamp benefits. Drug and alcohol treatment centers and group living arrangements will be required to complete a monthly reporting form. Walker stated that only five people attended the hearings and only general questions were asked.

Schrader asked if the ADC EBT pilot project in Linn County had been expanded.

HUMAN  
SERVICES  
Cont'd.

Stratemeyer recalled that the well-received ADC pilot project had been in operation since July 1989. Walker added that \$42,620 would be used to expand the ADC EBT program beyond the pilot program county and to implement EBT for the food stamp program. Schrader suspected that use of the card was more costly but Stratemeyer cited reduction in lost food stamps, etc. as a plus for the system.

Chs 75, 76; Walker highlighted revisions in Chapters 75, 76 and  
77.12 et al. 77.12 et al. pertaining to eligibility for Medicaid.  
[ARC 1928A, 1932A and 1935A]

77.12 et al. No questions on amendments to 77.12 et al.

78.5(3) According to Walker, revision of 78.5(3) would provide for payment to a podiatrist who dispensed drugs only when there was no licensed retail pharmacy in the community of the podiatrist's office.

In response to Tieden, Ellithorpe said there were no comparisons as to whether physicians receive more pay than podiatrists.

130.3, 176.6 There were no questions on amendments to 130.3 and 176.6.

Ch 162 Under revised Chapter 162, the payment mechanism for outpatient gamblers assistance services will be changed from a grant to a fee-for-service. Overland said there were 12 outpatient treatment programs in Iowa.

Schrader expressed his interest in outreach and prevention as well as advertising. Overland explained that the ads were purchased with money allocated after the contract is awarded. No formal action.

HEALTH DATA Representing the Health Data Commission was Pierce Wilson, who presented the following:

**HEALTH DATA COMMISSION[411]**

Data accessibility and confidentiality of public records and fair information practices,  
7.1 to 7.3, 7.6, Filed ARC 1912A

Ch 7

5/1/91

Wilson spoke of the March 26 public hearing where two comments were received on amendments to Chapter 7. They were requested to avoid naming a particular agency in the definition of "contractor" and not to remove the words "prior to public comment" from 7.2(2)"f." Both requests were honored.

Priebe questioned the need for a definition of "unverified data" in 7.1(145). Wilson replied that "unverified" would indicate that the data was not publicly available; verified would indicate that it was available. Wilson advised Tieden that Charter Hospital in Des Moines was the only facility not participating in the program.

## REVENUE

Representing Revenue and Finance Department was Dennis Meridith, who commented on the following agenda:

## REVENUE AND FINANCE DEPARTMENT[701]

Practice and procedure before the department of revenue and finance, 7.9,

Filed ARC 1865A ..... 4/3/91  
 Corporate officers' liability for unpaid hotel/motel tax, local option sales tax and consumer's use tax; exclusion from liability to immediate successor, 12.15(3), 30.3, 104.11, 104.12, 107.12, Notice ARC 1896A ..... 4/17/91  
 Exempt sales--railroad rolling stock, 17.13, Filed ARC 1866A ..... 4/3/91  
 Excursion gambling boats--exempt sales; local option sales and service tax, 17.25, 107.12, Notice ARC 1867A, also Filed Emergency ARC 1868A ..... 4/3/91

- 7.9 There were no questions on amendment to 7.9.
- 12.14(3) Meridith explained proposed amendments on corporate  
 et al. officer's liability and partner's liability for their failure to pay certain taxes. No questions.
- 17.13 An amendment in 17.13 was intended to make it clear that an exemption for rolling stock applies regardless of whether or not the stock is for hire and that the exemption exists for the benefit of the taxpayer if the equipment has to do with maintenance. No Committee recommendations.
- 17.23, Meridith told the Committee that amendment to 17.25  
 107.12 would add exempt sales by excursion boat licensees. New rule 107.12 added computation of local option tax due from mixed sales on excursion boats. Meridith pointed out that some of these boats would be plying the river adjacent to counties or municipalities with local option sales tax and the Department wanted to offer alternative ways for compliance. Three methods as examples of acceptable formulas were set out in the rule. Meridith continued that a licensee may petition the Department for permission to use an alternative method of apportionment.
- With respect to Priebe's concern as to the need for the rule, Meridith replied that, based upon their research, they believed that counties are coextensive with the state line which goes to the center of the main channel of the river. Priebe could see application where the boat is docked.
- Meridith emphasized that intent was to exert the taxing authority to the full extent available. Since Iowa was not aware of Illinois plans, the rules do not address that area.
- Priebe opined that this was a gray area and should be referred to the legislature for study. Meridith mentioned statutory authority which would indicate that while the state line is to the center of the main channel, the power of the state extends beyond that to the other side of the river. He indicated that the Department had corresponded with a limited number of persons who are affected by collection of taxes. Priebe was interested in jurisdiction when Illinois starts their riverboats.

## Motion

Pavich moved to refer rules 17.25 and 107.12 to the President of the Senate and Speaker of the House for further review by the appropriate committees. Motion carried with Schrader passing.

Schrader asked if there were opposition to the rules, and Meridith replied there was none. Their only concern was possible future action by the state of Illinois. Meridith thanked the Committee for their past consideration and informed them he was entering private law practice.

## UTILITIES

The Utilities Division was represented by Cindy Dilley, Vicki Place and Don Stursma. The following rules were considered:

**UTILITIES DIVISION[199]**  
**COMMERCE DEPARTMENT[181]"umbrella"**  
 Energy efficiency cost recovery, 7.4(4), 17.9, 35.12, Filed Emergency After Notice  
 ARC 1926A ..... 5/1/91  
 Netting of purchased gas adjustments and take-or-pay adjustments, 19.10(7)"b" to "c,"  
Notice ARC 1925A ..... 5/1/91  
 Consent for the sale of goods and services, 1.6, Filed ARC 1888A ..... A/17/91  
 Practice and procedure--attorneys, 7.2(7)"e," Filed ARC 1886A ..... A/17/91  
 Energy efficiency plans, 17.9, 19.11(2), 20.13(3), ch 35,  
Filed Emergency After Notice ARC 1864A ..... A/3/91  
 Complaint procedures, 19.4(1)"i," 20.4(2), 21.4(1)"f," 22.4(1)"b," Filed ARC 1885A ..... A/17/91  
 Electric utility service and safety, 20.1(3)"s," 20.2(2), 20.2(4)"g" and "w," 20.2(5)"a" and "b," 20.4(7),  
 20.4(15)"h"(4) and (6), 20.4(15)"j," 20.5(2)"a" and "b," 20.7(9), 25.1(1), 25.2(1), 25.2(2), 25.2(2)"a" to  
 "e," 25.2(3), 25.3 to 25.5, Notice ARC 1887A ..... A/17/91

## 7.4 et al.

Place presented rule changes to 7.4 et al. in regard to energy efficiency cost recovery. Place replied to Schrader's inquiry about the two-step notice process to customers, stating that utilities will send their customers a notice before the first proceeding to approve the plans and then again at the time of this proceeding.

## 19.10

Place summarized amendment to 19.10(7) and there were no questions.

## 1.6

No questions regarding 1.6.

## 7.2(7)

Place stated that revision of 7.2(7) would mirror the Iowa Supreme Court Rule 116 which requires out-of-state attorneys to apply for permission to appear in each proceeding and to file written appearance of a resident attorney for service. Priebe questioned the need for a licensed attorney. Royce was unsure how a Supreme Court rule could bind another branch of government and apply in an administrative proceeding. Place could not answer. There was no formal action by the ARRC.

## 17.9 et al.

In review of 17.9 et al., Place described the rules as being very detailed in informing utilities exactly what they are required to file. In response to Tieden, Place replied that utilities will file their plans to cover all customers in the state. The Board will make a determination as to which plan to approve.

UTILITIES  
Cont'd. There were no questions regarding amendments to 19.4(1) et al.

20.1 Dilley explained proposed revision to 20.1(3) et al. No Committee action.

TRANSPOR-  
TATION Dennis Ehlert, Bob Humphrey and Dwight Stevens were in attendance for the following rules:

TRANSPORTATION DEPARTMENT[761]  
 Signing for named routes, 131.10, Filed ARC 1902A ..... 5/1/91  
 Vehicle registration and certification of title, 400.1(8)\*c, 400.14(3) to 400.14(5),  
 400.61(2), Notice ARC 1906A ..... 5/1/91  
 Hearing fees--motor carriers, charter carriers, liquid transport carriers, 525.5(3),  
 528.4(3), Notice ARC 1900A ..... 4/17/91

131.10 Stevens discussed new rule 131.10 regarding signing for named routes. There has been an increased interest in naming of memorial highways--one was proposed for southern Iowa and there is some interest in the Burlington Freeway. Stevens clarified that the rule covers the procedures to follow, not how nominations or requests are handled.

400.1 et al. Dennis Ehlert presented the amendments to Chapter 400 relating to vehicle registration and certification of title. No formal action.

525.5(3) There were no questions regarding 525.5 or 528.4(3).

Recess Before recessing the meeting at 3:20 p.m., Chairman Priebe recognized Mary Ann Scott as a new Staff member of the Committee.

Reconvened Chairman Priebe reconvened the meeting at 9 a.m., Wednesday, May 15, 1991. Representative Maulsby was excused for the day. Other members and Staff were present.

AGRICULTURE  
AND LAND  
STEWARDSHIP The following rules of Agriculture and Land Stewardship Department were presented by John R. Whipple, Mark Lohafer, Camilla Valley, Lowell Anderson, Walter Felker, Dan Cooper, Ron Rowland, and Bob Cox:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]  
 Iowa farmers market/women infants children program, ch 50,  
Filed ARC 1907A ..... 5/1/91  
 Infectious and contagious diseases, 64.34(2), 64.35(1), 64.41(3),  
 64.42(1), 64.47(4), 64.153(1), 64.154(5), 64.155(8), 64.156(3),  
 64.162, 64.163, Notice ARC 1937A ..... 5/1/91  
 Noxious weeds, ch 58, Filed Emergency ARC 1903A ..... 5/1/91  
 Apiary--parasites, requirement for the sale of bees, certificate of inspection required,  
 22.2 to 22.4, Notice ARC 1884A ..... 4/17/91  
 Pesticides--secondary containment for pesticide storage and transfer facilities,  
 44.7(1), 44.7(2), 44.7(5), 44.10(1), Notice ARC 1879A, also  
Filed Emergency ARC 1878A ..... 4/17/91  
 Organic food production, 47.7(5), Filed ARC 1881A ..... 4/17/91

Ch 50 Valley explained new Chapter 50 and there were no questions.

Ch 64 Felker and Anderson explained revisions in Chapter 64 regarding infectious and contagious diseases.

AGRICULTURE  
AND LAND  
STEWARDSHIP  
Cont'd.

Priebe suggested clarification as to movement of the herds without change of ownership. He was concerned about consequences of no tags. Felker stated that herds referred to were those going to slaughter. A transportation certificate provided in Code chapter 172B could be produced to show ownership. Anderson cited the definition of herd as set out in IAC 21--64.147. Priebe reiterated his preference for something definitive; perhaps sign some certificate.

Tieden questioned the inspection fees charged to the farmer delivering livestock to a market -- 64.162(5). Felker said there would be a published order setting the fees. Numbers and values were not included in this rule. Felker informed Priebe that pseudorabies fees were still set by order.

Royce took the position that there should be consistency and fees should be in the rules. Technically speaking, a fee is part of a regulatory program and must be by rule. Felker agreed to pursue the matter before adoption of the rules.

Ch 58

Rowland presented Chapter 58 on noxious weeds and there were no questions.

22.2-22.4

Cox explained proposed new rules 22.2 to 22.4 which were developed by the Iowa Honey Producers Association. The rules address two exotic parasites which are a serious threat to honeybees. The Department is attempting to control the Varroa and tracheal mites. They are allowing up to 15 percent infestation with the tracheal mite.

In response to Tieden, Cox stated that total extinction was impossible and detection must be accomplished through laboratory testing. Priebe disagreed with allowing any infestation. He declared that bees should be completely free of parasites before they are sold.

Cox emphasized that the rules represent a compromise between many factions. He added that infestation builds up slowly and causes death of bees during the winter. No Committee action.

44.7, 44.10

Revised rules 44.7 and 44.10 were considered. Whipple reported that no public comment was received on the Notice and the amendments were filed emergency because of new granular pesticide formulations which became available in bulk. Dealers wanted to use these products and the secondary containment for pesticides did not address dry bulk material. Lohafer indicated that the EPA bulk pesticide policy was followed. No Committee recommendations.

47.7(5)

There were no recommendations for subrule 47.7(5).



SOIL  
CONSERVATION  
DIVISION

The following rules from the Soil Conservation Division were presented by Kenneth Tow:

SOIL CONSERVATION DIVISION[27]  
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"  
Contracts for public improvements and professional services, interest on retained funds,  
chs 6, 7, Filed ARC 1917A ..... 5/1/91  
Water protection practices--water protection fund, 12.51(4), 12.81(3), 12.82(6),  
12.84, Filed ARC 1918A ..... 5/1/91  
Minerals program, 60.70, 60.75(2), 60.75(3)"a," 60.75(3)"d" to "f," 60.80(8),  
60.85, 60.90, Notice ARC 1849A ..... 4/3/91

Minor clarifying changes were made prior to adoption. In response to Tieden, Tow said there were some ground-water contracts such as professional services for drainage wells and grant money was available from the federal government for coal mine reclamation projects.

Ch 12

Tow offered brief summary of Chapter 12 re water protection practices and water protection fund. No questions.

Ch 60

In review of amendments to Chapter 60, Tow recalled concerns from Clay County residents regarding setback grants. Subrule 60.75(3) allows a variance to setback requirements and Rule 60.85 sets out criteria for variance application. The Department had input from Buena Vista and Clay Counties and from the Limestone Producers Association. Tow said that paragraph 60.85(1)d would be deleted from the rules before they are adopted. This would eliminate the requirements for permission from the adjacent property owner of the proposed encroachment. The rule would require the current name, address, and telephone number of the property owner and the Department would notify the property owner of the request for variance.

Schrader voiced opposition since he could foresee encroachment by an operator who wanted to mine "every last bit of gravel or limestone." Deletion of paragraph d seemed to Schrader to be an unrealistic compromise.

Tow defended the Department's position contending it would be preferable for them to notify the individual as a party to the proceeding. They could consider any objection in the course of reviewing the variance request and make an administrative decision. Either party could object as a contested case. Tow concluded that the Department had been criticized for overstepping their bounds by extending authority beyond the mining operation.

Schrader requested Tow to leave paragraph "d" intact. No formal action.

Committee  
Business

Barry sought guidance as to disposition of a proposed rule she had received from Soil Conservation for publication. The rule was intended to implement 1991 legislation not yet signed by the Governor.

Priebe opined that the Department should withhold filing until the bill was signed. Royce reasoned that

Committee  
Business -  
Cont'd.

it would be critically important to avoid citation of unsigned legislation in adopted rules. Tow indicated that he had consulted Dierenfeld about the rule and she was working with the Department. Tow explained that the rule addresses cost share, the \$6 million plus appropriation, and their objective was to make funds available for the summer and fall construction seasons.

Priebe suggested emergency adoption after the bill has been signed.

Schrader favored publication of the Notice before the enabling legislation is signed over an emergency filing. He wanted to avoid any delay in disbursing funds to soil conservation districts.

After further discussion there was Committee consensus that the Department should proceed with the Notice with Barry including an editorial note re the status of the legislation.

ECONOMIC  
DEVELOPMENT

Iowa Department of Economic Development was represented by Melanie Johnson and JoAnn Callison, who presented the following:

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

Additional program requirements--community builder program and environmental criteria, 6.6(1)"d," 7.4(2)"h," 22.6(1)"c," 23.5(1)"i," 27.3(5), 80.86 to 80.91,

Notice ARC 1894A ..... 4/17/91

Callison told the Committee that proposed additional rules to Chapter 80 would require any person applying for assistance through the Department to report violations of environmental statutes or rules. They will also be required to conduct in-house or external audits to reduce and safely dispose of waste. Those who fail to cooperate or have a major environmental problem would be less likely to be funded.

ENVIRON-  
MENTAL  
PROTECTION

The Environmental Protection Commission was represented by Mark Landa, who commented on the following rules:

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Emission standards for contaminants--new source performance standards, 23.1(2),

23.1(2)"egg" to "iii," 23.1(3), 23.1(3)"k" to "n," Filed ARC 1899A ..... 4/17/91

Technical standards for underground storage tanks, 135.5(1)"a"(3), Notice ARC 1897A,

also Filed Emergency ARC 1898A ..... 4/17/91

According to Landa, the Department has adopted federal rules verbatim or by reference in amendments to 23.1. Monsanto in Muscatine is the only source affected by these rules.

In a matter not before the Committee, there was discussion of leaky underground storage tanks. The deadline for automatic line leak detectors was extended until September 1991.

Chairman Priebe announced a 15 minute recess.

DENTAL  
EXAMINERS

Commie Price presented the following amendments of the Dental Examiners Board:

Ch 25

**DENTAL EXAMINERS BOARD[650]**  
PUBLIC HEALTH DEPARTMENT[641]"umbrella"  
Continuing education, 25.2(2), 25.3(4), 25.3(4)"a" and "b,"  
25.9(3), Filed ARC 1901A ..... 5/1/91

Amendments to Chapter 25 would adjust the continuing education compliance period to coincide with the license renewal period. Royce advised Priebe that continuing education could be completed over a two-year period.

Price explained a "table clinic" as participation in the clinician or practice part, with a new procedure or instrument involved in the continuing education.

PUBLIC  
HEALTH

The following agenda of the Public Health Department was before the Committee:

**PUBLIC HEALTH DEPARTMENT[641]**  
Immunization of persons attending elementary or secondary schools or licensed child-care centers, 7.4(4)"c" and "d," Notice ARC 1870A ..... 4/3/91  
Outpatient diabetes education programs, ch 9, Filed ARC 1875A ..... 4/3/91  
Acquired immune deficiency syndrome (AIDS)—home- and community-based services, 11.70 to 11.78, Filed ARC 1856A ..... 4/3/91  
Radiation control program—fees, 38.13(1), 38.13(5), 38.13(6), Notice ARC 1853A ..... 4/3/91  
Standards for protection against radiation—personnel monitoring, 40.9(2), Notice ARC 1854A ..... 4/3/91  
Consent for the sale of goods and services, ch 190, Notice ARC 1883A ..... 4/17/91

Representing the Department were David Fries, Carolyn Adams, Mary Weaver, Carolyn Caquelin, Mike Guely, Charlene Rogers, Bureau of Neurological Health, and Bruce Hokel, Radioactive Materials Program Supervisor.

Ch 9

Chairman Priebe called up Chapter 9 and Fries provided background on the rules which were modified as a result of comments from the public hearing as follows: continuing education--application process; instructors may receive continuing education credit by attending programs in diabetes, diabetes management or education; a data summary sheet will replace the health assessment form. Fries said that all outpatient diabetes education programs must be certified to be reimbursed by third parties. The National Association Certification Program will be followed.

11.70-11.78

Fries also explained rule changes to Chapter 11 saying they were presented to the State Board of Health and have been adopted. No one attended the public hearing and no written or oral comments were received. Fries described rules 11.70 to 11.78 as implementing a federally funded program which allows eligible AIDS clients to be reimbursed for homemaker services. Currently, there are three eligible clients.

PUBLIC HEALTH  
Deferred

The remaining rules of Public Health were deferred temporarily.

IOWA FINANCE  
AUTHORITY

Ted R. Chapler, Director, Iowa Finance Authority, presented the following and there were no recommendations:

**IOWA FINANCE AUTHORITY[265]**  
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]"umbrella"  
Amend and transfer 524—chs 1 to 15 to 265—chs 1 to 15, Filed ARC 1876A ..... 4/3/91

Committee  
Business

Pavich called attention to quorum requirements in the ARRC Rules of Procedure--two-thirds vote of six members. It was noted that membership was increased to ten by 1991 legislation and a change would be necessary. There was consensus that the rules should not be held up at this time but would need modification after July 1 if the bill is signed by the Governor.

PUBLIC  
HEALTH  
Resumed

The Committee resumed consideration of rules of Public Health.

## 7.4(4)

In review of proposed amendment to 7.4(4), Guely said there was general agreement that a second MMR (measles, mumps, rubella) immunization should be given between the ages of 4 to 6 years or age 11 or 12. The American Academy of Pediatrics favors the middle or junior high age. Although, in their publication, they recognize "that some public health jurisdictions may mandate revaccination at the time of school entry." The Immunization Practices Advisory Committee, which is associated with the Center's Disease Control U. S. Public Health Service, and the American Academy of Family Practice recommend four to six years of age. Guely spoke of a "degree of rightness" to all of these positions.

The Department gathered statistics from other states and learned that Iowa has had fewer cases and no deaths due to rubella so they decided on ages four to six as opposed to middle or junior high for the second dose of vaccine. Missouri and Kansas have adopted similar rules. Guely spoke of the cost of immunization and Iowa's financial constraints. The MMR costs \$15.38 per dose, and in the clinic situation, it would be free. The cost in a private physician's office would be more. It was noted that some physicians disagree as to the age when a second injection should be administered. No formal action.

## 38.13

Amendments to 38.13 were reviewed by Rogers who stated that fee increases would defray the cost of administering the state's radiation control program. Previously, only a portion of their cost was covered by fees. Based on the written comments, they plan to place a \$1500 cap on the fees for medicine, osteopathic and chiropractic and \$1000 on dentistry and podiatry. In response to Priebe's concern on increases, Rogers said they had to make up 25 to 30 percent more plus the increased costs of running the programs.

## 40.9

Hokel told the Committee that revision of 40.9 would bring the rules into compliance with the U. S. Nuclear Regulatory Commission. No questions.

## Ch 190

There were no questions regarding Chapter 190.

PROFESSIONAL  
LICENSURE

Pavich took the chair. The Professional Licensure Division presented the following rules:

## PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Optometry examiners board—discipline procedures, 180.112 to 180.122,

Notice ARC 1915A ..... 5/1/91

Speech pathology and audiology examiners—board quorum requirements, license reinstatement procedures, 300.8(4), 301.9(2)"b" to "d," Filed ARC 1916A ..... 5/1/91

Speech pathology and audiology examiners—per diem rate, methods of discipline, 300.8(5), 301.112, 301.112(1), Notice ARC 1913A ..... 5/1/91

Licensure of nursing home administrators, 141.7(1)"d," Filed ARC 1855A ..... 4/3/91

Physical therapy examiners, 200.3(1)"b," 200.4(4), 200.10(7), 200.19(2) to 200.19(12), 200.20(7)"k"(4), Notice ARC 1882A ..... 4/17/91

Physician assistants, 325.3(1), 325.4(1), 325.4(5)"d," 325.15(7)"a," Notice ARC 1892A ..... 4/17/91

Present from the Division were Barbara Charls, Marilyn Ubaldo, Kathy Williams and Harriet Miller. Also present was Elizabeth Coyte from the Physician Assistant Examiners Board.

Ch 180

Charls presented revised rules 180.112 to 180.122 on disciplinary procedures for the Board of Optometry Examiners.

Schrader inquired about 180.120 regarding immunity to civil liability. Royce responded this follows Code chapter 258A which encourages people to report wrongdoing. Charls pointed out that the complaint does not become public until it goes to hearing. Schrader quoted the last sentence of 180.120 which provided that the "immunity from civil liability shall not apply if the act is done with malice." He asked how the Board could grant immunity from actions that might be taken from a third party. Royce clarified that the statute grants the immunity and the language of the rule was fairly standard.

141.7

Williams explained that revisions of 141.7(1)d would make the educational requirements the same for equivalency.

Ch 200

There were no questions regarding amendments to Chapter 200, Physical Therapy Examiners.

Ch 325

Williams presented amendments to Chapter 325, Physician Assistants, which are to clarify and update the licensure and renewal and continuing education requirements. She called attention to new language in 325.4(1)a(3) and (4) which was moved from 325.4(1)b(4) and (5) to clarify responsibility of the PA. Williams pointed out that the rule would be revised before adoption to use the statutory language indicating joint responsibility of PA and supervising physicians.

300.8(4),  
301.9(2)

Miller presented amendments to 300.8(4) and 301.9(2) on quorum requirements and license reinstatement procedures for the Board of Speech Pathology and Audiology Examiners. Question was raised as to whether four of seven members would constitute a quorum. Royce wondered if the Board's statute required a majority. He added that Code section 17A.2

PROFESSIONAL  
LICENSURE  
Cont'd.

provides that unless otherwise specifically stated by statute, a quorum is set at two-thirds, which would require five members.

Motion

Tieden moved to delay 300.9(4) for 70 days for further study. Motion carried. [Delay lifted later in the meeting.]

In response to Tieden regarding the cost of reinstatement, Miller replied that there was a cap of \$350.

PUBLIC  
SAFETY

Present from the Department for the following agenda were Carroll Bidler, Gary Stevens, C. T. Odell, Assistant Attorney General, Michael Coveyou and Roy Marshall, State Fire Marshal:

**PUBLIC SAFETY DEPARTMENT[661]**  
Weapons, 4.1, 4.4(1)"g," 4.4(2), 4.4(4)"g," 4.4(6), 4.4(7)"h," 4.5(1) to 4.5(3), Filed ARC 1850A ..... 4/3/91  
Membership of LEATAC, 15.2(3), 15.2(4), 15.2(6) to 15.2(9), 15.2(11) to 15.2(13), 15.3, 15.6,  
Filed ARC 1851A ..... 4/3/91  
State of Iowa building code, 16.140(1)"c," 16.400(1)"y," 16.401, 16.704(5), 16.705(3),  
Table 705A, Filed ARC 1895A ..... 4/17/91  
State of Iowa building code, 16.140(1)"e" to "k," 16.500(1)"c," 16.706, Division VII  
Figures 7, 10, 11, Notice ARC 1852A ..... 4/3/91  
Special review--ABOVEGROUND STORAGE TANKS-- NFPA Standards

Also present: Ed Kistenmacher and Ron Marr, Petroleum Marketers of Iowa.

Ch 15

Coveyou commented that amendments to Chapter 15 reflect current operation of the Law Enforcement Administrator's Telecommunications Advisory Committee (LEATAC). The Oversight Committee meets every two months to arbitrate disagreements on frequencies and power. No Committee action.

Ch 4

Bidler gave an explanation of amendments to Chapter 4 regarding weapons. He stated that 1990 statutory changes mandated criminal record checks before permits to purchase or carry weapons are issued by the county sheriff or the commissioner of public safety, effective July 1, 1991. Bidler quoted from Code section 724.15(2)"d" which requires a valid permit to carry weapons as provided in Code section 724.10.

Ch 16

Coveyou reviewed revisions in Chapter 16 regarding State of Iowa building code--ARCs 1852A and 1895A. He described the adopted rules as primarily establishing minimum standards for toilet facilities in public buildings covered by the building code. The rules are noncontroversial.

Coveyou said that ARC 1852A basically deals with two issues--egress windows in basements of dwelling units and the accessibility and functionality of apartment units for persons with disabilities. Extensive comments were received on the Notice. Local building and code enforcement officials had expressed opposition to the egress window provisions.

PUBLIC  
SAFETY  
Cont'd.

Special  
Review

Chairman Priebe in the chair and called up the special review of the aboveground storage tank issue. Marshall addressed the Committee and discussion focused on the fact that the Department plans to adopt the federal standards (NFPA) with no changes to comply with Code section 101.12. After some controversy, the NFPA adopted the final provisions in April 1991.

Schrader recalled that federal language allows above-ground storage tanks to be installed at automotive service stations upon the approval of the authority having jurisdiction. He wondered if both the fire marshal and local city or county officials would have to approve and Marshall answered in the affirmative.

Priebe pointed out that Iowa could be more restrictive but not less restrictive than federal. There was discussion of the one cent diminution fee imposed in the LUST bill. Schrader thought some concerns that had been raised should be considered by the Department. He continued that the definition of the "automotive service station" had been expanded by the facilities that are unmanned and it could be a fire safety hazard. He also knew of concerns that an aboveground tank might present more of a safety problem. Distance factors have been equalized for the commercial or industrial aboveground storage according to Marshall. Copies of federal guidelines and draft copies of the proposed rule were distributed to the ARRC.

Coveyou interjected that it was the Department's intention to adopt the rules under emergency provisions of 17A and Notice them simultaneously.

Priebe was aware of elevators that want to install these tanks and he suggested filing the rules under emergency to a date certain and then follow the regular process.

Kistenmacher voiced support of the Department's position.

SPEECH  
PATHOLO-  
GISTS

Chairman Priebe announced that research had revealed Code section 147.14 provides a majority of members of the Board of Pathology shall constitute a quorum.

Motion

Doyle moved to lift the 70-day delay imposed earlier today. Motion carried.

There was discussion of the problem with inconsistency as to quorum requirements. Royce called attention to the two-thirds requirement in Code section 17A which was enacted in 1975.



Motion  
ARRC Bill

Pavich moved that the ARRC sponsor a bill to change the quorum in 17A.2(1) from two-thirds to fifty percent of the membership plus one. Priebe reasoned that seven affirmative votes would be needed to take action by the ARRC if the membership were increased to ten, since two-thirds is more than six. Royce counseled that when a major decision is made there should be as many members present as possible.

Pavich's motion carried with Tieden voting "no." Tieden cited his reluctance to modify Chapter 17A.

PUBLIC  
SAFETY  
Vehicle  
Impoundment  
6.4(2)

Subrule 661 IAC 6.4(2)d relating to inventory of an impounded vehicle, was before the Committee for final action. The effective date, March 27, 1991, had been delayed 70 days at the March ARRC meeting.

Doyle focused on language in paragraph d which states "... If keys or other means of access are not available to the officer.....the officer is authorized to break locks to gain access ...." He was interested in the interpretation of "other means." He cited hypothetical situations, e.g. the vehicle was in an accident and the driver was taken to the hospital for treatment. The driver returns for the vehicle in a few hours and it has already been searched and damage incurred. In the case of an electric trunk where they short the wire or "hot wire" it to open it or use a crow bar, causing hundreds of dollars in damages, could the person file a complaint against the department? Doyle reasoned that a locksmith could be "other means" and the owner of the vehicle could be charged for the key, etc.

Coveyou admitted that a burden is placed on the officer, at least in means of access.

Doyle continued his questioning about liability in the instance when a car has been wrecked and while the driver is making arrangements to have it towed in for repair, police break in the trunk. The rule requires inventory of the vehicle within 24 hours and the police have no reason to believe there is anything in the trunk except maybe a briefcase containing legal documents such as criminal files. Doyle asked if there were anything in the rule to prevent the officers from reading or copying confidential information. Odell responded that they could not read or copy any confidential information. Doyle pressed for clarification and Odell contended that they could not go beyond the bounds of the Sixth Amendment. Doyle pointed out that the officers would not know that he was a lawyer. Odell said that only contraband or drugs could be seized. In the case of a pistol in his briefcase, Odell did not believe it could be seized if it were in compliance with the dictates of Code chapter 724.

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Cont'd.

Doyle also questioned the meaning of "evident" as used in the sentence, "Each container shall be opened unless the contents of a particular container are evident from its exterior." Coveyou cited as an example a sealed container that was marked on the outside. Doyle disagreed and offered an example of a Mr. Coffee box which was sealed but contained miscellaneous tools which could be burglary tools under a broad definition. Odell opined that by picking up the box, it would not be evident that it contained a coffee maker. She continued that an officer would not be justified in opening a sealed six pack of Pepsi since the contents would be evident. The rule is an attempt to limit damage when contents are obvious. Coveyou interjected that the original container, even the Mr. Coffee box, if it is still stapled, would be evident from the outside.

Doyle wondered if a marijuana cigarette on a person would give probable cause to open a trunk. In this case, could officers go to court for probable cause to open the trunk? Odell recognized that Doyle posed difficult questions to answer with these few facts because every courtroom case is decided on its facts. There are no hard line rules that can be laid down. Odell added that the rule complies with dictates of the courts that mandate a "policy." It has been discussed in an Iowa Supreme Court case that inventory searches are a well-defined exception.

Schrader suspected that paragraph d was flawed. It would seem to require an inventory at the place of abandonment of a vehicle and before the vehicle could be towed. He declared that the officer on the corner of S. E. 14th and Grand would not have a locksmith, but he might have a crowbar.

Odell disagreed that it was intended for an officer to do the inventory search in the middle of an intersection. Schrader concurred but maintained that the rule did not reflect this. Coveyou quoted from the sentence which requires inventory within 24 hours of impoundment.

Schrader was of the opinion that the rule was open for broad interpretation which has been a concern from the outset.

There was discussion of the Florida v. Wells case, with Coveyou stressing that it was not the Department's intent to change existing policy, but to clarify it in response to Florida v. Wells. The previous language required an inventory of all property within the vehicle, which meant that the contents of locked compartments and closed containers were being

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Cont'd.

inventoried. Coveyou continued, prior to this issue, Odell's predecessor, Gary Hayward, advised the Department to revise the rule.

Schrader observed that the 70-day delay on paragraph d would expire before the June ARRC meeting. However, he could not support a delay into the next General Assembly because the state would be at risk without a policy. Royce advised that an objection could be voted at any time. Doyle suggested that the Committee petition the Department for clarification of the vague language of the rule.

Priebe suggested the Session delay until acceptable language could be drafted. The delay could then be lifted immediately.

Coveyou emphasized that it was imperative for the Department to have a policy in place. When the emergency version expires in 180 days because of the objection imposed by the ARRC, the Department would have no alternative but to readopt it under emergency provisions again. A major point was the protection and safety of the officers and others and the liability of the state because of allegations that property has been stolen.

Coveyou pointed out that language relative to timing of the inventory had been in place at least seven years but the Department was willing to reconsider it.

It was agreed that Royce and Dierenfeld would work with Public Safety officials to resolve the issue.

Doyle reiterated his concerns about the briefcase issue--in the Wells case it was a suitcase. Schrader would find the rule more acceptable if the time frame for inventory was clearer. Distinction between inventory and search was confusing.

Coveyou stressed again that the inventory process was never intended to search contraband. Schrader declared that a search warrant should be obtained when there is reason to search the vehicle.

Motion to  
Lift Delay

Doyle moved to lift the 70-day delay with the understanding that the Department would work for a solution to the problem. Motion carried.

HISTORICAL  
DIVISION

Present for the following rules were Lynda Wessel and Carol Ulch:

Ch 3

HISTORICAL DIVISION[223]  
CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"  
Public records and fair information practices, ch 3, Filed ARC 1880A ..... 4/17/91  
Historical resources development program, 49.2, 49.4(1), 49.4(3), 49.4(7), 49.4(8),  
49.5(4)"b," 49.7(1)"a"(3), 49.7(1)"b," Filed ARC 1889A ..... 4/17/91

HISTORICAL  
DIVISION  
Cont'd.

No questions on Chapter 3.

Ch 49

In review of Chapter 49, Wessell said that more people would be eligible for the program. A cap has been placed on the number of projects as well as the amount of money per applicant. No action taken.

PERSONNEL

The Personnel Department was represented by T. A. Meyer, Clint Davis and Christine Roeper to consider the following revisions:

**PERSONNEL DEPARTMENT[581]**

Classification; recruitment, application and examination; eligible lists; certification and selection; appointments; promotion, transfer, temporary assignment and voluntary demotion; grievances and appeals; leave; equal employment opportunity and affirmative action, 3.4(2), 3.5(1), 3.5(4), 3.5(5), 5.2(2), 5.2(4)"a," 5.3(1) to 5.3(3), 5.4(2)"c," 5.5(2), 5.6, 6.1(2), 6.5, 7.3(3), 8.3, 10.1(1), 12.1, 14.15, 20.5(1), Notice ARC 1893A ..... 4/17/91

3.4 et al.

Davis introduced T. A. Meyer who will be representing the Department at future Rules meetings. Meyer explained that proposed amendments to 3.4(2) et al. cover nine chapters of the administrative rules, primarily program areas relating to selection and certification. Davis informed Priebe that physical examinations are done by licensed physicians--5.3(2).

Responding to Doyle on 5.3(1), Meyer explained that the legislature took action on a bill from the Department of Human Services in the last session with regard to review of records on persons to be considered for employment as child protective investigators, youth service institutions, dependent adult institutions, etc. These rules set out parameters for conducting these background investigations. Doyle inquired about medical records obtained from a doctor and Meyer said that authority would be with the individual department. For example, the Law Enforcement Academy would be authorized, in its statute, to have access to records about those applying for peace officer positions. Meyer was unsure about access to medical records. Meyer continued that Personnel has authority for the selection of state employees per se and these rules are intended as a guide.

Doyle asked if the rules in any way conflict with confidentiality or privacy. Wessel replied that an attorney on their staff has seen the need for clarification that the information gathered is protected by 22.7, confidential personnel records. No action.

No Rep

No agency representation was requested for the following rules and there were no questions.

**EXECUTIVE COUNCIL[361]**

Amend and transfer 420--chs 1 to 15 to 361--chs 1 to 15,

Filed Emergency ARC 1904A ..... 5/1/91

5-15-91

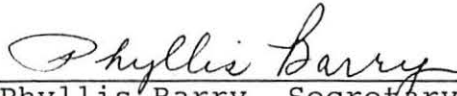
No Rep  
Cont'd.

INSURANCE DIVISION[191]  
COMMERCE DEPARTMENT[181]\*umbrella\*  
Surplus notes, artwork, 5.4, 5.6(4), Filed ARC 1909A ..... 5/1/91  
LAW ENFORCEMENT ACADEMY[501]  
Time frames for training tolled during active military service, 3.11, 8.5,  
Filed Emergency ARC 1834A ..... 4/3/91  
MEDICAL EXAMINERS BOARD[653]  
PUBLIC HEALTH DEPARTMENT[641]\*umbrella\*  
Licensure requirements, 11.3(6)"c" to "e," Notice ARC 1910A ..... 5/1/91  
NURSING BOARD[655]  
PUBLIC HEALTH DEPARTMENT[641]\*umbrella\*  
Advanced registered nurse practitioners, 7.2(4)"c," 7.2(7)"c," Filed ARC 1841A ..... 4/3/91  
TREASURER OF STATE[781]  
Accepting credit card payments, ch 8, Filed ARC 1858A ..... 4/3/91

Adjourn

Chairman Priebe adjourned the meeting at 1 p.m. The next meeting was scheduled for June 11 and 12, 1991.

Respectfully submitted,



Phyllis Barry, Secretary  
Mary Ann Scott, Admin. Asst.

  
Chairman