

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, October 8 and 9, 1985.

Place of Meeting: Senate Committee Rooms 24 and 116, State Capitol, Des Moines, Iowa.

Members Present: Senator Berl E. Priebe, Chairman; Representative James D. O'Kane, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; Representatives Edward J. Parker and Betty J. Clark. Also present: Joseph Royce, Committee Counsel; Barbara Burnett, Governor's Administrative Rules Coordinator; Phyllis Barry, Deputy Code Editor; and Vivian Haag, Executive Administrator.

Convened Chairman Priebe convened the meeting at 10:00 a.m. in Senate Committee Room 24.

AGRICULTURE
DEPARTMENT

Elizabeth Duncan, Counsel, John R. Whipple, Charles A. Eckermann, and James M. O'Connor were present for the Department to review:

Bulk food operation, 36.5(4) ARC 5910	F	9 11 85
On-site containment of fertilizers, soil conditioners and pesticides, ch 9 ARC 5951	N	9 25/85
Food standards, weights and measures, 34.6 to 34.8, 65.39 ARC 5963		9 25/85

Also present: Winton Etchen, Iowa Fertilizer & Chemical Association and Steven Schoenebaum, Attorney.

36.5 No questions re 36.5(4). According to Duncan, a new chapter 9 was proposed as a result of concern by the public and fertilizer and chemical producers to protect Iowa's surface and ground waters from contamination. National model rules were followed and the proposal has been perused by a task force comprised of representatives of industry and Water, Air, and Waste Management. Favorable comments have been received. In response to Clark re 30-- 9.5, Duncan indicated they had specific rules for anhydrous ammonia storage. Clark was told that the "twenty-five year, twenty-four hour precipitation event" was terminology from DWAWM--a standard for all areas of the state. It was Whipple's understanding that the standard has never exceeded five inches of precipitation.

9.12 Duncan agreed to rewrite 9.12(2) to remove the requirement to publish site location in the Iowa Administrative Bulletin. It was consensus that a local newspaper would be more appropriate. Royce questioned authority to regulate storage of fertilizer generally. Duncan asked for and was granted permission to research the matter and prepare a written response.

AGRICULTURE
DEPARTMENT
Continued

Duncan agreed with Parker that there was overlapping authority with DWAWM in this area. Re present facilities, Tieden called attention to a dealer with a 300,000 gallon tank and inherent problems of raising it to a platform. Whipple indicated that the consideration would be whether or not water in that facility was contaminated.

9.6

Discussion of dikes--9.6. Tieden contended that it would be impossible to build a dike in some situations. Impact of heavy rains was mentioned. Etchen pointed out that spilled material would be pumped into a storage tank and disposed of the following year. He admitted that it would not be physically possible for some facilities to build a dike. Tieden could foresee some facilities being put out of business. Etchen was aware of expense but also recognized the responsibility of the industry to eliminate polluted groundwater. Tieden was informed that the height of the dike was determined by DWAWM. He took the position that the site of the facility should be the determining factor.

Schoenebaum stressed that the industry is very environmentally conscious. None of the rules were intended to be unduly onerous but were designed to provide minimum standards for industry compliance. Tieden declared the timing was poor.

34.6 - 34.8

Brief review of rules 34.6 to 34.8 and amendment to 55.39. Priebe advised Department officials that he had requested a bill to resolve gasoline metering problems.

VETERINARY
MEDICINE
9.1

Dr. Merle H. Lang, State Veterinarian, appeared for review of standards of practice, 9.1, 9.1(2), 9.1(3), 9.2(1), ARC 5950, also filed emergency ARC 5949, IAB 9/25/85. Lang explained revisions to chapter 9 which had been requested by the Board.

O'Kane and Priebe raised question re 9.1 as possibly exceeding the Department's authority. Lang explained that the language was taken from the pharmacy law. O'Kane did not want to preclude a farmer from treating his own livestock, in some instances. Priebe recommended modification of the rule to read: "A drug or immunization product where state or federal law restricts this drug or immunizing product to use by or under the order of a licensed veterinarian, shall... professional practice." Duncan agreed to furnish Code citations by letter to Committee members. Neither Duncan nor Lang saw a problem with Priebe's suggestion.

Priebe wondered how the veterinarian/client/patient relationship would be determined in 9.1(3). Duncan said it would be made by federal lay inspectors. Lang assured Priebe there would be no additional cost to

VETERINARY
MEDICINE

the state. He indicated that federal authorities find enforcement difficult. Priebe asked Lang to supply a copy of the federal directive. Lang cited dispensing of widely used oxytocin as an example of when a veterinarian might exercise the client/patient relationship. Lang agreed to provide additional information to the Committee.

CONSERVATION
COMMISSION

The following Conservation Commission rules were considered:

Speed and distance navigation regulations, 30.5 to 30.24	ARC 5967	F	9/25/85
Pheasant, quail and gray (Hungarian) partridge hunting seasons, 103.1 to 103.3	ARC 5968	F	9/25/85
Trapping limitations, ch 114	ARC 5980	F	9/25/85
Moor regulations, 40.4(1)"b"	ARC 5965	N	9/25/85
Public-private cost-sharing to acquire natural areas with unique or unusual features, ch 74	ARC 5979	N	9/25/85
Deer hunting regulations, 106.1(4), 106.2(1), 106.2(2), 106.2(4), 106.3(2), 106.4(1) to 106.4(3), 106.8, 106.10.			
<u>filed emergency</u> ARC 5891	F		9/11/85
Waterfowl and coot hunting seasons, 107.1 to 107.3, 107.4(1), 107.4(2)"l"	ARC 5969	F	9/25/85
Wild turkey spring hunting regulations, ch 111	ARC 5966	N	9/25/85

Commission representatives present were: Bob Fagerland, Deputy; Richard Bishop, Division of Wildlife; Terry Little, Wildlife; Robert M. Oden, Associate Superintendent of Enforcement.

30.5 - 30.24

Oden gave brief overview of 30.5 to 30.24. O'Kane in the chair. Re 30.10(3), Oden said that the federal government is responsible for the marking, although a mutual understanding exists between the Corps of Engineers and the state.

103.1-103.3

Discussion of 103.1 to 103.3. Tieden expressed opposition to the lengthening of the pheasant season. Priebe reiterated his position that a pheasant season in his area is "absolutely ridiculous." He opposed increasing the possession limit from six to nine birds and extending the season to January 5. He maintained that the counties located north of Highway 30 should be managed differently.

O'Kane also expressed concern and suggested that the Commission consider a December 1 opening date. General discussion. O'Kane suspected there were fewer hunters later in the season. Bishop said the Conservation Commission had no reason to limit the number of hunters. Bishop observed that the farming practices remove protected areas and pheasant population is reduced. He noted there would be pockets of good population in NE Iowa and that NW Iowa also has a high number of birds this year. Bishop added that scientific information confirms that shooting rooster pheasants has no impact on total population. He recalled that Minnesota had a closed pheasant season for one year and Iowa's pheasant population was higher. When Minnesota reopened their season, trends followed Iowa's. He concluded that a moratorium was not the answer.

Priebe still favored a district concept similar to the procedure followed for deer and turkeys.

CONSERVATION
COMMISSION
Continued

Bishop explained that the increased bag limit impacts only the "traveler hunter." There would be no biological impact and he contended pheasant population was up 100 per cent in Iowa. Both O'Kane and Priebe expressed mixed feelings on the subject of out-of-state hunters.

114.1

Bishop advised that rule 114.1 was drafted in response to problems with snares and conebear traps. Although it is a very positive move, Commission authorities realize that complaints will continue. In response to Priebe, Bishop said the landlord could give permission to trap on his land but the person living in the house must give permission to set traps in the road ditch. Priebe suggested substituting "someone in authority" for "resident of the dwelling". Bishop indicated that had been argued in the Commission.

40.4(1)b

Oden stated that the County Conservation Board had requested unrestricted horsepower with a no-wake speed on Lake Iowa, Iowa County. There have been no enforcement problems. Discussion as to definition of "no-wake" speed and Oden described it as being when a vessel creates no adverse impact on another traveling at no more than 5 miles per hour. Priebe preferred substitution of "where it has no adverse effect" for "no-wake" -- each lake could be regulated accordingly.

ch 78

Fagerland reviewed proposed chapter 78 intended to implement 1985 Iowa Acts, H.F. 225. Under the Act, the Commission may receive up to \$500,000 of the lottery fund for acquisition of natural areas with unusual features--78.7(3)c. Fagerland noted that the Act directed the Commission to use funds for timber areas, for example. These timber areas are not meant for intensive public use and he mentioned Star Cave at Burlington as one with potential. Fagerland agreed to refer Priebe's comment to department officials. Priebe also expressed concern that public "use" was not the appropriate word.

Responding to Tieden, Fagerland assumed that the areas would be managed by appropriate Divisions of the Conservation Commission. No action taken.

ch 106

Bishop gave brief overview of amendments to chapter 106. Priebe thought the Conservation Commission should have allowed for leeway for a second season if the deer kill were not adequate. Discussion of 106.2(4) and taking of deer on the Burlington Ordnance Plant grounds. Bishop did not foresee problems.

Bishop explained that amendments to chapter 107 were filed emergency because the hunting season on

CONSERVATION
COMMISSION
Continued

migratory birds must follow guidelines established by the Federal Fish and Wildlife Service. In response to Priebe, Bishop said studies re sex ratios in mallards had revealed that overkill was unlikely. The Commission is trying to balance the shooting of hens.

107.1(1)

Re 107.1(1), Bishop advised Tieden that the wild celery beds located in the LaCrosse area were causing birds to shift down. They need protection, thus, the closed season on canvasback on a portion of the Mississippi River.

ch 111

In reviewing chapter 111, Tieden interpreted 111.3(2)g as giving unfair advantage to those who hunt in a zone and a zone within that zone. Bishop noted that some people have no desire to hunt in the public zone. Although he didn't anticipate problems, Bishop was willing to review the rule again.

COLLEGE AID
COMMISSION

Gary Nichols presented the following on behalf of the College Aid Commission:

Scholarship program, medical tuition loans, osteopathic subvention program, national guard educational benefits, due process, 2.1(4)"b" and (1), 2.1(6)"b"(3) and (5), 2.1(8)"a," 3.1(1)"a" and "c," 7.1(3)"b," 9.1(1)"f," 11.1(2)"a" and "d." <u>filed</u>		
emergency ARC 5897	<i>N. * FE</i>	9/11/85
Iowa guaranteed student loan program, Ch II, Sec. B, amendments to ch 10	ARC 5896	<i>N</i> 9/11/85
Iowa guaranteed student loan program, Ch VI, Sec. J, amendments to ch 10	ARC 5895, also	
filed emergency ARC 5894	<i>N. * FE</i>	9/11/85
Iowa guaranteed student loan program, Ch XIV, Sec. B, amendments to ch 10	ARC 5893, also <u>filed</u>	
emergency ARC 5892	<i>N. * FE</i>	9/11/85

Priebe in the chair. Nichols noted the first set of amendments were filed emergency and made gender changes as directed by the Administrative Rules Coordinator. Nichols indicated that 3.1(1)c would be rescinded when payments have been made. There is no statute of limitation if payments are being made. The program has not been operative for 10 years. Nichols cited the medical tuition loan program as an example of the long-term commitment made when that kind of forgiveable loan program is legislated.

3.1(1)

ch 10

According to Nichols, chapter 10, Iowa Guaranteed Student Loan Program, will be amended at the request of colleges and universities to clarify when a student may borrow a second time for the same academic year-- essentially eight months must have elapsed since the previous loan. They are proposing to conform to guidelines administered in the other states. In discussing B.3.(a), Nichols said any loan approval would be contingent upon eligibility. Priebe and Tieden suggested that the paragraph be amended to substitute "may" for "will".

The last two sets of rules on the agenda were considered simultaneously. Nichols reported that the amendments to chapter 10 were adopted at the recommendation of Federal Department of Education to be effective October 1, 1985. No action taken.

BANKING DEPARTMENT

Thomas H. Huston, Superintendent, Larry Kingery, Regulated Loan Supervisor, and Don Senneff, Assistant Attorney General, represented the Department of Banking for:

Regulated loans, 21.2(2), 21.4(2)"c" and "d," 21.6(2), 21.7(1), 21.8 ARC 5900...N 9/11/85

Huston advised that no decision had been made by the Banking Board following the October 1 public hearing on interest rates on regulated loans. The amendments to chapter 21 had been put into effect July 1, 1985 under emergency provisions of Code chapter 17A. Huston described his role as chairman of the Banking Board with no voting privilege.

Senneff alluded to "volumes of material" presented at the hearing and said a transcript of the proceeding was being prepared. O'Kane was satisfied that the proper course was being followed.

Priebe emphasized the importance of public input and the Committee's obligation to ensure this.

Recess

Chairman Priebe recessed the Committee at 11:45 a.m. Reconvened at 1:30 p.m. with members and staff present.

PHARMACY EXAMINERS

Chairman Priebe recognized Norman Johnson, Executive Secretary, who presented the following:

Standards, unethical conduct or practice, 6.5(7), 6.5(8) ARC 5945	..F	9/25/85
Standards, IV infusion products, 6.14 ARC 5946	.....F	9/25/85
Pharmacist managers, 6.10, notice ARC 5832 terminated	ARC 5944	.....NT
Temporary designation as a controlled substance, 8.20, filed emergency	ARC 5947	.....FE 9/25/85

Brief discussion with no recommendations by the Committee.

DENTAL EXAMINERS

Constance Price, Executive Director, and Kris Burt represented Dental Examiners for review of:

Gender changes, 7.1(2)"a," 11.2(2)"b," 12.3(1), 12.3(2), 20.5, 21.1, 21.3, 22.7(1), 51.5, 51.7(1), 51.7(3), 51.8(2)	51.10 ARC 5914	.....N	9/11/85
Dental assistants participating in dental radiography, 22.7(2)	ARC 5915	.....N	9/11/85
Continuing education, ch 25	ARC 5916	.....N	9/11/85
Advertising, ch 26	ARC 5917	.....N	9/11/85

No questions re gender changes in 7.1(2) et al or 22.7(2).

25.3
25.4

Clark questioned need for both 25.3 --approval of programs...-- and 25.4--approval of sponsors. Price explained that the Board approves sponsors and they are obligated to abide by continuing education guidelines. Clark thought "may" should be "shall" in the last sentence of 25.3(5), addressing postapproval of activities. Price recalled the Board's position was that some flexibility was needed. Tieden was informed that reciprocity exists with other states.

ch 26

Price summarized revised rules relative to advertising by licensed practitioners. Representatives from the AG's office and Federal Trade Commission assisted in the draft of chapter 26. Re "bait and switch" advertising in 26.1(12), Price stated that the Board usually learns about this from patients or licensees.

10-8-85

REAL ESTATE
COMMISSION

The Real Estate Commission was represented by Kenneth Smith, Director, and Jenny Netcott, for review of:

Brokers and salespersons, administrative procedures, gender changes, 1.10, 1.12, 1.2, 1.4, 1.7(1), 1.17, 1.23, 1.24, 1.26, 1.29, 2.1(2), filed without notice, ARC 5921	F.W.Y.	9/11/85
Petitions - rulemaking and declaratory ruling, 2.6, 2.7, ARC 5982	F.	9/25/85
Prelicense education and continuing education, ch 3, ARC 5923	F.	9/11/85
Time-share interval filing fees, 2.8, filed emergency after notice, ARC 5922	F.E.A.N.	9/11/85

Brief discussion with no recommendations.

Committee
Business

ARRC meeting dates were set for November 12 and 13, December 2 and 3, 1985. Committee in short recess.

INSURANCE
DEPARTMENT

Chairman Priebe called up Insurance rules as follows:

Securities division, registration and operation of broker-dealers, 50.33 to 50.36, 50.39 to 50.41, 50.44, ARC 5941	F.	9/25/85
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Craig A. Goettsch, Securities Division, stated that rescission of the rules would bring the Department into compliance with 1983 Iowa Acts, HF 514. Clark noted that the Act became effective July 1, 1984, but Goettsch pointed out that the Department had made no attempt to enforce the rules which had been nullified by the statute.

Parker and Goettsch discussed the impact of the legislation on Iowa companies with Goettsch saying it resulted in little change. Short recess.

COMMERCE
COMMISSION

Present for review of Commerce rules were Ray Vawter, Jr., Dan Hanson and Gordon Dunn.

Rule-making, registration for the small business impact (Act 393, 4, 395), ARC 5991	F.	9/25/85
Practice and procedure, 7.2(10), 7.4(2), 7.4-4, 7.4(10), 7.5(1), 7.5(2), ARC 5918	F.	9/11/85
Regulatory flexibility analysis - energy conservation improvement pilot programs, ch 30 (notice), ARC 5671, emergency, ARC 5670, IAB 7/3/85, ARC 5992	N.	9/25/85

Also present: Dennis D. Hogan, Sheet Metal Association.

ch 30

Hanson offered background on the energy conservation pilot program, Chapter 30, rules which were filed emergency and effective July 1, 1985. Simultaneously, Chapter 30 was published under the Notice process. Regulatory Flexibility Analyses requested by the Iowa Association of Sheet Metal Contractors and the Iowa Association of Municipal Utilities were denied by the Commission. However, the Commission, on its own motion, voluntarily undertook a Regulatory Flexibility Analysis on rules promulgated in Docket #RMU-85-17 and RMU 85-18, published 7/3/85 IAB.

Hogan reiterated his frustration at being denied the Regulatory Flexibility Analysis and spoke in support of impact of SF 450. He also complimented Commerce officials for their support of the legislation. Hogan expressed dissatisfaction in being advised that analysis could be made only on the rules and not on the programs. He mentioned specific audit programs in Sioux City.

Vawter interjected that Commerce was reviewing the matter and cautioned that staff could not speak for the Commission.

COMMERCE
COMMISSION
Continued

Hogan contended that utilities conducting audits would be comparable to "the fox guarding the chicken house." He called attention to Puget Sound Utility of Seattle which has cooperated with the industry for over 10 years. No formal action.

3.9(3)
3.9(5)

Hanson indicated that 3.9(3) and 3.9(5) clarify the Commission's regulatory flexibility analysis procedure. The final rules were modified by eliminating provision as to when the Commission would give special notice of an impact on a small business and when they would entertain request for Regulatory Flexibility Analysis. The amendments will allow the Commission to maintain its small business impact list of registered small businesses and organizations. The rules also encourage businesses or organizations to be as specific as possible in their requests. As the preamble states, the Commission has had several difficulties with the statute.

Royce questioned language in the preamble where the Department felt the statute was unclear in some respects. Hanson was of the opinion that the 25 businesses requesting flexibility analysis should have some interest in the issue. Otherwise, the Commission may be compelled to change its rule even though they can't appeal, thus an anomaly. Although there seems to be an implied standing requirement, Hanson concluded the Commission had not addressed that at this time. They plan to consider each request on case-by-case basis.

ch 7

Significant amendments to chapter 7 were reviewed by Hanson. In response to Doyle, Hanson said some opposition was expressed to deletion of 7.4(2). Also, Northwestern Bell had suggested revision of 7.4(4) which was declined by the Commission. No recommendations.

PUBLIC
SAFETY

Wilbur Johnson, State Fire Marshal, and Connie White appeared for review of:

Fire marshal, residential occupancies, 5.800 to 5.905 ARC 5993 *F*..... 9.25/85
Fire safety, school and college buildings, 5.651(1) ARC 5986, also filed emergency ARC 5985 *N + FF*..... 9.25/85

5.802(4)

White stated that changes from the Noticed version of rules 5.800 to 5.805 were primarily grammatical. Discussion of smoke detectors--5.802(4)a with Johnson informing Doyle that the provision meets HUD and FHA requirements.

5.800(3)

Tieden raised question as to possible conflict in use of "shall" in both requirements in 5.800(3). Johnson noted that the state building code permits a city to be more restrictive and the Department would not interfere. Johnson concurred with Parker's opinion that one statewide building code would be ideal.

PUBLIC SAFETY Continued

Doyle recalled recent tragedy in the Polk County Jail where inmates were found hanging from the sprinkler system and he asked if jails were regulated separately. Johnson responded that the Corrections Department has a separate set of rules. Under proposed legislation, prisons would conduct their own inspections. There are four jail inspectors for 155 jails in the state--inspections are once a year.

Discussion moved to fire safety for school and college buildings--5.651. Tieden asked if Johnson would ever perceive the requirement for day-care centers and Johnson indicated support. Priebe questioned Johnson as to regulations for homes where there is private teaching. Johnson said the rule was developed to cover those situations. Priebe offered hypothetical situations. Johnson was doubtful it would apply to self teaching for a family of eight.

COMPUTER SUPPORT BUREAU

The Committee agreed to request a representative of the Computer Support Bureau to appear at 2:30 p.m. Wednesday.

Recess

The Committee was recessed at 3:30 p.m.

Wednesday October 9

Chairman Priebe reconvened the meeting Wednesday, October 9, 1985, 9:10 a.m., in Committee Room 24. All members and staff were present.

SOIL CONSERVATION

Kenneth Tow, Assistant Director, represented Iowa Department of Soil Conservation. The Iowa financial incentives program for soil erosion control was before the Committee as follows:

Iowa financial incentives program for soil erosion control. 5.20(17), 5.53, 5.74(6) a. "5.82(2) k." 5.84(13), 5.11, 5.41(9), 5.58, 5.60(9) ARC 5981 9 25 85

Tow noted that the rules address three areas: Items 1 to 6--woodland fencing program authorized in 1985 Iowa Acts, HF 266; Items 7 and 8--use of Iowa Conservation Commission funds in combination with Soil Conservation financial incentives program funds; Item 9 further implements the nonpoint source pollution control research practices on a demonstration basis on Big Spring project, Clayton County. Tow pointed out that 5.53(2) b and c were modified at Committee request to allow reapplication for remaining unused funds for the fencing program. No questions.

DEPT OF TRANSPORTATION

Carol Padgett, Administrative Officer; Linda Timmins, IRP Supervisor; Sharon Green, Administration Officer of Operating Authority; and Ruth Skluzacek, Director, Office of Vehicle Registration, were present to review:

Motor vehicle dealers, display of vehicles. (07.D) 10.1(15), 10.10(2) to 10.10(7), 10.11 ARC 5954 9 25 85
Registration of motor vehicle weighing 55,000 pounds or more. (07.D) 11.20 ARC 5953, also filed emergency ARC 5952 9 25 85

TRANSPORTATION DEPARTMENT

Skruzacek said 10.10(6) was clarified at Committee request--a permit excludes Sunday as directed by Code section 322.3(9).

In re [07,D] 11.20, Skruzacek said the Surface Transportation Act of 1982 provided that a state must receive proof of payment of federal heavy vehicle use tax before registering vehicles 55,000 pounds and over. Under the Act, a 25 per cent tax reduction will be allowed for logging trucks. Agricultural vehicles, registered for 28 tons, will be exempt from heavy use tax if they do not exceed 7,500 miles. Priebe interjected the federal government did not address logging trucks in the same manner as DOT. Skruzacek responded that the cutoff weight for trucks was 20,000 pounds. The rule does not pertain to special trucks. Priebe maintained that the federal government did not demand the requirements of 11.20(2). Skruzacek said the written statement certifying usage was the same one provided to federal officials. She added that the rules provide that the exemption must be noted on state registration system before it can be granted. Short recess.

WATER, AIR & WASTE MANAGEMENT DEPT

O'Kane in the chair. Diana Hansen, Attorney, Legal Services Division, Jerry Tonneson, Mike Murphy and Morris Preston were present for Water, Air and Waste Management Department. The following agenda was considered:

Secondary treatment and effluent standards for publicly owned treatment works and privately owned domestic sewage treatment works. 60.2, 62.3(1) to 62.3(3) ARC 5911 ..N.....	9/11/85
Wastewater construction and operation permits. 64.29(1) to 64.29(5) ARC 5912 ..N.....	9/11/85
Use of recycled oils for road oiling, dust control and weed control. 140.1, 140.7, ch 143 ARC 5913 ..N.....	9/11/85

60.2
62.3

According to Hansen, revisions in 60.2 and 62.3 were intended to incorporate changes in federal EPA regulations and to clarify standards for municipalities. Certain older treatment facilities will be allowed to meet less stringent discharge limits.

In response to O'Kane, Preston said there were 200 to 300 lagoons in the state that would be affected. In his opinion, actual number of facilities could successfully demonstrate proper operation and maintenance would be minimal. O'Kane inquired about the fact that the less stringent effluent standard would apply to facilities having no construction since 1972. Preston said this was true of most facilities. As to comments on the rules, a Dubuque individual gave testimony at the hearing and the Department anticipates input from the League of Municipalities. Generally, comments have been supportive.

WATER, AIR &
WASTE MANAGE-
MENT DEPT

Doyle recalled problems experienced by the city of Sloan last year. Preston commented that since a number of communities were unable to participate in the construction grant program, DWAWM has offered an opportunity to build or update plants in stages. They hope to develop an individual plan for each community. General discussion of problems facing smaller communities.

64.2(9)

In re 64.2(9)b, Hansen explained that the Department proposes to incorporate standards on disinfection from various sources. Chapter 20 was developed in cooperation with a committee of private consulting engineers and pertains to design standards for wastewater treatment facilities. A hearing had been held with no verbal comments being offered. Royce saw no problems with the procedure. Hansen said the Department would work with any city in noncompliance. She continued that, generally, cities are required to meet final effluent limitations by July 1, 1988. O'Kane interjected that the constitutional bonding limit would be a consideration and Preston admitted it was a complex issue.

ch 140, 143

In review of amendments to chapters 140 and 143, Murphy said the rules follow legislation which limited Department's authority. Also, the rules establish safeguards against hazardous conditions caused by application of waste oil to roads, etc. The oil cannot be contaminated by PCB, contain excessive lead, or be ignitable. Murphy described "burned" oil as that recycled oil used for heat--143.2. He stated that the definition of "recycled oil" was taken from the Code. Committee recommendation was to study the definition in an effort to rewrite it for clarity. Clark suggested possible deletion of "following its original use."

EMPLOYMENT
SECURITY
(Job Service)

Joseph Bervid was present for the following:

Employer's contribution and charges, claims and benefits, job placement services, IPERS, forms, 3.11(3)"b."
4.21"e," 4.6, 4.7(2)"f," 4.13(1)"a," 4.22(4) and "c," 7.7, 8.1(3), 8.23, 10.7(7) ARC 5943..... 9/25/85

4.22(4)

Bervid gave brief overview of the amendments which were, for the most part, grammatical. Tieden reasoned that some amendments were "substantial." Re 4.22(4), Bervid said the Code was unclear on the matter of off-season employees laid off as a result of a business closing. The court held that the Department's interpretation of the statute was wrong, thus the amendment. Bervid emphasized that it was a policy change--their previous interpretation was less equitable.

8.1(3)

O'Kane requested Bervid to contact Royce when the investment policy was formulated--8.1(3).
No other questions.

PUBLIC
INSTRUCTION

Charles Moench was present for review of area vocational schools and community colleges, jobs now capital account, 5.35 to 5.39, ARC 5942, filed, IAB 9/25/85. The rules address application for and allocation of funds from the Jobs Now Capitals Account. Moench summarized the procedure for application and criteria for evaluating it.

Responding to Parker, Moench assumed that in-kind contributions would be treated as other in-kind matches. There was no intent by the Department to create undue problems. Moench spoke of the modest wage scale and the uncertainty of permanency of the jobs.

5.39

In re 5.39, second paragraph, Doyle voiced opposition to "...shall schedule hearing to be held within twenty days of the request, unless continued by the parties for good cause." He requested modification "...unless continuance is granted on application of a party with good cause." O'Kane raised question re last sentence of 5.39--"The state board's approval shall constitute final agency action." Royce advised that the Department was setting up a contested case process but more detail was needed. He referred to rather lengthy rules of the Department on general contested case provision and suggested reference to these rules. Doyle favored that approach. Royce will work with the Department. General Committee agreement that filed emergency process should not be used in this instance.

5.36

With respect to the last paragraph of 5.36, Moench said that DPI was optimistic the rule would create some opportunities for planning. Moench was hesitant to say that any confusion over the workability of the rule was removed or that the area schools were knowledgeable of the program. However, efforts had been made to work with them.

RACING
COMMISSION

Mick Lura presented rules as follows:

(Greyhound racing, mutuel rules, trifecta, 7.6(16), 8.1, 8.2(4)l, 8.6 ARC 5961, also filed emergency ARC 5960 ~~ARC 5960~~ 9/25/85

Revised rules will add trifecta as a new form of wagering at Greyhound tracks. The number of dual entries allowed in a race will be reduced. Tieden and Priebe inquired as to what impact trifecta betting would have on breakage since that should be taken into consideration. Priebe suspected there would be at least one-third reduction. Tieden interjected he was not opposed to the trifecta but recalled one purpose of the legislation on breakage was to enhance the industrial development portion of the bill.

Lura could foresee a minimal, slightly downward effect on breakage. Priebe reiterated that breakage was included to encourage dog and horse breeding industry in the state. No action taken.

SECRETARY OF STATE

Sandra J. Steinbach represented Secretary of State for the following agenda:

- Form of ballot for propositions to impose local option taxes, 11.4 ARC 5984 *F.F.F.*..... 9/25/85
- Form of ballot for propositions to impose local option taxes, 11.4, 11.5, 11.6(1) ARC 5987, *also*
- (filed emergency)* ARC 5988 *N.Y.F.F.*..... 9/11/85
- Political advertisements, 11.6 ARC 5983 *N*..... 9/25/85

No recommendations were offered on discussion of the forms of ballots. In review of political advertisements in 11.6, Priebe wondered if 11.6(2)c would provide a loophole and he asked who would make the decision as to whether or not a disclaimer would be impracticable. Steinbach was not sure.

Discussion of yard signs. Steinbach pointed out that legislation mandated use of disclaimer on signs. Royce discussed possible differences between published articles as opposed to printed material such as yard signs. Steinbach pointed out that articles were specifically excluded but admitted there was a fine line of distinction. Steinbach explained that federal candidates are subject to federal regulations-- 11.6(2)d. Committee was generally opposed to the definition of "published material." Royce was directed to research the issue.

Royce
Directive

Steinbach said no public hearing had been requested but the Committee thought the State Central Committees should be notified. It was Priebe's opinion that a hearing should be scheduled for the rule. He contended that a hearing should always be provided on rules of any magnitude.

BEER & LIQUOR CONTROL DEPT

William Armstrong, Legal Counsel, appeared on behalf of Beer & Liquor for the following rules:

- Private wine sales, supplier discrimination, 14.7 ARC 5956, *also filed emergency* ARC 5955 *N.Y.F.F.*..... 9/25/85

He reported that an October 22 hearing was scheduled. No questions.

HUMAN SERVICES

Mary Ann Walker, Vivian Thompson, Charles Ballinger, Suzanne Boyde, Jim Hennessey, Marg Corkery, Miriam Turnbull, Mary Helen Cogley, Jim Krogman, Gloria Conrad, Margaret O. Ward, Julie Dettmann, Rosemary Easton, Vernon Woodard, Will Miller, Dan Gilbert, and Barb Momberg were present for review of:

- Mental health service provider standards, ch 35 ARC 5974 *F*..... 9/25/85
- Work and training programs, 55.2(1)"b" ARC 5904 *F*..... 9/11/85
- Providers of medical and remedial care, intermediate care facilities, 79.1(2), 79.1(8), 79.1(9), 81.6(3), 81.6(4), 81.6(16) ARC 5905 *F*..... 9/11/85
- Abuse of children, dependent adult abuse, 175.1, 175.8(4), 175.8(5), 175.11(2), 175.14, 175.15, 176.10, 176.13(2) ARC 5906 *F*..... 9/11/85
- Foster care services, placement, 202.6(5) ARC 5907 *F*..... 9/11/85
- ADC, resources, income, 41.6(10), 41.7(1), 41.7(9)"f" ARC 5970 *N*..... 9/25/85
- Federal surplus food and institutional food programs, food losses, 73.13, 74.19(2), 74.22 ARC 5971 *N*..... 9/25/85
- Medical assistance, surgical procedures -- prior approval, 78.1(19), 78.7(18), 78.2(3) ARC 5920 *N*..... 9/11/85
- Medical assistance and child care centers, gender changes, 78.10, 109.7(4)"b," *filed emergency* ARC 5901 *F.F.*..... 9/11/85
- Payment for transportation to receive medical care, 78.13(10) ARC 5972 *N*..... 9/25/85
- Family and group day care homes, standards, 130.5(1)"f" ARC 5908 *N*..... 9/11/85
- Social services block grant, amendments to ch 153, notice ARC 5147 terminated, ARC 5973 *N.T.*..... 9/25/85
- Purchase of adoption services, ch 157 ARC 5903, *also filed emergency* ARC 5902 *N.Y.F.F.*..... 9/11/85
- Domestic abuse, 160.1, 160.10 ARC 5909 *N*..... 9/11/85

Walker briefed the Committee re changes made to chapter 35. Priebe was advised that community satisfaction studies consisted of questionnaires sent to key

HUMAN
SERVICES
Continued

provider agencies making referrals to the center in order to learn if there is satisfaction. Ward explained that a couple of facilities are funded but are not subject to licensing, e.g., Lutheran Social Services. Tieden was skeptical and wondered if they were "developing a rule for a law." Clark contended the law required the agency to develop the rule and Ward concurred. Tieden commented it was two levels of care and two levels of standards for the same type of individuals.

55.2(1)b Walker said 55.2(1)b clarifies that clients must apply for educational awards for each academic year, and the awards must be applied to the cost on a month-by-month basis. One exception would be when a client attends a private training facility where tuition exceeds the amount the Department can pay. Tieden thought that language "Clients who elect...may use excess moneys at their discretion" was quite broad. Walker reminded that banks would have limitations on loans and there are costs DHS cannot cover. General discussion. Purchase of tools and unexpected car expenses were two areas mentioned. Priebe and Tieden thought expenditures should be verified. Walker reminded ARRC that this was an Individual Education Training Plan policy, not an ADC policy per se. Priebe was doubtful that intent of IETP was to provide excess funds.

79.1 O'Kane saw the bank loan procedure as the safeguard.
81.6 Royce and Walker discussed the first paragraph of the preamble in amendments to 79.1 and 81.6, "The commissioner has the authority to make rules to determine the method and level of reimbursement for medical and health services." Walker stated that all of their rules must be approved by their Council.

chs 175,
176 According to Walker, amendments to chapters 175 and 176 had generated comments from the Iowa Hospital Association and the Iowa Medical Society. They requested inclusion of exceptions allowed by the federal government with regard to withholding medically indicated treatment and the Department complied.

175.1 Doyle posed general question as to whether religious rights were considered in the matter of withholding medication and treatment--175.1"5". Hennessey referred to Code chapter 232, in particular section 232.68, where child abuse includes denial of critical care. He added that the rule was intended to clarify the law--section 255.10 addresses the religious exemption. Hennessey saw no problem.

chs 73, 74 No comments or questions re 202.6(5), 41.6 et al, 41.7(9). In re amendments to chapters 73 and 74, Priebe referred to food loss of \$2500 in 74.22(4)d and asked if collection were attempted. Woodard indicated that amount was usually a cumulative loss. However, an attempt is made to recover

HUMAN SERVICES
Continued

individual losses and inspection of that entity would be made. Woodard pointed out that food distribution is handled by volunteers. Brief discussion of the cheese distribution, fraud, or loss. Local entities make the determination as to whether cheese was lost or stolen.

73.13
74.19

Doyle brought up a reference to "Iowa Code chapter 714" in 73.13(7) and 74.19(2) and noted that the Department planned to rely on federal authorities. He reasoned that would be under jurisdiction of the County Attorneys. Department officials were aware that no Code provision existed for prosecution--legislation proposed last year was not enacted and it will be resubmitted. The Investigations Division of the Department had requested the questionable language. Doyle suggested that the Department's legal advisor review the subrules in question. Walker was amenable.

78.1(19)

Clark asked for explanation of "high coefficients of variation." Gilbert referenced a study conducted by Health Policy Corporation. Certain surgeries are performed more frequently in some areas and others, more frequently by some physicians. Surgeries with highest variance are called high coefficients of variation--statistical terminology.

Priebe could envision problems with the stringent cleanliness provision in 109.7(4) relative to diaper changes. No questions re 78.13(10), 110.5(1) or chapter 153. No recommendations for chapters 157 or 160.

Recess

Recess for lunch at 11:55 a.m. Chairman Priebe reconvened the meeting at 1:10 p.m. and called on Revenue Department officials for the following:

REVENUE DEPT.

Filing and extensions of tax liens and charging off uncollectible tax accounts, 9.1 to 9.7	ARC 5930	F	9/11/85			
Interest on refunds, 10.3	ARC 5931	F	9/11/85			
Exempt sales, sales and use tax on services, 28.18(2)"d."	17.18	ARC 5932	F			
Taxable and exempt sales determined by method of transaction or usage, special fuel, 18.37(1)	ARC 5933	F	9/11/85			
Receipts exempt from use tax, mobile homes, 32.3	ARC 5934	F	9/11/85			
Individual income tax, fiduciary income tax, 39.4, 40.4, 40.24, 40.25, 42.7, 43.3(8), 46.1(1)"d."	89.8(10)	ARC 5989	F			
Research activities credit, 42.2(6), 52.4(5)	ARC 5935	F	9/11/85			
New jobs credit, 42.2(7), 52.4(6)	ARC 5990	F	9/25/85			
Corporation income, franchise tax, short period returns, 52.2(3), 52.2(2)	ARC 5936	F	9/11/85			
Motor fuel, special fuel, 64.1"3", 64.4(3), 64.4(4), 65.20	ARC 5937	F	9/11/85			
Property tax credits and exemptions, 80.3(1), 80.3(6), 80.6(1), 80.7(1), 80.7(4) to 80.7(6), 80.9(1), 80.9(2)"a."						
90.9(3), 80.3(6)"a"	ARC 5938	F	9/11/85			
Cigarette tax, tobacco tax, 81.16, 82.4(1)"e."	83.3(1)"3", 83.3(2)	ARC 5939	F			
Inheritance tax, 86.3(6), 86.5(11), 86.7, 86.7(1), 86.7(2), 86.7(4), 88.7(5)	ARC 5940	F	9/11/85			
Taxation, printing supply items, 16.6, 18.33, notice ARC 5569 terminated	ARC 6924	N	9/11/85			
Taxation, printing supply items, 16.6, 18.33	ARC 5925	N	9/11/85			
Exempt and taxable sales -- relating to agricultural production, drainage tile, 17.9, 18.35	ARC 5926	N	9/11/85			
Sales or services rendered, furnished or performed by a county or city, 18.39	ARC 5927	N	9/11/85			
Taxation, lobbying, 26.35	ARC 5928	N	9/11/85			
Motor fuel, special fuel, 63.1, 63.3(6)"e."	63.3(7)"d.", 63.5, 63.6, 63.11, 63.1(1) to 63.1(3), 63.20, 64.2(5), 64.3"2", 64.7(1) to 64.7(5), 64.9, 64.10, 64.12, 64.19"	e.", 64.21(2), 65.1, 65.6, 66.6(1), 66.6(3) and "d" and "e."	65.9	ARC 5929	N	9/11/85

Hearings

John Christensen and Carl Castelda were in attendance. Discussion between Priebe and Castelda as to justification for hearings on all rules. Priebe reiterated his position that hearings should be scheduled for any substantive rulemaking. According to Castelda, the Department does not believe a hearing is always warranted.

9.1-9.7

No questions re 9.1 to 9.7.

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REVENUE
DEPARTMENT

Castelda briefed the Committee with respect to public hearings which were held concerning the majority of the filed rules before the Committee today. No Committee recommendations for 10.3, 26.18(2)d, 17.18, and 18.37(1). Castelda understood that the Trucking Industry would be requesting further statutory change with respect to mobile homes tax exemption--32.3. No questions re 42.2(7), 52.4(6), 52.2, 58.2, 65.20 and amendments to chapter 64.

ch 80

Amendments to chapter 80 were designed to implement SF 509, 1985 Acts, administration of property tax exemptions for forest or fruit tree reservations, and SF 395, property tax exemption for pollution control equipment, etc. Castelda indicated that additional research may be done with respect to sales tax on point of sale computers--a controversial area which has generated some public comment.

Doyle discussed the confusing aspects of having the assessor or county conservation boards make the inspection of the property--80.9(1). Castelda was not aware of decisions made by counties but was willing to check the matter. Castelda continued that rules to increase cigarette tax were unchanged from the Notice.

In reviewing inheritance tax amendments, Castelda said the substance addressed a 30-day notice requirement for closing estates. Controversy ensued and the Department met with the Iowa Bar Association. Revenue's legislative package will include a provision to withdraw the statutory language relating to the 30-day notice.

There was brief discussion of Notice on taxation of printing supply items which had been terminated. A revised Notice found in ARC 5925 [16.6, 18.33] clarifies that the statutory language does not restrict exemption to commercial printers. No public comment had been received. Proposed exempt and taxable sales relating to agriculture production drainage tile implements SF 395 in clarifying exemptions to rules pertaining to agriculture production. Priebe requested that the Department set a hearing for the rules.

Tieden reasoned that Example 2 in 17.9(1) had complicated a simple matter. Castelda observed the whole area of sales tax exemptions to the agricultural community was unclear. The Department had requested clarifying legislation last year. Priebe suggested referring the matter to the appropriate legislative committees. Castelda knew of others in the General Assembly concerned about fuel, milking machines, etc. Castelda was willing to hold the rules in abeyance until after the public hearing and a meeting with Farm Bureau officials. He would report to the ARRC in November or December. Castelda advised Tieden that the court has ruled that the farmer is not a manufacturer, but a producer.

REVENUE DEPARTMENT Tieden and Castelda discussed the fact that the Department's interpretation sometimes differs from legislative intent. Castelda offered as suggestion that effective date of new legislation be delayed until January or the next July to allow an agency more time to study it. Upon advice of Tieden and Priebe, Castelda indicated a willingness to meet with other interested groups in addition to the Farm Bureau.

18.39 Review of 18.39, imposition of sales tax on services for privileges of participating in athletic sports provided by cities and counties. A hearing will be held. Clark recommended deletion of superfluous words in 18.39.

26.35 Castelda described 26.35 as the Department's attempt to define lobbying services. He expressed disappointment in the fact that lobbyists had not come forth with factual situations as to what would be considered taxable or nontaxable. Castelda noted that legal services are not taxable and lobbying services are. Difficulty arises in determining which service a lawyer is performing. Discussion of merits of a possible hearing on the issue.

Castelda stated that amendments to chapter 65 consist of gender and nonsubstantive technical corrections. No questions re amendments to chapter 39 et al, 42.2(7) and 52.4(6).

Minutes Doyle moved to approve minutes of the September meeting. Carried.

Recess Committee was in brief recess to move to Room 116.

HEALTH DEPARTMENT Susan Osmann, Health Planning Division; Mark Wheeler, Hearing Office; Peter Fox, Licensing, and Keith Rankin, Barber Examiners, appeared to review:

Reportable diseases, 1.2(1) ARC 5888	.....	9/11/85
Psychology examiners, alternative procedure and settlement, 140.204 ARC 5889	.....	9/11/85
Barber examiners, apprenticeship, 152.9 ARC 5977	.....	9/25/85
Barber examiners, examination of board members, 152.111 ARC 5957	.....	9/25/85
Physical and occupational therapy examiners, license renewal, 137.5(1), 138.2(7), 138.2(1)(2) ARC 5975	.....	9/25/85
Standards for certificate of need review, magnetic resonance imaging services standards, 203.12 ARC 5987	.....	9/25/85

No recommendations for 140.204, 152.9 or 152.111.

1.2(1) Wheeler told the Committee there had been no adverse comment re 1.2(1). Priebe brought up the matter of AIDS and learned that cases are being reported to the Health Department. Dr. Wintermeyer, an epidemiologist in the Department, could address questions.

203.12 Osmann presented rule 203.12 which contained standards for magnetic energy equipment. Clark took the position that the CT procedure was not properly defined. Osmann thought the point was well taken.

Computer Support Bureau Rulemaking Royce introduced Donovan Peeters, newly appointed Director of the Legislative Service Bureau. Sandy Scharf, Computer Support Bureau, appeared at Committee request to discuss a matter of interest to the state Ombudsman's office. Royce informed the Committee that the Ombudsman had raised question as to whether the Computer Support Bureau (CSB) would be considered a rulemaking agency under Code chapter 17A. That bureau will be providing computer services and interacting with the public on a more or less constant basis. Royce continued that legislative agencies, generally, are not subject to rulemaking because they do not deal directly with the public.

Peeters commented on the Code definition of "agency." It was his understanding that CSB is developing guidelines for public access to computer data base. The guidelines will be reviewed by the Computer Outreach Committee which will make recommendations to the Legislative Council. The Council will adopt the policy on public access to the computer system. Peeters was of the opinion that "in a technical sense, legal sense, and maybe even in a real sense, that it is the Legislative Council promulgating these guidelines and not the Computer Support Bureau."

Priebe viewed this as eliminating public input. Peeters quoted from the definition of "agency" in Chapter 17A and noted that the "General Assembly" was excluded from rulemaking. If the term "General Assembly" also includes the "Legislative Council," then the Legislative Council is quite clearly exempt. Priebe reasoned the Council was not the GA but a segment thereof. Discussion followed.

Tieden pointed out that although the Citizen's Aide/Ombudsman's office was not required to adopt rules, they did so voluntarily.

At O'Kane's request, Scharf enumerated the services that would be available through the pilot program. A user fee would be \$600 for the first year to cover operating costs. It was anticipated that the program would be limited to 20 users. A questionnaire had been sent to General Assembly members on the matter.

After further discussion, O'Kane recommended that guidelines and policy be part of the contract.

Priebe declared that "public relations wise," it would be well to have rules.

Clark concluded that if the pilot program succeeds, "rulemaking may be a good idea."

10-9-85

No Agency
Representatives

No agency representatives were requested to appear
for the following:

CREDIT UNION DEPARTMENT[295]	
Small employee groups, 5.5 ARC 5899	9 11 85
ENGINEERING AND LAND SURVEYING EXAMINERS, BOARD OF[390]	
Board fees and services charges, re-examination, gender change, 1.9, 1.251e, 1.3 ARC 5964	9 25 85
HEALTH DEPARTMENT[470]	
Podiatry examiners, waiver for continuing education, settlement of disciplinary actions, 139,107, 139,204 ARC 5976	9 25 85
Chiropractic examiners, continuing education, report, 141,68 ARC 5948	9 25 85
Social work examiners, declaratory rulings, 161,350 ARC 5830	9 11 85
INDUSTRIAL COMMISSIONER[500]	
Contested cases, 4.3, 4.6, 1984 to 1987, 4.11, 4.11, 4.18, 4.20, 4.20(2), 4.23, 4.27, 4.29, 4.30 ARC 5958	9 25 85
Substantive and interpretive rules, 8.5, 8.7, 8.9 ARC 5959	9 25 85
IOWA ADVANCE FUNDING AUTHORITY[515]	
General, ch 1 ARC 5988	9 25 85
LABOR, BUREAU OF[530]	
Occupational safety and health rules for general industry, 10.20 ARC 5978	9 25 85
MERIT EMPLOYMENT DEPARTMENT[570]	
Pay plan, 4.021, (filed emergency) ARC 5919	9/11 85
PAROLE, BOARD OF[615]	
Communication to inmate of presumed statutory minimum sentence, 4.9 ARC 5962	9 25 85
REGENTS, BOARD OF[720]	
Gender changes, amendments to chs 1 to 4, 6, 9 to 12 filed without notice ARC 5898	9-11 85

Next Meeting

The next meeting was scheduled for Tuesday and
Wednesday, November 12 and 13, 1985.

Adjourned

Chairman Priebe adjourned the meeting at 2:45 p.m.

Respectfully submitted,

Phyllis Barry

 Phyllis Barry
 Assisted by Vivian Haag

APPROVED:

Beal E Priebe

 CHAIRMAN