

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting

The regular meeting of the Administrative Rules Review Committee was held Tuesday and Wednesday, December 9 and 10, 1986, in Senate Committee Room 24, 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 G. Parker and Betty Jean Clark. Staff present: Joseph Royce, Committee Counsel; Phyllis Barry, Deputy Code Editor; Vivian Haag, Executive Administrator. Also present: Barbara Booker Burnett, Governor's Administrative Rules Coordinator.

Convened

Chairman Priebe convened the meeting at 10:05 a.m.

CONSERVATION COMMISSION

The Conservation Division of the Natural Resources Department was represented by Allen L. Farris, Division Administrator and Nancy Exline, Associate Superintendent of Parks for the following:

Mussels—methods and seasons, 12.1	ARC 7091	.....	F	11/5/86
Unprotected nongame, reptiles, 16.1(2)	ARC 7092	.....	F	11/5/86
Motorboats—speed restrictions, 30.18, 30.28	ARC 7093	.....	F	11/5/86
Motor regulations—horsepower limitations, 40.4(2)"b"	ARC 7094	.....	F	11/5/86
State parks and recreation areas, fees, 45.3	ARC 7095	.....	F	11/5/86
Park user fee, permit affixed, 51.5(3)	ARC 7096	.....	F	11/5/86
Crow and pigeon regulations, 101.2	ARC 7097	.....	F	11/5/86
Fishing regulations, 108.1, 108.2	ARC 7098	.....	F	11/5/86
Commercial fishing, ch 110	ARC 7099	.....	F	11/5/86
Turtle regulations, 115.1	ARC 7100	.....	F	11/5/86
Cost assistance program to promote wildlife habitat on private lands—cost reimbursement, 22.7, <u>filed</u>				
<u>emergency</u>	ARC 7090	.....	FE	11/5/86

Priebe, in a matter not before the Committee, reported complaints he had received concerning Conservation Division policy with respect to their meeting agenda and the fact that specific times are not designated. Interested persons may have to wait several hours to address a particular issue. Farris reminded ARRC that the policy had been followed for 15 years. Agenda information includes appointments, date and time of meeting, and the fact that public participation is allowed.

ch 12

In re chapter 12, Farris briefed Committee on changes made since Notice. Tieden questioned Farris as to possibility of legalizing the taking of dead mussels from the Mississippi River. Farris noted enforcement problems, e.g. determining that a mussel was dead prior to being taken. Responding to Tieden's question re the "tip-off line," Farris would need the individual's number since files are confidential.

No questions re 16.1(2), 30.18, 30.28, and 40.4(2)b.

45.3

Exline said there had been no public comments re 45.3. However, she recalled concern as to authority of the

CONSERVA-
TION
COMMISSION
(Cont.)

director to waive fees. Mike Smith, Assistant Attorney General, was contacted and took the position that the rule was appropriate. Exline pointed out the rule was revised to ensure equitable distribution of benefits conferred to all park users.

51.5(3)

In reviewing 51.5(3), Priebe questioned statutory authority of a peace officer to remove a fee permit from a car. Exline quoted from the Code and Royce concurred there was authority. General discussion.

Doyle noted a similarity between the permit and a credit card which contains language that it remains property of the issuer. He recommended that the Department seek guidance from the Attorney General and rewrite the provision. Exline apprised the ARRC that during 1986, administratively, they took the permit, voided it, provided another one and requested the park user to attach it to the vehicle in the presence of the conservation officer. Committee supported that concept and concurred the rule should be reworded for clarity. Exline said that new permits had been printed and Doyle suggested that appropriate language could be provided on separate paper. Exline was amenable to clarification.

101.2

Farris stated that a change was made in rule 101.2 after complaint from Iowa Pest Control Dealers Association. Royce asked if Pigeon Racers were satisfied and Farris indicated they were not, although the Division had not heard from them formally. O'Kane thought opponents of the rule were aware that the statutory change would be needed.

ch 108

Farris briefed the Committee on the changes made since Notice--Tieden questioned size limit by length rather than weight for walleye. Farris cited convenience of carrying a tape measure or a ruler as opposed to a scale.

ch 110

Changes from Notice of Chapter 110 addressed recommendations of the ARRC and commercial fishermen. O'Kane was informed that the reporting requirement in 110.2(6) had been in effect since the 1950s. The statute was amended last year to include it in the rules.

110.1(4)

In re 110.1(4) on contract approval, Farris said that \$25,000 was the amount that the director can approve.

115.1

In re 115.1, Farris said changes were made as a result of public comment which was generally favorable.

22.7

Farris explained that 22.7 was adopted under emergency provisions for clarification as recommended by the ARRC. Tieden questioned use of "may" and "shall" in the first sentence of 22.7 as possible "loophole." Farris thought it would cover unusual circumstances.

Committee Business Filed without Notice O'Kane called attention to the rules of the State Advisory Preserves Board on the "No representative requested to appear" agenda which were "Filed without Notice." He asked Royce if an emergency filing would have been preferable. Royce saw no problem but added that O'Kane's point was well taken. Comment was made that possibly the AG had opposed emergency adoption. Royce quoted from Code section 17A.4 and after further discussion, Royce was directed to research the matter to determine if the ARRC should add a provision to their Rules of Procedure re filing without notice.

January Meeting The Committee agreed to hold their next meeting January 6 and 7, 1987, one week early.

AGRICULTURE AND LAND STEWARDSHIP Charles A. Eckermann. Pesticide Section; John R. Whipple, Fertilizer Section, and Elizabeth Duncan, Hearing officer, appeared on behalf of the Department for the following:

Pesticides—licensed commercial applicators, 30--10.22, 10.26 ARC 7134F 11/19/86
On-site containment of pesticides, fertilizers and soil conditioners, 9.50 to 9.58 ARC 7124N. 11/19/86

No recommendations were offered for rules 30--10.22 and 10.26 which were explained by Eckermann.

9.50--9.58 Whipple, Supervisor, Fertilizer Section, briefed Committee with respect to proposed amendments to chapter 9. No action taken.

HUMAN SERVICES DEPARTMENT Mary Ann Walker, Bill Fisher, C. Ballinger, Don McKeever, Dan Gilbert, Barb Momberg, Larry Sogard, and Bob Lipman appeared on behalf of the Department of Human Services. The agenda follows:

ADC, continuing eligibility, 40.7(1)a(3) ARC 7109F 11/5/86
Relief for needy Indians, reporting requirements, 64.3 ARC 7110F 11/5/86
Federal surplus food program, 73.1(1), 73.3(1) to 73.3(3), 73.12(2), 73.14, 73.15 ARC 7111F 11/5/86
Other policies relating to providers of medical and remedial care, reimbursement for hospitals, 79.1(3)e ARC 7112F 11/5/86
ADC—granting assistance, recoupment, collections, nonassistance child support recovery program, 41.2(6)b(4) and "e," 41.7(1)h, 41.7(6)u, 46.1, 46.4(3)b, 95.1, 95.12, 96.12, 96.14 ARC 7107N. 11/5/86
Unemployed parent workfare program, 59.5(4), 59.6(2)f ARC 7135N. 11/19/86
Emergency food distribution program, emergency food and shelter programs, chs 51 and 72, filed emergency ARC 7106FF 11/5/86
Amount, duration, and scope of medical and remedial services, 78.2(5), 78.6(4) ARC 7108N. 11/5/86

40.7(1)a(3) Walker summarized 40.7(1)a(3), amendments to chapter 73, ch 73 64.3, 79.1(3)e. No recommendations.
79.1(3)

ch 41 et al According to Walker, Items 1 to 4 would be eliminated from the proposed amendments to 41.2(6), 41.7, 46.1 and 46.4(3) when the rules are adopted.

96.12 Tieden was informed that fees provided for in 96.12 were paid by the collection agency. Clark commented on "static" regarding child support payments being issued from a central location. Ryan admitted there was misunderstanding of this matter. Effective 4-1-87, all new orders entered in the state are to be paid through the collection service center where a computer will be utilized. Priebe asked Department officials to follow up on a complaint from Estherville. Once a copy of the order is secured from the clerk of court, a parent will be notified to pay at the collection service center and envelopes will be provided for the payments to be sent.

HUMAN
SERVICES

O'Kane and Clark were supportive of the concept.

59.5(4)

59.6(2) f

Amendments to 59.5(4) and 59.6(2) f will allow a \$25 per month allowance for transportation expenses. Lipman said that an analysis of the program revealed the cost was close to \$25. The increase will eliminate processing some claims twice.

chs 71,72

Walker pointed out that Chapters 71 and 72 would be rescinded since the programs are inactive and additional funding is not anticipated. The funds had been distributed to 36 target counties based on their unemployment and poverty rates. Parker was interested in whose calculation had been used to make the determination and Walker agreed to research the matter.

No questions re 78.2(5) and 78.6(4).

TRANSPORTA-
TION
DEPARTMENT

Don Alexander, Project Manager; David Plazak, Betty Baird, Ruth Skluzacek, Jan Hardy, John Kelly and Earl Willits, Assistant Attorney General, were present. The following agenda was considered:

RISE program. (06.Q) 4.2, 4.3(1)"e" and "f," 4.4(2)"a," 4.8(7)"d," 4.11(2)"c" ARC 7076 F 11/5/86
Motor vehicle dealers, manufacturers and distributors. (07.D) 10.10(8) ARC 7123, also filed emergency
ARC 7122 N.F.E. 11/19/86
Vehicle registration and certificate of title. (07.D) 11.21(4) ARC 7075, also filed emergency ARC 7074 N.F.E. 11/5/86
Energy conservation trust fund appropriation. (09.B) ch 5, ch 4 title ,ARC 7072A, also filed emergency ARC 7072 N.F.E. 11/5/86

Also present were Mark A. Taylor, Jr., IFCA; Steven Schoenbaum, Attorney; Bill Fisher, Iowa State Fair, and Gary W. Thomas, Iowa Association of Auto Dealers.

Plazak explained changes from the Notice and recalled concern which had been expressed by the ARRC regarding the RISE program. He pointed out that the law does not address multiyear commitments as provided in 4.4(2) a.

[07,D]10.10

Skluzacek explained that [07,D]10.10(8) was promulgated as a result of petition from the State Fair Board. The provision will allow the Department to grant a special permit for display only of Classes "A" and "C" motor homes at conventions sponsored by established national associations. Willits provided background on the rule which the AG office believes will be within the statutory requirements of Code chapter 322. A \$6 million convention with 300 to 400 motor homes had been contracted by the Board for July 1987 and would not compete with auto dealers. Doyle did not disagree with the concept but questioned the broad interpretation of the law. Willits admitted it was a broad interpretation.

Thomas stated that his organization did not object to the convention but asked that the word "homes" be substituted for "vehicles" in line 3 of the subrule. Fisher thought that would be acceptable. DOT officials wanted inclusion of "travel trailers". Only Iowa dealers will be permitted to sell. Thomas understood that the

TRANSPORTA-
TION
DEPARTMENT
(Cont.)

Temporary
Deferral

convention would not be a selling event. Willits reminded ARRC that there is a DOT permit process to be followed and he thought the suggested change would serve to narrow the rule, making it subject to challenge. He suggested possible legislative revision of chapter 322 to avoid further loss of conventions. O'Kane asked that the matter be deferred until after lunch for further study. So ordered by Chairman Priebe.

[07,D]11.21 Skluzacek gave brief overview of [07,D]11.21(4) which was adopted under emergency provisions to remove unsafe vehicles from the roadway. Hearings had been held. Parker preferred use of the normal rule-making process. General discussion of all terrain vehicles and their safety factors. Doyle was told that operator of an "unregistered" vehicle could be arrested for driving on certain streets at certain hours. Registration was discretionary by the Department. Priebe saw no reason for registering off-road vehicles and asked for statutory authority. Response was that those vehicles used in agriculture were exempt from registration. A vehicle designed for off-highway use but used on a highway must be licensed. Code section 321.23(4a) addresses that area. No formal action.

[09,B]
ch 5

Discussion of [09,B]ch 5 which was adopted under emergency provisions at the same time it was Noticed. Alexander described the intent was to permit DOT to spend appropriation under the energy conservation trust fund law by June 30. Parker voiced opposition to the emergency filing. No formal action.

Recessed
Reconvened

Chairman Priebe recessed the Committee for lunch at 11:55 a.m. and reconvened the meeting at 1:15 p.m.

Royce announced the Board of Nursing special review scheduled for Wednesday was removed from the agenda since interested parties were negotiating.

Chairman Priebe called on DOT officials to continue review of [07,D]10.10(8) deferred earlier. He had checked with a large supplier who saw no problem with the suggested change. Skluzacek asked if permits which were ready for delivery should be revised to reflect the changes. She was directed to see if the modification could be made.

PUBLIC
HEALTH
DEPARTMENT

Harriett Miller, Chiropractic Examiners Board; Keith Rankin, Barber Board; David Fries and Gaylord L. (Bud) Rushenberg, Public Health; and Etta Chesterman, Inspections and Appeals, appeared for the following:

Chiropractic examiners, 141.11(1), 141.11(2), 141.11(3)"a," 141.13(6), 141.62(1), 141.62(2), 141.62(4), 141.62(6), 141.70(2)"b," 141.12(3) ARC 7081 F 11 5 86
Optometry examiners, 143.9(2), 143.10(6) ARC 7136 F 11 19 86
Mass gathering, 19.1, 19.4(1)"b," 19.4(3)"c" and "f," 19.4(8) ARC 7137 N 11 19 86
Intermediate care facilities and skilled nursing facilities--residents' rights in general, 58.39(2), 59.14(2), also Notice ARC 6068 terminated ARC 7082 N 11 5 86
Sanitary conditions for barbershops and barber schools, inspection report posted, 154.17 ARC 7138 N 11 19 86

PUBLIC
HEALTH
DEPARTMENT
(Cont.)

Miller gave brief explanation of amendments to chapter 141. Tieden noted that required hours for continuing education were being decreased from 40 to 36 in 141.62(6) and Miller remarked that license holders participating in 12-hour weekend programs were finding it burdensome to pick up the additional four hours.

ch 141

153.17

Rankin explained rule 153.17 and the Committee recommended that it be clarified to read: "Barbers shall post, in a conspicuous place, the prior inspection report for each respective shop."

Chesterman spoke in regard to 58.39(2) and 59.44(2) relating to intermediate care facilities and skilled facilities which will be revised after Notice.

19.1 et al

Fries and Rushenberg reviewed proposed amendments to Chapter 19. Priebe raised question as to use of "12 hours duration" in 19.1(2). Rushenberg responded that county fairs could have less than 1000 in attendance. Priebe thought a mass gathering would be 1000 regardless of the length of time they were there. Royce advised that for general purposes, mass gathering had not been defined. Tieden was told the purpose was to provide toilet facilities and water. He observed there were few mass gatherings in Iowa. Fries indicated the rule had originated when rock concerts were conducted for as long as a weekend and was consistent with other states. A public hearing was held and no complaints were received. No questions were posed re 143.9(2) or 143.10(6).

PUBLIC
SAFETY
DEPARTMENT

Connie White, Roy Marshall, Assistant State Fire Marshal, Don Appell, Assistant Building Code Commissioner, represented Public Safety Department for the following rules:

Devices and methods to test blood for alcohol or drug content, 7.1, 7.7 ARC 7113 F 11/5/86
State of Iowa building code, 16.110(1), 16.110(3), 16.120(2) to 16.120(6), 16.121(1), 16.121(3), 16.130(7) "d,"
16.130(14), 16.140(1), 16.300, 16.400(1), 16.500(1), 16.620(1), 16.620(2), 16.701(2), 16.701(7), 16.701(15),
16.704(4), 16.705(1) "f", 16.705(2), 16.705(5), 16.705(8), 16.705(11), 16.705(12), 16.706(1) ARC 7114 F 11/5/86
Fire marshal—explosive materials—health care facilities, 5.602(3) "e," 5.602(4) "e," 5.851 ARC 7080 N 11/5/86
Devices and methods to test blood for alcohol or drug content, 7.6, Notice ARC 6717 terminated ARC 7079 N.T. 11/5/86

No recommendations for 7.1 and 7.7.

5.602

Discussion of 5.602(3) and 5.602(4) which will provide exception for door locking arrangements in certain care facilities. Blain Donaldson, Care Facility Administrator, found the proposal to be acceptable.

White stated that the Noticed version of 7.6 was terminated since the Department had decided to retain the emergency language as published in 7-16-86 IAB. The rule established a margin of error for OWI chemical testing. Of the 14,000 tests per year that will be run by the DCI lab, an estimated 500 will be in the questionable area. ARRC members questioned authority of the Department to establish a margin of error by rule. Doyle asked unanimous consent to refer the emergency rule and statute to the House and Senate Judiciary Committees for their perusal. So ordered.

Referred
to GA

PUBLIC
SAFETY
DEPARTMENT
(Cont.)

Don Appell pointed out that 32 of 34 items were adopted following Notice of amendment to chapter 16. Priebe was told the amendments would not affect anything not now covered by the Iowa Code. The other two items pertained to the model energy code and the home heating index. The Department was waiting for an AG opinion as to whether or not they could deviate from the recommendation which resulted from the survey. Doyle questioned White about new legislation which allows for sale of certain firearms. Royce cited 1986 Acts, chapter 1238, section 33. White said that nothing had been done in that area.

COMMERCE
DEPARTMENT
Utilities
Division

David Lynch and Allan Kniep, Assistants General Counsel, appeared for the following:

Practice and procedure, method of intervention, 7.2(8) ARC 7142.....F 11/19/86
I-SAVE America's vital energy, 27.5(2)"b"(3), 27.5(2)"d" and "h." 27.6(2) ARC 7116F 11/5/86
Energy conservation improvements—pilot programs, 250—ch 30 ARC 7117.....F 11/5/86
Purchased gas adjustments and annual review of gas procurement practices, 19.10, 19.11, 19.2(4)"b" ARC 7115N 11/5/86

7.2

Lynch gave brief overview of 7.2(8) where the intervention deadline was changed. Comments had been received from AT&T, Great River Gas Company, General Telephone and Iowa Power and Light Company, but none from the general public or consumer advocate. No Committee action.

ch 27

Kniep said that amendments to Chapter 27 were initiated in response to the U.S. Department of Energy's rejection of the Board's previous plan. No questions.

Priebe questioned Department officials with respect to availability of Commerce rules throughout the country. He had been informed that there was no charge. Lynch knew only of lists established where individuals are charged for mailings but he agreed to pursue the matter.

No questions re chapter 30.

19.10
et al

According to Lynch, proposed amendments to Chapter 19 will restructure the way the Board regulates rates of natural gas distribution utilities. FERC is restructuring the wholesale natural gas market to provide options. Lynch advised Tieden there would be an investigation into billing practices.

Credit
Union
Division

Betty Minor appeared on behalf of the Credit Union Division for the following:

Small employee groups, branch offices, foreign credit union branch offices, director election—absentee ballot voting procedure, 5.1, 6.1(1), 15.3(1), ch 16 ARC 7153N 11/19/86

Minor reviewed the proposed rules for which a public hearing was held this morning. No one attended but written comments from a Trade Association, three Credit Unions, and the Iowa State Education Association were supportive. Clark called attention to an incorrect

Credit
Union
Division
(Cont.)
6.1(1)

citation in 16.7(2)--reference to 16.1(1) should be 16.7(1).

Minor stated that credit unions in other states have large memberships and 6.1(1) will permit the establishment of a branch in other states. General discussion.

Doyle brought up the matter of the Sioux City Base Credit Union, and Minor assured him their bylaws now permit absentee balloting. The mail would go to the last known address and the Board of Directors determine use of absentee ballots.

Discussion of reversion of accounts, with Minor noting that one credit union reverted 604 accounts to the state treasury. Doyle was told that a returned absentee ballot would be a contact. Doyle concurred with Minor that the address should be verified with the treasurer's office. No formal action.

Committee
Business

Priebe distributed a letter of resignation from Representative James D. O'Kane and announced that an election for Vice Chairman would be conducted.

Vice
Chairman

Representative Clark nominated Representative Edward Parker to assume the position of Vice Chairman, effective December 16. Motion carried. Doyle asked that the record show that O'Kane's resignation was accepted. Priebe noted that Representative David Tabor of Baldwin had been appointed to fill the vacancy created by O'Kane's resignation.

Minutes

Doyle moved approval of the November minutes. Motion carried.

Chairman Priebe recognized Barry who pointed out that the Professional and Occupational Regulation Commission [637] had been repealed and she asked Committee concurrence to delete the rules from the Iowa Administrative Code with appropriate Editor's note.

Motion

Tieden moved that the Iowa Administrative Code Editors be authorized to delete the Professional and Occupational Regulation Commission rules from the IAC. Motion carried.

AGRICULTURAL
DEVELOPMENT
AUTHORITY

William Greiner appeared for review of the following:

Operating loan guarantee program, 523-5.1, 5.2(1), 5.3(1), 5.4(1) -ARC 7139.....F 11/19/86

No formal action taken.

INSPECTIONS
AND APPEALS

Charles Sweeney was present to respond to request by Representative Clark to review rules of Inspections and Appeals. The rules had been excerpted from rules by the Public Health Department following reorganization. Inspections and Appeals will now conduct investigations when requested by the Boards. An attorney, a hearing

INSPECTIONS
AND APPEALS
(Cont.)

officer, or an investigator may be assigned depending upon the situation. Clark had expressed concern with respect to internal affairs investigations within the Executive Branch. According to Sweeney, this will not be covered by rules. The bulk of their resources will be directed at food stamp, ADC and Medicaid programs. If an investigator is used for state purposes only, there is no federal match--the Department is 67 per cent federally funded. Sweeney emphasized that they want a legitimate request either from an agency head or the Governor's office. They would call on the Public Safety Department for matters of a criminal nature.

Clark still wondered what assistance Jane Doe, in outlying areas, would receive. Sweeney responded that, historically, her choice would be to bring it to the attention of the agency head, the Ombudsman, or the Governor. Sweeney continued that they will exercise care to avoid becoming an investigative arm of the Ombudsman in order to maintain separation of powers.

Mosher reviewed a situation where a citizen with a complaint requested investigation by a regulatory board. The citizen was dissatisfied with the results and contacted her state representative who then referred the matter to the Ombudsman. Discussion of the fact that the Ombudsman has no authority to investigate licensing complaints involving private citizens--their jurisdiction is limited to governmental agencies. Also, no arm of the legislature could trigger an investigation by Inspections and Appeals.

Royce suggested a middle ground to draft a rule stating requests from the Ombudsman would be accepted by Inspections and Appeals as resources permit or from a Board request. Sweeney could support that approach but would need to discuss it with counsel. Mosher reasoned that if proper investigations were conducted, there would be no need to contact the Inspections and Appeals Department. Consensus was that legislative committees should be apprised of the matter.

Motion
to refer
to GA

Doyle moved that the President of the Senate and the Speaker of the House be informed of the problem for referral to the appropriate committees. Carried.

Recessed

Chairman Priebe recessed the meeting at 3:10 p.m.

Reconvened
Wednesday

Administrative Rules Review Committee, Wednesday, December 10, 1986. All members and staff present. Chairman Priebe convened the meeting at 9:05 a.m. in Senate Committee Room 24.

NATURAL
RESOURCES
DEPARTMENT

The following three agencies' rules were considered together because of their similarity and the fact that transfers were being made to implement reorganization:

Natural
Resource
Commission

NATURAL RESOURCES DEPARTMENT OF[561]

Description of organization, ch 1 ARC 7085N. 11/5/86
Public and confidential information, ch 2 ARC 7086N. 11/5/86
Submission of information and complaints — investigations, ch 3 ARC 7087N. 11/5/86

Environ-
mental
Protection
Commission

NATURAL RESOURCE COMMISSION[571]

Operation of commission, ch 1 ARC 7102N. 11/5/86
Public and confidential information, ch 2, 290—ch 63 ARC 7088N. 11/5/86
Submission of information and complaints — investigations, ch 3, 290—60.3, 60.4 ARC 7089N. 11/5/86

ENVIRONMENTAL PROTECTION COMMISSION[567]

On-site wastewater treatment and disposal systems, 69.1 to 69.18 ARC 7148F. 11/19/86
Public and confidential information, ch 2, 900—4.1 to 4.4 ARC 7149N. 11/19/86
Submission of information and complaints — investigations, ch 3, 900—4.5 ARC 7150N. 11/19/86

The Departments were represented by Mike Murphy, Bureau Chief; Vic Kennedy, Legal Counsel; Randy Clark, Legal Service; Diana Hansen, and Wayne Reed.

Responding to Tieden's question re underground tank rules, Murphy said those would be on the Commission's agenda in December. Murphy advised Priebe that the Department of Natural Resources has been informed that the federal government would propose rules in February which would not be finalized for at least a year. Murphy continued that the legislation required the DNR to adopt interim rules. Murphy anticipated that the DNR would put new rules on notice to be in a position to adopt simultaneously with federal adoption.

Re chapter 2, Kennedy said it was a revision of former DWAWM rules--Chapter 4--modified by addition from the energy policy and conservation commission rules. Paragraph g will be added to 2.4(1). Responding to Priebe, Kennedy said that 2.4(4)a,b was unchanged from DWAWM rule re confidential files and availability of same. Priebe thought that the Department head should control the confidential file. Kennedy explained that most confidential material is relative to reports that companies have made in connection with emission control and companies have requested confidential treatment. It has not been a problem.

2.4(1)
2.4(4)

2.4(2)d

Doyle recommended that NPDES be defined in 2.4(2)d. Kennedy assured him that "National Pollutant Discharge Elimination System" was used throughout their rules. Doyle asked if the Citizens' Aide office would have access to confidential information and Kennedy answered in the negative. It is "working information gained from the outside." Royce encouraged the Department to adopt rules to implement Iowa Code section 22.11--Fair Information Practices Act.

ch 3

Randy Clark described chapter 3 as consolidation of existing rules of former DWAWM, Conservation and EPC. They provide general guidance for submission of information to the Natural Resources Department and for complaints and investigation of same.

NATURAL
RESOURCES
DEPARTMENT
(Cont.)

Hansen explained the EPC rules 69.1 to 69.18 had been updated for minimum standards. No questions.

The ARRC asked the three agencies to consider one set of rules with cross reference to the main rules.

Racing

Chairman Priebe had asked for rules of the Racing and Gaming Commission to be moved from the No Representative status for review today but the Commission was not available. He had questions re 7.8(1)c. O'Kane moved that subrule 7.8(1), paragraph c be delayed 70 days for further study and that the rule be placed on the January ARRC agenda.

Motion to
Delay

Recess

Chairman Priebe announced a ten-minute recess.

HUMAN
RIGHTS
DEPARTMENT

Human Rights, Division of Community Action Agencies, community services block grant, ch 22, ARC 7083, Notice, IAB 11/5/86 was reviewed by Rod Huenemann of Human Rights Department. The rules implement 1986 Acts, SF 2175-- annual funding cycle consistent with federal fiscal year, which begins October 1. Clark supported three per cent for the program administration. She recommended addition of the word "of" following "(97%)" in the second sentence of 22.3(2). Clark viewed 22.4(5) as needing clarification. In her opinion, a more logical approach would be to set out those who are "eligible." Heunemann said that the only eligible recipient would be the one designated as a community action agency.

Tieden questioned reliance on census records since they are only updated every 10 years but it was pointed out that Iowa law requires this procedure.

O'Kane referenced 22.11 re termination of affiliation and asked if a city council or board of supervisors had ever taken such action. Huenemann said not since 1981. Originally local government was required to sign off on providing service.

COMMERCE
Insurance
Division

Sharon Henry, attorney, appeared on behalf of the Insurance Division for consideration of the following:

Registration and operation of broker-dealers, uniform limited offering exemption, 50.16	ARC 7105	.....F	11/5/86
Semiannual reports filed with the administrator, 50.21, 50.59	ARC 7104	.....F	11/5/86
Declaratory rulings, petitions for rule making, chs 2 and 4	ARC 7084	.....N	11/5/86
Smoker:nonsmoker mortality tables, ch 44	ARC 7077	.....N	11/5/86

No questions re 50.16, 50.21, 50.59, chapters 2 and 4.

ch 44

Henry said that Chapter 44 adopts NAIC regulation on smoker mortality. Responding to Tieden, Henry said the NAIC had done extensive research and Iowa attempts to follow that Association model.

CULTURAL
AFFAIRS

O'Kane took the Chair and called on Mark Peitzman for the following:

Iowa community cultural grants program, ch 1. 630—ch 18 ARC 7152.....N. 11/19/86
Iowa community cultural grants program, ch 1. filed emergency ARC 7121.....FE 11/19/86

Peitzman explained that with the creation of the Department in July, one mandate was the Iowa Community Cultural Grant Program, formerly administered by the OPP. O'Kane was interested in knowing the difference between the two sets of rules and Peitzman cited name changes and the addition of an appeals section--1.12.

Another change provides discretionary funds for the Director--up to a maximum of 10 per cent of the project funding to be used for projects that fulfill goals and intent of legislation, but whose timelines do not fall within the granting cycle.

Requests will be submitted in mid-January with a 60-day response period for the applicant. A Review Committee will rank requests and funding will follow. Peitzman was unable to cite statutory authority for the 10 per cent reserve fund in 1.7(3). O'Kane noted lack of an appeals process for the 10 per cent funds. Peitzman provided illustrations of the requests for funds.

1.7(3) Tieden contended subrule 1.7(3) was totally outside the rating system. Peitzman said under state government reorganization, the community cultural advisory council no longer existed; therefore, the director has ability to adjust rankings or amount of funding. O'Kane considered it poor policy and asked Royce if there were grounds for an objection. Royce advised that the argument raised provided ample grounds. O'Kane thought it most unfortunate that the subrule was filed emergency which precludes a delay for further study.

Motion to Object 1.7(3)
1.12
1.6
Doyle moved to object to subrule 1.7(3) on the grounds that it is unreasonable and beyond the authority of the Department. Motion to object carried. The objection could be overcome by providing that the appeals process specified in rule 1.12 applies to discretionary grants and by providing that the Director evaluate applications according to criteria set out in 1.6. In re 1.12, Doyle thought the last two paragraphs should have separate numbers. In addition, he took the position that the second numbered paragraph 2 could place the party in jeopardy and the same could apply with paragraph 5.

Royce commented that Code section 17A.19 contains grounds for appeals which are usually limited to exceeding statutory authority or arbitrary or capricious actions by the agency. He noted that rule 1.12 contained more detail but posed the question as to impact if there were a reason to appeal that does not fit one of those categories. Doyle suggested that the Department follow Royce's suggestion. O'Kane preferred a standard appeals process. Priebe resumed the Chair.

ECONOMIC
DEVELOPMENT
DEPARTMENT

JoAnn Callison reviewed youth affairs--young adult component, 14.7, ARC 7125, Notice, IAB 11-19-86. Callison reported on unfavorable comments at the Public hearing. In 14.7(3), fairness of factors was questioned in the selection system; accuracy of the budget calculation was challenged; the definition of "economically distressed" county was also opposed; others considered the unemployment rate to be unreliable.

Doyle referenced eligibility requirements in 14.7(4) and suspected that portions could be in violation of federal law -- "... youth should have no history of serious crimes or other antisocial behavior..." Callison agreed to have their attorney review the provision. She added that other state conservation corps have some restrictions.

Doyle suggested narrowing the limitation to criminal acts against people. Callison stated that opponents to 14.7(7)b and c, which would allow minimum wage, contended that would be insufficient for the 19 to 24 age group. Priebe disagreed that wages should be higher since many individuals receive only minimum wage.

Provision in 14.7(7)h and k concerning nonpaid release time to attend GED classes and paid time to job search were opposed. However, the Department's position was that the rule should not change.

In 14.7(7)m, Clark asked for clarification by including "director".

James D. Underwood, Iowa Comprehensive Manpower Services, presented a letter with attachments from the federal record which was not favorable to use of unemployment rates for determining distribution of money. Underwood interpreted legislative intent was to consider concentration of people where services are needed. He maintained that the rules would favor a state agency in receiving funding. He also spoke to bonus points and called attention to the fact that under the old statute, community-based organizations were encouraged to operate the programs.

O'Kane concurred that the official unemployment figures were bogus but that it "is all we have." Underwood favored use of census data, also welfare figures or minority rates or the Department could propose other standards. In response to O'Kane, Callison thought the Department could redefine "need."

Tieden took the position that utilization of census data could benefit only the larger counties in Iowa. Callison indicated that all comments would be reviewed before the rules are adopted.

Job
Service
Division

Joseph F. Bervid and Paul N. Moran reviewed the following and no questions were posed:

Claims and benefits, 4.39(15), 4.40(3)"g" and "h" ARC 7141, also filed emergency ARC 7140 *N:FE* 11/19/86

PHARMACY
EXAMINERS
BOARD

Norman Johnson represented the Board for the following:

Licensure -- transfer of exam scores, 1.14(1) ARC 7127 *N* 11 19/86
Pharmacy business licenses, return of drugs and appliances, 2.6 ARC 7128 *N* 11 19/86
License fees -- duplicate certificates, 4.2 ARC 7129 *N* 11 19/86
Licensure by reciprocity, ch 5 ARC 7130 *N* 11 19/86
Minimum standards for the practice of pharmacy, 6.1, 6.5(7) ARC 7131 *N* 11 19/86
Controlled substances, 8.13(9), 8.15, 8.19, ch 12 ARC 7132 *N* 11 19/86
Purpose and organization -- license reinstatement, voluntary surrender of a license, 9.3, 9.4 ARC 7133 *N* 11 19/86

No questions re 1.14(1). After brief overview of 2.6, Priebe said he was surprised that drugs could be returned under any circumstances. Johnson assured him it was done within a controlled setting. No recommendations for 4.2.

ch 5

Discussion of Chapter 5 which was updated relative to fees, necessary creditals and reciprocity eligibility. Doyle recommended that a portion of the fee be retained for administrative costs--5.1--and other Committee members concurred.

6.1
6.5(7)

In review of 6.1, 6.5(7), Clark questioned "... or any other equipment..." in 6.5(7). Johnson pointed out the language was not new--thought was that if a pharmacy were so inclined, it could provide a kickback to a nursing home by purchasing hospital beds which would not be relevant to providing services and would deny patients a freedom of choice.

Doyle mentioned ethics; in particular, nursing homes seeking donations from pharmacies. Legally, the patient has choice of physician and pharmacy but many arrangements deny the choice. Tieden was surprised that complimentary packages of controlled substances were allowed. Johnson admitted the law was controversial and proposed legislation would be introduced on the matter.

8.13(9)

Clark recommended removal of "prescription as provided herein which shall be a new" from the end of 8.13(9).

9.3

With respect to license reinstatement in 9.3, Doyle recommended inclusion of the fee amount.

Tieden excused.

BOARD OF
REGENTS

The following agenda was reviewed by Robert J. Barak and Kenneth S. Moll:

Admission rules common to the three state universities, 1.2(1), 1.2(2) ARC 7118 *N* 11/5/86

No questions were raised.

REVENUE
DEPARTMENT

Clair Cramer represented the Department and offered a summary of the following:

Permit or license—delinquent in paying cigarette, motor fuel, sales or use tax, 13.16, 30.1(3), 63.26.
81.13 ARC 7145 F 11/19/86
Sales by trade shops to printers, 18.33(2) ARC 7146 F 11/19/86
Local option sales and service tax, 107.9, 107.11 ARC 7147 F 11/19/86
Taxable sales, exempt sales, taxable and exempt sales determined by method of transaction or usage, vehicles
subject to registration, 16.3, 17.13, 18.6(6), 34.5(3) ARC 7144 V 11/19/86

No formal action taken.

No Agency
Represent-
atives

No Agency Representatives were requested to appear for the following:

HIGHER EDUCATION LOAN AUTHORITY(4801)
Certain rules exempted from public participation, 23 ARC 7126 F 11/19/86
PRESERVES, STATE ADVISORY BOARD(5751)
Transfer and name change, chs 1 and 2, filed without notice ARC 7101 F 11/5/86
PUBLIC EMPLOYMENT RELATIONS BOARD(8211)
Transfer chs 1 to 10 and other amendments, 1.2.21 2.7 2.12(1) 2.15(1)(d) and "e," 2.15(2) 2.16, 2.21, 2.22, 3.1,
3.4, 3.8, 1.1(1), 4.1(2) 4.2(1), 4.2(4), 4.2(5), 4.2(6)(c) and "e," 4.3(2), 4.3(3), 4.8, 4.8, 5.1(2)(b) 5.1(5), 5.2(1), 5.2(2),
5.4(1)(a), 5.5(3), 5.6 to 5.8, 6.1, 6.3(2), 7.1(1), 7.4(3), 7.5(4), 7.5(10), 7.6, 7.7(1), 8.6, 9.1, 10.2(1) ARC 7073 F 11/5/86
Merit appeals, ch 11 ARC 7074 F 11/5/86
RACING AND GAMING DIVISION(1951)
Greyhound racing, mutuel departments, 7.8(1)(c), 7.8(4)(a), 8.2(4)(d)(3) to (5), 8.2(4)(g)(1)(2) ARC 7120 F 11/19/86
Transfer of rules, name and address change, chs 1 to 10, filed emergency ARC 7119 F 11/19/86

O'Kane
Farewell

Committee and staff extended best wishes to O'Kane in his new endeavor as County Supervisor.

Adjourn-
ment

The Committee was adjourned at 12:50 p.m. The next meeting was scheduled for Tuesday and Wednesday, January 6 and 7, 1987.

Respectfully submitted,

Phyllis Barry
Phyllis Barry, Secretary
Assisted by Vivian Haag
and Bonnie King

APPROVED:

Paul E. Rubio
CHAIRMAN