

MINUTES OF SPECIAL MEETING OF THE ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of meeting The special meeting of the Administrative Rules Review Committee (ARRC) was held on Monday, March 8, in Senate Room 22 and Tuesday, March 9, in Senate Room 24, State Capitol, Des Moines.

Members present Representative Janet Metcalf, Co-chair; Senator Berl E. Priebe, Co-chair; Senators H. Kay Hedge, John P. Kibbie, William Palmer and Sheldon Rittmer; Representatives Horace Daggett, Minnette Doderer, Roger Halvorson and David Schrader.

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

Convened Education Co-chair Priebe convened the meeting at 7 a.m. and announced that a quorum was present. He advised that the Education Department had adopted the rules pertaining to Phase III education, 281—Chapter 91 which would be before the ARRC at their April meeting. He recalled a request for the Department to defer adoption to provide for a May review by the ARRC. At that time the General Assembly would no longer be in session and thorough consideration of the rules would be possible. Priebe emphasized that a number of citizens also wanted to address the issues involved.

Motion Delay 70 days After some discussion, Hedge moved to delay for 70 days for further study Education Department rules 281—Chapter 91 regarding Phase III. Motion carried. Kibbie, Rittmer and Schrader out of the room and not voting.

Priebe then turned the meeting over to Co-chair Metcalf who called up the Human Services agenda:

HUMAN SERVICES

HUMAN SERVICES DEPARTMENT[441]
Interviews of patients by the news media or other outside persons or groups, 28.6(2), Notice ARC 3724A.. 2/3/93
Medicaid eligibility, 75.1(7), 75.14(1), 75.14(1)"a"(3) and (4), 75.14(1)"b"(1), 75.14(1)"c" to "e,"
75.14(3), 75.14(4), 75.14(6), 75.20(2)"a" to "c," Filed ARC 3722A..... 2/3/93
Medicaid eligibility for special agricultural workers, 75.11(3), 75.11(3)"f," 75.13(1),
Filed Emergency After Notice ARC 3723A 2/3/93
Personal needs allowance — surviving spouse of veteran, 75.16(2)"a," Notice ARC 3747A..... 2/17/93
Scope of practice of independent nurse practitioners and physician assistants; short-term inpatient
hospice care, 78.25(1), 78.36(1)"a"(5), 78.36(2)"c" and "d," Filed ARC 3721A 2/3/93
Nursing facilities for persons with mental illness; services in psychiatric institutions, 79.14, 80.2(2)"i" and "ac,"
80.2(2)"am," ch 85, Filed ARC 3709A 2/3/93
Nursing facilities — definition of abuse, elimination of time-limited agreements, implementation of
federal regulations, 81.1, 81.13(2)"a" to "d" and "f," 81.13(5)"b"(2), 81.13(5)"c"(4)"2," 81.13(5)"g"(1),
81.13(5)"o"(1) and (2), 81.13(6)"a"(6), 81.13(6)"d"(1)"2," 81.13(7)"c"(1), 81.13(8)"f"(2)"1,"
81.13(9)"d"(1), 81.13(9)"e," 81.13(9)"f"(1), 81.13(10)"g"(2), 81.13(14)"a," 81.13(16)"d,"
81.13(18)"d"(1)"5," 81.13(19)"o"(4), Filed ARC 3710A 2/3/93
Early and periodic screening, diagnosis, and treatment, 84.3, 84.3(6)"c," 84.4(1), Filed ARC 3716A 2/3/93
Nonassistance child support recovery program, 96.15(1) to 96.15(5), Notice ARC 3715A, also
Filed Emergency ARC 3714A 2/3/93
Licensing and regulation of child-placing agencies, purchase of independent living services, ch 108,
156.12(1), 156.12(2), 202.9, 202.9(1) to 202.9(3), 202.9(4)"a" and "d," 202.9(5)"c"(2), 202.9(6)"a"(2),
Notice ARC 3745A 2/17/93
Purchase of service — fidelity bonding, rescind 150.3(3)"r"(1), Filed ARC 3713A..... 2/3/93
Respite care services, family-centered services, ch 180, ch 182 preamble, 182.1 to 182.3,
182.5(1)"a," 182.7, 182.7(6), 182.7(7), 182.8(5), 182.8(6), 182.11, Filed ARC 3708A 2/3/93
Residential services for adults, 207.4(4), 207.5, Filed ARC 3707A 2/3/93

HUMAN SERVICES (Cont.) In attendance from the Department were Mary Ann Walker, Gary Gesaman, Dee Conner, Harold Templeman, Sally Nadolsky, Alice Fisher, Charlcie Parrish, Margery Corkery, Barry Bennett and Mary Helen Cogley.

28.6(2); 75.1(7) et al. No questions on amendments to 28.6(2) and Chapter 75 found in ARC 3724A and 3722A.

75.11(3) et al. In reviewing amendments to 75.11(3) et al. filed emergency in ARC 3723A, Walker advised Priebe that the number of aliens was not increasing—there were four last year and possibly five this year who would be eligible for Medicaid coverage.

75.16(2) No questions or comments re 75.16(2)"a," Noticed in ARC 3747A.

78.25(1) et al. Amendments to 78.25(1) et al. were before the Committee. Priebe inquired why physician assistants were included. Walker said they would be performing some of the examinations in the prenatal and postpartum medical services.

79.14, 80.2, Ch 85 Discussion followed on amendments to 79.14, 80.2 and Chapter 85 regarding nursing facilities for persons with mental illness and services in psychiatric institutions.

Gesaman responded to Priebe that fiscal impact of this rule making would be positive since it would allow additional federal financial participation. The cost of care in these facilities was discussed at length. Gesaman stated it was possible to place a cap on ICFMR but he noted the wide range of services and costs. A cap on rate of increase was imposed last July.

Halvorson inquired if the level of care had actually increased commensurate with the definition of care and the cost. Walker responded that more had been done with active treatment which required additional staff. Priebe and Halvorson debated pros and cons of placing a cap on the costs. Halvorson viewed it as Department responsibility to determine need for higher level of care.

Kibbie requested the Department to provide a copy of institutions that revert from one category to another and resulting costs. Gesaman recalled that only two facilities had converted from child and foster care to ICFMR in the last two years. In the last five years, he estimated there had been six to eight such conversions. Priebe interjected that the entire facility had not changed—only a wing perhaps. Kibbie concurred and added that there were vast differences in equipment and personnel requirements.

Rittmer commented on funding from the county, state and federal level and the guidelines that must be met.

Halvorson reiterated his request for the Department to research the level of care to determine if benefits were commensurate with dollars spent.

Doderer requested that the names of the facilities and profile of clients be included in the Department's report.

Rittmer noted there were attempts to place patients in less restrictive care when possible.

Walker advised Daggett that the rules being discussed would have little or no impact on the ICFMR costs.

HUMAN SERVICES (Cont.)

Gesaman responded to Kibbie that it would be very difficult for foster care facilities to convert to ICFMR as a result of the rule changes. Gesaman cited more cost containment in the program as recommended by the ARRC last year. He suspected that much of the concern expressed at this meeting and by the Boards of Supervisors was carried over from last year. Gesaman concluded that the ICFMR Program would look different a year from now because of changes to become effective July 1.

No Committee recommendations.

Ch 81

No comments or recommendations on amendments to Chapter 81 found in ARC 3710A.

84.3, 84.4

Amendments to 84.3 and 84.4 were before the Committee. Walker assured Kibbie that physicians assistants would be allowed to perform these screening services.

96.15

No questions on 96.15, nonassistance child support recovery program.

Ch 108 et al.

Metcalf inquired about the religious policy in 108.7(15) contending it was not defined. Walker said the Department would provide information from the different institutions and include examples when the rules were adopted and filed.

150.3

In review of 150.3, purchase of service—fidelity bonding, Walker summarized the rule making for the new ARRC members. The Noticed version had been discussed at length but she was not aware of problems.

Chs 180, 182

In review of amendments to Chapters 180 and 182, it was noted that the reference to "regions" reflects change from "eight districts" to "five regions." Walker explained allocation of the funds.

In response to Daggett, Bennett responded that most of the children under the respite care services program would receive special education. He emphasized that this program offers parents of these children a weekend break, for example. Approximately 190 families receive these services.

Bennett informed Kibbie that some rural areas lack these services which were offered in more populated areas. Bennett discussed training and other qualifications necessary to care for these children.

207.4, 207.5

No questions or recommendations on 207.4 and 207.5

ECONOMIC DEVELOPMENT

Mike Miller, Bureau of Business Finance Chief, reviewed the following agenda:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Self-employment loan program (SELP), 8.2, 8.3(8), 8.4, 8.6(1), 8.6(2), Filed ARC 3758A 2/17/93
 Community economic betterment program, 22.1, 22.2, 22.4, 22.5(2), 22.6(2), 22.6(3)"b,"
 22.7(1)"f" and "g," 22.8(2), 22.8(3), 22.9(2), 22.9(3), 22.12(4), 22.15(6), Filed ARC 3759A 2/17/93
 Targeted small business financial assistance program, 27.2 to 27.4, 27.7, Notice ARC 3761A 2/17/93
 Targeted small business procurement program — notice of solicitation for bids, 54.10,
Filed Emergency ARC 3762A 2/17/93

8.2 et al.

No recommendations on amendments to 8.2 et al.

ECONOMIC-
DEVELOPMENT
(Cont.) – Ch 22

In discussing amendments to the CEBA Program, Chapter 22, Daggett questioned the elimination of the Rural Economic Development and the effect on rural Iowa.

Miller commented funding was guaranteed by the federal government through the Farmers Home Administration and the money itself came from local institutions. What was actually lost from that program was about \$1 million of bank financing at 8 percent.

Halvorson questioned deletion of "and those created positions do not result in displacement of workers from another Iowa Business" from the definition of "Job creation" in 22.2. Miller said this amendment was basically to eliminate confusion cited in an auditor's report. The Department attempts to monitor any displacement before an award is made to a company.

Ch 27

Miller gave brief overview of amendments to Chapter 27, the TSB financial assistance program. Metcalf questioned the wording in 27.4(9)"c" with respect to factors considered for financial need and thought that "personal liquid assets" should appear before ". . . ability or inability to secure a loan" Miller suggested addition of "business venture". Miller advised Metcalf that 27.4(14) was amended to reduce time for reapplication from 180 to 90 days. The Department reasoned that 6 months was excessive. There was discussion of placement on the waiting list of those whose applications have been denied. Metcalf reasoned that first-time applicants just be reviewed first.

Priebe raised a question in 27.4(5), second sentence, which stated that "Existing debt . . . does not include interim financing obtained after the targeted small business award." Miller cited a situation where money was obtained for the same purpose as the TSB award and this gives the Department the ability to waive the limitation. Priebe requested clarification of the subrule to be more specific.

Priebe also expressed concern over new language in 27.4(8) regarding a quorum. He contended that it would allow IDED staff to make a recommendation without any Loan Review Committee members being present and this provision should be stricken. Miller responded that awards were made every month and sometimes all of the three-member review committee could not attend meetings. Priebe declared that by agreeing to serve, the committee assumed responsibility to attend these meetings. Miller pointed out that the Director of the IDED makes the final decisions on awards. Suggestion was made that a telephone conference system be used. Priebe felt strongly that the Review Committee should do the voting. Miller advised Daggett this was a one-day monthly meeting and Daggett concluded that it was not unreasonable to require attendance.

Halvorson inquired who was eligible for TSB assistance and Miller advised it was intended for small businesses owned and operated by at least 51 percent female or minority ownership with under \$3 million average annual gross income.

Schrader asked if this Loan Review Committee were mandated by Iowa Code and Miller did not think so.

Rittmer concurred that at least two Committee members should approve the awards and that a conference call could provide a solution.

Metcalf referenced the definition of "small business" and inquired as to what authority it was changed from the Iowa Code definition. Miller understood this

**ECONOMIC
DEVELOPMENT
(Cont.)**

definition was from legislation passed last year and Royce was asked to research this. Metcalf favored just one definition of "small business."

Royce reported that 1993 Iowa Code, subsection 15.102(4) defined "small business" as having 20 employees. It was noted that the Code contained several definitions of "small business" and further research was needed.

54.10

Miller gave a brief overview on amendments to 54.10, TSB procurement program. No questions or comments.

**ACCOUNTANCY
EXAMINING BD.**

In attendance were K. Marie Thayer, Bill Schroeder and Glenda Loving. The Filed amendments to 193A—3.4(3), 3.9(1), 14.1 and Chapter 17 re peer review and fees found in IAB 1/20/93 as ARC 3700A were before the Committee.

It was noted that the rules became effective 2/24/93 and any problems were to be worked out between the Board and the Auditor's Office.

Thayer pointed out that the five-member board (all CPAs) had resigned because of the ethics legislation. She added that proposed new legislation was addressing this problem. Priebe concluded that the ARRC could recall the rules when a new Board has been appointed.

**AUDITOR OF
STATE 21.1**

Warren Jenkins, Deputy Auditor, briefed the members on amendments to 21.1, filing fees, Filed in IAB 2/3/93 as ARC 3726A.

Co-chair Priebe presiding.

Hedge noted a considerable increase in the fees and Jenkins explained that the stricken figures were percentages and the new figures represented dollar amounts.

**DENTAL
EXAMINERS BD.**

Constance Price, Executive Director, reviewed the following agenda and there were no questions or recommendations by the Committee:

DENTAL EXAMINERS BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Waiver of personal interview in connection with dental licensure by credentials, CPR certification

for dental hygienists, 11.3(3), 11.5(2)"g," 11.6(2)"k," Filed ARC 3787A.....2/17/93

Current CPR certification requirement for dental hygienist license renewal, 14.1(4), Filed ARC 3782A2/17/93

Dental assistants engaging in radiography — fee increases, 22.8(6), 22.9(1) to 22.9(3), Filed ARC 3783A .2/17/93

Continuing education report due from licensees and sponsors; current CPR certification requirement for dental hygienist license renewal, 25.2(7), 25.2(8), 25.2(10), 25.4(3), Filed ARC 3784A.....2/17/93

Professional ethics — compliance with Centers for Disease Control recommendations preventing transmission of HIV and HBV to patients during exposure-prone procedures, 27.9(1), 27.9(3),

Filed ARC 3785A2/17/93

Designation of specialty, ch 28, Filed ARC 3781A.....2/17/93

Discipline for licensees who fail to comply with Centers for Disease Control recommendations for prevention of transmission of HIV and HBV to patients during exposure-prone procedures or who fail to comply with the recommendations of a professional review panel or who fail to comply with infection control standards, 30.4"35" to "38," Filed ARC 3786A.....2/17/93

Co-chair Metcalf presiding.

CORRECTIONS

Fred Scaletta, Administrative Rules Coordinator for the Department, gave a brief overview of the following agenda:

CORRECTIONS DEPARTMENT[201]

Gifts to inmates, 20.5(2), Notice ARC 3766A 2/17/93
 Iowa state penitentiary visitation, 21.2, 21.5, Notice ARC 2807A Terminated ARC 3769A 2/17/93
 Mount Pleasant Correctional Facility, 24.2, Notice ARC 3767A 2/17/93
 North Central Correctional Facility, 26.1 to 26.3, Notice ARC 3768A 2/17/93

The Committee offered no questions or recommendations.

**ECONOMIC
DEVELOPMENT
TSB - Ch 26**

Royce reported on further research regarding the Targeted Small Business rules of Economic Development—261 Chapter 27. He noted that 1993 Iowa Code §15.102(5) defines targeted small business "as one which is 51 percent or more owned . . . by one or more women or minority persons . . . and has as annual gross income of less than \$3 million. "Small business" as defined in §15.102(4) includes fewer than 20 employees.

**INSPECTIONS &
APPEALS**

Rebecca Walsh and Mary Oliver represented the Department for the following agenda:

INSPECTIONS AND APPEALS DEPARTMENT[481]

Staffing in residential care facilities; seclusion room in intermediate care facilities and residential care facilities for persons with mental illness, 58.21(13)"c" and "d," 59.26(15)"c" and "d," 61.5(12), 62.13(5)"c," Filed ARC 3733A 2/3/93

58.21 et al.

It was noted that the adopted amendments did not include revision of 57.12(2)"a" which was included in the Notice. The ARRC had requested an Economic Impact Statement on this paragraph at their meeting held 12/1/92.

No recommendations by the Committee.

EDUCATION

The following agenda was reviewed by Charlotte Burt, Kathy L. Collins and Susan Hetzler from the Department.

EDUCATION DEPARTMENT[281]

Health services, 12.3(9), Filed ARC 3727A 2/3/93
 Extracurricular interscholastic competition — physical examination, 36.14(1), Notice ARC 3729A 2/3/93
 Practitioner preparation programs, 77.5, 77.10"4," 78.6, Filed ARC 3728A 2/3/93

12.3(9)

Burt highlighted amendments to 12.3(9) relating to health services. Priebe questioned the use of "presumed" in the last sentence. Collins responded that this was a presumption which basically has legal effect.

36.14(1)

Collins reviewed amendments to 36.14(1). No comments.

77.5 et al.

Hetzler gave a brief overview of amendments to 77.5, 77.10"4," and 78.6. Brief discussion focused on the shifting of costs involved with the Practitioner Preparation Program approval from the Department to the institution. Costs would average less than \$1000 for a six-member team. Kibbie was advised that community colleges were not included.

**Committee Business
Phase III**

Metcalf brought up the matter of delay on 281—Chapter 91 which was voted at the beginning of the meeting when three members were not present. She thought the issue should be open for discussion in deference to those who were not present for the vote.

Priebe restated his position. Because of controversy generated by the Phase III rules he took the position that there would not be ample time to devote to review in April during the legislative session. Priebe stressed the importance of allowing input from interested persons. Since the Department failed to honor the Committee's request to delay filing these rules until they could be considered at the May meeting, when more time would be available, a motion for a 70-day delay was entertained and passed.

Schrader thought the Committee had exceeded its legal authority in taking that action "as a matter of convenience." He also voiced opposition to the fact that the issue was not on the agenda.

Motion

Schrader moved to rescind the earlier action of the ARRC. Priebe spoke in opposition to the motion. He said there was not time for advance notice since the rules were just published in the 3/17/93 Bulletin.

Motion

Doderer agreed that a motion to defer a vote on the motion before the Committee until a time certain (7:30 a.m. Tuesday, March 9) would be in order and she so moved.

Motion Failed

The Doderer motion failed by a show of hands.

Motion Failed

Schrader's motion to rescind the previous motion was voted upon. Roll call showed Priebe, Metcalf, Hedge, Palmer, Rittmer, Daggett, Doderer and Halvorson voting "nay" and Kibbie and Schrader voting "aye." Metcalf announced the motion had failed.

Schrader asked the secretary to review the vote taken on the 7 a.m. motion by a show of hands to determine who was present at that time. Barry stated that her notes revealed Schrader, Rittmer and Kibbie were not present upon convening of the meeting.

**EPC
61.2(5), 61.3(5)"e"**

Diana Hanson and Ralph Turkle were in attendance from the Environmental Protection Commission for amendments to 61.2(5) and 61.3(5)"e," water quality standards, designated uses for stream segments, Noticed in IAB 2/17/93 as ARC 3756A.

Daggett was advised this rule designates how a particular stream segment should be classified.

Hedge was informed that the headings above each column were defined in the complete chapter of rules in the Iowa Administrative Code.

**NATURAL
RESOURCE
COMMISSION**

Bill Ferris and Richard Bishop were present from the Commission for the following agenda:

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Community forestry challenge grant program, ch 34, Filed ARC 3764A2/17/93

Nonresident deer hunting, 94.1, 94.2, 94.8, Notice ARC 3763A2/17/93

hunting preserves, ch 112, Filed ARC 3765A2/17/93

NAT. RESOURCES New Chapter 34 was reviewed. Ferris assured Halvorson this program was
(Cont.) – Ch 34 federally funded and there was no change in allocation policy.

Ch 94 Nonresident deer hunting amendments were before the Committee—94.1, 94.2 and 94.8. Bishop justified for Priebe the reasons for the rule making. Bishop explained there was no shortage of deer but in Northern Iowa, the Commission had been criticized for excessive depletion of herds. He saw no reason to curtail nonresident hunting which results in a fairly small take. The greatest number of requests for nonresident licenses comes from farmers who have family members or friends from out of state. Bishop spoke of the agency's balance of agriculture and sportsman interest.

Ch 112 No recommendations for Chapter 112 regarding hunting preserves.

PROFESSIONAL LICENSURE Barbara Nervig, Barbara Charls and Harriett Miller were present for the following agenda:

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Barber examiners — elimination of requirement for certification of freedom from infectious or contagious diseases, inactive practitioners, reinstatement of inactive or lapsed instructor license, penalty fee for late renewals, 20.5(2), 20.108, 20.112, 20.214(3), 20.214(9), Filed ARC 3772A.....2/17/93
Barber examiners — certificate for continuing education, 20.105, Filed ARC 3777A.....2/17/93
Ophthalmic dispensers, public records and fair information practices, rescind chs 160, 169, Filed Emergency ARC 3740A 2/3/93
Board of optometry examiners — licensure by endorsement, 180.6, 180.10(7), Filed ARC 3736A..... 2/3/93
Fee increase for physical therapy and physical therapist assistant examinations, 200.9(1), 202.10(1), Notice ARC 3771A2/17/93
Occupational therapy examiners, ch 201, Filed ARC 3757A.....2/17/93
Speech pathology and audiology examiners — uniform rules, chs 303 to 305, Filed ARC 3778A.....2/17/93

There were no questions or recommendations on amendments to chapters 20, 160, 169, or 180 found in ARCs 3772A, 3777A, 3740A and 3736A.

200.9, 202.10 In amendments to 200.9(1), Priebe was advised the only change was in the examination fee which increased from \$100 to \$110.

No questions on the remainder of the agenda.

PUBLIC HEALTH Present from the Department were Carolyn Adams, Administrative Rules Coordinator; Don Flater, Chief BEH; Gary Ireland, EMS Manager; and Michael Magnant, Environmental Engineer. The following agenda was presented for review:

PUBLIC HEALTH DEPARTMENT[641]

Swimming pools and spas, ch 15, Filed ARC 3743A 2/3/93
Backflow prevention assembly tester registration, ch 26, Filed ARC 3741A 2/3/93
Misadministration of radiation, 41.1(8)"c," 41.1(8)"c"(5), 41.1(9)"d," 41.1(9)"d"(5), Filed ARC 3739A 2/3/93First responder and EMT-A certification, 131.4(1)"g" and "o," 131.4(8)"b," 131.4(9), 131.4(10), 131.5(5)"c," 131.5(11)"c," Filed ARC 3738A 2/3/93
Advanced emergency medical care, 132.2(4), 132.3(1), 132.4(9), 132.5(5)"c," 132.7(6), 132.8(1), 132.9(4), 132.14(7), Filed ARC 3737A 2/3/93

**PUBLIC HEALTH
(Cont.) – Ch 15**

In review of Chapter 15 on swimming pools and spas, Kibbie recalled the referral of these rules by the ARRC last September to the General Assembly. Royce explained that a general referral was merely seeking the legislature's attention on an issue and has no impact on the rules process. He also explained a session delay which could be imposed on an adopted rule only.

Doderer referred to legislation passed last year which legalized public wading pools and she asked if these rules would have an impact. Magnant advised they would not, but language was adopted to reflect the law. Subrule 15.4(1) sets standards for fountains.

Kibbie wondered if concerns expressed on these rules last summer had been addressed and Magnant indicated that language relative to the responsibility of certified pool operators had been simplified. In addition, the rules state that the fee would not be collected unless inspection was made.

Ch 26, 41

No recommendations or comments on amendments to Chapter 26 or 41 filed as ARC 3741A and 3739A.

131.4 et al.

In 131.4(8)"b," Priebe was informed that late fees and endorsement fees were nonrefundable.

Ch 132

No questions or recommendations on amendments to Chapter 132, advanced emergency medical care.

**CAMPAIGN
FINANCE**

Kay Williams, Executive Director, CFD Commission, was in attendance to answer questions re amendments to 4.33, lobbyist monthly reports, Noticed as ARC 3734A and Filed Emergency as ARC 3744A, appearing in IAB 2/3/93.

Schrader observed that the reports must be filed on or before the fifth day of succeeding month which would allow only three working days for filing when the first of the month falls on Saturday. Williams responded that the Commission originally required the fifteenth of the month as a filing date. However, since only five days were allowed for campaign finance disclosure reports, they attached the same requirement to lobbyist reports. Williams would refer Schrader's comments to the Commission.

Minutes

Priebe moved that the minutes of the ARRC meeting dated February 8, 1993, be approved as submitted. Motion carried.

Committee Business

The time of the meetings during the legislative session was discussed. Metcalf suggested that the Tuesday meeting end at 8:40 a.m. and Priebe thought both days should begin at 7 a.m.

Doderer inquired about the funding of the ARRC and Barry cited Iowa Code §17A.8(3)—a separate open-ended appropriation.

Barry asked the Committee's permission to publish in the Iowa Administrative Bulletin a reminder that the Phase III rules were formally delayed 70 days. The request was tabled until Tuesday. Members were reminded that the meeting would be held in Room 24 on Tuesday, March 9 at 7:30 a.m.

Reconvened

Co-chair Metcalf reconvened the ARRC at 7:30 a.m. and the following Civil Rights Commission agenda was considered:

CIVIL RIGHTS

CIVIL RIGHTS COMMISSION[161]

Toll-free, TDD and facsimile numbers, forms notebook, complaint process, access to information, 1.1(1)"b,"

1.5(7), 1.5(8), 2.1(4) to 2.1(13), 3.2(4), 3.2(5), 3.3(3), 3.4, 3.5, 3.7(3), 3.8, 3.10, 3.12, 3.13(8) to 3.13(10),

3.14, 3.16, 11.17(2), 11.17(4), 11.17(5), "administrative law judge" in chs 1 to 6, 8 to 11, 15,

Filed ARC 3760A2/17/93

Contested cases, 4.1 to 4.35, Notice ARC 3750A.....2/17/93

Present for the Commission were Ronald Pothast, Director of Administration; Donald Grove, Acting Executive Director; and Richard Autry, Assistant Attorney General.

1.1(1)"b," et al.

Grove gave a brief overview of the amendments to 1.1(1)"b," et al.

Russell Samson, Attorney representing the Iowa Association of Business and Industry (ABI), noted that both the ABI and the Association of School Boards made lengthy comments on the proposed rules at the public hearing and these comments had been "glazed over" by the Commission. Samson urged the ARRC to impose a 70-day delay so that members could familiarize themselves with the various issues of concern. Samson highlighted some of these areas—the first involving 3.4(3) technical defects in complaint. He contended that the Commission was attempting to bypass the clear statutory requirement. Another area of concern was that apparently no case was every final before the Civil Rights Commission since they reopen cases that had been previously closed.

According to Autry, subrule 3.4(3) was verbatim language from the EOC which had not changed for a number of years. He pointed out that the Supreme Court has ruled that even though certain language appears in the statute, it is not essential for the purpose of the agency but helps them to proceed in a more orderly fashion.

Regarding reopenings, Autry said there must be an important distinction between the Commission's types of reopenings. He spoke of two kinds of closures: Administrative when there is insufficient time or budget to investigate; and statutory—when this occurs, the complainant has two years to request a right to sue letter to sue the complainant. Autry continued that the other type of reopening was "no probable cause" which cuts off the right to sue letter. In limited circumstances this type could be reopened. The Supreme Court holds that no probable cause can be reopened within 30 days for any reason but after 30 days, opening would be limited to fraud or misrepresentation.

Daggett pointed out that 3.4(3) was new language and Autry reiterated that was EOC criteria—federal standards adopted to comply with current federal laws. In response to Daggett, Autry indicated that the Commission would investigate a charge filed and would not presume guilt but would determine if a hearing were justified. Daggett commented that in law enforcement, if the letter of the law were not followed by the law enforcement officer in the apprehension, the case would be thrown out. Autry stated there were constitutional issues in a criminal investigation that would not apply in the Civil Rights Commission setting—convictions were not based on the original charge by the police. The courts consider information filed by the county attorney as significant, not the charge filed by the police.

CIVIL RIGHTS (Cont.)

Grove described the Commission's complaint process—four employees take calls from throughout the state—an average of 20 to 40 per day. About 35 to 40 percent of the time, follow-up intake interviews result and complaints are drafted, perfected, and sent to the caller for signature. If the complaint is returned within 180 days, it will be timely filed.

Priebe saw a need for further study of the rules. He had received communications from several businesses and the school board.

Motion – Delay 70 days

Priebe moved to delay for 70 days amendments to Chapters 1, 2, 3, 6, 8, 11 and 15 as published in ARC 3760A. Motion passed with Doderer and Schrader voting "nay."

4.1–4.35

No comments or questions on amendments to 4.1 to 4.35.

AGRICULTURE

In attendance for the Department were Ronald Rowland, Regulatory Division Director; John Schlitz; Lawrence Birchmier, P. R. Coordinator; Bob Cox, State Apiarist; and Lillian M. Moore, Dairy Trade Practices.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Apiary — American foulbrood disease, three new exotic parasites, Africanized honeybees, 22.2 to 22.8,

Notice ARC 3706A 2/3/93

Dairy trade practices — monthly promotional filings, 23.8(4), Notice ARC 3748A 2/17/93

Pseudorabies disease, 64.156(2)"d," 64.157(2)"c," 64.157(5), 64.158(2)"f," 64.158(3)"c," 64.158(4),

64.158(6), 64.159, 64.160, 64.162(4)"b," Notice ARC 3752A 2/17/93

Animal welfare — exercise areas and runs, "breeding animals," in-home kennels, neutering of dogs and cats adopted from animal shelters and pounds, 67.2(1)"j" to "l," 67.2(3), 67.5(4), 67.7(2)"b,"

Notice ARC 3754A 2/17/93

Ch 22

Apiary amendments to Chapter 22 were reviewed by Cox. No action taken.

23.8(4)

No questions or comments on dairy trade practices amendment in 23.8(4).

Ch 64

Birchmier gave an overview of amendments to Chapter 64 pertaining to pseudorabies rules. Daggett was advised there had been no indication of any commentors at the upcoming public hearing.

Birchmier informed Priebe that 64.156(2)"d" was intended to clarify what was meant by "monitored" herd.

Ch 67

Rowland reviewed amendments to Chapter 67 on animal welfare. Priebe expressed his opinion that the Department had exceeded its authority in 67.2(3)"a," where "in-home kennels" were defined as kennels where not more than six animals could be maintained. He recommended revision to specify "not more than three breeding females" in the individual's living quarters.

Rowland explained to Halvorson that wire floors in dog runs were being eliminated because there was indication of damage to paws of animals—67.2(1)"j."

DOT

The Transportation Department was represented by Dennis Ehlert, Shirley Andre, Terry Dillinger and David Fitcomb. The following agenda was considered:

TRANSPORTATION DEPARTMENT[761]

Vehicle registration and certificate of title — damage disclosure statement, 400.23(3), 400.55,

Filed ARC 3719A 2/3/93

Salvage, 405.1 to 405.10, 405.12, 405.15, rescind Appendix to ch 405, Filed ARC 3712A 2/3/93

Definition of car lot, use of dealer plates, definition of travel trailer dealer's extension lot, vehicle

rebuilders, used parts dealers, vehicle salvagers, rescission of transitional rule on temporary licenses,

420.1, 420.4(1)"f," 420.4(2)"f," 422.1(6), 431.2(3)"f" to "h," rescind 431.6, Filed ARC 3720A 2/3/93

SPECIAL REVIEW—Driver's licenses—Mandatory retesting following an accident

Ch 400

No recommendations by the ARRC on amendments to Chapter 400.

Ch 405

Amendments to Chapter 405 regarding salvage vehicles were before the Committee. Hedge was advised the revisions would basically restrict who could bid on a salvaged vehicle to educational institutions and those dealing in new vehicles. Ehlert informed Priebe that individuals could not purchase salvaged vehicles in an attempt to control the flow.

Schrader spoke of his continued frustration with the statute.

420.1 et al.

Filed amendments to 420.1 et al. were before the Committee. There was brief discussion of the rules which were intended to comply with 1992 legislation.

Re-exam —
Driver's License
Special Review

Palmer explained his request for the special review, noting there was no established criteria relating to mandatory retesting of a driver following an accident.

Dillinger explained that the driver is requested to appear for retesting based on recommendation by a peace officer, a court, or a citizen. The form used contains specific criteria but a letter may be used for such a request. Basically, it must identify the individual, the person requesting the reexamination and cite the reason for the reexamination. The reason must be directly related to the rules of safe driving.

Palmer cited an example of an accident with no personal injury involved where the driver had no violations or previous accidents but was called in for retesting. Dillinger said if the accident involved an elderly person (80 or older), statistics show they are involved in failure to yield types of accidents, improperly misjudging speed of oncoming traffic, backing, or left turns with failure to yield. The elderly driver would be asked to appear in an attempt to improve their driving habits.

Palmer questioned personnel at an examination station and learned that 60 to 70 drivers were selected on the basis of age. However, when talking with DOT officials he was told that age was not a predominant criteria. He expressed concern about the trauma experienced by persons receiving these notices without any advice as to rights regarding modification of their driving. He maintained that a better system was needed. Palmer knew of a younger person with two or three serious accidents on their record who had not been called in for reexamination.

Andre agreed with Palmer that the reexamination letters should be revised and indicated that was being accomplished. She added that about 75 percent of the drivers reexamined would be classified as elderly.

**DOT (Cont.)
Motion - Driver
Licenses**

Palmer moved that DOT draft rules on the procedure for retesting for drivers' licenses. Motion carried.

**TREASURER OF
STATE**

Larry Thornton, Deputy Treasurer, was present for the following:

TREASURER OF STATE[781]

Deposit and security of public funds in savings and loans, ch 3, Notice ARC 3776A, also

Filed Emergency ARC 3775A2/17/93

Deposit and security of public funds in credit unions, ch 14, Notice ARC 3773A, also

Filed Emergency ARC 3774A2/17/93

Chs 3 and 14

Thornton gave a detailed overview of Chapters 3 and 14 regarding deposit and security of public funds in savings and loans and credit unions. In response to Metcalf, he stated that the associations of these institutions had been updated on progress made in recent discussions.

Hedge was informed that under these rules savings and loans were at a disadvantage in bidding for public funds. Thornton also stated that if the policy statement is as expected and the board acts on it, the Treasurer's Office plans to file emergency rules immediately after that action, reversing the situation to allow other types of collateral. No Committee action.

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

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Specialty areas of nursing practice for the advanced registered nurse practitioner, 7.2(1),

Filed Emergency ARC 3717A 2/3/93

Disciplinary hearing costs, ch 13, Notice ARC 3725A 2/3/93

No questions or recommendations.

UTILITIES

The Utilities Division was represented by Susan Allender, General Counsel; Allan Kniep and Diane Munns, Assistants General Counsel and Vicki Place, Deputy General Counsel. Also present were John M. Lewis, Iowa Utility Association and J. Kent Jerome, Secretary/Treasurer, Iowa Telephone Association. The following agenda was reviewed:

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Deregulation of new services, 5.2(3), 5.3(2), Filed ARC 3780A2/17/93

Rate-making treatment for postemployment benefits other than pensions, 7.11(3), 7.11(4),

Filed ARC 3731A 2/3/93

Statement of financial accounting Standard No. 106 — postemployment benefits other than pensions, 16.9,

Filed ARC 3779A2/17/93

Terminating local access transport service, 22.14(2)"d"(7), Filed ARC 3730A 2/3/93

5.2, 5.3

No questions on amendments to 5.2(3) and 5.3(2) re deregulation of new services.

7.11, 16.9

Munns presented amendments to 7.11 and 16.9 which addressed standard financial accounting No. 106—accounting and rate making.

Kibbie wondered if there would be change in the basis by which the need of a rate increase could be justified. Munns explained that companies must pursue

UTILITIES (Cont.) a rate case in order to have these costs included and once they are included, they must be placed in an external trust.

Allender opined that it would increase the amount that would be asked for in a rate case if the accrual amount were higher than the cash basis. She added that with few exceptions, rate cases have not been based on the accrual method.

22.14 No recommendations on Filed amendment to 22.14(2)"d."

Metcalf reminded new members that the agencies listed under "No Rep." on the last page of the agenda could be called before the ARRC if anyone had questions.

NO REPS No agency representatives were requested to appear for the following:

ARCHITECTURAL EXAMINING BOARD[193B]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Registration, continuing education, disciplinary action, 2.2(1), 2.4, 3.1(3), 5.21, Notice ARC 3735A..... 2/3/93

BANKING DIVISION[187]

COMMERCE DEPARTMENT[181]"umbrella"

Reverse stock split authorization for state-chartered banks, 2.7, Filed ARC 3755A.....2/17/93

ENERGY AND GEOLOGICAL RESOURCES DIVISION[565]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Application fee for exploratory drilling permit, 51.2(2), Filed ARC 3732A..... 2/3/93

LABOR SERVICES DIVISION[347]

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

Permit-required confined spaces for general industry, 10.20, Notice ARC 3749A.....2/17/93

LOTTERY DIVISION[705]

REVENUE AND FINANCE DEPARTMENT[701]"umbrella"

Ticket sales restrictions, 3.12, Notice ARC 3711A..... 2/3/93

PERSONNEL DEPARTMENT[581]

Definitions; classification; pay; recruitment, application and examination; appointments; promotion, transfer, temporary assignment and voluntary demotion; separations, disciplinary actions and reductions in force; performance planning and evaluation; leave; benefits, 1.1, 3.2(1), 3.4, 3.5(4), 4.1, 4.4(1), 4.5(1), 4.5(1)"e" and "i," 4.5(4)"b" and "c," 4.5(8) to 4.5(10), 4.5(18), 5.2(4)"b"(8), 8.3, 8.6, 10.2, 10.6, 11.1(3)"h," 11.3, 13.2(1), 14.2(2)"o," 14.3(10), 14.15, 14.17, 15.6, 15.9, Notice ARC 3753A.....2/17/93

PREVENTION OF DISABILITIES POLICY COUNCIL[597]

Contracting, ch 5, Filed ARC 3742A..... 2/3/93

REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Business conduct, administrative procedure, 1.24(2), 1.27(7), 1.30(6), 1.32(6), 2.1,

Filed Emergency ARC 3770A.....2/17/93

REVENUE AND FINANCE DEPARTMENT[701]

Taxation of nonresidents' pensions and annuities, reduction in state itemized deductions for certain high-income taxpayers, reduced state deduction for home mortgage interest for taxpayers with mortgage interest credit, 40.44, 41.11, 41.12, Notice ARC 3751A.....2/17/93

NO REPS (Cont.)

SECRETARY OF STATE[721s]

Application for status as a political party, 21.15, Filed ARC 3718A. 2/3/93


Next meeting

A time and date for the April and May meetings of the ARRC were discussed. Agreement was reached to meet Monday and Tuesday, April 5 and 6 at 7 a.m. The May date would be determined at the April meeting.

Adjournment

Co-chair Metcalf adjourned the meeting at 9:05 a.m.

Respectfully submitted,


Phyllis Barry, Secretary
Assisted by Mary Ann Scott

APPROVED BY:


Co-chair