

MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting

The special meeting of the Administrative Rules Review Committee was held Tuesday, Wednesday and Thursday, January 5, 6 and 7, 1988, State Capitol, Des Moines, Iowa, in lieu of statutory date.

Members Present

Senator Berl E. Priebe, Chairman; Representative Edward G. Parker, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; Representatives David M. Tabor and Betty Jean Clark. Staff present: Joseph A. Royce, Legal Counsel; Phyllis Barry, Deputy Code Editor; Vivian Haag, Executive Administrator. Also present: Barbara Booker Burnett, Governor's Administrative Rules Coordinator.

Convened

Vice Chairman Parker convened the January 5 meeting in Senate Room 24; Priebe and Tabor excused.

EDUCATION DEPARTMENT

Rules of the following Departments were before the Committee:

LABOR SERVICES DIVISION

EDUCATION DEPARTMENT[670]
Driver education, 6.12(5) to 6.13(7), filed without notice ARC 8230.....F/WN 12/16/87
School facilities — asbestos-containing materials in school buildings, ch 82 ARC 8238, also filed emergency ARC 8237.....N±FE 12/16/87
Juvenile home Education ARC 8183, Special12/2/87

LABOR SERVICES DIVISION[347]
EMPLOYMENT SERVICES DEPARTMENT[341] "umbrella"
Professional kickboxing, ch 100 ARC 8259.....F. 12/30/87
Occupational safety and health rules for general industry 10.20 ARC 8202.....N.... 12/16/87
Asbestos control procedures, ch 81, 82.1, 82.3(1)"a"(11), 82.3(1)"b," 82.3(4), 82.4, 82.6 to 82.8, 82.9(2), 82.9(3), 82.9(5), 82.10, 82.11 ARC 8258.....N.... 12/30/87

Education Department was represented by Carol Bradley, Deputy, A. John Martin, Chief of Instruction Curriculum, Don Korocho, Driver Education, and C. Milton Wilson. Labor Services Division representatives present were Walter Johnson and Shashi Patel.

6.12(5)

Martin expressed the Department's belief that the rules on motorcycle education would be a significant step in improving quality of the driver education program. He explained the three different fundings of the program. Motorcyclists pay an extra dollar at the time of licensing if they are in the restricted category and that generates the funding. Annual reimbursement, estimated at \$100,000, is based upon monthly receipts and the projection at the end of six months will be prorated.

Clark spoke in opposition to the concept of the law. Martin explained the reason for bypassing the Notice process. The rules had been prepared in August, and affected parties were consulted. There was no apparent controversy but rules were more or less "lost in the system" after Dr. Benton's resignation. Due to changes in the renewal dates for driver licenses, there will be a reduction of available funds for two years.

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LABOR
SERVICES
DIVISION
Ch 82

1-5-88

The operation expense will be significant. Koroch indicated that 1640 students participated in the 1986 program at an average cost of \$65 to \$80 per student. No other comments.

Wilson reviewed Chapter 82, stating that it would implement the federal program -- the Asbestos Hazard Emergency Response Act. Clark observed excessive duplication in rules 82.9 to 82.10. She preferred basic guidelines for all groups. Wilson stated that when EPA approval is needed, each course must have specific curriculum delineated and they had followed the accreditation plan.

In response to Clark, Wilson stated that no licenses had been issued under the rule. There are 2000 worker licenses and 75 to 85 of the contractors are licensed. Those two areas are covered by statute.

Johnson reported on the cooperative effort of the Education Department and Labor Services Division in developing rules on the subject of asbestos control. Philosophical comments were made with respect to the safety factor. Johnson indicated that amendments to Chapters 81 and 82 of Labor rules were mirrored from Chapter 82 of Education rules to a great extent. Discussion of the two sets of rules continued.

Johnson said that Labor rules cover contractor licensing which is not addressed by The Asbestos Hazard Emergency Response Act (ADHERA). OSHA regulations are all encompassing and Chapter 82 addresses contractor training.

Parker commented that although it was not the fault of the two departments, it was nonsense to require two different departments to be involved in licensing and application. Johnson replied that clarifying legislation would be submitted. Also, no federal funding is received.

Johnson pointed out that a bill in Congress would require these rules to be applicable to all public buildings. He indicated that dates certain would be included where necessary in the rules.

Clark referred to definition of "asbestos" in 347--82.1 and noted that it did not correspond with materials set out in 347--81.1(1). Johnson replied that language in 81.1 was from OSHA and 82.1 was from EPA. He agreed to confer with technicians on the subject.

In response to Doyle, Johnson said that legal liabilities and legal ramifications associated with that level of training are discussed in the training course for management planners. Wilson added that this issue would be included in all five levels of training. He also stated that there were no insurance requirements.

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Doyle wondered if it would be helpful for the insurance commissioner to list who may or may not sell this type of insurance.

Wilson recalled that four companies insure on a claims-made basis or project duration and 15 per cent of total gross project. Parker felt that lack of available insurance would limit numbers of contractors. Johnson pointed out that decision had been made to avoid having separate workers for removal of asbestos in schools. The school requirement will be applicable for all workers. No Committee action taken on asbestos rules.

Education
Ch 42

Discussion of Chapter 42, education in juvenile homes, which was carried over from January. Carol Bradley explained the juvenile programs which essentially will be funded by withholding an amount per pupil from state aid of local school districts. Clark was told that "half an aide" would be an individual working on a part-time basis or an individual's time divided between two programs. Bradley described the four changes which they plan to recommend to the State Board before final action.

LABOR
DIVISION

No questions re 347--chapter 100 or 10.20.

ECONOMIC
DEVELOPMENT

Mike Miller represented Economic Development Department for adopted rule 261--22.9 pertaining to the new business opportunity program, 12/30/87 IAB, ARC 8242. He indicated the rules had not been changed since Notice. Two grants had been awarded under the emergency version--Crawford County, \$100,000, and Eastman Kodak, Cedar Rapids, \$400,000.

Tieden referred to the rating system in 22.9(3) and took the position that 10 points did not constitute much of a preference. He reasoned that it was difficult to think of Kodak as a "small business."

Miller spoke of the effort to separate the program for small businesses and any other kinds. He agreed the point system should be higher--possibly 40 or 50. Parker recalled a different understanding of how the program would be implemented. No formal action.

PHARMACY
EXAMINERS
BOARD

Norman Johnson appeared for the following:

General pharmacy licenses, 2.1 to 2.8, 2.11	ARC 8212	F. 12/16/87
Hospital pharmacy licenses, ch 12	ARC 8213	F. 12/16/87
Notices in 10/18/87	IAB	SPECIAL
10/04/87	IAB	

Discussion of Chapter 2 revisions. Johnson informed Tieden that the minimum square footage requirement of 50 feet for a prescription department was set some

PHARMACY
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BOARD

years ago when pharmacists had wanted to operate a pharmacy in a broom closet or the back of a vehicle. It is difficult when dealing with security and control of drugs. Dispensing of drugs in open view was thought by the Board to provide public access to the pharmacist--2.5(3).

Johnson said that requirements for hospital pharmacy licenses were essentially the same as those for general pharmacy, except for space requirements and distribution of drugs. Comments from Hospital Association, Iowa Society of Hospital Pharmacists, and the Iowa Pharmacists Association were considered in final drafting.

Doyle raised question as to liability for security when several keys are available. Johnson knew of no set standards but emphasized that a key should be available for emergency purposes. A mechanism for controlling the key and being able to identify who has gained access to the pharmacy were important. Johnson stated that the Administrator is ultimately responsible for everything in a hospital.

Johnson briefly reviewed the Notices published in the November Bulletins--final rules will be available in March.

PUBLIC
HEALTH
DEPARTMENT

Roger Chapman, Carson E. Whitlow, and Susan Osmann appeared for the following:

Birth defects institute, 4.1	ARC 8233	.....	F. 12/16/87
Local registrars — death and fetal death certificates, 98.6	ARC 8269	.....	N. 12/30/87
Establishment of new certificates of birth, 100.7	ARC 8268	.....	N. 12/30/87
Confidentiality of records, 103.1(4)	ARC 8267	.....	N. 12/30/87

Whitlow explained 98.6 which changes preparation of certifications in an attempt to alleviate illegible entries and further expedite the process.

Tieden and Clark expressed concern that this would somehow open up an area with respect to abortions. Whitlow assured them that would not be the case. Births over twenty weeks would require the certificate. No other questions. No questions re 100.7 or 103.1(4).

IOWA
FINANCE
AUTHORITY

Ted R. Chapler, General Counsel, and Linda Kniep, Attorney, represented the Authority for review of low-income housing credit program, chapter 12, ARC 8257, Notice, 12/30/87 IAB.

Kniep explained that the tax reform Act of 1986 created a new kind of credit and the statute directed the State Housing Credit Agency to allocate the state ceiling for those credits. The Authority was designated as allocator of those credits and the rules implement the process for allocation with low-income housing credits. The credit is a little over \$3.6 million--\$1.25 for each Iowan.

Parker suspected that participation would not be profitable for a developer.

IOWA
FINANCE
AUTHORITY

According to Department officials, HUD provides figures on an annual basis--county or metropolitan areas. They admitted that the statute is complex. Information on income levels and explanation of the credit system are included in the application package.

Doyle noted that, in addition to a \$200 nonrefundable processing fee, there was a credit fee equal to five per cent of the first year's tax credit. He was interested in knowing the range. Kniep said that it could range from \$40 on a single family house being rented or to \$2,000 or more on a larger project. Primarily, there have been small projects. Doyle questioned the fairness of the fees. He could envision large fees for multiple units with much paperwork. He wondered about the possibility of a minimum or maximum. Kniep knew of no complaints. No formal action taken.

Committee
Business

Royce reported that the Insurance Division was interested in talking with ARRC with respect to rule 191--15.20(2) which was reviewed at the December meeting. The proposed provision would require "celebrities" who appear in insurance ads to be licensed agents.

Parker referenced what he considered to be a biased article in the Des Moines Register which appeared after ARRC review of the rule.

Recess
Reconvene

Vice Chairman Parker recessed the Committee for lunch at 11:40 a.m.
Reconvened at 1:30 p.m.

HEALTH

David Fries, Rose Vasquez, Assistant Attorney General, represented the Public Health Department for the following:

Approval of laboratories for employee drug testing, ch 12 ARC 8234 *N* 12/16/87

Ch 12

Under proposed Chapter 12, the Department will have authority to approve laboratories which perform drug testing for employees. Tieden was assured that the definition of "physician" did not include "chiropractor." He questioned inclusion of "or an equivalent technology" in 12.6(1). Fries stated that the "state of the art could change very quickly and the second set served to meet requirements of FDA." Iowa was the first state to propose such rules and a public hearing was in process today. Fries indicated that the words "to conduct analyses of specimens for drug and alcohol screening" would be deleted from the end of 12.4(3)a(4).

Another major issue, according to Fries, was the confirmation test set out in 12.6(2). It is the intent of the Department to protect the employer, employee, and all concerned individuals. Fries told Doyle that 641--12.7 dealt with the exception regarding alcohol. He anticipated changes before the rules are adopted. No Committee action.

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NATURAL RESOURCE COMMISSION The following rules were before ARRC and representatives in attendance included Richard A. Bishop, Morris Preston, Mark Landa, Ruth Bender, Vic Kennedy and Mike Carrier.

EPC & NRD

NATURAL RESOURCE COMMISSION[571]
 NATURAL RESOURCES DEPARTMENT[561] "umbrella"
 Wildlife habitat on private lands promotion program, 22.4(2)"c," "e," "f," and "g," 22.5(1), 22.5(2)"b," 22.5(4),
 22.6(2)"b" ARC 8265 F. 12/30/87
 Wildlife refuges, 52.1(2)"a," 52.1(3) ARC 8266 F. 12/30/87

ENVIRONMENTAL PROTECTION COMMISSION[567]
 NATURAL RESOURCES DEPARTMENT[561] "umbrella"
 Maximum contaminant levels for used or recycled oils, 143.6 ARC 8239 F. 12/16/87
 Household hazardous materials, ch 144, filed without notice, ARC 8209 F.W.N. 12/16/87
 Criteria for siting low-level radioactive waste disposal facilities, ch 152 ARC 8211 F. 12/16/87
 Permits, 102.14(3)"a" ARC 8210 N. 12/16/87
 Solid wastes grants, ch 209 ARC 8273 N. 12/30/87

NATURAL RESOURCE COMMISSION[571]
 NATURAL RESOURCES DEPARTMENT[561] "umbrella"
 Concessions, ch 14 ARC 8251 N. 12/30/87

NATURAL RESOURCES DEPARTMENT[561]
 Concessions, ch 14 ARC 8250 N. 12/30/87

Natural Resources - EPC
 Underground tanks - Analysis, Ch 135 Special

Ch 22 In amendments to Chapter 22, Bishop briefed ARRC re minor changes since the Notice. He described disposition of revenues from wildlife habitat stamps income tax checkoff and added that all available funds would be spent.

Bishop advised Doyle that a farmer with federal set-aside acres would not be precluded from establishing a private game reserve which could be leased for hunting. Tieden referenced problems of hunting abuse and thought there should be a state policy relative to liability if someone is hurt. Bishop concurred.

No questions re 52.1(2)a and 52.1(3). Landa explained amendments to 143.6. No questions.

Ch 144 Bender stated that a committee of 10 retail association representatives provided input on Chapter 144. It was noted that the logo set out in 144.4(1) had no national significance--it was developed in and is unique to Iowa. No ARRC recommendations.

Ch 152 Bender said that Chapter 152 parallels rules for hazardous waste facilities. She was doubtful that Iowa would meet the 1993 deadline for identifying a radioactive waste disposal facility site. Michigan was selected as the host state and alternates are Minnesota and Ohio. No questions.

102.14(3) Landa described amendment to 104.14(3)a which will prohibit burial of wet sewer sludge at sanitary landfills. Parker and Tieden commented on problems created by the prohibitions. Landa said they had attempted to facilitate recycling of fly ash and a number of permits have been issued to sites.

Ch 209 Kennedy explained that 567--Chapter 209 of Environmental Protection Commission supersedes 565--Chapter 19 which was proposed by the Energy and Geological Resources Division--

NATURAL
RESOURCES
EPC & DNR
Continued

11/18/87 IAB. The language is identical and will implement '87 Acts, HF. 631. Kennedy attributed the recycling problems in Iowa to the fact that volume generated is small.

Ch 14

Carrier provided history on concessionaires in state parks and the rules--571--Chapter 14--intended to address problems. Contracts will be let and the new chapter formalizes procedures which have been established over the years.

Doyle suggested possible addition of a "destruction clause" to 14.5. He also referred to 14.4, g, which would allow a check of "driver's license records" and he wondered if they could get a DCI check as well. Doyle failed to see the relevancy. Kennedy pointed out that the information would alert them of individuals who might not cooperate with rangers in enforcing fishing laws and rules of the park. The Department wants to avoid concessionaires who have demonstrated rather flagrant contempt for laws. Carrier reminded Parker that a notice of intent to renew a contract is required to be published.

Kennedy added that finding a responsible concessionaire does not usually present a problem. He explained that 561--Chapter 14 adopts by reference, with three exceptions, 571--Chapter 14. These rules implement statutes relative to parks and govern the two facilities which are not operated under Department of Natural Resources. They are the Informational Facility at Springbrook and Big Creek Shooting range. No questions.

Ch 135
Special
Review

There was special review of 567--Chapter 135--Underground Storage Tanks. Royce reported on a problem confronted by a constituent of Senator Doyle. The individual had inherited a gas station but decided it was not economically feasible to install all of the monitoring devices required to ensure no leakage. Royce continued that the person spent \$8,000 to have the hydraulic lifts and gas tanks removed. Soil testing would cost another \$600 and he wondered how station owners could bear this burden.

Preston said the rule allows for many options. He estimated about \$100 for the analytical work--the state pays \$90 for gasoline and \$100 for diesel. Preston advised use of an organic vapor analyzer for volatile substances such as gasoline. Costs would average \$200 to \$300 a day. He emphasized Department concern about EPA requirements which could be retroactive and create a greater expense after an area is cemented. Tanks are registered. Preston admitted there was no local enforcement on gas tanks. Parker saw a major discrepancy in that an individual could be penalized more in attempting to comply with the regulations. Preston mentioned provisions for installation of new tanks which prohibit filling of them after April 15 unless they are registered.

NATURAL
RESOURCES
EPC & DNR
Continued

He admitted that cheating was a possibility. Department officials said that the fire marshal has jurisdiction over cities re location of tanks and possible variance of above-ground tanks.

Discussion as to the need for inclusion of severability language in rules when such provisions are set out in Code section 14.12. Clark wondered if similar language should be included in Code chapter 17A. No action.

MANAGEMENT The following was presented by Ray Peterson and Lawrence
DEPARTMENT Bryant:

Contract compliance, ch 4 ARC 8173F. 12/2/87
(carried over from December meeting)

Also present: Elizabeth Osenbaugh, Assistant Attorney General.

Bryant reported that since the December meeting, interested parties met and reconsidered the three controversial portions of the rules which were not set out in the Noticed version--4.5(2)c, 4.5(3), 4.7(2). Based on discussion with Royce and the Attorney General, Department officials thought a delay was advisable.

Royce recalled that Senator Mann was basically supportive of the rules but would have no problem with a delay of questionable portions. Royce could see a need for the legislature to review the authority of the Department as to its regulatory role. The statute speaks of responsibility for administration and promotion of equal opportunity but it is questionable whether authority can be extended to regulate private contractors in the area of affirmative action, periodic reporting or disqualification from contracting with the state.

Motion to Delay Doyle moved to delay the effective date of Management Department rules 541--4.5(2)c, 4.5(3) and 4.7(2) to the end of the 1988 Session of the General Assembly, and that appropriate notice be sent to both House and Senate to take action necessary for compliance with the procedures. Motion carried.

Recess Committee in recess at 3:05 p.m.

Convened

Vice Chairman Parker convened the meeting, Wednesday, January 6, 1988, at 9:05 a.m. Tabor not present for roll call.

HUMAN
SERVICES
DEPARTMENT

The following agenda was before ARRC:

Volunteer services, preamble, 12.2, 12.3	ARC 8218	.....	F.	12/16/87
Mental health institutes, 29.2(10), 29.2(11), 29.2(12)	ARC 8219	.....	F.	12/16/87
Granting assistance — child care for ADC recipients in JTPA program, 41.8(3)"d"	ARC 8220	.....	F.	12/16/87
Work and training programs, 65.2(2)"b"(3), filed emergency after notice	ARC 8225	.....	FEAN	12/16/87
Administration, 65.3, 65.29(1)	ARC 8221	.....	F.	12/16/87
Administration of program, 65.3, filed without notice	ARC 8228	.....	F.	12/16/87
Types of outpatient services covered by Medicaid, 78.3, 78.30, 79.1(2), 79.1(5)"f"	ARC 8216	.....	F.	12/30/87
Other policies relating to providers of medical and remedial care, 79.1(5)"a," "c"(1) and (2), "f"	ARC 8235	.....	F.	12/16/87
Reimbursement methodology for multiple source drugs, 79.1(8)"a" and "b," filed without notice	ARC 8226	.....	F.W.N.	12/16/87
Medically needy, 86.3(6), filed emergency after notice	ARC 8224	.....	FEAN	12/16/87
Grant diversion program, 91.1(2)"b," filed emergency after notice	ARC 8247	.....	FEAN	12/30/87
Purchase of service, 150.1, 150.2, 150.3, 150.3(1)"c" to "f," 150.3(2) to 150.3(10), 150.5(1)"b," "c," "d," "f," 105.5(2) to 150.5(7), 150.6 to 150.8	ARC 8223	.....	F.	12/16/87
Payments for foster care and foster parent training; foster care project grants, 156.9, ch 164	ARC 8249	.....	F.	12/30/87
Foster care services, 202.6(5)	ARC 8222	.....	F.	12/16/87
Developmental disabilities basic grant program, 38.3(3), 38.4(1)"a" and "b," 38.4(2)"a" and "b," filed emergency	ARC 8193	.....	FE	12/16/87
Application for aid, granting assistance, payment, 40.4(4), 41.2(7), 41.7(9)"j," 45.5	ARC 8264	.....	N.	12/30/87
Granting assistance — small nonrecurring monetary gifts, 41.7(7)"f"	ARC 8217	.....	N.	12/16/87
Aid to dependent children eligibility under the self-employment investment demonstration project, ch 48, filed emergency	ARC 8229	.....	FE	12/16/87
Counties included in pilot self-employment project for ADC recipients, 48.2, filed emergency	ARC 8244	.....	FE	12/30/87
Eligibility, payment, medically needy — SSI cost-of-living adjustments, 51.4(1), 51.4(2), 51.7, 51.1(1), 51.1(2), 51.1(3)"a"(2)"l," 86.10(1), 86.10(2), filed emergency	ARC 8245	.....	FE	12/30/87
Conditions of eligibility, 75.1(2)	ARC 8216	.....	N.	12/16/87
Reimbursement methodology for multiple source drugs, 79.1(8)"a" and "b" ARC 8227 (also filed without notice	ARC 8226)	.....	F.W.N.	12/16/87
General provisions, 130.3(1)"d"(2), filed emergency	ARC 8248	.....	FE	12/30/87
Subsidized adoptions, 201.1 to 201.3, 201.4, 201.4(3), 201.5, 201.6(1), 201.6(3), 201.7, 201.8, 201.10	ARC 8215	.....	N.	12/16/87

Representatives present were Mary Ann Walker, Dan McKeever, Phil Bingaman, Darlene Clark, Julie Dettmann, Carol Clift, Heidi Rosenbaum, Anita Smith, Nancy Haigh, Dan Gilbert, Jan Walters, Don Kearney, C. S. Ballinger, C. Dobson, Suzanne Boyde, Mary Nelson, Joe Mahrenholz, Marg Corkery, and Bob Lipman. Also present: James Blessman, M.D., Pat Hofmaster and Carmella Brown, representing Mercy Hospital; Linda Goeldner, Iowa Hospital Association.

12.2

No questions re 12.2 or 12.3.

29.2(10)

Tieden was told that 29.2(10) et al. was update of medical services provided to mental health institute patients and would have no impact on costs. Also, Walker anticipated that the allocation of \$100,000 would cover costs--41.8(3)d. Lipman agreed to send information to ARRC relative to population to be served.

55.2(2)b(3)

Parker reiterated ARRC opposition to emergency filings. No recommendations for amendment to 55.2. Responding to Doyle, Walker indicated the retroactive provision[07/01/87] of 65.3 was federal requirement. She advised ARRC that the Council on Human Services had sent letters to the federal government on food stamps. General assistance payments are now counted as income.

78.3 &
78.31

Walker explained that outpatient hospital services were being greatly expanded. An extensive study had been conducted resulting in limited services to alcoholism, substance abuse, eating disorders, cardiac rehabilitation, and mental health. At the time of filing, DHS stated their budget request would include request to expand outpatient services, including pain management. However, their Council removed those budget askings. Department officials were unable to provide estimated costs.

HUMAN
SERVICES
Continued

According to Hofmaster, Mercy Hospital had been reimbursed for the chronic pain program since 1982. At the November 16 hearing, there was no definitive statement with respect to reimbursement for the second grouping of programs. Hofmaster expressed frustration in that they failed to receive adequate notice of the change.

Royce discussed the time frame with Walker, who noted that Noticed rules listed four covered areas.

Responding to Parker, Walker said that all outpatient programs were being reimbursed prior to the Notice, the study was conducted, and DHS decided to cover the four most essential services. Iowa Hospital Association viewed the matter as a reduction of services to Medicaid patients.

Blessman, who created inpatient pain management in 1978, said the first outpatient services were established in the interest of saving money. He contended that elimination of reimbursement would not eliminate the need for outpatient care. Providers will "gear up" inpatient programs again, which he thought would be a mistake since accrediting agencies for pain centers exist nationwide--CARP. Blessman suggested that control could exist by requiring all programs to have the accreditation. Comparative figures revealed that costs for inpatient care would double in many instances. Walker reiterated that inpatient treatment was their only alternative.

Mention was made of a session delay. Gilbert said DHS has historically paid for traditional outpatient service programs--40 different programs. Blessman made the point that all insurance carriers reimburse the pain management outpatient programs. While Mercy Hospital does not object to implementation of the rules, they do oppose a slow-down for others.

Parker commented that if the state is paying for outpatient pain services, there should be rules. Walker indicated DHS pays for 46-odd areas of the state and a delay would have no effect. Parker viewed this as an appropriation question which should be in a subcommittee.

Motion to
Delay

Priebe moved that 441--78.31(1) be delayed 70 days from March 1 for further study and that the Lieutenant Governor and Speaker of the House be notified. Motion carried. There was further discussion with Walker expressing concern that the delay would affect the entire filing. She explained that the March 1 effective date would allow fiscal officers time to prepare for implementation of the program. Priebe so moved to amend his motion to include all of ARC 8246. Motion carried. Priebe resumed the Chair.

Motion to
Amend

79.1(5)
et al.

Walker briefed ARRC re 79.2(5)a, e, and f, 79.1(8)a and b, 86.3(60, 91.11(2)b, amendments to Chapters 150, 156, 164, and 202.6(5).

HUMAN
SERVICES
Continued

No recommendations re Chapter 38, 40.4(4) et al., Chapter 48 and 41.7(7)f.

Walker noted that caseloads in Senator Priebe's areas were reviewed but there were not enough clients to include his district in the pilot project. [48.2] A chart of county population and ADC population was displayed. No questions re 51.4 et al.

75.1(2) According to Walker, 75.1(2), conditions of eligibility, was a federal regulation mandating states to provide Medicaid coverage for certain groups and permits states to provide coverage for other groups.

130.3 Amendment to 130.3(1)d(2) was a legislative mandate with respect to the income eligibility.

201.1 to 201.3 et al. Tieden questioned language in 201.3(1) as to whether it was federal--the subsidized adoption program.

Corkery replied that Caucasian children eight years of age and under are fairly easy to place as are minority children up to four years of age. Placement is more difficult when minority children reach school age. A private adoption agency would charge a fee for a black baby. Walker indicated that subsidy would be paid only if a child were hard to place.

Doyle was told that no study had been conducted on adoption of Indian children. According to Walker, Indian children must be placed with Indian families unless tribal approval is given. Federal law prohibits placing a child from one tribe in the home of another. General discussion. Corkery commented that Indian children were not difficult to place, but agreed there were fewer families available.

201.1 Tieden challenged use of "deputy commissioner" in 201.1. According to Walker, certain division directors are deputy commissioners. Tieden also asked Department officials to check the definition of "physician" to determine whether "chiropractor" would be included.

201.5(4) Doyle questioned the change of "determining" to "negotiating" in 201.5(4). Walker replied that federal regulations were strict. If parents seek a subsidy and have a high income, negotiation takes place. Doyle thought that could generate discrepancy between families of equal income since some would be more skillful in negotiating. Priebe concurred with Doyle.

LANDSCAPE
ARCHITECT-
TURAL
EXAMING
BOARD

K. Marie Thayer, Glenda Loving, and Ronald Neimann represented Landscape Architectural Examining Board for:

Description of organization, examinations, continuing education, disciplinary action, 1.1 to 1.7, 2.1 to 2.10, 3.1 to 3.6, 3.8, 4.1 "5" and "8," 4.2(1), 4.7(6), 4.8, 4.10 ARC 8214N..... 12/16/87

ARCHITEC-
TURAL
EXAMINING
BOARD

Neimann said the process of reorganization provided opportunity for them to review and update their set of rules.

Thayer was amenable to Clark's request to include a two-thirds quorum requirement in order for the Board to pass an issue. Clark was advised that language in 3.2(5) had been in the rules since 1976. Clark called attention to 4.1 and said "if every profession were to get tough with felony convictions, whether or not related to a profession, individuals should not be able to work." Royce indicated that would require statute change. General discussion.

4.8

In response to question by Doyle re 4.8, "8," "...license behavior," Thayer quoted from Code section 258A.3 and 258A.9. At Doyle's suggestion, Thayer agreed to incorporate fees from 2.2(3) into 2.10. No formal action.

NURSING
BOARD

Ann Mowery appeared for the following rules of the Nursing Board:

PUBLIC HEALTH DEPARTMENT[641] "umbrella" F. 12/30/87
Nursing education, 2.6(2)c(3) ARC 8240
Licensure to practice — registered nurse/licensed practical nurse, exam scores reported pass/fail, 3.4(2)a(1) and (2), 3.6(8) ARC 8192 N. 12/16/87

She briefly explained 2.6(2)c(3), commenting it should be delayed to coincide with the remainder of Chapter 2, which was delayed into the General Assembly. There was brief discussion of possible compromise on Chapter 2. A proposal which was submitted to the Board had not been acted upon. She agreed to keep the Committee informed.

Motion to
Delay

Clark moved to delay 2.6(2)c(3) to the end of the Legislative Session. Motion carried 4 to 1. Parker voted "no."

3.4(2)a

In discussing amendments to 3.4(2)a(1) and (2) and 3.6(8), Tieden was told that individuals were not permitted to view their test. He supported the concept of apprising the individual of questions missed. Mowery indicated that such a policy would increase costs. She added that a report is made on the areas missed. No other action.

TRANSPOR-
TATION
DEPARTMENT

The following agenda was before ARRC and reviewed by Kathleen Robinson, Ian MacGillivray and Craig Severance.

Essential air service terminal improvement program, ch 715 ARC 8241 F. 12/30/87
Intermodal pilot project program, ch 201 ARC 8194, also filed emergency ARC 8195 N.A.F.E. 12/16/87

Robinson explained that no comments had been received on Chapter 715. Energy overcharge funds will provide funding for the Intermodal Transportation Project.

Parker reminded DOT officials of ARRC continuing dissatisfaction with emergency filed rules.

RACING &
GAMING

Jack Ketterer was present for Racing and Gaming to review twofold rule 8.2(4)j(12), ARC 8191, 12/16/87 IAB.

RACING & GAMING In response to Priebe, Ketterer explained that grandstand refers to the entire facility.

ATTORNEY GENERAL Regulation of membership campground operators, chapter 25, ARC 8243, filed, 12/30/87 IAB, was before ARRC. Susan Barnes, Assistant Attorney General, Debra Moore, Investigator, Consumer Protection, were present. There were no recommendations.

Committee Business Civil Rights Forms Barry sought guidance with respect to several forms relative to rules of Civil Rights Commission as to whether or not they should be published in the Iowa Administrative Code. Committee concurred that publication would be unnecessary, but availability of the forms should be published.

Committee Rule Parker brought up the question of when formal action by the Committee would be effective, e.g., a delay. After discussion, Royce was directed to draft language to provide that when a 70-day delay is lifted, it will be effective upon adjournment of the Committee. The proposal will be considered at a subsequent meeting for possible adoption as a Committee rule.

Recess Reconvened The Committee was in recess at 11:15 a.m. Chairman Priebe reconvened the meeting at 1:10 p.m. Quorum present.

INSURANCE DIVISION The following Insurance Division rules were presented by Fred Haskins:

COMMERCE DEPARTMENT (181) "umbrella"
 Regulation of insurers — general provisions, 5.4 to 5.6 ARC 8252.....N..... 12/30/87
 Life insurance companies — variable annuities contracts, 31.4(9) ARC 8201.....N..... 12/16/87

No Committee recommendations were offered for the proposals.

15.20(2) Parker brought up the issue of Insurance rule 15.20(2) which would require a person [celebrity] identified by name in an insurance advertisement to be licensed to sell insurance. He referenced a letter from William Hager, Insurance Commissioner, wherein Hager responded to Committee concerns and defended the rule. Parker reiterated his frustration with published statements made by an Insurance Division official. It was Parker's opinion that the Committee was being used as a "scapegoat."

INSPECTIONS & APPEALS Xenda Lindel-Prine and Mary Oliver were present for the following:

Renumber 481—chs 4 and 5 as 481—chs 10 and 11 ARC 8196N..... 12/16/87
 Agency procedure for rule making, ch 4 ARC 8198N..... 12/16/87
 Food establishments, 31.1"4" ARC 8197.....N..... 12/16/87
 Health care facilities, 57.49, 58.53, 63.48, 64.59 ARC 8199.....N..... 12/16/87

No questions re Chapters 10 and 11.

Clark and Priebe expressed opinion that the last paragraph of 4.10(2) was overly vague. Lindel-Prine agreed to remove the nebulous language.

INSPECTIONS
& APPEALS
Continued

No questions re 31.1(4). Amendments to Chapters 57, 58, 63, and 64 were considered. Oliver advised ARRC that Human Services would hold workshops to apprise counties of the rules which apply to all care facilities.

Priebe questioned their statutory authority. Oliver stated that legislation requires Inspections and Appeals to perform the inspections.

Parker thought the Department should determine whether or not this added level of inspection would require special training and addition of new inspectors. He was concerned that documentation would place an excessive burden on county care facilities and was interested in costs.

Economic
Impact
Statement

Parker moved that an economic impact statement be prepared on ARC 8199. Motion carried.

There was discussion of Class II and III violations and penalties, and it was noted that the Classes appear at the end of a particular rule. No other comment.

UTILITIES
DIVISION

The Division was represented by Vicki Place and Ray Vawter, Jr., and the agenda follows.

COMMERCE DEPARTMENT (1811 "umbrella"
Customer definition, 19.1(3), 20.1(3) "c." 20.4(10), 22.1(3), amended notice ARC 8208 A.N. 12/16/87
Service area boundaries, 20.3(8) to 20.3(12), amended notice ARC 8254 A.N. 12/30/87

The Board proposes to define "customer" which is controversial. Therefore, an oral presentation will be held. Area boundaries have been renoticed in response to utilities comments. Clark excused.

No recommendations re 20.3(8) to 20.3(12).

BOARD OF
REGENTS

1.4

R. Wayne Richey and the Iowa State University Registrar were present for admission rules for the state universities, being 1.4, ARC 8130, 11/18/87 IAB. The rules were carried over from the December meeting.

Richey was willing to visit with Priebe concerning the limitation on enrollment of students at Iowa State. Also, Priebe suggested that Regents consider addition of mortuary science.

INSURANCE
DIVISION

David Lyons, Deputy Insurance Commissioner, appeared before the Committee with a letter of clarification on the position taken by the Division on rule 15.20. One point was that the Division would recommunicate to the press that the question on the rule was not whether consumers should be protected but rather what legal means are available to accomplish this purpose. Lyons indicated that the Division was willing to request advice from the Attorney General as to what degree of authority existed for the rule. In conclusion, Lyons expressed appreciation to the ARRC.

1-6-88

INSURANCE
Motion

Parker moved that the Committee request an opinion from the Attorney General on the issue of "celebrities" acting as spokespersons for insurance advertising. Motion carried.

Clark suspected that any persuasive salesperson could create problems for elderly and other vulnerable persons. Lyons agreed to provide all necessary material.

LIVESTOCK
HEALTH
ADVISORY

Mark Truesdell appeared to explain the following:

LIVESTOCK HEALTH ADVISORY COUNCIL[521]
Recommendations, ch 1 ARC 8232.....

F. 12/16/87

Trusdell referenced changes made by the Council following Notice.

Priebe thought it was regrettable that the funds were cut for calf and lamb viral enteritis. He recalled that large numbers of calves have been lost to the disease. He observed that \$27,000 was allocated for TGE when an effective vaccine was available. Priebe was surprised about some of the changes and questioned increases for bovine respiratory syncytial virus and bovine immunity enhancement.

Doyle was interested in the success of the research program--how many new vaccines--and Priebe cited pink eye research as being relatively new but successful. Other successes included pseudorabies programs.

Truesdell mentioned the loss of Dr. Wood, who had been the researcher on calf and lamb scours. He agreed to relay Committee concerns to the Council.

Recess

Committee was in recess at 2:45 p.m.

1-7-88

Committee
Convened

Chairman Priebe reconvened the meeting, Thursday,
January 7, 1988, 9:05 a.m., Committee Room 22.

GENERAL
SERVICES

The following was before the ARRC for special review:

New state historical building use, 1.6(6), filed emergency ARC 8136 — special review F.E. 11/18/87

General Services representatives present were Jack Walters and Kathy Williams. Walters recalled the basic issue was whether alcoholic beverages should be served in the new Historical Building as provided by 1.6(6). He continued that because of the opportunities for various uses by the community, it would be advantageous to allow serving of champagne, wine and cheese. Requests have come from corporations, community groups, etc. General Services considers the building to be a cultural center and would like it "to blossom and grow in this nature."

Tabor expressed his displeasure with the emergency filing which precluded public input on a "major change of use on the Capitol Complex." He preferred that any General Services commitment on the issue be deferred until they can make a presentation to the Legislature.

Walters did not want to "pass the buck" but still defended the rule. Priebe supported Tabor's recommendation and thought it would be helpful for both caucuses to review the issue.

Royce pointed out that the matter was addressed in two sets of rules--General Services 1.6(6) and Historical Division rule 223--13.5(303). Rule 223--13.5(303) delineates the physical use of the building and sets out restrictions on the privilege of serving liquor in the new Historical Museum. [13.5(6)b(3)] There was brief discussion of contracts which have been let. It was Priebe's opinion that these would have to be honored. No formal action.

Minutes

Doyle moved approval of the minutes of the December meeting. Motion carried.

AGRICULTURE
& LAND
STEWARDSHIP

The following rules were before the Committee:

Multiflora rose eradication program for cost reimbursement, 30-4.1, 4.2	ARC 8262	.....	F..	12/30/87
Grain indemnity fund board — organization and operation, claims against the grain depositors and sellers				
indemnity fund, 63.2, 63.4, 63.4(3), 64.1, 64.2, 64.4, 64.5(2), 64.6	ARC 8200	.....	F..	12/16/87
Administration, amend and transfer 30—ch 1 to 21—ch 1	ARC 8263	.....	N	12/30/87
*Pesticide applicator certification requirements, fees, examinations and renewals, 30-10.22, 10.22(1) to 10.22(4), 10.22(8)	ARC 8155	.....	N	12/2/87
*Pesticides—license fees and reporting requirements, 30-10.47, 10.48	ARC 8154	.....	N	12/2/87
*Pesticide registration fees, exemptions, penalties, 30-10.49	ARC 8153	.....	N	12/2/87
*Pesticides — notification requirements, 30-10.50	ARC 8152	.....	N	12/2/87
(Pesticide rules carried over from December meeting, to be reviewed 1/7/88, 8:30 a.m.)				
Agricultural revitalization program, ch 56	ARC 8260, also filed emergency	ARC 8272	.....	N + F.E. 12/30/87
State regulatory program for surface coal mining and reclamation operations, chs 140 to 149	ARC 8261	.....	N	12/30/87

Department representatives in attendance included:
Daryl Frey, Charles Eckermann, Paul Sadler, James Ellerhoff, Kenneth Tow, Arlo Hullinger, and Lynette Donner.

AGRICULTURE
& LAND
STEWARDSHIP
Continued

Also present: Representatives Jack Hatch and Paul W. Johnson; Ken and Shirley Peckosh, Chip Hughes, Iowa Nurserymen's Association; Keith Luchtel, Monsanto; Ned F. Chiodo, CSMA; Winton Etchen, Scott McKinnie, Iowa Fertilizer and Chemical Association; Theresa Kehoe, Senate Democratic Caucus; Ed Conlow, House Democratic Caucus; Father Norm White, Dubuque Rural Life Office; Lyle E. Curry, Iowa Pest Control Association; Lyle Krewson, Sierra Club, Iowa Chapter; Randy S. Allman, Iowa Grain and Feed Association; Roger A. Nowadzky, Legislative Council for League of Iowa Municipalities; Judie Hoffman, League of Women Voters; Ron Salisbury, Terry Johnson, Bill Murphy, David L. Anjinio, Iowa Pest Control Association; Ted Yanecek, Iowa Farm Bureau; Steve Gunson, City of Des Moines Health Department; Larry Thomsen, West Central Coop; Bobby Baker, Polk County Health Division; Daryl Johnson; Charles McIntyre, Quaker Oats Co.; Cindy Hildebrand, Environmentalist, and several interested persons.

4.1, 4.2 Hullinger explained revised rules 4.1 and 4.2. No recommendations.

64.2 Donner reviewed rules of the Grain Indemnity Fund Board and noted that the only change since the Notice was addition of a cross reference and clarification of 64.2. Discussion of the fact that three grain dealers had been liquidated, the largest amount being a little over \$200,000. In response to Priebe as to the impact of federal bonding regulations, Donner said they were unsure as to how the fund would be affected. They have filed a response and objection to the proposal. Priebe suspected that under the federal changes some warehouses would not qualify for grain indemnity or for Commodity Credit Corporation storage. Priebe recommended that this matter be scrutinized. Donner and Hullinger described revision of chapter 1 as their first step in the process to conform with state reorganization. Major divisions, and the Bureaus and subunits within each division, are outlined. Priebe questioned inclusion of the Sheep Bureau in 1.3(2) since it was his understanding they were not under Agriculture. Department officials said that it was not the commodity group but merely support staff as far as marketing efforts.

Ch 1

1.3(2)

Priebe "wanted to be consistent" since a group reverting to a checkoff must "stand on their own two feet." Hullinger stated that the Code mandates a separate Commodities Division [159.20] and unless that is changed, the Department is obligated to address this area in the rules. Priebe would pursue the question of commodity groups.

Ch 56

Greiner explained the reason for emergency filing of Chapter 56 was to alert approximately 70 to 80 groups

AGRICULTURE
& LAND
STEWARDSHIP
Continued

of the program to be funded by a \$300,000 lottery appropriation for public/private partnerships. ARRC reiterated their opposition to emergency rules.

Parker voiced opposition to the rules as lacking any set goals and declared that the emergency implementation precluded any input. In response to Tieden as to type of programs included, Greiner said the legislation was broad and they are seeking ideas from various regions of the state. He continued that the Authority favors alternatives to agriculture, value added--forestry, for example. They purposely avoided identifying specific projects in the rules.

Clark pointed out that this should have been listed in the rule as a criteria about which they would judge. Priebe mentioned a meeting of the Agriculture Committee in the Senate next week where, hopefully, some of the sheep producers could be involved. He recalled pilot programs in Minnesota that are working very well as a result of "some seed money." Sheep producers are going to show about an \$87.00 per ewe profit this year. Priebe felt that some of the Lottery funds should qualify for this kind of program.

Greiner agreed to provide the ARRC with copies of the requests for proposals. Priebe recommended that more detail be provided in the adopted rules following Notice.

Chs 140-149

Tow summarized proposed revision of coal mining rules which adopt federal regulations by reference as of July 1, 1987. The rules basically mirror current practice with exception of a few additional federal rules relative to wildlife and design standards on roads. Clark observed inconsistencies in the format of the proposal and Tow assured her they would be eliminated before the rules are adopted.

Tow reported that three surface mines are presently in operation in Iowa. Collectively, there are 26 units inspected by the state. Production is down from approximately 800,000 tons a year to 500,000 tons. Tow advised Tieden that each mine has a separate permit.

Revenue
Deferred
AGRICULTURE
Ch 10
Pesticides

Chairman Priebe announced that Revenue and Finance rules would be deferred until after lunch. He then called on Agriculture officials to continue discussion of amendments to Chapter 10 which were carried over from December. He introduced legislators who were present and explained the procedure to be followed.

10.22

Frey stated that amendment to 10.22 addresses applicators of pesticides. He said that the law was changed to require certification of all persons who use pesticides. Private or commercial applicators who apply

AGRICULTURE
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STEWARDSHIP

"restricted-use" pesticides must be certified through the testing procedure if they are applying those pesticides. The renewal of license classification and certification is also set forth. Failure to pass the exam three times in a six-month period requires a mandatory six-month waiting period.

10.47
10.48

According to Frey, rules 10.47 and 10.48 describe the reports required for pesticide sales and use, and the appropriate fees for the manufacturer, distributor, and pesticide dealer. Frey continued that rule 10.49 addresses pesticide registration fees. Penalties for non-registered pesticides and procedures for registration of discontinued pesticides are also included.

10.50

Rule 10.50 will govern urban application of pesticides and provide guidelines for public bodies to notify adjacent property occupants as to application of pesticides within highway rights-of-way.

With respect to examinations, Frey said that the intent was to provide the training and, this year, a small number of private applicators will be certified. The Department anticipates recertifying approximately 10,000 private applicators, mostly farmers. Frey added that, recently, 95 to 97 per cent have passed the test. He attributed the need for certification to change in the Environmental Protection Agency list which is increasing. Department officials estimate that, by next fall, 40,000 private applicators would need certification. Priebe suspected the figure would be closer to 165,000.

In response to Priebe, Eckermann said the person who does mixing as well as the one who does the spraying would have to take the test. Also, if the only duty of the teenager or other individual were to drive the truck from house to field, and touching and mixing of the pesticide were not involved, certification would be unnecessary. He added that the interpretation must be associated with the person who handles the pesticide in an unopened container. Priebe did not interpret the rule in that manner. He asked about liability and spoke of emergency needs and shortage of qualified applicators.

Eckermann answered that the person applying the pesticide as well as the farmer could be liable. Insurance is not required but would be advisable.

In response to Tabor, Kehoe quoted from section 214 of the Act [Code Supplement §206.5] relative to certification requirements. Eckermann emphasized that the more knowledgeable the applicator, the safer the application for the applicator and the environment. He concluded that intent of the pesticide law would be lost without the certification process.

AGRICULTURE
& LAND
STEWARDSHIP
Pesticides
continued

Priebe asked if his wife were to pick up a restricted product, Lasso, would she need to be certified? Ecker-mann responded that rules existing since 1986 allow for a noncertified person to pick up restricted use pesticides--if verified by the retailer.

Tabor mentioned possible creation of another category. Frey responded that this had been considered but the Department would be uncomfortable in creating a new category of applicator absent adopted rules.

In a question of semantics, Clark pondered whether "handles" pesticides would be preferable to "uses..."

Tieden took the position that persons who fail the tests should be afforded an opportunity to know their weak areas. Frey was aware of the need but cited staff shortage as a reason that such a process could not be fully implemented.

Representative Johnson indicated that the industry suspects pollution of groundwater could be attributed in part to the "mixing operation."

Parker thought there should be a rule on the mixing. Doyle raised question re reciprocity between Iowa and other states with less restriction. Representative Johnson stated that "apparently other states around us are less restrictive than we are--at this point, reciprocity probably does not apply." Representative Hatch spoke of liability and mismanagement. If the farmer has a certified applicator, the risk would be reduced. Priebe declared that many hired men would be reluctant to take the test. Frey advised that the test measures a basic understanding of the pesticides being used. A possible criticism could be that the test is too easy. He was confident the system would work if given a "year or so."

Tieden noted that a school superintendent had called him to inquire about the qualifications to take the test. Schools routinely use toxic rodent repellants.

Further discussion of public applicator who would have to meet the same certification requirements as commercial applicators. In response to Tieden, Frey stated that the Department had been contacted by Quaker Oats a number of times and the firm had testified at the public hearing. The company has 75 to 100 employees who as a small part of their work--less than one per cent--drop restricted-use grain fumigant pellets into a cannister. The law as written required certification in that situation. A significant problem faces the company if certain employees must study the manual, and take the test. This would be contrary to a labor agreement which protects the job description. However, Frey saw no authority to rectify the situation.

AGRICULTURE
& LAND
STEWARDSHIP
Pesticides
Continued

Chairman Priebe recognized Luchtel who referenced problems with the "massive" legislation, which was "sliced here and there without regard for impact." He contended that major problems stemmed from the definitions and too much was left to the "common-sense approach." Luchtel recalled discussion of legislation which centered on rural and urban use of chemicals. It was his understanding that the Department has some latitude to address these situations, but chooses not to utilize it at this point. Luchtel saw a need for clarification of Code chapter 206.

Etchen interpreted that under private applicator certification, operations such as Priebe's would not require licensing. He thought the law was specific that "persons who apply pesticides" shall be certified. He contended that only those who apply pesticides as commercial certified applicators would have to be certified.

Frey agreed there was an ambiguity with two definitions at work but he maintained the rules were within the statute. All testimony is being reviewed and the Department will use their best judgment in interpreting the statute.

Elmer Stuer, Commercial Applicator, Iowa Aerial, reasoned that pilots should not fly an airplane after mixing and handling chemicals. He was fearful that his help of 20 years would resign.

Etchen pointed out that a test for commercial applicators was held at the National Custom Applicators Exposition in Ft. Dodge. In two days, 600 were tested with over 50 per cent passing. Frey advised that this test should be preceded by training and a comprehensive review of the manual. Standards should be more stringent for commercial applicators because of the responsibility and admitted the commercial test was difficult.

McIntyre favored an economic impact study. He took the position that it was unreasonable to ask individuals who seldom handle pesticides to study the 106-page manual and take the exam. McIntyre recognized that pure groundwater was essential and the ultimate goal. He was willing to provide copies of his recommendations and Tieden requested that copies be made available to the Senate and House.

Jim Bartholomew, President, Iowa Aerial Applicators, spoke of unfairness of retesting and voiced opposition. He viewed it as discriminatory against the industry. Bartholomew was supportive of a continuing education program and an economic impact study.

AGRICULTURE
& LAND
STEWARDSHIP
Pesticides
Continued

Frey stated that "the certification and recertification through testing is a way to maintain a level of knowledge that makes that application [of pesticides] safer." Frey concurred with Parker that a statutory change would be needed to change the fee schedule.

Motion

Clark moved that the appropriate legislative committees be requested to review Code Supplement section 206.5 relative to certification fees of \$25 for one year or \$75 for three years. It was noted that virtually no other licensed profession is required to retest as a condition for license renewal. Motion carried.

Frey advised Thomsen that certification would not be required in a situation where a secretary takes a phone order.

Hildebrand, Iowa Audubon Council, voiced support of the rules which they believe were "designed to address real problems, which still exist." The provision of "under direct supervision" was recognized as a big loophole and her group felt that the Act and rules make an honest attempt to address it. Hildebrand suspected that wide use of pesticides in Iowa tends to create complacency as to hazards. She concluded that "small mistakes can result in big results when dealing with pesticides and toxic materials."

Fr. White voiced support of Hildebrand's comments and continuing education.

Tabor expressed his opinion that Hildebrand's comment re "under direct supervision was irrelevant. Priebe was doubtful that anyone was opposed to clean water but thought a realistic approach was important.

Salsbury recommended a period of training prior to testing. Etchen thought it was a matter of record that the industry supports continued training. Salsbury could foresee hardship for trained person who failed the test and was suspended from work.

Frey pointed out that the six-month waiting period between testing was not statutory. However, the law [206.5] gives broad authority for rule making to the Secretary.

Discussion of difficulty for certain individuals in taking tests. Frey could not provide figures for Priebe as to how many would lose their jobs. Clark expressed her opinion that getting advanced experience before taking the test would be unwise. This is not the practice in other professions. She concluded that individuals who cannot pass the test should probably pursue another line of work.

AGRICULTURE
& LAND
STEWARDSHIP
Pesticides
Continued

Tim Steiger, Northwood Air Applicator, thought it would be cumbersome to test his part-time crew. Frey contended there would be situations when the 30-day provision could be used as a loophole to hire temporary help and circumvent the intent of the statute and rules. He declared that the "chemicals are designed to kill" and that fact must be respected.

Johnson, All American Turf, expressed opposition to pretesting.

Clark mentioned the possibility of providing for oral tests. Frey admitted there were instances where that has been done.

Hoffman urged approval of rules without "weakening" them. Krewson saw little option for significant change and urged acceptance of the rules.

10.47
10.48

Discussion moved to rule 10.47 and 10.48--license fees and reporting requirements. Frey explained the purpose of reports which will be used in determining the dealer's license fee and pesticide use in the state. The report from the manufacturer determines product registration fee and the distributor report provides a check and balance.

Shirley Peckosh read from a prepared statement wherein she contended that the Act, HF 631, failed to logically address groundwater pollution problems. The following summarizes areas which will impact the Iowa Nurserymen's Association: Increases in the cost of pesticides; unfair burden on specified retailers with licensing, counting inventory, and reporting; elimination of many pesticide products from the Iowa market; erroneous, inconsistent and irrelevant data will be generated by the state reporting requirements; many of the products to be reported such as flea collars and aerosol insect foggers would have little, if any, environmental effect; registration, reporting and licensing requirements will increase the number of state employees and generate more bureaucracy; generation of fees is based on inaccurate conceptions of how pesticides are distributed and used in Iowa.

With respect to the rules: Rule 10.48(1) requires those who distribute at wholesale to fill out reports. Peckosh thought the rule should be changed to reflect distribution at retail as the legislation states; rule 10.49(2)a lists five conditions for a manufacturer to meet in order to obtain a registration fee exemption. Since this is impossible, it appears that no exemptions will be granted. Peckosh thought a determination should be made concerning how the state will enforce the rules.

The Association supports: Legislation that will minimize all types of environmental damage, including protection

AGRICULTURE
& LAND
STEWARDSHIP
Pesticides
Continued

of the Iowa groundwater supply; an equitable, consistent, and simple method for generating revenue for appropriate environmental protection projects; field sampling and testing of water, soil and air using existing state personnel or private contractors; standby cleanup teams for responding to specific instances of environmental damage; permanent hazardous material collection centers; special cleanup days on a regular schedule and at specific locations--every area in the state should have ready access to a collection center or a cleanup day location; additional educational opportunities for all users of materials having potential for environmental damage including fertilizers, pesticides, hazardous household materials, and other hazardous waste products. The Association favors postponement of implementation of any rules until this session of the legislature has an opportunity to review HF 631 and to consult businesses affected by this legislation; also, favors an economic impact study.

Frey disagreed with allegation that information of reprints will be irrelevant or erroneous. If the \$10,000 exemption on pesticide dealers license dramatically distorts accuracy of data, the Department was willing and authorized under statute to require report forms from dealers to determine validity of request for exemption under \$10,000. He admitted that the Department has no idea how many pesticides are sold in Iowa.

Frey emphasized that the statute does not look at one particular chemical, but all of them.

Allman said a bottom line for the Iowa Grain and Feed Association would be fees and revenue. He questioned statutory authority for 10.47(2) to impose a dealer's license fee of only 1/10th of 1 per cent of gross annual sales and he quoted from Code Supp. §206.8(2)...."A pesticide dealer shall pay a minimum annual license fee of twenty-five dollars or an annual license fee based on one-tenth of one percent of the gross retail sales of all pesticides sold by the pesticide dealer in the previous year....."

Chiodo was concerned about the area of reporting by the manufacturer since it was almost impossible to control a product once it reaches the distribution chain. A second concern was the registration fee structure which, in his opinion, could greatly reduce the number of products registered in Iowa. In response to Parker, Chiodo explained the distribution process for chemicals which could involve four to five states. According to Frey, available data from computer programs indicates that the problem of registration is not significant.

Priebe was concerned about possible shortage of chemicals in the event of an "outbreak."

AGRICULTURE
& LAND
STEWARDSHIP
Pesticides
Continued

Luchtel recalled that in debate of the bill, reporting was to originate at the retail level. He favored a specific registration fee and utilization of surveys to obtain information.

Eckermann was aware of problems in monitoring of sales. He referred to 206.12(7) as authority to adopt the form of report and require additional information necessary to determine pesticide use in the state.

In response to Tieden, Rep. Johnson recalled that he had recommended a tax on pesticides to generate funds for groundwater cleanup. Farmers were opposed and other fair and equitable methods were sought. The major piece of legislation has brought out complications no one could foresee. He was willing to work on resolution of the issues.

10.49

Frey reviewed the fee structure in 10.49 and reported to Tabor that California registers products at the first of the year. One year ago, registration dropped 35 per cent. Discussion of substituting "shall" for "may" in the first paragraph of 10.49(3).

Tieden questioned how an individual would be affected by rule 10.50 if he applied his own chemicals. Johnson commented that that was a good point. Allman pointed out that substantial agricultural lands surround smaller towns. Frey thought the point was well taken and they would attempt to address the matter. He indicated that all exemptions should be met as a result of the shift from pesticide sales tax to the registration fee as a revenue source--10.49. Frey mentioned they had one request for a small business regulatory flexibility analysis. It will be necessary to contract with an outside agency to comply with the request. The rules cannot be adopted for three to four months which poses regulatory problems of some magnitude.

In response to Priebe, Kehoe read from Code §206.8 and recommended that the \$25 minimum annual license fee be included in rule 10.47(2). Eckermann admitted it was unclear.

Priebe was confident that problems could be resolved and he thanked everyone for their participation.

Recess
Reconvened

Recessed for lunch at 12:30 p.m. Reconvened at 1:30 p.m. Clark excused.

Motion
Economic
Impact

Tabor moved that ARRC request an economic impact statement on the four Notices of Agriculture and Land Stewardship. Motion carried.

1-7-88

REVENUE
& FINANCE

Carl Castelda, Deputy Director, and Jim Hamilton, Income Tax Division, appeared on behalf of Revenue and Finance Department for the following:

Interest, penalty, and exceptions to penalty, 10.2(7) ARC 8270.....	F.	12/30/87
Determination of a sale and sale price — trade-ins, 15.19(2), 15.19(3) ARC 8205	F.	12/16/87
Sales tax exemption — prescription drugs 20.7(1) ARC 8206	F.	12/16/87
Sales tax exemption — diabetic testing materials for human consumption, 20.8(1)"c" ARC 8204.....	F.	12/16/87
Motor fuel, 63.26(4), 64.7(6) ARC 8207	F.	12/16/87
Composite returns, ch 48 ARC 8203	N.	12/16/87
Filing returns, payment of tax and penalty and interest; determination of net income, 52.4(5), 53.8(2), 53.8(2)"c," 59.6 ARC 8271	N.	12/30/87

Special Review—Income Tax

Castelda provided update on the hearing on agricultural rules re electricity use in implements of husbandry. The poultry industry contends they should be entitled to the electricity exemption. The term "livestock" does not include "poultry."

The Department had met with Jim Campbell with respect to rules on withholding of pari-mutuel betting and they will abide by the Revenue rule.

10.2(7)

Castelda offered brief overview of the five filed rules. Tabor raised question about sales tax on automobiles sold to relatives. Castelda advised that, generally, family relationship does not change the tax status. Everything related to the transaction must be considered.

No recommendations re 10.2(7), 15.19, 20.7, 63.26(4), 64.7(6) or Chapter 48. In re 52.4(5) et al, Castelda said that amendments to 52.4 et al. implement provisions of SF 523.

Tieden asked if the Revenue Code needed a date and Castelda pointed out that Code §422.4(5) would control.

Castelda and Hamilton provided Committee members with advance copies of rules intended to implement income tax revisions enacted at the Extraordinary Session in 1987.

No Agency
Reps

No agency representatives were required to appear for the following:

ENERGY AND GEOLOGICAL RESOURCES DIVISION[565]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Solid wastes energy grants, ch 19 Notice ARC 8137, terminated ARC 8274N.T. 12/30/87

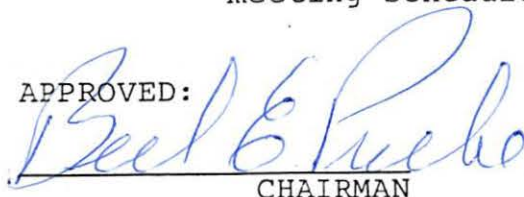
JOB SERVICE DIVISION[345]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"
Employer's contribution and charges, claims and benefits, benefit payment control, 3.3(3)"d," 4.1(67)"b," 5.2(1)"c" ARC 8255N. 12/30/87

LAW ENFORCEMENT ACADEMY[501]
Valid driver or chauffeur license for railway special agents required, 2.1(3), filed emergency ARC 8236F.E. 12/16/87

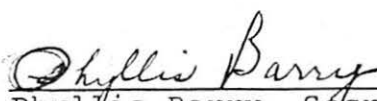
Adjourned

Chairman Priebe adjourned the ARRC at 2:30 p.m. Next meeting scheduled for February 9, 1988.

APPROVED:


CHAIRMAN

Respectfully submitted,


Phyllis Barry, Secretary
Assisted by Vivian Haag and
Bonnie King