

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, November 9 and Wednesday November 10, 1982,
10:00 a.m.

Place of Meeting: Senate Committee Rooms 22 and 116, Capitol Building,
Des Moines, Iowa.

Members Present: Representative Laverne Schroeder, Chairman; Senator
Berl E. Priebe, Vice Chairman; Senators Edgar Holden
and Dale L. Tieden and Representatives Betty J. Clark
and Ned F. Chiodo.
Also present: Joseph Royce, Committee Counsel,
Brice Oakley, Governor's Rules Coordinator, Phyllis Barry,
Deputy Code Editor, Vivian Haag, Administrative Assistant.

CONSERVATION
COMMISSION

Chairman Schroeder called the meeting to order at 10:00 a.m.
He called for review of the following Conservation rules:

Wildlife Habitat Stamp, cost assistance, 22.5, 22.6	ARC 3316	.....F.....	10/27/82
Artificial lakes, horsepower limit, 30.2	ARC 3317	.....F.....	10/27/82
Water skis and surfboards, 30.61	ARC 3318	.....F.....	10/27/82
State forest camping, 41.5, 41.7, 41.8, 41.9, 41.10	ARC 3319	.....F.....	10/27/82
Fishing regulations, 108.2(1), 108.2(3), 108.2(5)	ARC 3320	.....F.....	10/27/82

The Commission was represented by Bob Barratt, Wildlife
Superintendent; Allen L. Farris, Chief, Fish and Wildlife;
Nancy Exline, Associate Parks Superintendent.

22.5, 22.6

Barratt explained amendments to 22.5 and 22.6 and there
was brief discussion.

30.2

In response to question by Schroeder, Exline stated that
the two lakes listed in 30.2 were under 100 acres.
Communities near the two lakes had requested the rule.
Exline pointed out that lakes over 100 acres were addressed
in the statute.

30.61

Committee members were informed that the U. S. Coast
Guard had advised the Department that a date certain
for the CFR reference in rule 30.61 was not available.

Ch 41

Exline advised the Committee that amendments to the
state forest camping rules were basically the same as
those published under Notice except for clarification of
41.9--time limit.

108.2

Farris reported that amendments to rule 108.22 estab-
lishes a slightly longer closed season for fishing
in the great lakes region.. The only comment from
the public was relative to the dropping of the restriction
on Spring Branch Creek.
No formal action taken on rules of Conservation Commission.

Committee
Business

Discussion of meeting dates for December and January.

December &
January meetings

Moved by Priebe that a special meeting be held on No-
vember 30 and December 1 in lieu of the statutory date of
December 14. Further, that a special meeting be scheduled
for January 4 and 5, 1983, in lieu of the statutory date
of January 11. Motion carried unanimously.

Committee
Business
Cont'd

Discussion of the Committee's Rules of Procedure as they appear in the Iowa Administrative Code. Schroeder took the position that the Chairman should be permitted to make motions. Members concurred.

Royce recommended that Committee rule 9 could be amended to read: "Motions shall not require seconds and may be made by any committee member."

Priebe so moved. Motion carried unanimously.

Barry agreed to amend rule 9 and republish it in the IAC.

Minutes

Chairman Schroeder called for disposition of the minutes of the October meeting. The Secretary pointed out three typographical errors which would be corrected. Holden moved that the minutes be approved. Carried viva voce.

Draft to
Legislative
Council

Royce brought up the matter of his proposed draft to the Legislative Council pertaining to the role of the ARRC in introducing legislation.

It was noted that Schroeder and Chiodo had been invited to appear before the Legislative Procedures Committee at their next meeting to pursue the issue.

Clark posed questions as to possible ramifications in the event the ARRC would be granted standing committee status.

Priebe thought emphasis should be on the importance of maintaining an experienced Committee. Schroeder added that the statute should be amended to provide for staggered terms.

Clark reasoned that increasing the membership could provide more expertise for considering the wide gamut of subjects confronted by the Committee.

Agriculture
Rules moved
to December
meeting

Royce reported that Bette Duncan would not be available today to represent the Department of Agriculture for review of the following rules:

Referendum procedures, ch 2	ARC 3324	.....N.....	10/27/82
Aujesky's disease, 16.149, 16.151(3), 16.153	ARC 3325	.....N.....	10/27/82
Food establishments, 38.1, 38.2	ARC 3326	.....N.....	10/27/82

It was decided to defer consideration until the December meeting.

PAROLE
BOARD

Robert G. Tangeman, Hearing/Liaison Officer, Board of Parole appeared for review of the following:

Inmate interviews, 3.6(2) rescinded	ARC 3264	.....F.....	10/13/82
Findings of hearing officer, 7.5(13)	ARC 3265	.....F.....	10/13/82
Final parole revocation hearing, 7.6(2)	ARC 3266	.....F.....	10/13/82
Waiver of probable cause hearing, 7.7(2)	ARC 3267	.....F.....	10/13/82
Request for reconsideration, 9.1	ARC 3268	.....F.....	10/13/82

7.6 (2)

Priebe raised question re 7.6 (2) as to being "too wide open".

Tangeman recalled the amendment was adopted as a result of a particular case where the Board needed to take immediate action with respect to a parolee.

Priebe recommended that the stricken language be retained and that the word "additional" be added before "hearings" in the last sentence of 7.6 (2).

Discussion of 7.7(2). Tangeman said the amendment merely set out the current practice.

Oakley recalled a proposal in the classified sentencing bill this year re the initial probable cause hearing. The

PAROLE BOARD
Cont'd

statute now requires that it be held where the parolee is apprehended rather than where the parole violation occurred. This procedure is costly and Oakley opined that another attempt should be made to enact legislation on the subject.

Discussion of 9.1. No recommendations.

LAW ENFORCE-
MENT ACADEMY
Chapter 3

John Callaghan, Director of the Iowa Law Enforcement Academy, was accompanied by John Quinn and Ben K. Yarrington for review of the following:

Officers, instructor certification, ch 3, vision 1.1(9), notice, ch 7 ARC 2798, terminated ARC 3308...~~F~~..... 10/13/82

Schroeder questioned the change in 1.1(9)--"14 out of the 18 plates" to "10 out of the 14 test plates". Callaghan explained the error was called to their attention by an optometrist. He emphasized that the provision refers to color vision only.

In considering Chapter 3, Schroeder could envision problems for the area schools which provide the training. Callaghan stated that all schools were aware of the rules and he did not anticipate any hardship for them. He added that the rules merely formalize existing practice.

Schroeder referred to 3.4(1)k which would require a drinking driver control instructor to have "...a strong background in the Iowa Code and case law..." He suspected that the provision would tend to preclude new instructors.

Callaghan stressed that regional training facilities had heartily endorsed the rules which were intended to provide flexibility.

Holden asked why training for firearms instructor was limited to the Academy. Callaghan responded that it was basically because of the Academy's ability to impart a sound shooting policy--when the officer is legally entitled to use his or her weapon.

Schroeder opined that should not be the responsibility of the instructor. Callaghan disagreed. He contended that safety was of paramount importance.

There was brief discussion of qualifications for both specialist and professional instructors. No formal action taken.

Recess

The Committee was in recess from 11:00 a.m. to 11:15 a.m.

PUBLIC SAFETY
Fire Marshal
Chapter 5

Chairman Schroeder called for review of the Public Safety Department's amendments to Chapter 5 of their rules with respect to the flammable and combustible liquids code and liquified natural gas, published as adopted 10/13/82 IAB, ARC 3270.

Department officials in attendance were: Wilbur Johnson, Fire Marshal and Connie White, Planner.

PUBLIC SAFETY
Cont'd

Johnson did not envision any problems with the rules which set out standard procedures.

Re 5.308(101) which prohibits air testing of underground tanks, it was pointed out the test could be inaccurate. Tieden was informed that fuel oil was a Class II or III liquid and was not addressed in these amendments. Fuel oil can be stored in a home, if properly vented. According to Johnson, that was a National Standard. However, he personally did not concur with the practice.

It was noted that there were no standards for waste oil burning furnaces. Johnson stated that a National Fire Protection Association meeting would be held in November and if they should adopt standards on the subject, the Department would act to include the standards in Iowa rules.

Johnson advised the Committee that Iowa has no authority to regulate use of kerosene heaters. Fire chiefs support educating the public as to use of these heaters. Reference was made to "misleading advertising" in this area. No recommendations were offered.

AUDITOR OF
STATE
S and L's &
Ind. Loans

John Pringle, Director of Financial Institutions Division, Auditor of State, appeared for review of the following:

Industrial loan division, real estate loans, 1.30, filed emergency after notice, ARC 3306...~~FEAN~~.....10/13/82
Savings and loan division, real estate loans, ch 12, filed emergency after notice, ARC 3307...~~FEAN~~.....10/13/82

Pringle pointed out that 1982 Acts, Chapter 1253, included provision for financial institutions in Iowa to have equal authority with respect to real estate lending. The Auditor rules were specifically designed to ensure sound loans and proper disclosure to borrowers.

1.30(1)

Priebe raised question as to possible conflict between 1.30(1)b and 1.30(2)e(8). He maintained "shall" should be used in both instances. Although Pringle thought the intent was to allow discretion in 1.30(1)b, he was willing to review the matter.

Tieden was advised that the Department had accepted suggestions for changes in the rules following Notice.

Holden was somewhat disturbed about the number of changes since the Notice.

No formal action taken on amendments to Chapters 1 and 12.

BANKING

9.2

Representing the Department of Banking were: Thomas Huston, Superintendent, Howard K. Hall, Deputy, and Deane Rowland, Assistant. Rule 9.2(524) which was filed emergency after Notice--IAB 10/13/82 ARC 3298--was considered.

Hall explained that 9.2(1) was in agreement with federal law.

Department officials admitted that complaints had been registered concerning excessive paperwork in connection with disclosure.

Schroeder questioned 9.2(9) which stated in part that "....a state bank may charge any negotiated prepayment premium on any other loan secured by a mortgage or deed of trust upon real property." He was hopeful there would be monitoring of refinancing. -1832 -

CREDIT UNION Chapter 10 Betty Minor, Credit Union Department Administrator, presented Chapter 10 of their rules pertaining to real estate loans which were filed emergency after notice as ARC 3292 in 10/13/82 IAB. The only change after the notice was made in 10.2(2) as suggested by the ARRC.

Recess Chairman Schroeder recessed the Committee for lunch at 12:05 p.m.
He reconvened the meeting at 1:40 p.m. and called for review of the following rules of Employment Security:

EMPLOYMENT SECURITY

Lump sum payment, 4.13(1), 4.24(4), 4.32(7), 4.39(13) ARC 3336 F..... 10/27/82
IPERS, amendments to ch 8 ARC 3337 F..... 10/27/82
Federal social security, amendments to ch 9 ARC 3296 F..... 10/13/82
Federal social security—forms, 10.9 ARC 3297 F..... 10/13/82
Federal supplemental compensation program, 4.50 ARC 3295 N..... 10/13/82

Paul Moran and Dennis Jacobs were in attendance.

Chapter 4 No questions re amendments to Chapter 4, ARC 3336

8.6 At the request of Tieden, Jacobs provided an example of the waiver provided to the employer in 8.6(4). The Department can work with employers on a case-by-case basis.

9.5(1) Tieden asked who makes the decision as to whether wage equivalents "may or may not be taxable under social security." Jacobs advised that after the report is evaluated by the Department and a determination cannot be made, it is forwarded to social security officials.

4.50 Moran stated that 4.50(96) contains a new federal program as a result of the tax equity Act. He did not foresee problems with the program.

No suggestions were offered for employment security amendments

ENVIRONMENTAL QUALITY Representing the Department of Environmental Quality were: Jerry Tonneson, Environmental Specialist; Mark Landa and Patti Allen, Compliance Officers; Morris Preston, Section Chief, Construction Grants Division. The following rules were before the Committee:

Controlling pollution, 3.1, 3.2, 3.3, 3.5(1) 3.5(4) ARC 3301 F..... 10/13/82
Emission standards for contaminants, 4.1(2) ARC 3302 F..... 10/13/82
Wastewater construction and operation permits 19.2(12) ARC 3303 F..... 10/13/82

Chapter 3 Discussion of amendments to Chapter 3.
Tonneson called attention to the omission of proposed amendments which would have enabled the Department to operate the federal Prevention of Significant Deterioration Program (PSD) in Iowa. He cited lack of funding as the reason.

Schroeder was advised that a "hardship clause" in the rules would allow dirt replacement without a permit.
Priebe was assured that feedlots would not be affected by the rules--only anaerobic lagoons (3.1(2)d).

ENVIRONMENTAL
QUALITY Cont'd

Tieden inquired as to the status of funding for sewage treatment plants and learned that program grants will be identical to last year. Federal appropriation for FY '83 was \$33 million which was an increase over 1982 but a reduction from previous years.

Tonneson reviewed 3.5(4)d which addresses granting of credit for emission reductions or offsets which can be used to avoid the application of lowest achievable emission rate. The state implementation plan requires some of these reductions to even meet the standards. Applicability of the rules would be in those areas not meeting air quality standards. If they were granted credit for reductions that were required as part of the state implementation plan on air quality, the Department's progress would be hindered.

Schroeder thought credit prior to 1978 should be allowed. Tonneson recalled the SIP strategy was based upon the inventory on air polluting emissions as of January 1, 1978. He agreed, however, to consider extenuating circumstances.

4.1(2)

No questions re 4.1(2).

19.2(12)

Allen reviewed the grant funding for wastewater treatment construction and said the Commission chose to leave it at the 75 percent level.

Preston noted that Polk County would not receive funds in 1983 but cities that would include: West Union, Waukon, Postville, Lost Island, Elkader, Fayette, Storm Lake, Newton, Granger and Sabula.

No formal action taken.

IOWA FAMILY
FARM DEVELOP-
MENT AUTHORITY

2.17, 2.18

No questions were raised with respect to the filed rules 2.17 and 2.18--beginning farmer loan program--ARC 3269 published in IAB 10/13/82. The Iowa Family Farm Development Authority was notified that a representative would not be needed at today's meeting.

SOCIAL SERVICES

The Department of Social Services was represented by: Judith Welp, Rules and Manual Specialist; Margaret Stokes, Standards Officer; Robert Lipman, WIN Coordinator; Lois Berens, Program Specialist in Medical Services; and Dan Gilbert, Section Manager.

The following rules were considered:

Unemployed parent, ch 42	ARC 3279	.....	10/13/82
Co-ordinated manpower services program, ch 58	ARC 3280	.....	10/13/82
Medical assistance, eligibility, 75.5	ARC 3281	.....	10/13/82
Intermediate care facilities, 81.6(10), 82.5(10)	ARC 3282	.....	10/13/82
Purchase of services, 145.3(3)	ARC 3283	.....	10/13/82
Alternative diagnostic facilities, ch 34	ARC 3277	.....	10/13/82
ADC, parent in uniformed service, 41.1(5)a	ARC 3322	.....	10/27/82
ADC, budgeting, 41.7(2)c, 41.7(9)a, "b", 45.7, filed emergency	ARC 3284	.....	10/13/82
ADC, budgeting, 41.7(9)f	ARC 3323	.....	10/27/82
Supplementary assistance, 51.4(1), filed emergency	ARC 3285	.....	10/13/82
Unemployed parent workfare program ch 59, ARC 3287 also filed emergency	ARC 3286	.....	10/13/82
Food stamps program, application 65.2, filed emergency	ARC 3288	.....	10/13/82
Medical assistance, pharmacies, 78.2(2), filed emergency after notice	ARC 3289	.....	10/13/82
Child day care, 132.4(2), filed emergency	ARC 3290	.....	10/13/82
Group living foster care facilities, 114.4(2)b(3)	ARC 3278	.....	10/13/82

SOCIAL
SERVICES
Cont'd
75.5

No questions were voiced with respect to Chapters 42 and 58.

Welp pointed out that the subject addressed in 75.5 had been in litigation--the previous rule was challenged. The new version changes the method of determining eligibility for an individual, in a medical institution, who has a spouse at home. It also clarifies the eligibility determination of members of a couple who are both institutionalized. Welp noted there are three choices for the state as to diversion of funds.

81.6
82.5

Amendments to 81.6(10) and 82.5(10) clarify disposition of revenue from the sale of medical supplies, food or services to employees or nonresidents of the facility. No recommendations.

145.3

According to Welp, no comments were submitted re 145.3(3) which limits the rate increases for purchase of service providers to more than eight percent for fiscal year 1983. The estimated savings were \$1.5 million--the figure originally projected.

Chapter
34

Welp continued that Chapter 34 provides counties with alternative diagnostic facilities. Standards would be consistent with those for community mental health centers. In response to Tieden, Welp cited an example for 34.1(2)b would be a social worker who is not licensed.

41.1

Amendment to 41.1(5)a would implement federal regulation which excludes children of uniformed service parents from deprived status.

41.7,
45.7

Amendments to 41.7(2), 41.7(9) and 45.7 provide for rounding down the need standard and payment amount to the next whole dollar for ADC recipients. At Clark's request, Welp explained the \$30 plus one-third disregard in 41.7(2)c was limited to four months. The provision was intended as a cost-containment measure from the Omnibus Reconciliation Act.

Clark viewed the rule as "hitting the hardest those who are working their way out of welfare."

41.7 (9)

Re 41.7(9)a(5), Welp said that when three paychecks are received instead of two, it would be considered a month of suspension and the recipient would be ineligible that month but could expect to be eligible the following month.

Welp emphasized the Department is working to clarify their monthly reporting rules, in general.

Welp stated that amendment to 41.7(9)f was "clean-up" in nature. The Department is suspending payment retrospectively.

SOCIAL
SERVICES
Cont'd
Chapter
59

No questions were posed re 51.4(1).

Discussion of the unemployed parent workfare program--Chapter 5 which is scheduled to operate from October to March.

Schroeder wondered how the Department could justify a mileage allowance of only 14 cents when others get 20 to 24 cents. Welp indicated the figures were from the WIN program. She added that each participant was limited to \$25 monthly for transportation and parking.

Oakley had the same question and he also wondered about the one-hour limitation on travel time. He suspected the equation was faulty and concluded that if the program was only a token its effectiveness could be questionable.

Lipman noted that work sites would be in metropolitan areas or small towns. He admitted the Department has no prior experience in this type of program and they will be evaluating it during the next six months. So far, the program has received positive reception.

65.2 Welp pointed out that the food stamp monthly reporting form had been revised as suggested by the ARRC.

78.2(2)e Pharmacies will be reimbursed fifty cents per prescription as an incentive to dispense lower cost equivalent drugs under filed emergency 78.2(2)e. Holden viewed this as "ironic."

132.4(2) Amendments to 132.4(2) will "grandfather" in cases adversely affected by the requirement to use a work expense allowance or a training allowance rather than this program and will provide for payment of child care for employed recipients through both programs.

Royce asked if there would be a rule on child day care funding which would limit the amount of outside income that is disregarded for purposes of determining eligibility. Welp knew of none at this time.

114.3(2) Schroeder saw no basis for the amendment to 114.3(2)b(3) with respect to group living foster care facilities for children. Exception would be made to allow five children per room in facilities licensed prior to July 1, 1981. Others would be limited to four children per room. Schroeder thought it would be preferable to provide for a waiver. Welp emphasized that the Department does not want to grant waivers but they knew of one facility that would have to do extensive remodeling as a result of the standards.

Royce opined there could be a question as to whether the Department's action was "reasonable."

Oakley defended the agency's action. It was his opinion they had legal authority. He concluded that facilities are needed and it would be wrong to put "those people out of business."

Recess

ENERGY
POLICY
Chapter
14

Chairman Schroeder recessed the meeting at 2:55 p.m. He reconvened it at 3:20 p.m. and called for review of rules of the Energy Policy Council pertaining to low income home energy assistance program, being Chapter 14 which was filed emergency as ARC 3310 and Noticed as ARC 3311 in IAB 10/27/82.

Council representatives were: James Smith, Director of Energy Assistance Division, and Sue Downey, Program Planner.

Smith said that changes from 1981 include provision for payment to be made directly to the vendor, a specific definition of income was provided and the appeal time was changed from 30 to 60 days.

The Committee was advised that gross income is considered in determining eligibility for the program. The value of the property would not be relevant. General guidelines were reviewed.

Holden asked why "any assets drawn down as withdrawals from banks and savings institutions..." were to be disregarded in determining eligibility--14.2(3). Downey said many elderly were paying their utilities with savings. She continued that all income from all sources within the past three months is taken into consideration in determining eligibility. Farmers use a copy of their most recent income tax return. Holden contended it would be easy for the wealthy to comply and still meet the standards of the law. Downey emphasized there had been little abuse of the program.

Smith reiterated that the primary supplier is paid--not the household.

Holden favored allocation by Btu's with certain limitations.

Smith recognized that a fair method would be to pay a portion of each heating bill but this approach would create an administrative nightmare. Holden disagreed that this would be fair.

Downey distributed copies of fliers which were mailed with utility bills to explain the program.

Schroeder recommended that the Department research the Btu concept.

COMMERCE The Commerce Commission was represented by Ben Stead and Ron
COMMISSION Polle, Counsel. Also present were: Barbara Fisher, Public Affairs Assistant, United Telephone and Jack Clark, Iowa Utility Association. The following rules were considered:

Accounting, telephone utilities, amendments to 16.5 and ch 22 ARC 3340 F 10/27/82
Utilities, main and service line extensions, amendments to chs 19, 20 and 21 ARC 3291 .. F 10/13/82

COMMERCE Schroeder was advised that the industry had basically accepted
Cont'd the rules.

22.11(3) Holden called for explanation of 22.11(3). Stead said that, as of a transition date, a set amount will be determined to be amortized over ten years or some lesser depreciation period. The amount does not change. After the ten-year period the customer will pay for repairs and maintenance. General discussion of inside wiring and related expenses. Stead commented that, because of inequities, inside wiring was treated as a nonutility function. Customers are not paying for other customers costs incurred by the utility. Customers will pay only for the amortization amount--the imbedded investment made by the utility in the past. Stead admitted there would be inequities. He added that "early on the staff had requested rate differential between customers with old inside wiring and new customers who make installation after the transition date." New customers pay full cost of the new wiring plus they are "tagged" the additional amount being amortized in their existing rates. Realistically the wiring is not free.

Tieden questioned Commerce officials concerning "demarcation point" in 22.1(3)r. Stead reasoned that one difficulty was attempting to "quantify, in a few sentences, a myriad of existing circumstances." The key test for determining demarcation for either business or residential purposes is that point where property of the utility is invested for use of the individual customer. That line is drawn immediately adjacent to the drop and block and protector affixed to a home.

Tieden called attention to problem when one landowner has premises across from each other but are located in different telephone supplier territory.

Stead concurred this is a difficult situation.

Discussion moved to utility extension policies.

Schroeder raised question as to the formula for contribution in aid of construction for service line extensions--20.3(13)b(4). Polle indicated the figure 50 feet per lot.

In a matter not officially before the Committee, Stead agreed to provide Chiodo with information re advertising by utilities.

No formal action taken on Commerce rules.

HEALTH
DEPARTMENT

The following persons appeared before the Committee for review of rules of the Health Department: David Ancell, Administrative Officer in vital records; Donald Flater, Program Coordinator; Jane Johnson, Administrative Assistant; JoAnne Hannaseh, Director of Department of Nursing, Iowa Hospital Association; Tim Gibson, Public Affairs, Iowa Medical Society; Jim Carney and Margaret Page, Iowa Society of Radiologic Technologists. Rules to be considered were:

Radiation emitting equipment, ch 42, ARC 3299 ... *N* 10/13/82
Vital records, 96.4, ARC 3300 *N* 10/13/82

96.4

Chairman Schroeder called up 96.4 and voiced his dissatisfaction with an additional charge of \$4 being imposed even though the Department might be in error.

Ancell pointed out that the search fees are statutory and are deposited in the general fund of the state.

Schroeder asked Ancell to research the law pertaining to change of name for 18-year olds for possible simplification.

Chapter 42 Proposed revision of operating procedures and standards for use of radiation emitting equipment was before the Committee. Chairman Schroeder called on interested persons from the audience for comments.

Carney recalled the Society of RT's had been supportive of the original version of the rules which were adopted in 1981 to become effective July 1, 1982. He expressed opposition to the expansion of functions which a limited diagnostic radiographer can perform. Further, it had been his understanding that the word "direct" would be removed from 42.1(6)a. Flater stated the word "direct" had been left in the rule through oversight and he assured Carney it would be deleted.

Carney continued that the "watered down" version would result in more enforcement difficulties. He distributed copies of a statement from the Society.

Hannaseh read from a prepared statement in support of the rules.

Gibson voiced support of rules on behalf of the Iowa Medical Society. He maintained that limitations were clarified and much needed flexibility would be provided to small hospitals and physician's offices.

Flater noted that the Department had received four letters from NE Iowa hospitals expressing support of the rules. He added that Chapter 42 would be on the agenda for the Board meeting November 10. The Department is preparing responses to questions which have been sent to them.

Recess

Chairman Schroeder recessed the meeting at 4:25 p.m. to be reconvened Wednesday, November 10 at 9:00 a.m. in Room 116.

Reconvened Chairman Schroeder convened the recessed meeting at 9:10 a.m. in Committee Room 116. All members present.

INSURANCE The Insurance Department was represented by the following: Tony Schrader, Deputy Commissioner; R. Cheryl Friedman, Attorney; Greg Theobald, Attorney and Vice Chairman, No. Am. Securities Administration Association; Craig Goettsch, Superintendent, Securities Division. Also appearing: Jamie A. Wade, Attorney representing Shearson/American Express; Steven J. Dickinson, Attorney representing Belin, Harris, Hedrick & Heartney; Russ Cross, Administrative Assistant to Governor Ray and five ISU students.

On the agenda for consideration were the following

Continuing education for insurance agents, 11.1(3) ARC 3332 ..X..... 10/27/82
Commodity pool programs, 50.80 ARC 3312. X..... 10/27/82

11.1(3) Schrader explained that under existing subrule 11.1(3) non-resident agents were exempt from continuing education requirements. An Attorney General's Opinion [requested by Representative Harbor] held that this practice was not legal. The proposal provides exemption to nonresident agents in states that have continuing education--other nonresidents would have to comply with Iowa rules.

Commodity Pools Goettsch distributed copies of the prospectus which will provide the investor with necessary information on commodity pool programs. He described the prospectus as a legal document which contains a limited partnership contract, as a sales document which the agent or broker uses during the selling process, and, in a sense, an insurance document. Goettsch admitted that the proposed uniform guidelines were complex and could be "overwhelming."

Schroeder asked if the rules would affect general operations which have only ten to fifteen partners. It was his belief that these groups have caused problems in the past. Goettsch responded that thirty-five or less during any twelve-month period would be exempt from registration if there were no public offering. He added that drafters of the law apparently thought there was a point where the state should not become involved and that postselling disclosure was provided.

Schroeder maintained the insurance industry should be advocating, "Let's all be in the same playing field regardless of the number of partners."

Goettsch reiterated the statute would need amending and he was sure the Bar Association and the Industry would be vehemently opposed to excluding commodity pools from private operating exemption. He indicated there were strong arguments to support that.

INSURANCE
Cont'd

In response to Chiodo re "suitability requirements," Goettsch said that a commodity pool was not really a tax shelter.

Goettsch recalled that several states began the study of commodity pools in the late 1970's. He agreed to provide information to Schroeder and Chiodo.

There was brief review of subrule 50.80(1)--Scope.

Goettsch discussed the makeup of a commodity pool and the role of a trading advisor. Commodity brokers earn commission for every trade. Therefore, trading advisors should be non-affiliated.

Goettsch stressed the importance of the Insurance Department's ability to waive certain rules when good reason is shown. Certain areas of security laws cannot have strict limitations, he said. Limitations are placed on trading advisors.

The Department looked at all filings on commodities during the last two or three years and noted only two or three affiliated trading advisors.

It was pointed out that brokerage commission could exceed the profits.

Tieden asked for an example of an exception. Goettsch stated that the Division placed a cap on the amount of brokerage commission which could be earned in one year.

Oakley touched on the matter of confidentiality--what is protected and at what point. He was interested in knowing how the industry is advised as to what is approved or disapproved. Goettsch indicated that a registered offer becomes public when it is filed. It is not published but there is public access. Goettsch admitted matters are sometimes handled by "word of mouth." Oakley preferred a more systematic method.

Wade told the Committee that his firm sponsors and organizes a number of commodity pools. He referenced affiliated advisors. Shearson has had six pools of which several are not registered in the state because they have affiliated advisors. They recognize the conflict of interest and structure their pools to minimize this.

In reply to question by Schroeder, Wade was not supportive of subjecting both public and private pools to the same regulation. However, he was not opposed to similar requirements for disclosure.

Wade provided the Committee with written comments and concluded that the risk is great when investing in commodities.

INSURANCE
Cont'd

Dickinson who represented several commodity pool operators distributed copies of a document which embodied comments his firm intended to make at the public hearing on the rules. He referred to Iowa Code section 502.203(9) and took the position that it was unconstitutional. Dickinson suggested that there should be coordination with the Commodity Futures Trading Commission, particularly, in the area of disclosure. He observed that the proposal has a broad definition of affiliate. Also, that there was a need to structure a more flexible package for compensation for the general partner and trading advisor.

Goettsch spoke of their difficulty in drafting the proposal and the reason for including the "scope" portion. He added that it was not his practice to cast aspersions on other agencies but he felt it was common knowledge that CFTC was generally under-staffed and under-financed. States are seeking more jurisdiction in the enforcement area. He concluded that the problem of large losses in commodity pools continues.

No formal action by the Committee.

BEER AND
LIQUOR
CONTROL

Leasing

Present for review of rules of the Beer and Liquor Control Department were: Department Director, Rolland A. Gallagher; Staff Attorney, William Armstrong; William Angrick, State Ombudsman; and Earl Willits, Assistant Attorney General. Chairman Schroeder called for consideration of proposed 9.11(4) and 9.16, published in IAB 10/27/82 as ARC 3321. Gallagher described their present bid process for the leasing of state liquor stores. There are 214 in the state all of which are leased property. Previously, appeals of a decision by the Beer and Liquor Control Council could be made to the Executive Council. However, they had been advised by the Attorney General there was no statutory authority for this approach and rule 9.16 would be amended to delete the objectionable language. Gallagher continued that, in order to simplify the process, the rule would be amended to allow the Department rather than the Beer and Liquor Control Council to award bids.

Holden was advised that the Council makeup was statutory. There was discussion of the appeals process followed by other agencies. Royce pointed out that it would vary depending upon the statute. It was noted that General Services has an important role in the appeals procedure and some agencies would come under them in that respect. Holden was concerned that a situation was being created where some departments would have no appeals process.

Priebe referenced problems with location of a liquor store in Algona. He urged the Department to withhold adoption of the rules and he would seek legislation to authorize the Executive Council to hear bidders' appeals.

BEER AND
LIQUOR
Cont'd

Oakley was doubtful that this would resolve the issue since the Executive Council was not a judicially formulated body.

Priebe was critical of the Department's property manager and expressed the opinion that the Executive Council must stand for election and answer to the people and therefore were the logical body to hear the bid appeals.

Royce reasoned that since the Beer and Liquor law was silent on the appeals procedure, Chapter 17A provisions would prevail--after Council action, the next appeal would be to the district court.

Priebe requested that the Committee seek an opinion of the Attorney General as to the legality of the appeal to the Executive Council.

Willits stressed that jurisdiction cannot be conferred upon the Executive Council by administrative rule--it was only through oversight that rule 9.16 was adopted.

Willits agreed to ask that the matter be placed on the agenda for the next Executive Council meeting.

Priebe asked that the Executive Council apprise the Committee of their action.

ID Forms

At the request of Angrick, the Committee called attention to the matter of verification of identification forms and the policy being followed by the Beer and Liquor Control Department. Rule 4.32 on the subject had been published as a Notice in 10/28/81 IAB but was later terminated when the ARRC voiced opposition. Gallagher was informed that although 4.32 had been terminated, liquor stores were still requiring purchasers to sign a form. According to Gallagher, the rule was withdrawn but the Department failed to update their policy and procedures manual accordingly. He indicated they would resubmit the rule, but in the meantime, stores would be directed to discontinue the practice. It was pointed out that taverns use the forms for age verification.

Royce noted the title of the form was misleading since it was also an attestation that liquor was not being purchased for resale or other illegal purpose. Schroeder suggested the rule be expanded to require that the form be signed verifying that large volume purchases are for individual use.

Oakley discussed the Ombudsman's correspondence with Gallagher in an attempt to clarify the position of the two factions. Angrick posed the question as to whether the verification forms would be public record--would they come under 68A or would 749B apply. No action taken.

SOIL
CONSERVATION

Ken Tow represented the Department of Soil Conservation for the following:

SOIL CON-
SERVATION
DEPT.
Cont'd -

SOIL CONSERVATION, DEPARTMENT OF [780]

Iowa soil 2000 program, 6.40, 6.50 ARC 3338 F 10/27/82
Abandoned mined land reclamation, ch 27 ARC 3339 F 10/27/82

6.40,
6.50

Members were informed of minor clarification changes which were made in 6.40 or 6.50 before filing. The two rules complete the Iowa Soil 2000 program.

Schroeder and Priebe voiced concern re 6.50(7) which would allow agreements to be amended. Priebe noted there was no appeal process but felt it was important that the state keep a "handle" on state funds.

In re 6.50(8)b, Schroeder raised question about land that would be sold at a later time. He interpreted the provision to exclude from cost-sharing an heir who might buy the farm at a later time. Tow was willing to clarify this. He pointed out that the control of the funds is addressed in another rule of the Department. Tow agreed that districts might need some guidelines with respect to appeals.

Ch 27

There was brief discussion of 27.90(1) which was statutory. No formal action on Soil Conservation rules.

Recess

Committee was in recess from 11:10 to 11:20 a.m.

MERIT

DEPARTMENT

Merit Employment Department rules were moved to the No Representative category. [See p. 1849]

COMMISSION
ON AGING

Mary Ann Olson, Field Supervision, Commission on Aging, was present for review of:

AGING, COMMISSION ON [20]

Designation of planning and service areas, 4.25(3), 4.25(4), 4.25(5) ARC 3305 N 10/13/82

According to Olson, more specific criteria were added as directed by the Administration on Aging Office in Washington. The only comment received about the rules was favorable. Schroeder inquired as to why there was 6 months before the initial program goes into operation. Olson explained that the state agency is working with 16 OPP areas and 13 geographic regions with Area Agency offices. There are two processes they must go through: (1) Designate planning and service areas as a geographic boundary, and (2) designate agency to provide the service. More time is needed to make a change in the service area. Schroeder thought a waiver provision should be provided.

4.25(3)b(3) In answer to Tieden's question on 4.25(3)b(3), Olson said they were making a distinction between presentations and testimony as opposed to other comments.

Committee
Business

Members expressed dissatisfaction with the PA systems in Committee Rooms 116 and 118. Priebe moved that Senator Tieden report the problem to the Legislative Council. Motion carried.

11-10-82

REVENUE
DEPARTMENT

Carl Castelda, Deputy Director, Michael Cox, Property Tax, Don Cooper, Director, Income Tax, and Ben Brown, Estates & Trusts Division, appeared on behalf of Revenue Department for review of:

REVENUE DEPARTMENT[730]

Contested case proceedings, 7.17(5)	ARC 3272	F	10/13/82
Failure to pay penalty, amendments to chs 44, 52, 58, 86, 87, 88 and 89	ARC 3273	F	10/13/82
Assessors and deputy assessors, amendments to ch 72	ARC 3274	F	10/13/82
Property tax paid, reimbursement for elderly and disabled, amendments to ch 73	ARC 3275	F	10/13/82
Property exemptions, 78.2, 78.3, 78.4(3), (4), 78.6(1), 78.7	ARC 3276	F	10/13/82
Request for waiver of penalty, penalty and interest, 12.11, 44.8(7), 52.5(12), 58.5(11), 63.9, 75.2, 81.15, 104.9	ARC 3271	N	10/13/82
Computing income tax for nonresidents and part-year residents, amendments to chs 38, 39, 40, 41, 42	ARC 3334	N	10/27/82
Inheritance tax, special use valuation, 86.8	ARC 3335	N	10/27/82

ch 72

No questions were posed re 7.17(5) and amendments to chapters 44, 52, 58, 86, 87, 88 and 89. In the discussion of chapter 72, Schroeder wondered, in view of lower interest rates, if it would be necessary to change penalty rates on tax liability. Castelda replied that in October, the Department announced interest rate for the next calendar year--all taxes due and payable after January 1, 1983--14 percent or 1.2 percent each month. The 1982 rate is 17 percent or 1.4 percent per month. In addition to the interest, there can be a statutory penalty for failing to pay on a timely basis.

Castelda discussed the Armstrong case and the Revenue Director's authority to waive the penalty. It is the only Supreme Court case the Iowa Supreme Court has looked at in this area. It adopts an "innocent error concept"--the Court has said if the taxpayer seeks the advice of a professional and the return is in error, the Department should not assess any penalty. It also held that each case should be considered on a case-by-case basis. The Department adopted that portion of the opinion. Castelda reasoned it was ironic in that recent legislatures have encouraged individuals to file their own returns. He concluded that the Department has drafted two legislative proposals which will be submitted to Royce for perusal.

ch 73

No questions re ch 73. Priebe raised question re 78.2(1) as to whether the application should be filed prior to the Board of Review session. Cox replied the ruling is spelling out a clerical procedure. If the taxpayer elects to file with the Board of Review and not the assessor, he can only do so when the Board is in session. Priebe asked the Department to consider possible legislation to allow filing of an appeal at any time. He emphasized that none of the regular cycle should be changed. Oakley envisioned this would generate more appeals.

No questions with respect to ARC 3271. There was discussion of tax computation for nonresidents. Priebe questioned Department officials as to the meaning of "Part-year resident" in 38.1(3). Castelda explained that was a resident of Iowa who lives in the state less than twelve months each year.

No questions re 86.8.

Recess

The Committee was recessed for lunch at 12:01 p.m. Reconvened at 1:50 p.m.

PHARMACY BD. Norman Johnson, Executive Secretary, Pharmacy Examiners Board, appeared for review of the following:

Clarifying amendments to 4.1, 6.8 and 9.2, filed emergency ARC 3313 F.E. 10/27/82
 Medical assistance Act participation 6.10 rescinded, filed emergency ARC 3314 F.E. 10/27/82
 Imitation controlled substances, 8.17, filed emergency ARC 3315 F.E. 10/27/82

8:17

Discussion centered on rule 8.17 which was intended to assist law enforcement officials in identifying imitation controlled substances.

Schroeder asked if all such substances had to be listed before action could be taken. Johnson responded in the negative. He added that as products are identified, they will be added to the rule. Schroeder cited a possible problem of changing one letter in the description of a substance which could necessitate amending the rule. Johnson agreed this was a possibility. Discussion of possible statutory change.

Royce pointed out that a criminal statute must be specific.

Motion

Priebe moved that the Lt. Governor and Speaker of the House be requested to notify the Human Resources and Judiciary Committees to review statutes governing imitation substance control to ensure that they are adequate. Carried viva voce. It was agreed that both ARRC Chairman and Vice Chairman would sign the request.

TRANSPORTA-
TION DEPT.

The following rules of the Transportation Department were before the Committee:

Special fuel and identification sticker [07.D], 11.1(12), 11.7 ARC 3309 F.E. 10/13/82
 Driver licenses, minor's restriction, [07.C] 13.5(4) ARC 3261 N 10/13/82
 Driver improvement program [07.C] 13.13(8), 13.19 ARC 3262 N 10/13/82
 Financial responsibility, [07.C] 14.1, 14.6(3) ARC 3263 N 10/13/82
 Special permits, excess size and weight, amendments to [07.F] ch 2 ARC 3330 N 10/27/82

The following persons were in attendance:

Carol Coates, Director of Vehicle Registration;
 Bill Kendall, Director of Driver Licensing; Cande Bakke, Director and Ron Hughes, Assistant Director of the Office of Operating Authority; Donna Rhone and Norris Davis from the Department. Also, Chris Boettke, Warren Transportation; L. W. Simpson, Midseven Transportation; C. Ingersoll, Iowa Water Truck Assn.; J. Warren Smith, Mobile Home Industry; Leon Dwyer, Bradway Mobile Homes; C. Fred Hansen, Nu-Trend Mobile Homes, Inc.; Charles Anderson, Harvest Homes, Omaha; Charles L. Anderson, Metro Mobile Home Assn., Omaha; Joe M. Kelley, Manufactured Housing Assn.; William J. (Bill) Johnson, Country Living Homes; Thomas R. Reuter, Wilson Concrete Co.; Gary Alberhasky, Bon-Aire Mobile Home Lodge.

*Bob
Fullerton*

07D 11.1,.7 Coates briefly explained amendments to 07D Chapter 11 with respect to special fuel identification stickers. No recommendations were offered.

07C 13.5(4) In reviewing 07C 13.5(4) which implements 1982 Acts, Senate File 796, Kendall and Davis said that probationary operator's license would be replaced with a minor's restricted license. School superintendents would be relieved of any liability.

TRANSPORTA-
TION Cont'd13.13(8),
13.19

In re 13.13(8) and 13.19, Schroeder inquired if drivers would be allowed four traffic violations in a twelve-month period before they would be declared habitual violators. Kendall replied that after three moving violations, a driver would be declared habitual and would be required to enroll in the driver improvement course. There would be a one-year probationary period after the course completion. There was discussion of work permits for habitual violators.

14.1(2)

Under subrule 14.1(2), owners and operators of motor vehicles subject to Code Sections 327A.5 and 327B.61 would be added to the financial responsibility exceptions. Interstate operators follow federal regulations which are more stringent.

Schroeder requested DOT to compile information on rental car business insurance. Tieden wondered if that would be an area for the Insurance Department but Kendall agreed to provide the information.

In a matter not officially before the Committee, Kendall informed Tieden that the Department has not addressed the possibility of permitting students to obtain a motorcycle license without studying driver education. The Department disagreed with some Committee members that the law would permit this approach and the Attorney General had concurred with the Department.

07F, Ch 2

In reviewing 07F, Chapter 2 amendments, Bakke noted that public interest was directed to the escort rule 2.4(321E). After perusal of three studies on the safety benefits of escorts, the Department proposed to eliminate official escorts for oversize vehicles. Instead, flashing lights on the towing unit of loads would be utilized. Also, the proposal would eliminate the official escort status. Resources are no longer available for training of these escorts. Flashing lights would be used for loads eighty feet long but not in excess of one hundred feet.

Kelly spoke in support of the changes.

Tieden was advised that cost for escort service was 85 cents per mile.

Bill Hansen favored the amendments and did not foresee any danger to human life and property.

Hauck supported the team concept where the driver would work with his own escort. He doubted the rules would affect the number of his employees. Hauck informed Clark that the escort

TRANSPORTA- service charge was made from the point of origin to the destina-
TION Cont'd tion. Flag car operators receive 45 cents a mile. The dealer
is billed for actual miles which ultimately would be absorbed
by the customer.

Fred Hansen preferred his own escort service.

Boettke expressed concern for escort costs for 90,000 pound vehicles. He called attention to the numerous bridges which are embargoed for less than 90,000 pounds and he referenced "center lining."

Holden was informed that surrounding states do not require official escorts. However, they must center line when crossing bridges. Holden supported use of flashing lights when center lining was necessary--not strictly on a weight basis.

Boettke maintained the safety record was excellent and restrictions were not needed.

Clark cited the problem of approaching "blind bridges" where flashing lights would not be visible. Bakke emphasized that the rules provide for discretion--DOT engineers would identify troublesome areas and require escorts for these.

Simpson stressed that unsafe conditions exist when oversize vehicles are towed on Iowa's two-lane roads. He encouraged adoption of rules to permit oversize loads on the interstate system.

There was general discussion. Bakke reported that Virginia is the only other state requiring an official escort. According to Bakke, 2,030 permits were requested under existing rules which involved 162 civilian escorts, 365 official escorts, 344 double escorts and 1,159 required no escorts. Under the proposal, the Department estimated 576 trips would use civilian escorts, 334 trips would require flashing lights and 1,120 would require none.

Two informational hearings had been held on the rule and an official one was scheduled for December 14. The Department had received approximately 100 objections to the rules. There was discussion of public hearing notices sent by the DOT and Schroeder defended the method followed by the Department. Bakke announced that letters were sent to 956 official escorts and 300 went to those who had contacted the Department.

The Committee agreed that following adjournment, Fullerton would be granted permission for a demonstration depicting problems encountered when towing oversize vehicles.

NO AGENCY
REPRESENTATIVE

An agency representative was not requested to appear for any of the following:

FAIR BOARD[430]
Clarifying amendments, 1.5, 2.2(2), 2.5 ARC 3329 *F* 10/27/82
HOUSING FINANCE AUTHORITY[495]
Repealer (sunset), 4.7, 5.32, filed without notice ARC 3341 *F.W.N.* 10/27/82
Group homes, loan program, ch 6 ARC 3331 *N* 10/27/82

MERIT EMPLOYMENT DEPARTMENT[570]
Professional/managerial pay plan, amendments to chs 1 to 12, 14, and 17 ARC 3304 *N* 10/13/82

PUBLIC INSTRUCTION DEPARTMENT[670]
Industrial start-up training program, 27.1 ARC 3260 *F* 10/13/82

SUBSTANCE ABUSE, DEPARTMENT OF[805]
Licensure standards for treatment programs, 3.6, 3.7 ARC 3294 *F* 10/13/82
Standards for residential/intermediate care programs, 3.24(6), 3.24(14), 3.23(5) ARC 3293 *N* 10/13/82

ADJOURNMENT

Chairman Schroeder adjourned the meeting at 3:00 p.m.
A special meeting was scheduled for January 4 and 5, 1983.

Respectfully submitted,

Phyllis Barry
Phyllis Barry, Secretary
Assistance of Vivian Haag

DATED _____

Luvene Schroeder
Chairman