

MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Thursday and Friday, January 5 and 6, 1984, in lieu of statutory date, January 10, 1984.

Place of Meeting: Committee Room 118, State Capitol, Des Moines, Iowa.

Members Present: Vice Chairman Laverne Schroeder; Senators Donald V. Doyle and Dale L. Tieden; Representatives Ned Chiodo and James D. O'Kane. Not present: Senator Berl Priebe, Chairman, having reported he would be on vacation.
Also present: Joseph Royce, Committee Counsel; Phyllis Barry, Deputy Code Editor and Vivian Haag, Administrative Assistant.

Convened Vice Chairman Schroeder convened the Committee at 10:05 a.m. in Committee Room 118.

CONSERVATION COMMISSION Conservation Commission agenda before the Committee was as follows:

CONSERVATION COMMISSION[290]
Blinds and decoys on game management areas, ch 1 ARC 4340 .F. 12/21/83
Legal residency, 5.1 ARC 4341 .F. 12/21/83
Scuba and skin spearing of rough fish, 6.2, 6.4 ARC 4342 .F. 12/21/83
Motor vehicle restrictions, 9.1, 9.2 ARC 4343 .F. 12/21/83
Mussels - methods and seasons, 12.1(1) ARC 4344 .F. 12/21/83
Motor regulations, 40.3 ARC 4345 .F. 12/21/83
Examining and copying of public records, 63.2(2), 63.2(4) ARC 4346 .F. 12/21/83
License depositaries, 66.5, 66.6 ARC 4347 .F. 12/21/83
Wild turkey spring hunting regulations, ch 111 ARC 4317 .F. 12/7/83
Safety equipment, 27.13(9), 27.13(10) ARC 4332 .N. 12/21/83
Speed and distance - zoning, ch 30 ARC 4333 .N. 12/21/83
Navigation aids, maintenance of waterway markers, 31.4 ARC 4334 .N. 12/21/83
Nonpermanent structures, ice fishing shelters, 44.1 ARC 4335 .N. 12/21/83
State parks and preserves, 45.2(4), 45.2(5), 45.4(6), 45.5(3) and 45.5(4) ARC 4336 .N. 12/21/83
Organization, method of operation, and public participation, 60.2, 60.3 ARC 4337 .N. 12/21/83
Declaratory rulings, 61.2 to 61.5 ARC 4338 .N. 12/21/83
Contested case proceeding, ch 64 ARC 4339 .N. 12/21/83

Nancy Exline, Parks Division; Richard Bishop, Wildlife Division; Rick McGeough, Enforcement; Marion Conover, Fisheries, and Stan Kuhn, Administration, were in attendance.

ch 1 Bishop presented a brief overview of chapter 1. Discussion centered on portable blinds. Schroeder suggested additional language pertaining to removal of blinds at the close of the season. Bishop cited lack of manpower for enforcement as a problem.

1.1(2) Doyle had concern for definition of "ownership" in 1.1(2). Bishop indicated that the penalty for violation would be a simple misdemeanor. The Federal game warden must abide by the Iowa Code.

5.1 In response to Schroeder, McGeough was hopeful there would be no problems with legal residency requirements defined in 5.1(109). He referenced the problem of people who come into the state for 30 days to work on construction, etc., and declare residency.

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CONSERVATION
COMMISSION
Continued

Some move in and out of the state and purchase a license without waiting 30 days, contending they have already established residence. Schroeder was unconvinced problems would be resolved by the rule. He recommended that the Department follow definition used in Code Supplement §321.1A for DOT residency requirements in order to obtain driver's license. O'Kane recalled that Conservation officials had been requested to follow DOT 321.1A guidelines at the time the rules were before ARRC under Notice. There was discussion of possible 70-day delay on 5.1 for further study.

McGeough pointed out that the rule defining legal residency had been in existence for 10 years. Royce advised there was no uniform definition of residency--it varies among the agencies. The Department emphasized there was no intent to penalize large numbers of nonresidents attending Iowa universities and colleges. Reciprocity was mentioned and Doyle indicated South Dakota had none. He recalled their "expensive" out-of-state license. O'Kane thought another degree of residency was being developed for the purpose of hunting and fishing.

Motion
5.1

O'Kane assumed the chair to allow Schroeder to move that rule 5.1 be referred to the General Assembly for review by the appropriate standing committees.

Motion lost

Tieden reasoned that the rule had worked for 10 years and he has received no complaints. He did not support the motion. Motion failed on a voice vote with 3 ayes and 1 nay.

Vice Chairman Schroeder resumed the chair. No other questions.

6.2, 6.4
9.1, 9.2
12.1(1)
40.3

No recommendations were offered for 6.2, 6.4. Bishop assured Tieden that a dual paraplegic would be covered by the amendments to chapter 9. No questions re 12.1(1) or 40.3.

63.2

In review of amendments to 63.2, Kuhn informed Schroeder that approximately 15 to 20 requests for mailing lists are received annually.

66.5, 66.6
ch 111

No questions re license depositories. In re chapter 111, Bishop referenced changes made since the Notice of Intended Action and displayed map of hunting zones for wild turkey. Tieden pointed out that the Yellow River Forest extends into Clayton County but the rule does not address that fact. He asked Bishop to research reason for removal of Clayton County in 111.2(2)g. In addition, Tieden wondered how county lines were determined in a forest area. Doyle had observed wild turkeys along areas in Scott County which were deleted in the zones.

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COMMISSION

Bishop indicated turkey population is scare in these areas. Doyle thought it was confusing. Bishop advised ARRC that there would be 4 seasons in '84.

27.13(9) (10)

Language in rule 27.13 had been standardized according to McGeough. Schroeder interpreted the provisions to restrict life rafts close to shore at sundown. Tieden inquired as to why windsurfers were excepted from wearing Personal Flotation Devices. McGeough recalled much public interest in this provision. Windsurfing is a competitive sport and the PFD's are restrictive. It was consensus of the Committee that consistency would be preferable with possible sanction for competitors under Olympic trials.

30.5, 31.4

No questions re 30.5 and 31.4. Exline was present for review of ice fishing shelters, 44.1. She explained that under the revision, it will no longer be necessary to have a permit for an ice shack. There will be flexibility with respect to date by which shacks are to be removed. Also, reflectors will be required as safety factor. Tieden was advised that a statutory change would be needed to prohibit driving of cars on the ice. O'Kane alluded to a continuing problem of ice fishing where roads around lakes are closed. Exline explained that clearing of state park roads was the responsibility of DOT. However, she agreed to apprise their County Conservation Boards of O'Kane's concern.

ch 45

In response to Schroeder, Exline doubted that chapter 45 amendments would have fiscal impact. They merely clarify and provide consistency in fees. No questions on amendments to chapters 60, 61 and 64. There was brief discussion of contested case proceedings.

COUNTY
FINANCE
COMMITTEE

Ron Amosson, Gary Meyer and Marjorie Schneider, Comptroller's Office, appeared on behalf of the County Finance Committee to review county budgets, chapter 4, ARC 4298, also filed emergency, ARC 4297, Notice, IAB 12/7/83.

According to Amosson, the rules implement 1983 Iowa Acts, HF 628, and establish requirements for form and content of county budgets. One person attended the public hearing.

O'Kane was informed there were no plans for rules re bookkeeping procedures--a standard form would be used.

ENERGY
POLICY
COUNCIL

Dennis Guffey, Deputy Director, and Roya Stanley, Program Planner, were present to review Energy Policy Rules.

~~ENERGY POLICY COUNCIL~~[380]

Building energy management for state and local government, ch 17 ARC 4279 .F..... 12/7/83
Energy measures and energy audits grant programs for schools, hospitals and buildings owned by units of local government and public care institutions. 7.1(2), 7.2, 7.3(3) ARC 4280 .N..... 12/7/83
Technical assistance and energy conservation-grant programs for schools, hospitals and buildings owned by units of local government and public care institutions. 8.6(2)"e"(3) and (4), 8.6(4)"c"(2) ARC 4281 .N..... 12/7/83

Guffey noted that the program addressed in Chapter 17 is funded at both federal and state levels. Programs in chapters 7 and 8 are federally funded.

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ENERGY POLICY No comments had been presented at the public hearing.
COUNCIL Stanley gave a brief overview of the energy measures
continued and audit programs. She pointed out addition of two
definitions and said they attempted to clarify the
evaluation criteria by which the applicant would be
graded. Schroeder wondered if a breakdown were
available. Stanley replied that, in the last funding
cycle, all of the hospitals that applied were granted
their askings. All hospitals had been notified about
the program and workshops were planned for February.

8.6(2) There was discussion of 8.6(2) which was intended to
bring the rules into agreement with the state plan.
Tieden raised question as to meaning of QSI and thought
it should be explained in the rule. Stanley said it set
a maximum and added that the formula is prepared by de-
tailed explanation. Essentially, they take annual
estimated savings, and divide by annual energy con-
sumption, then multiply that number as a percentage
by 10--a "convenience figure". EPC plans a thorough
review of the state plan next year in an attempt to
make it more understandable. No further questions.

AGRICULTURE Elizabeth Duncan and Charles A. Ackermann were present
DEPARTMENT for review of:

AGRICULTURE DEPARTMENT[30]

Miscellaneous amendments to chs 1, 2, 8, 10, 11, 12, 16, 18, 20, 25, 26, 30, 43 and 55 ARC 4273 ..N..... 12/7/83
Pesticides. 10.22(3)"b", 10.30, 10.32 to 10.37 ARC 4283 ..N..... 12/7/83

2.3(3) In re 2.3(3), joint owners, Tieden was told that change
was made at Graf's request since the owners need not be
husband and wife.

Tieden also expressed concern with respect to the poul-
try disease in Pennsylvania and wondered if Iowa were
affected. Duncan was sure the Department was cognizant
of the problem but she lacked specifics.

ch 10 Duncan briefly reviewed changes in chapter 10 which
basically adopt procedures formerly enforced by DWAWM.
O'Kane pointed out that the testing covers crops and
he opined that it should cover a particular family of
pesticides. Ackermann responded that the Department is
attempting to educate the applicators as to types of
pesticides used in day-to-day activity. Also, a general
examination on the background of pesticides and their
unique problems is required. Duncan said the rules
govern commercial or public applicators--10.22(33)a.

In response to Tieden, Ackermann said private applicators
--approximately 20,000--renew their certificates every
3 years.

February Meeting Recess February ARRC meeting dates were set for 7, 14, 15 and 16.
Vice Chairman Schroeder recessed the Committee for 10
minutes.

BOARD OF
VETERINARY
MEDICINE

1/5/84

Dr. Merle Lange and Elizabeth Duncan appeared on behalf of the Board of Veterinary Medicine for the following:

VETERINARY MEDICINE, BOARD OF [842]

Organization, application for licensure, examinations, auxiliary personnel, suspension of license, continuing education.

1.1, 1.3, 2.2, 2.3, 3.1, 4.1(5), 4.4 to 4.7, 8.3, 3.2, 4.1(1), 6.1 ARC 4326 . F..... 12/21/83

Tieden called attention to 1.3 relative to quorum and pointed out that ARRC insists on 2/3 of the members vote for affirmative action. Lange assured the Committee that was the Board's practice, but the rule would be clarified.

Discussion of animal technicians and veterinary assistants with Royce pointing out that the Department had not complied with Iowa Code Chapter 258A, supplemental licensing regulation. He briefed the Department on the requirements of Chapter 258A as they pertain to these rules. He also contended that 4.6(169) was too vague. Duncan was aware of Chapter 258A but called attention to the fact that animal technicians [veterinary assistants] are not requested to be licensed under Iowa Code Chapter 169. She added that the certification was for prestige and revocation would have no impact. The matter was discussed at length. O'Kane opined that certification was a degree of licensure. Royce referred to §169.20, Iowa Code Supplement, which states that "certificate" is not a license.

According to Lange, the "assistants" are not veterinary students but people who have an interest in that type of work. He said that most other states have similar programs.

Tieden was curious as to how many Vet students failed in 1983 and Lange estimated about 7%. The test is offered twice a year with no limitation on the number of times it may be taken. Tieden questioned the need of additional testing if the individual has taken and passed all of the required courses. Doyle interjected that was the practice in South Dakota. Lange said that most who fail the first time are successful six months later. Students from other countries have difficulty because of language.

Lange described the program for O'Kane and indicated that the term "veterinary assistant" was intended to encompass any other technicians who might work in the veterinary field, e.g., X-ray technicians.

O'Kane referred to §169.5(9)i which used "lay assistant". Barry agreed to research the matter. [It was learned that the GA failed to strike the word "lay" from paragraph "i" at the time they were attempting to remove it from sections in Chapter 169.]

Royce still had a problem with the terms for discipline under 258A[.10] and thought they should be expanded. O'Kane reiterated that the Courts have ruled that any

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BOARD OF
VETERINARY
MEDICINE
Continued

degree of regulation becomes licensure regardless of what it is called. Royce thought the statute[169.20] to be very clear that the certificate was not a license. Duncan agreed to forward comments to the Board.

Recess

Vice Chairman Schroeder recessed the Committee at 11:40 a.m. Reconvened 1:35 p.m. Schroeder took the chair and asked to be excused. O'Kane assumed the chair.

INSURANCE
DEPARTMENT

Insurance Department was represented by Tony Schrader; Also present, Dennis Schneider, Iowa Association of Life Underwriters and Elizabeth Hart, Assistant Attorney General for Health Department.

The following was considered:

INSURANCE DEPARTMENT[510]
Replacement of life insurance and annuities, ch 16 ARC 4286 ...F..... 12/7/83
Health maintenance organizations, 40.5(9) ARC 4325 ...N..... 12/21/83

Ch 16

Schrader gave a thumbnail sketch of changes since chapter 16 was under Notice. He indicated the rules were not applicable to term insurance. No recommendations.

HMO

Hart explained that 40.5(9) will require all HMO's to provide health education programs for enrollees which will focus upon the concept of wellness and prevention of illness.

Tieden was interested in knowing the difference between HMO and standard health insurance policies. Schrader responded that some standard health policies will not cover pre-existing conditions for a period of time. Tieden favored similar restrictions for both factions. Hart stated that HMO's were experiencing problems with requiring enrollees to take a physical screening examination. A mandatory physical examination will replace that process as requested by HMO's. Schrader called attention to the fact that the HMO lists services that are to be provided which is different from other insurance companies. Tieden expressed interest in learning results of the hearing scheduled for January 21. It was explained that HMO rules are a joint endeavor of the Insurance and Health Departments with rulemaking authority being in the Insurance Title--§514B.23.

CORRECTIONS
DEPARTMENT

Bud Kilman, Broxann Keigley, Charles W. Lee and Hal Farrier appeared on behalf of Department of Corrections to review the following:

CORRECTIONS, DEPARTMENT OF[291]
Operational activities, chs 1, 4, 6, 10 to 12, rules 20.2, 20.11, 20.12, 22.4, 22.5, 23.5, chs 25 and 26, rule 28.5, chs 40 to 43, subrules 50.5(4) to 50.5(6) ARC 4288 ...F..... 12/7/83

Also present: Sheriff of Story County.

Farrier introduced Keigley who addressed concerns raised by ARRC previously. She noted that furlough rules for all institutions will be combined in chapter 20. Previously, local law enforcement was granted authority to veto furloughs. Now, they will be notified and their.

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CORRECTIONS
DEPARTMENT
Continued

comment considered during approval process. Restitution reductions will be made only from inmate institutional allowance. The Department will notify the clerk of court of other income. 20.3(3) addresses individuals who might be denied visitation and the appeals process.

1.6(1)g

In re 1.6(1)g, Doyle pointed out possible problem with inclusion of "Oakdale" since it will not be completed until July or August. Keigley was of the opinion the second sentence in 1.6(1), pertaining to the director's authority, would cover that area. Farrier was willing to send a letter to all judges. Royce suggested an emergency rule to resolve the problem.

20.12

In re 20.12, paragraph 4, last sentence, Doyle was assured that "transporting" did not mean taking an inmate from Ft. Madison to Sioux City. Doyle asked inclusion of the 1983 Iowa Code Supplement in 40.4(2). In

20.12(4)c(2)

re 20.12(4)c(2), he could see no reason for recommendation from local law enforcement personnel and questioned statutory authority. Farrier explained that law enforcement officials want to know when an inmate is released. O'Kane concurred with Doyle's opposition to local enforcement recommendation having any impact on the furlough. Farrier emphasized that the Department needs information from the community. He was willing to change "recommendation" to "information." Farrier continued that they had not experienced problems with the furlough program.

In response to Chiodo, Farrier indicated the inmate develops the list of approved visitors and the inmate must initiate the visit.

There was brief discussion of the Attorney General's opinion which Keigley had distributed.

CIVIL RIGHTS
COMMISSION

Artis Reis, Director, Civil Rights Commission, was present to review rules of practice, processing the complaint, 1.4, ARC 4324, Notice, IAB 12/21/83.

According to Reis, rules are being reorganized to show sequential processing of a complaint. Rules to screen complaints will be preferable to placing restriction on the number filed. Possible filing fees were mentioned. Reis briefly reviewed backlog of cases and said the average time for resolution of a case is 11 months. She attributed increased caseload to the economy. Approximately fifty percent of the complaints last year were on age discrimination; twenty-five percent were sex and race related. There was general discussion.

Recess

Acting Chairman O'Kane recessed the Committee for 15 minutes.

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COLLEGE AID
COMMISSION

Willis Ann Wolff appeared on behalf of College Aid
Commission for review of:

COLLEGE AID COMMISSION[245]

Iowa guaranteed student loan program, amendments to ch 10 ARC 4276. also filed emergency ARC 4275. N.T.F.E.... 12/7/83

Wolff advised that the guarantee fee would be reduced
from 1 percent to .75 percent per annum--
about \$712,000 per year.

Committee
Discussion

Royce briefed the Committee regarding the VIP program
administered by the comptroller. The comptroller has
taken the position tha the program is an intragovern-
mental matter and rules were unnecessary. However,
they now plan to draft rules.

Recess

Committee was recessed at 2:55 p.m.

Reconvened The Committee was reconvened in Room 118 at 9:10 a.m. by Acting Chairman O'Kane. Members present: Senators Doyle and Tieden; Representatives Chiodo and O'Kane. Also present: Committee staff and Kathryn Graf, Governor's Rules Coordinator.

Minutes On motion by Doyle, minutes of the December meeting were approved.

EMPLOYMENT SECURITY Jim Hunsaker III, Joseph Bervid, William J. Yost, Paul Moran were present to review the following agenda:

EMPLOYMENT SECURITY[370]
Federal social security, contributions by employers, 9.7(1), 9.7(3) ARC 4290 12/7/83
Special review--school employees/unemployment eligibility

Also present: Dennis Jacobs, IPERS, and Ruth Mosher, Citizens Aide/Ombudsman office.

9.7 Jacobs explained that amendments to rule 9.7 reflect Public Law 98-21 and impact public employers who will remit money to the state. The state in turn will remit to the federal government on a semimonthly basis. Responding to question by Tieden, Jacobs said the time frames were established by the state.

Special Review At the request of the State Ombudsman, there was special review of the issue re unemployment eligibility for school employees. The ability of school employees to collect unemployment benefits is limited by statute--96.4(5)c. If the employee is hired for a 10-month period, there is a possibility benefits would not be received. However, if hired for a 12-month period and laid off, that individual could receive benefits. Subrule 4.22(3) seemed ambiguous and the question presented was "Should this issue be more fully developed by rule?" by making distinction between the two different groups.

Yost addressed question by Chiodo re 96.4(5)c -- history of collecting unemployment. Certain contractual employees are employed in the school system 12 months of the year. Yost cited exceptions which include those individuals who are regularly off between academic terms. He indicated there are a number of court cases in this area -- bargaining agreements would delay offer of reemployment for the academic terms. Job Service officials took the position that the statute was clear and there was no need for clarification.

O'Kane was informed that school contracts vary by district but generally, they are made in March. Chiodo asked, "What constitutes reasonable assurance that a 10-month employee would be rehired?" Yost said there had been no problems with that -- if the employee has not received assurance they would be rehired, they could be eligible for benefits. Royce interjected that the issue was how much detail was needed in the administrative rule to implement this provision and make it understandable for school employees.

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EMPLOYMENT
SECURITY
(Job Service)
continued

In response to O'Kane, Department officials believed the statute adequately covered the matter without a rule. Mosher contended there was inequitable application of "reasonable assurance" between 10- and 12-month contracts -- exemption for 12-month employees not addressed. Chiodo suggested a sentence, "If a person becomes unemployed in the area of education, unemployment can be collected for that period of time they are unemployed which occurred during the period of their contract." Bervid could foresee some difficulty with that. Yost maintained a rule was unnecessary. Bervid pondered whether "One instance in 15 years would justify an administrative rule."

Mosher declared it would be quite simple to include a sentence clarifying the fact that those employees who have full-time contracts would be exempt. She recommended amending rule 3.83. There was general discussion. Although Hunsaker thought the rules and law were clear, he agreed to clarify the provisions.

MERIT EMPLOY-
MENT DEPT.

Pay plan

Clint Davis, Deputy Director, and Emmeline Wynn, Division Manager, appeared on behalf of Merit Employment for special review of Merit policymaking for administration of the state pay plan. The question being, should there be public participation for perusal of these policies -- through rulemaking or otherwise; should agencies and their employees have a right not only to see the policy, but to have some participatory rights.

Davis discussed the Department's position on when to initiate rulemaking and when to use memos. Davis indicated they were in the process of rulemaking on administration of the reinstitution of merit/automatic pay increases for which many employees will be eligible on June 29, 1984. He pointed out that legislation rescinded that in 1981. When 4.5(2)e -- suspension of merit pay increases -- was created by the former Director, reinstitution of merit increases was not contemplated. Davis emphasized that it would be virtually impossible, by rule, for the Merit Department to address every issue in trying to create equitable and fair treatment for employees.

In some instances, employees under collective bargaining may experience inequities in the administration of the plan. Also, merit increases for noncontractual employees were discussed. Davis reiterated the Department's position on the importance of not being bound by strict administrative rule. Chiodo asked Davis if it were possible to draft a rule to cover the grievance process. Davis envisioned difficulty in attempting to cover all situations by rule, and he was confident the Department was in compliance with Iowa Code Chapter 19A.

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MERIT
EMPLOYMENT
DEPT
Concluded

Royce reasoned it would be preferable to have the rather broad issue discussed under regular rulemaking rather than special review. Chiodo wondered if there were justification for public comment prior to developing the first draft of rules. Royce responded that there was a question as to whether the rulemaking process was necessary -- under chapter 17A, they would be exempt. He continued that the question was somewhat confusing because Iowa Code section 19A.9(2) requires rules providing for "a pay plan" but does not specify that the plan be adopted as rules. Royce suspected that language in chapter 19A predated Administrative Code rulemaking process.

Committee
Action

After further discussion, Committee agreed that the State Government Committees should be notified and an Attorney General's opinion requested.

HEALTH
DEPARTMENT

Mark Wheeler, Peter Fox, Susan Osmann, Carson Whitlow, Laura Sands, Irene Howard and Jim Krusor appeared on behalf of the Health Department. The following was before the Committee:

| HEALTH DEPARTMENT[470] | | |
|--|--|----------|
| Reportable diseases. 1.2(1) ARC 4314 .F. | | 12/7/83 |
| Special supplemental food program for women, infants and children, 73.5 to 73.24 ARC 4289 .F. | | 12/7/83 |
| Vital records, fees, 96.4 ARC 4294 .F. | | 12/7/83 |
| Physical and occupational therapy examiners, license fees, 137.6, 138.207 ARC 4274 .F. | | 12/7/83 |
| Podiatry examiners, 139.1(4), 139.1(18), 139.3(3) to 139.3(5) ARC 4321 .F. | | 12/21/83 |
| Hearing aid dealers, license fees, 145.10 ARC 4322 .F. | | 12/21/83 |
| Hearing aid dealers, unethical practice, 145.212(8)*d and *e ARC 4323 .F. | | 12/21/83 |
| Cosmetology, license to practice, 160.7(1), 160.7(2), 160.7(4) ARC 4282 .F. | | 12/7/83 |
| Vital records, fees, 96.4 ARC 4330 .N. | | 12/21/83 |
| Requirements to practice medicine and surgery, 135.101(2), 135.102(5) ARC 4295 .N. | | 12/7/83 |
| Cosmetology examiners, 149.1(1) ARC 4296 .N. | | 12/7/83 |
| Standards for certificate of need review, designated inpatient substance abuse treatment unit standards, 203.11 ARC 4293 .N. | | 12/7/83 |

1.2(1) No questions re 1.2(1).

Ch 73, WIC In re the WIC program and staffing of local agencies, O'Kane inquired if the Department was amenable to including registered nurses under 73.5(1). Sands pointed out that RN's are not necessarily qualified to make dietary assessment. Physical screening is performed by dietitians.

Tieden requested that the record reflect his opposition to chapter 73 amendments, the special supplemental food program. It was his opinion that statutory authority had been exceeded. He recalled his opposition, when the rules were under Notice, to limitations placed on consumption of whole milk--73.8.

96.4 No questions re new language in 96.4(ARC 4294), 137.6 or 138.207.

Ch 139 Doyle referred to 139.1(4) which required that statements made in the application form be subscribed and sworn to by the applicant and notarized. He suggested that others with authority to acknowledge records and documents should be included in the rule also. Howard was willing to clarify when the rules are amended. No questions re 145.10 or 145.212(8).

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HEALTH
DEPARTMENT
Concluded

Amendments to Noticed 96.4 would allow citizens opportunity to obtain corrected certificates without charge. Whitlow cited adoption records as one of the major problems. Under adoption proceedings, a birth certificate may arrive without the father's name; the name is added later by the attorney and the certificate is amended to reflect this. Whitlow said the Department encourages people to obtain the most recent copy.

ch 135

Krusor presented a brief overview of Medical Examiner's amendments. Doyle noted use of "notarized" in 135.101(2) and recommended that the subrule be expanded to include others with authority to acknowledge records and documents. Krusor was amenable to referring the matter to the Board.

149.1(1)

O'Kane inquired as to reason for cosmetology subrule 149.1(1). Fox stated that the cosmetology schools were previously prohibited from use of the premises for anything other than cosmetology. The Board reconsidered and proposes to allow other uses after scheduled cosmetology instruction. CE and other programs will be permitted. No comments had been received.

Osmann explained amendments to chapter 203. Comments were received from all hospitals in the state last summer and revisions resulted. No recommendations by the Committee.

NURSING HOME
ADMINISTRATORS

Rule 2.5 pertaining to license fees was before the Committee. According to Fox, it was identical to the Notice and no comments had been made.

2.5(6)

Tieden raised question re 2.5(6), penalty fee for failure to complete CE, which seemed to infer an applicant could continue to practice. Fox said that the intent was to encourage CE completion in a timely manner.

Doyle was advised that the fee was a "penalty" fee. Fox said that if the individual did not take CE, they would lose the license and the thirty dollars would be a "reinstatement" fee. Tieden opined it was a little vague. Howard assured ARRC that the Nursing Home Administrators were aware of the subrule.

Medical
Examiners

Krusor returned to the meeting and asked to address the Committee. He had neglected to mention that 135.102(5)d was changed to a tougher requirement because of large numbers of foreign graduates among other reasons.

Doyle was informed that the approved "fifth pathway program" is one whereby individuals take basic sciences in one college and complete clinical sciences and residency in another location/setting. Krusor indicated few people go through the detailed program at this time.

Recess

O'Kane recessed the Committee for 10 minutes.

1/6/84

COMMERCE
COMMISSION

Bill Haas, Ray Vawter, John Pearce and Dwayne Ferguson
were present for Commerce Commission to review:

COMMERCE COMMISSION[250]
Use of residential electric service, 20.1(3), 20.4(15)^f, 20.4(22) ARC 4329...*F*..... 12/21/83
Practice and procedure, rehearings, 7.9(1), 7.9(3) ARC 4327...*N*..... 12/21/83
Public telephone service, 22.3(6)^a ARC 4328...*N*..... 12/21/83

Also present: Don Heidebrecht, United Telephone, and
Jack Clark, Iowa Utility Association.

20.1(3)

The definition of "service limiter" in 20.1(3) was re-
viewed. There was brief discussion of 22.3(6)^a which
would allow telephone utilities to remove coin-operated
stations which are too expensive.

No formal action taken on Commerce amendments.

SOIL
CONSERVATION

James B. Gulliford and James F. Ellerhoff appeared on
behalf of Soil Conservation Commission. The following
agenda was before the Committee:

SOIL CONSERVATION DEPARTMENT[780]
Surface coal mining and reclamation operations, bonds, 4.42(1)^e, 4.42(2), 4.322(3), 4.332(3)^c and "d", 4.41(1)^b 711, 4.41(1)^c ARC 4349...*N*..... 12/21/83
Surface coal mining and reclamation operations, 4.523(63) ARC 4287...*N*..... 12/7/83
Iowa financial incentives program for soil erosion control, (WECIP), 5.55(2), 5.55(3) ARC 4350...*N*..... 12/21/83

Gulliford presented a brief overview of the rules -- two
in the area of coal mining and one, wind erosion control
program.

Chiodo was informed that the dollar amounts would sig-
nificantly increase the bonding to guarantee reclama-
tion of strip-mined land in Iowa. General discussion
with Department officials noting they have authority
to set criteria. The bond per acre would be no more
than \$10,000 nor less than \$3,000 per acre. The pro-
posed rules had been mailed to the coal mining industry
and a hearing was scheduled. Surprisingly, according
to Gulliford, some industry officials believe the bonds
to be too low.

Gulliford responded to question by Tieden by explaining
that prime farm land is defined by the USDA. Tieden
expressed concern over the fact that consideration was
limited to "prime farm land." Department officials
pointed out that federal law requires greater care of
prime farmland.

4.523(63)

Gulliford said 4.523(63) allows flexibility in pre-
notification of intent to initiate underground mining
in Iowa. He cited Code Chapter 83A as the rulemaking
authority for chapter 4 amendments.

It was pointed out that the implementation clause pub-
lished in the IAB should be chapter 83A, not 83.
No questions re 5.55(2) (3).

RECESS

Committee was recessed at 11:19 a.m.
Reconvened at 1:04 p.m.

1/6/84

IOWA
DEVELOPMENT
COMMISSION

Dale Braynard appeared on behalf of Iowa Development Commission for review of:

IOWA DEVELOPMENT COMMISSION[520]
Iowa industrial new jobs training program, ch 5 ARC 4277 *F*..... 12/7/83
Declaratory rulings, ch 6 ARC 4278 *F*..... 12/7/83

Braynard noted that some revisions were made to chapter 5 rules and chapter 6 was identical to that published under Notice. Doyle suggested possible additions to 6.2(2)a; "if the matter is not in court" and "if an AG opinion is being requested." He opined those were two good reasons for refusal of a declaratory ruling request.

BOARD OF
PHARMACY

Norman Johnson, Executive Director, was present to review filed rule 6.8(7)b, minimum standards for practice of pharmacy, ARC 4285, IAB 12/7/83. Johnson explained the change with respect to pharmacist on inactive status. No questions.

Doyle, in a matter not before the Committee, commented that several of his constituents had petitioned to bank their CE hours -- particularly rural pharmacists. Johnson told him that the Board was not allowing that -- contending that programs are available, including correspondence courses.

Royce asked Johnson to explain an issue pertaining to generic drugs and referred to Human Services ARC 4306--subrule 78.2(2)a. In Johnson's opinion, it conflicts with the statute [Iowa Code §155.37(2)c]. He continued that DHS rule provides for the pharmacist to be reimbursed for the lower cost product, regardless of the cost, but the statute says pharmacists cannot dispense it. Clarifying legislation has been proposed to remove conflict between §155.36 and 155.37(2)c. It would allow nonequivalent drug list to be used for pharmacists and physicians as intended.

HUMAN
SERVICES

Judy Welp, Charles Ballinger, Joe Mahrenholz, M. E. Imlau were present to review the following Human Services rules:

HUMAN SERVICES DEPARTMENT[498]
Fair hearings and appeals, 7.1(15), 7.2, 7.5(5), 7.7(2)"j", 7.7(5), 7.10(4)"a" ARC 4301 *F*..... 12/7/83
ADC, granting assistance and unemployed parent, 41.4, 41.4(4), 41.4(6) to 41.4(8), 41.7(2)"c", 42.4(3), 42.4(5)"c", 42.4(6) ARC 4303 *F*..... 12/7/83
ADC, granting assistance, 41.7(7)"t" ARC 4302 *F*..... 12/7/83
ADC, granting assistance and unemployed parent, 41.7(7)"u", "v" and "w", 42.1(8) ARC 4304 *F*..... 12/7/83
ADC, qualifying parent, 42.4(1)"b" ARC 4305 *F*..... 12/7/83
Reductions, 52.1(3), 77.24, 78.2(2)"a" and "e", 78.3, 78.26, 79.1(2), 79.1(8), 80.2(2), 81.6(16)"a", "c", "d", 137.6(1), 137.7(1), 145.3(5)"q", 148.4(3), 148.4(7)"f", 148.4(8)"c", 160.9(3), 161.8(3) ARC 4306 *F*..... 12/7/83
Medical assistance, conditions of eligibility, 75.1(1), 75.1(11) ARC 4307 *F*..... 12/7/83
Work incentive program, ch 90 ARC 4308 *F*..... 12/7/83
Support recovery, 95.1, 95.6 to 95.8 ARC 4309 *F*..... 12/7/83
Foster care services, 136.6(2), 136.13(1), 136.13(3) ARC 4310 *F*..... 12/7/83
Reimbursement for county or multicounty juvenile shelter care and detention homes, ch 167 ARC 4311 *F*..... 12/7/83
Recoupment, procedural error, 46.1(10), filed emergency after notice ARC 4312 *FEAN*..... 12/7/83
Supplementary assistance, eligibility and payment, 51.4(1), 51.7, 52.1(1), 52.1(2), filed emergency after notice ARC 4313 *FE*..... 12/7/83
Medical and remedial services, hospitals, 78.3, filed emergency ARC 4315 *FE*..... 12/7/83
Providers of medical and remedial care, reimbursement for hospital, 79.1(3)"a" ARC 4309 *N*..... 12/7/83
Providers of medical and remedial care, reimbursement, 79.1(8), filed emergency ARC 4316 *FE*..... 12/7/83

No questions re amendments to chapter 7. Welp indicated that the ADC, granting assistance and unemployed parent rules coordinate with the WIN demonstration program. They were originally filed emergency and she briefed ARRC on changes made since that time.

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HUMAN
SERVICES
Continued

O'Kane inquired as to any involvement of Job Service. According to Welp, Human Services is contracting with Job Service -- basically, same services that were provided previously -- one exception, Job Service does not hear appeals -- Human Services does.

No questions re 41.7(7), 42.1(8) or 42.4(1)b.

78.2(2)a

In re ARC 4306, Welp noted that most of the rules on reductions had been before the Committee under the filed emergency process. Welp continued that opposition had been voiced against noticed 78.2(2)a. A second revision will be presented to the Council in January. Royce mentioned the so-called nonequivalent drug list -- he was unsure that the rule was worded to recognize the fact that a pharmacist is not allowed to dispense a drug listed on that nonequivalent list. Mahrenholz contended the rule did take the nonequivalent list into consideration.

Johnson, Board of Pharmacy, interjected that he disagreed with Mahrenholz' interpretation.

75.1(1)a

Doyle inquired about 75.1(1)a as to how long ADC recipients should continue to report overpayments. Department officials indicated a recipient would need to maintain eligibility and file changes in income or resources.

ch 90
WIN program

According to Welp, instead of being jointly administered by Job and Human Services, Human Services is now the sole administrator. O'Kane asked Welp to provide the rationale to ARRC. Tieden was interested in how Human Services decided which county would participate in the program. He recalled his opposition to the fact that no counties north from I-35 and north and east of I-80 were in the program. Welp agreed to have someone contact him on the matter.

ch 95,
ch 136

Amendments to chapter 95 re support recovery were described by Welp. Chiodo wondered why the contested case provision no longer applied. Imlau said the U. S. Supreme Court ruled that a foster family has no legal recourse to keep the child in their home. Therefore, they have no right to appeal. Reasons for removal of a child were discussed briefly. Chiodo argued, "Can the Department, by rule, do away with contested case provision, when Iowa law allows that right?" Imlau emphasized this was not a new Department policy. Royce asked if the statute on foster children contained hearing provisions. Welp did not believe so. Royce observed that if neither the statute or the constitution requires it, there is no built-in right. Imlau knew of legal cases that had been filed on the matter. Welp noted that DHS has administrative remedies and has not specifically said, "This is not a contested case."

1/6/84

HUMAN
SERVICES
Continued

Doyle suggested that Royce research the matter--basic question being "can an agency, by rule, disallow contested cases?" So ordered by the Acting Chairman.

ch 167

Doyle was advised by Royce that adoption of a contingent rule, 167.2, was permissible. It would be effective only if funds were available.

46.1(10)

In review of 46.1(10), Welp said an incomplete address on a form would be an example of "procedural error."

chs 51 & 52
78.3

No questions re amendments to chapters 51 and 52. Re 78.3, Welp said all of the cases were subject to review but not necessarily prior to admittance.

79.1(3)a

No questions re 79.1(3)a. Subrule 79.1(8) provided for reduction of pharmacists' professional fees to comply with budget cuts.

TRANSPORTA-
TION DEPT

Jane Phillips represented Iowa Department of Transportation and Transportation Regulation Authority for review of:

TRANSPORTATION, DEPARTMENT OF [820]

| | | | |
|---|----------|---|----------|
| Transportation regulation authority, truck operators and contract carriers. [07.F] 3.8(8) | ARC 4351 | ✓ | 12/21/83 |
| Transportation regulation authority, motor carriers and charter carriers. [07.F] 4.8 | ARC 4352 | ✓ | 12/21/83 |
| Transportation regulation authority, liquid transport carriers. [07.F] 13.5 | ARC 4353 | ✓ | 12/21/83 |
| Transportation regulation authority, railroad company annual reports. [10.A] 1.4 | ARC 4354 | ✓ | 12/21/83 |

3.8(8)

Phillips discussed reason for rescission of 820--[07,F] 3.8(8). To date, no comments had been received. She pointed out that [07,F] 4.8, 13.5 and 1.4[DA] were the same concept addressing 3 different carriers that are required to file annual reports with DOT.

O'Kane opined that DOT seemed to be referring to a federal document and not clarifying what was required of the carrier. Phillips replied that it is in relationship to actual required accounting procedures and those would be too lengthy to set forth in rule form. The Department thought it would be easier to identify specific accounting rules which are used and follow up with information to the public. Chiodo was told the procedure would change in accordance with federal changes. He asked that a date certain be included in reference to the manual.

4.8

Tieden was advised that not all carriers operate on a calendar basis--DOT sets given time period for uniformity. He contended "fiscal year" would be preferable in 4.8(2)a but Phillips said the procedure was set up on a calendar-year basis. Allowances can be made internally if problems are created for the carrier. Tieden viewed "at the earliest opportunity" as being too vague. Phillips discussed problem with the 25-page form which is issued by ICC. She was amenable to providing Royce with a copy.

Form to
Royce

O'Kane questioned necessity for the information. According to Phillips, it is used in determining whether or not a rate increase could be warranted or if additional authority is justified. Phillips said that 4.8(1) contains general description of information required. O'Kane considered it to be somewhat vague and wondered what "other relevant information" would be.

1/6/84

TRANSPORTATION
DEPARTMENT
Concluded

Discussion of railroads in Iowa--Phillips indicated the Railroad Division uses information for studies. It was noted that DOT does not set their rates for intrastate railroads--they are set within the limits of the law. Their regulation differs from other types of carriers. Royce failed to see the point of the studies if the DOT does not rate regulate the railroads. Phillips could not speak for the Rail and Water Division, or the Planning Division (which uses the information).

No other comments.

WATER, AIR &
WASTE MANAGE-
MENT

Doug Campbell, William Anderson and Mike Murphy appeared for review of:

WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900]
Amendments to chs 1, 5, 6, 7, 41, 50, 51, 52, 60, 61, 62, 64, 69, 70, 71, 72, 73, 75, 81, 100, 103 and 121 ARC 4331 12/21/83
Emission standards for contaminants, 23.1(2), 23.1(3) ARC 4319 12/21/83

Murphy recalled the merger of Natural Resources and Environmental Quality and explained that the amendments under ARC 4331 represent changes to the comprehensive set of rules consistent with the proposed amendments of July 1983. A major change was made in 51.8(3) with respect to pumping large amounts of water. Subrule 6.3(2) was modified at the recommendation of the Farm Bureau to be more definitive. Discussion as to when the Executive Director may decline to issue a declaratory ruling.

51.8(3)

6.2(2)

ch 23

Anderson briefed the Committee on the rules for emission standards for contaminants. Discussion of issuance of permits for certain industries. Department officials emphasized that these facilities prefer seeking a permit from one source rather than being involved with EPA and the state.

23.1(2) gg

Doyle questioned whether or not 23.1(2) gg would apply to metal furniture made by Prison Industries. He was informed that the rules would apply only to a new manufacturing facility.

With respect to sulphur dioxide emissions, Anderson stated that Iowa has remained in basically the same situation for the last 8 years. The federal government has a set of standards for Iowa facilities and the state has a different set. He pointed out that Iowa's standards are less restrictive; the source has to meet EPA standards, which are more restrictive. He could foresee that the federal government will direct Iowa to revise the implementation plan. It relates to two power plants not located in Des Moines. However, Iowa is not in danger of losing federal funding at this time.

1/6/84

No Agency
Reps

A Family Farm Development Authority representative could not be present and it was agreed they would be placed on the February agenda.

Feb.
Agenda

Agency representatives were not called to appear for the following:

| | |
|--|---|
| IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523] | |
| Soil conservation loan program, 4.2(7), 4.7 | ARC 4284 F..... 12/7/83 |
| Operating loan guarantee program, ch 5 | ARC 4292, also filed emergency ARC 4291... N. F. F. E. 12/7/83 |
| LANDSCAPE ARCHITECTURAL EXAMINERS BOARD[540] | |
| Headquarters of the board, examinations, fees, 1.3, 2.4, 2.10 | ARC 4348 F..... 12/21/83 |
| SECRETARY OF STATE[750] | |
| County commissioners of elections, forms, judiciary, filing complaints, manner of voting, 3.2, 4.2(2), 6.12(3), 7.2, 10.4(5) | ARC 4318 F..... 12/21/83 |

Adjourned

No other business. Doyle moved to adjourn at 2:36 p.m.
So ordered.

Next meeting will be February 7, 1984, 7:30 a.m.

Respectfully submitted,

Phyllis Barry
Phyllis Barry, Secretary
Assisted by Vivian Haag

APPROVED:

Bert E. Rich
CHAIRMAN