

MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of
Meeting

Tuesday and Wednesday, July 1 and 2, 1986, State Capitol, Room 24, Des Moines, in lieu of statutory date.

Members
Present

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

Meeting
Convened

Chairman Priebe convened the July meeting at 10:00 a.m.

**SUBSTANCE
ABUSE**

Janet Zwick represented Division of Substance Abuse for the following:

Licensure standards for substance abuse treatment programs, 3.1, 3.3, 3.9 ARC 6638 F. 6/18/86 1905

3.1

After brief overview of amendments to chapter 3, Zwick said that new rules would be adopted for the correctional institutions. O'Kane raised question as to the reason for definition of "concerned family member"--3.1. Zwick responded that House File 244 provides that concerned family members may be admitted into treatment. O'Kane expressed his opinion that the definition was deficient. Priebe thought the point was well taken. No action taken.

**AGRICULTURE
DEPARTMENT
10.22, 10.26**

Bette Duncan, Counsel, and Charles A. Eckermann, Supervisor, Pesticide Section, were present for review of proposed rules 10.22 and 10.26, pertaining to licensure and certification for pesticide applicators, IAB 6/18/86 ARC 6612. Royce noted absence of language relative to regulatory flexibility analyses in the preamble to the Notice. Duncan was doubtful that an analysis was needed for the licensing requirement. She added that the Iowa Pest Control Association Board had expressed concern over the lack of continuing education for applicators. The Department had been concerned as well. Priebe raised question re statutory authority to require so-called hired men to apply the pesticide. Duncan agreed to respond in writing. It was Priebe's opinion that the second paragraph of 10.22(9) might require a statutory change.

10.22(9)

O'Kane pointed out what he considered to be nebulous language in 10.22(206) "...under the direct supervision

AGRICULTURE
DEPARTMENT
(Cont.)

of a certified applicator." He contended that 10.22(1) should be more specific as to time required. Duncan concurred. Eckermann noted that was addressed in 10.22(5) but O'Kane recommended combining the language. O'Kane was told that herbicides were included in the definition of pesticides. Duncan indicated the nebulous language was from Code §206.2(27) and she admitted it had caused concern. The Committee asked Royce for his opinion on the 6-hour training requirements. Royce advised that if the Code specifies some kind of training and the Department has general regulatory powers, there is an implication they can promulgate rules to explain the statute. O'Kane wondered if the Department were forcing licensing on another group of people. Duncan saw a problem as to what constitutes "under direct supervision of." She referenced Code section 206.6(4) with respect to the training program requirement for personnel who apply pesticides. Priebe asked Royce, Burnett and Duncan to seek a resolution to the controversial issue.

COMMERCE
DEPARTMENT

The following agenda was before the ARRC:

Public records, 1.8(3), 1.9	ARC 6608	.....	F	6/4/86	182
Rate case procedural schedule, 7.7(16)"a" and "b"	ARC 6606	.....	N	6/4/86	1804
Transition rules for participation in grain indemnity fund, ch 14	filed emergency ARC 6609	.....	FE	6/4/86	1819
Natural gas distribution utilities, transportation service, 19.13	ARC 6630	.....	N	6/18/86	184
Incentive rates for electric utility customers, 20.14	ARC 6607	.....	N	6/4/86	1804
Telephone utilities, intrastate billing and collection service tariffs, 22.14(3)	ARC 6631	.....	N	6/18/86	1864

Commerce Commission was represented by Ray Vawter, Jr., Allan Keniep, David Lynch and Cynthia Dilley. Dilley gave brief history of public records rules. Doyle referred to 1.9(7)a and took the position that the fee should be set out. Lynch said that fee information is available prior to the search--flexibility was intended. Royce supported the Department and observed that Commerce was the first agency to implement the "terribly complicated statute." Dilley told O'Kane that the same process was utilized for requests prior to this rule. The Department handled trade secrets in a confidential manner. No other questions.

ch 14

In re ch 14, Keniep gave brief overview of transition rules which replace the surety bond system with the grain indemnity fund for Iowa licensed grain warehouses and grain dealers. The transitional rules will sunset October 1. Permanent rules will be adopted by the new Department of Agriculture and Land Stewardship, which assumed authority over the grain warehouse division under reorganization. Priebe noted several grey areas and Keniep admitted the rules would likely be unclear to grain dealers at this time.

19.13

In re 19.13, Lynch said clarification was made in response to federal energy regulatory commission's deregulation and restructuring of the interstate natural gas market. Soon, customers may purchase their gas from the gas field with transportation through the interstate pipeline. These rules would require Iowa utilities to

COMMERCE
DEPARTMENT
(Cont.)
20.14

carry that gas the final distance to the customer.

22.14

In re 20.14, O'Kane expressed concern over what effect the discounts would have on different classes of customers. Lynch said one feature of the rule as proposed is that no cost could be spread to other customers. Lynch said that 22.14(3) was for clarification of current rules with respect to telephone deregulation, billing and collection services. Kent Jerome said the Iowa telephone Association would comment by July 14.

COMMITTEE
BUSINESS

It was decided that the Superintendent of Banking would be requested to appear before the Committee to explain how the Agricultural Credit Corporation maximum loan rate is determined. Barry distributed copies of the ARRC Rules of Procedure. These will be reviewed for possible update at a subsequent meeting. Barry also distributed a proposed schedule of rulemaking for departments to comply with reorganization. Burnett, Royce and Barry had compiled the schedule as required by Senate File 2175, section 2065(2). Deadline for the transition rules was tentatively set for April 1987. It was noted that the entire 14-Volume IAC and Index will need revision.

Discussion of priorities with Burnett explaining justification for an earlier schedule for Revenue rules since private practitioners practice before the Department. Priebe agreed that those rules were important but felt the Department would need adequate time. Royce advised that only the Coordinator or ARRC could extend time. Royce noted that provision in the Act preserves all rules until they are changed but this might not be sufficient to avoid a court challenge. Burnett favored earlier completion of the revisions but understood the workload and time involved. Priebe was willing to rely on the Staff and Burnett to develop a satisfactory plan. Doyle suggested Royce contact Legislative Oversight Committee Chair and request a copy of their minutes. Priebe preferred that a statement be made to provide: "The agency shall appear before the ARRC and the Coordinator to request a delay if they cannot meet their deadline." Discussion of possible joint meeting of the ARRC and the Oversight Committee at a future date.

Royce distributed copies of his memo wherein he summarized expanded powers granted to the ARRC under reorganization. The period for delay of rules has been extended to the extent of the entire session. A major change is the unlimited objection power which is no longer tied to the effective date of rules. Royce also noted a slight extension of the governor's veto power.

Priebe announced a special review of Archaeology rules for the ARRC August meeting. A Cherokee attorney has

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COMMITTEE
BUSINESS
(Cont.)
August Mtg.

expressed concern over road construction delay due to an historical discovery.

The August meeting was scheduled for Tuesday and Wednesday, August 19 and 20.

LIVESTOCK
HEALTH
ADVISORY
COUNCIL

Mark Truesdell appeared for the Council to review the Notice of Intended Action for the proposed recommendation for expenditure of the standing appropriation of \$300,000 granted for livestock disease research--Iowa Code chapter 267. Truesdell stated that the Council meets three or four times each year and the Code requires them to meet twice each year with the Iowa State University College of Veterinary Medicine. He anticipated that changes would be made at the July 8 meeting.

Priebe questioned the need for \$31,200 for Marshall County when the federal research program for pseudorabies exists here in Iowa. Truesdell said that amount would be reduced about \$12,000 and focus would be primarily on the pseudorabies subunit vaccine. According to Truesdell, substantial increases were made in items 5 and 11 for turkey coryza and Newcastle disease research. He viewed Pinkeye research as the star project. Priebe questioned need for \$34,300 since a vaccine for pinkeye is available. He pointed out that angus cattle are not susceptible to that disease. Priebe also noted that there is a vaccine for bovine virus diarrhea--paragraph 10. Truesdell advised the Committee of the astounding conclusion that commercial vaccines do more harm than good. Priebe viewed \$15,600 for Newcastle disease research as excessive since fewer chickens were produced in Iowa. He favored utilizing the appropriation for diseases of horses and dogs. It was noted that a statutory change would probably be necessary. Truesdell responded that Iowa ranks eighth in production of layers and turkeys. In discussing the sheep pneumonia research--12.--Truesdell said a survey revealed that pathogens present in the flocks cause pneumonia; 100 per cent of tested flocks have PI3 virus; 53 per cent have respiratory syncytial virus; and 44 per cent have BVD virus. O'Kane asked Truesdell to elaborate on the changes in the preamble when the rules are filed.

Recess

Committee was in recess at 11:30 a.m.

Reconvened

Committee was reconvened by Chairman Priebe at 1:40 p.m. in Room 116.

HUMAN
SERVICES

The Human Services agenda was considered as follows:

HUMAN
SERVICES
DEPARTMENT
(Cont.)

Special review. Noticed rule 1.7--Council for
Developmental Disabilities--Quorum 4/23/86
Collections, nonassistance child support recovery program, 95.3, 95.3(1), 95.3(2), 95.7(8), 96.3(1)"j," 96.9(4), 96.10,
96.10(2), 96.10(3), 96.11 ARC 6617 F 6/18/86 1902
Organization, refugee cash assistance, refugee services program, medical assistance -- persons covered, 1.3(8),
chs 60 and 61, 75.1(1), 75.1(17), 75.1(22), rules 715--chs 1 to 8 rescinded ARC 6613 N 6/18/86 1975
ADC, eligibility factors, unearned income, food stamp program, 40.1, 40.7(1), 41.7(1)"i," 65.1, 65.10, 65.19(6),
65.19(9), 65.22(1), 65.29, filed emergency after notice ARC 6615 FEAN 6/18/86 1891
ADC, WIN/CMS program, recoupment, 40.1, 41.4, 41.4(1), 41.4(1)"a" and "f," 41.4(3) to 41.4(8), 42.4(2)"a," 42.4(3),
42.4(5)"c," 42.4(6), 46.4(1), 90.3, 90.4, 90.6(1), 90.14 to 90.16 ARC 6600 N 6/4/86 1812
Federal surplus food program, household eligibility, 73.4(3)"d"(2), filed emergency ARC 6614 F.E. 6/18/86 1893
Work incentive demonstration program (WIN/CMS), 90.1(4), filed emergency after notice ARC 6616 FEAN 6/18/86 1893
Gamblers assistance program, ch 162, filed emergency after notice ARC 6618 FEAN 6/18/86 1894

The Department was represented by Mark Wheeler, Developmental Disabilities Council member; Dan Gilbert, Vernon Woodard, Bob Lipman, Don Kearney, Marie Theisen, Vivian Thompson, Nancy Haigh, John Fairweather; Karen Perlowski, Division of Mental Health, Mental Retardation and Developmental Disabilities; Patti Cale and Marv Weidner, Bureau of Refugee Programs; Norma Ryan and Jan Jackson, Bureau of Collections; Lorena Griffith, Economic Assistance; and Jerry Stilwell, Developmental Disabilities Council member. O'Kane pointed out that in the preamble for ARC 6617, amendments to chapters 95 and 96, there was reference to a recent federal interpretation and he asked for the source of reason for denial. Walker said it had been in a letter and O'Kane requested a copy.

1.7(3)

Wheeler appeared as a member of the Developmental Disabilities Council. Discussion of 1.7(3), quorum requirements for the Council. Members contended that because of the makeup of the council, half would be a working quorum. ARRC members preferred that the rule follow ARRC guidelines--2/3 of the members would constitute a quorum. Mention was made of the possible financial hardship for some who serve. Federal funding amounts to \$600,000. Priebe contended that Code §17A.2 was specific with respect to quorum requirements. Wheeler reminded the ARRC that the Council is appointed by the Governor and is not an agency. Their rules are submitted through the auspices of Human Services. Wheeler recalled difficulties in getting quorum, especially in the winter months. Clark wondered if there were a fine line between the Council and what §17A.2 addressed. Royce said an argument could be made that the group is not administrative since it serves in an advisory capacity to Human Services. Wheeler noted that Council members are reimbursed.

According to Wheeler, a teleconference would not be possible since some members need sign language and require interpreters. Stilwell inquired if other advisory boards or groups were required to meet the same quorum requirement. It was noted that the MADD Advisory Council was recently granted an exemption from that 2/3 requirement. After further discussion, Priebe took the position that one more than half of the membership should be required to vote an issue.

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HUMAN
SERVICES
DEPARTMENT
(Cont.)

Wheeler contended that would relegate the severely handicapped to no participation in the Council. Priebe asked Wheeler to carry ARRC concerns to the Council and suggested that an Attorney General's opinion be requested.

1.3(8)
60.6(1)

Discussion of Human Services rules 1.3(8), chapters 60 et al. Clark recommended that 60.6(1) be restructured to shorten the lengthy definition. Department officials concurred that it was somewhat convoluted but because of federal funding, they must replicate to the federal language. Walker explained that 60.7 addressed the

60.9

child that would be born after the parents have been in the states for 18 months. Re 60.9(5)b, Clark recommended deletion of the hyphen following "six" and inserting it between "payment" and "month." In re the definition of "resettlement agency," Clark took the position that

75.1

clarification was needed. Clark raised questions re 75.1(1), as to how "persons deemed to be receiving ADC or RCA" could be denied the payment. Department officials responded that they consider recipients who would fit those categories and they are denied for certain reasons. Clark thought use of "deemed to be eligible" would be clearer. No other questions.

40.1

Priebe referenced preamble to amendments on ADC, 40.1, et al and inquired as to how the \$75 amount was decided with respect to ADC and FS clients. Walker agreed to clarify that it is a monthly income. O'Kane was told that the federal government was relaxing standards on monthly reporting as a result of a recommendation of a study group. Walker agreed to provide additional information on the matter to the ARRC.

Walker said that amendments to the ADC, WIN/CMS program provides that ADC applicants and recipients are automatically registered with WIN. O'Kane supported the new process but questioned why referrals to vocational rehabilitation were mandatory when acceptance was optional. Thompson explained that federal regulations require the referral but the state has the option of participation.

73.4

Emergency amendment to 73.4(3)d(2) raises income levels for the federal surplus program or "cheese program."

90.1(4)

No questions re 90.1(4) or chapter 162.

COLLEGE AID
COMMISSION

4.2

Gary Nichols, Acting Executive Director, and Scott Galenbeck, Assistant Attorney General, represented the College Aid Commission for review of proposed new rule 4.2(261) pertaining to tuition grant institutional eligibility which was published in 6/4/86 IAB as ARC 6604. Nichols said that one supportive comment had been received but more rigorous requirements were recommended--all schools should be accredited. The Department takes the position that the Code governs in this area. Priebe was

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COLLEGE AID COMMISSION (Cont.) advised that no change was made with respect to participation by schools--an administrative structure is provided for staff use. Priebe had received a call re concern for eligibility of small business schools.

4.2(1)e(1) O'Kane stated that private colleges were concerned that eligibility would be opened to institutions which are diminishing in size. O'Kane was uncomfortable with what he considered expansion of statutory language in requiring letters from three NCA accredited institutions--4.2(1)e(1). Galenbeck responded that the objective was to avoid the contested case in the future by obtaining ample information. No action taken.

BOARD OF
PHARMACY
EXAMINERS

Norman Johnson represented the Board for the following:

Licensure, examination subjects, 1.13(1) ARC 6581	F	6/4/86	1835
Pharmacy business licenses, reference material, 2.3(1) ARC 6582	F	6/4/86	1835
Controlled substances, dispensing without prescription, 8.13(15)"a" and "b" ARC 6583	F	6/4/86	1835
Controlled substances, prescribing and dispensing of Dronabinol, 8.21, 8.22 ARC 6584	F	6/4/86	1836
Minimum standards, return of unit dose packaged drugs, 6.11(6)"b" ARC 6580	N	6/4/86	1870
Controlled substances, temporary designation, 8.20, filed emergency ARC 6585	F.E.	6/4/86	1821

8.10(5)-SPECIAL REVIEW

8.10(5) There was brief discussion of 8.10(5) relative to appropriate safeguards to be exercised by pharmacies operating as a department in other businesses. Johnson was aware of a situation mentioned by Doyle which involved a conflict over keys to a pharmacy located in a courthouse.

2.3(1) Royce advised Priebe that a date certain would not be required in 2.3(1). No action taken on the Pharmacy rules.

PUBLIC
SAFETY
DEPARTMENT

Connie White and Mike Rehberg appeared on behalf of Department of Public Safety to review the following:

Devices and methods to test blood for alcohol or drug content, 7.2(1), 7.2(3), 7.3(5) ARC 6635	N.	6/18/86	1880
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White gave brief description of the devices and methods to test blood for alcohol or drug content. Brief discussion of use of "revised periodically" in 7.2(1), line 10. Rehberg noted that the words had been there for almost a decade. Clark raised question as to need for date certain. No action taken.

BOARD OF
REGENTS

The following rule was presented by Douglas True:

Purchasing, selection of advisors and agents -- issuance of bonds or notes, 8.8 ARC 6620, also filed emergency ARC 6619	N. + F.E.	6/18/86	1897
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According to True, a less formal process had been followed by the Board prior to 1982. True explained that six bond counsels and fourteen financial advisers had responded--a competitive market. Parker was told that about 85 per cent of the Regents bondholders live in the state.

DENTAL
EXAMINERS
BOARD

Constance Price and Kristie Burt were present for the following:

General anesthesia, parenteral sedation and nitrous oxide inhalation analgesia, ch 29 ARC 6601	F	6/4/86	1931
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DENTAL
EXAMINERS
BOARD
(Cont.)

Price explained that use of wide variety of drugs for the dental practice has permitted the profession to extend oral health care to millions of individuals who would otherwise remain untreated.

The American Dental Association has encouraged state boards to ensure that only properly trained and experienced dentists are permitted to use general anesthesia. Prior to the rule, administering of general anesthesia was unregulated. Doyle wondered if an assumption of liability would come with the rules. Price reasoned there was liability without the rules. Enforcement personnel are available.

TREASURER
OF STATE

Mike Tramontina and Lynn Muehlenthaler were present for the following:

Invest in Iowa agriculture diversification program, ch 4 ARC 6611, also filed emergency ARC 6610 ... N.Y.F.E 6/18/86 1878

Tramontina explained that emergency implementation of the rules was necessary to comply with 1986 Iowa Acts, H.F. 2313. He distributed a list of loans amounting to \$463,000.

According to Tramontina, the loans were made in haste and the Department plans to refine the rules. Public input was being provided through the Notice process. Parker was told that the law is specific with respect to eligible borrower--a person considered to be ineligible for loans on business. O'Kane recalled that the statute addressed refinancing--4.6(7). Tramontina did not believe that was in the statute. Clark wondered if preference were given to those with contracts. Tramontina responded that \$30 million is available for the program and there has been no problem with priority. He indicated that the Treasurer's preference would be toward financing any marketing activity over any production activity. Clark suggested that the Department of Economic Development should make available potential markets. Tramontina advised that the Treasurer works closely with the additional marketing persons authorized in the horticultural bill of 1986. There was brief discussion of the treasury bill rate--6.34% for one year. Tramontina said a loan would be placed at 4.34% today. Application packages will be sent to each ARRC member as they requested.

Tramontina said they were required to define alternative crop and he asked for opinions. Priebe questioned inclusion of Christmas trees in the definition of "horticultural and nontraditional crops." Tramontina indicated this was a difficult area so they had decided to apply it to everything except corn, soybeans, rye, oats, alfalfa or wheat. Tramontina did not have percentages with respect to total production.

IOWA
DEVELOPMENT
COMMISSION

Allan Thoms and Thomas Jolas, Department of Economic Development, formerly Iowa Development Commission,

IOWA
DEVELOPMENT
COMMISSION
(Cont.)

appeared for:

Special review of ch 1, Administrative procedures
ch 8, Community Economic Better Program, IAC

Priebe recognized Parker who initiated questioning of Department officials as to their procedures for setting priorities among competing projects for grants. Parker was particularly concerned about the emergency award of \$738,000 to Iowa Beef Producers, Inc. for expansion of a pork facility in Council Bluffs. Thoms discussed their process and pointed out that the Dubuque County Captive Plastics grant was also an emergency situation. The Project Review Committee met and then, by telephone conference, the grant was approved. At that time, ex officio members were not notified. A similar process was followed for the Iowa Beef Producers emergency. Thoms contended that ex officio members were not invited since the process was one of philosophy and development and not necessarily one of a voting nature. He continued that at their last Commission meeting in Hampton, it was decided that ex officio members would be included in all special meetings and information would be forwarded to them.

Royce responded to Parker's question re rights or powers for ex officio members. He referenced Roberts Rules of Order which seemed to confirm that ex officio members would be nonvoting and, therefore, not counted for a quorum. General discussion of Commission makeup and university presidents who serve in an ex officio capacity. In Priebe's opinion, the university presidents would not be permitted to send a designee. He reiterated continuing preference for a quorum of "2/3 or 1 over half." Parker stressed the importance of maintaining credibility of the program. He recalled there were 10 emergency applications pending at the time of the IPB grant award. Parker noted that the rules did not address factors used to determine the grant. Thoms said the staff would review the request--the program was not secret. He emphasized that applications cannot be taken until funds are in the account. Thoms reiterated that potential loss of 230 jobs was a large factor in the IBP grant. He referenced the Iowa Lakes Community College where "100,000 seed money" was provided to maintain the project until alternative funds were available.

Parker concurred that an emergency situation had existed in Dubuque. However, he suspected that the internal corporate investment 20% rate of return was pertinent to the IBP grant. Parker was concerned as to the extent industries would be allowed to "threaten us." He took the position that the rules should define an "economic relocation." He saw a definite deficiency in administrative provisions. Thoms interpreted the rules to provide that company "Y" would not be helped to locate from one city to another. Parker disagreed with that interpretation.

IOWA
DEVELOPMENT
Commission
(Cont.)

Clark pondered whether there should be rules to govern the selection process of one emergency over another. O'Kane was told that IBP purchased and remodeled a slaughter facility. In response to O'Kane, Department officials stated that IBP had indicated they would consider a site elsewhere if this grant were not approved. O'Kane wondered if Iowa would continue to respond to this "blackmail tactic."

Thoms took exception to allegation that Iowa Beef Producers received preferential treatment. He viewed the process as being analogous to a business transaction with any corporation.

Department officials defended Commission action but assured the ARRC that the Commission would consider Committee concerns. Thoms stressed that the Department was attempting to be competitive with the new program. In the past, Iowa has been criticized for acting too slowly. No action taken.

Priebe called for disposition of the June 10 minutes. Doyle asked that his motion be modified to read "and other ARRC members." O'Kane moved approval of the June ARRC minutes as modified. Carried.

Recess

Committee was recessed at 4:40 p.m.

Reconvened

The Administrative Rules Review Committee was reconvened in Room 22, State Capitol, 9:00 a.m., Wednesday, July 2, 1986. Members not present: Tieden and Parker.

HEALTH
DEPARTMENT

Susan Osmann, Bob Minkler, Ken Choquette, Irene Howard, Mike Guely, Joyce Spencer, Don Kerns and Mark Johnson represented the Department. Keith Rankin, Barber and Cosmetology Board, was present. Also present: Henri Minette, Iowa Methodist Medical Center, Jan Garras, Mercy Health Center of Central Iowa and James Krusor, Medical Examiners. The following agenda was considered:

Hospitals, 51.3(4), 51.3(5) ARC 6592	F	6/4/86	1833
Hospitals, health care facilities — general policies, 51.4(3)"1," 57.11(10), 58.10(10), 59.12(10), 63.9(10), 64.12(13) ARC 6602	F	6/4/86	1834
Residential care facilities for the mentally retarded, 63.3(4) ARC 6593	F	6/4/86	1834
Advanced emergency medical technicians and paramedics, 132.1, 132.3(1), and "c" and "d," 132.4(1), 132.4(3)"b," 132.4(5)"b," 132.4(7) and "a" to "c," 132.4(8), 132.4(9)"b," 132.5(1), 132.5(8), 132.6(2)"a"(1), 132.8(2)"a" to "c," 132.8(4)"c," 132.13 ARC 6632	F	6/18/86	1800
Medical examiners, 135.101(2) ARC 6633	F	6/18/86	1802
Certificate of need program, 202.2(3) ARC 6594	F	6/4/86	1834
Public swimming pools, ch 15 ARC 6590	N	6/4/86	1806
Financial assistance to eligible end stage renal disease patients, 111.6(2), <u>filed emergency</u> ARC 6591	FE	6/4/86	1821
Physical therapy, licensure by examination, 137.3(1) ARC 6598	N	6/4/86	1812
Board of optometry examiners, declaratory rulings, 143.11, 143.10(5), 144.1(5) ARC 6621	N	6/18/86	1812
Cosmetology establishments operated in connection with any other business, 150.4(2) ARC 6622	N	6/18/86	1873
Barber examiners, schools, license fees, 152.8(1), 152.8(4), 160.6, 152.214 ARC 6623	N	6/18/86	1873
Barbershops operated in conjunction with a cosmetology establishment, 153.5 ARC 6624	N	6/18/86	1874
Social work examiners, declaratory rulings, 161.3(5) ARC 6625	N	6/18/86	1874

ch 15

No questions re amendments to Chapters 51, 57 to 59, 63 or 64. In explaining Chapter 15, Choquette said the health and safety rules had been in existence since 1954. The Department was in the process of revising the 1963 version when the Attorney General advised that authority in the area of safety was nonexistent. The state has been named in ten suits. The 1963 rules on

HEALTH
DEPARTMENT
(Cont.)

sanitation and safety will be rescinded and new rules will address sanitation only. Clarifying legislation will be sought with respect to safety.

- 15.4(10)
15.5(4) At the request of Clark, Choquette agreed to clarify 15.4(10). In re 15.5(4), Clark called attention to a discrepancy in the chart as to the number of toilets required for a 201--300 patron load in male bathhouse facilities. Choquette pointed out that 15.4(1) was drafted following the drowning of a child at Nollen Plaza in Des Moines.
- 202.2(3) In re 202.2(3), Osmann said any new institutional health service was reviewable under certificate of need for expenditures over \$250,000. A definition of expenditure is included in the rules.
- ch 132, 135 Krusor appeared for review of amendments to chapters 132 and 135. No questions.
- Guey and Spencer discussed rules pertaining to the renal disease program. Budget limitations resulted in a 70 per cent reimbursement rate May 14 to June 30; an 85 per cent reimbursement rate is anticipated for the new fiscal year. No questions regarding amendments to 137.3(1), 143.10(5), 143.11, 144.1(5), 150.4(2), 152.6, and 160.6.
- 153.5 Discussion of 153.5 relative to separation of a barber-shop and cosmetology establishment. Rankin pointed out that the law governing barbers did not address working in the shop with cosmetologists. However, cosmetology law requires a partition to separate the two operations. Boards were contacted and they favored the partition. Royce advised there was no statutory authority for the partition.
- After discussion, ARRC recommended that the two Boards work together and research their statutory authority. The ARRC indicated they would object to 153.5 if adopted as proposed.
- 152.214 There was discussion of fees in 152.214. In response to Doyle, Rankin indicated that the demonstrator license fee had been waived, in most instances, for the last 10 years. Rankin was willing to delete the provision-- 152.214(15).
- 161.3(5) Discussion of 161.3(5). Howard informed Royce that accreditation for foreign schools was progressing slowly. The Council on Social Work Education has implemented a credentials evaluation service. For \$150, applicants can have credentials evaluated to determine if they are equivalent to an MSW from an accredited U.S. school. The investigation process would take 4 to 8 weeks. Howard was aware of the fact

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HEALTH
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(Cont.)

that revision of the rules would be necessary to permit the Board to accept equivalency. According to Howard, transcripts would be judged in relationship to a graduate of the University of Iowa MSW program. Howard was willing to amend 161.3(5), paragraph (i), by inserting a comma following "petitioners" to clarify that a petitioner would always receive rulings. No formal action.

INSURANCE
DEPARTMENT

Sharon Henry presented the following proposals:

Property and casualty insurance rate and form filing procedures, 20.4(4) to 20.4(7)	ARC 6586	✓	6/4/86	1214
Life insurance policies, life insurance companies — variable annuities contracts, variable life insurance model regulation, 30.5, 31.3(2) "c", 33.4(1) "c"	ARC 6587	✓	6/4/86	1215
Accident and health insurance, individual accident and health — minimum standards, 35.4, 35.7, 36.11	ARC 6588	✓	6/4/86	1216

No recommendations were offered.

Recess

Chairman Priebe called for a ten-minute recess.

Reconvened
BANKING

Meeting was reconvened and Chairman Priebe called on Banking Superintendent William R. Bernau to discuss Agricultural Credit Corporation Maximum Loan Rates. Also appearing were Howard Hall, Deputy, and Donald G. Senneff, Assistant Attorney General. ARRC members had observed that the June 30, 1986, rate topped out at 14.85 per cent. Priebe had received complaints from constituents that bank money at 6.72 or 6.75 per cent was being loaned at 12.50 and 13.00 per cent. He referenced an article in The Des Moines Register reporting Iowa to be the highest in the nation.

535.12

Discussion of the statutory authority in 535.12 and the four percentage points spread. Committee members interpreted the language to permit the rate to be established at a lower percentage, and Priebe suggested that 11.85 per cent was more realistic. Senneff explained that the Department's policy had been to call Omaha for the figure and add four per cent. O'Kane questioned Bernau as to his opinion on basing these interest rates on the federal intermediate credit bank of Omaha. Bernau viewed it as a poor policy decision since rates are artificially high. O'Kane thought there should be a more sensible approach. Bernau reasoned that the drafters of the statute were well intentioned and did not foresee the present problems. He suggested that another index choice might be more satisfactory. Priebe was concerned that the higher rate would be interpreted as a vehicle to charge the maximum. There was discussion as to whether or not publication of any rates was needed. Priebe stated that he receives many requests for reinstatement of the usury rate. He did not favor that approach. Senneff clarified that maximum rates were effective for the prior month.

PLANNING &
PROGRAMMING

JoAnn Callison appeared for review of the following:

Youth affairs, 14.3 to 14.5	ARC 6595	✓	6/4/86	1236
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No recommendations were offered.

FAIR BOARD
6.1(173)

The Fair Board was represented by Jerry Coughlan who explained the proposed amendment to rule 6.1(173) which defines the superintendent's duties relative to competitive classes. The Notice was published in 6/18/86 IAB as ARC 6626.

There was brief discussion of 430--6.1(173). Priebe recommended consistency in coordinating competitive exhibits and competitions. Coughlan explained the purpose of the rule to ensure that superintendents work with approval of staff or manager. No other questions.

CORRECTIONS
DEPARTMENT

Carrie Mineart[†] appeared on behalf of the Corrections Department for the following:

Institutions, visiting and tours, 23.2, 23.3, 25.1(3), 26.1(2), 27.2(1) ARC 6644 / 6/18/86 / 870

Also present: William Angrick, Citizens Aide and Ruth Mosher, Deputy.

Mineart distributed copies of the proposed rules which had been further modified. Chapter 23, Women's Institution at Mitchellville; Chapter 25, Correctional Treatment Unit at Clarinda; Chapter 26, North Central Correctional Facility at Rockwell City; and Chapter 27, Iowa Medical and Classification center at Oakdale. The rules do not affect Anamosa or Fort Madison.

O'Kane expressed preference for consistency in visiting hours at the institutions to avoid difficulties for families and friends. Priebe had problems with the fact that no allowance was made for impromptu visits by close friends of family. Mineart assured ARRC that an honest effort is made to inform visitors of the available hours--most visitors are registered. Clark reported that a visitor to Mitchellville had received from a guard a less than favorable impression as to disciplinary practices and treatment of prisoners. Doyle wanted assurance that stepparents were included in definition of "immediate family" in 23.2(9). He recommended removal of "etc." from that subrule.

23.2(9) Mosher commented on 23.2(2) with regard to visits during scheduled work and treatment activities. She had been contacted by several residents and rumors were abundant that all contact hours would have to be in before receiving a visitor. She had visited with the superintendent who assured her that the rule would be very flexible and affect few people. Another concern of Mitchellville inmates was the requirement for permission from the counselor, who would not always be available--23.2(2). Mosher supported the use of "administrator on call." It was her understanding that guidelines would be provided for granting and denying these visits. She stressed importance of flexibility for extenuating circumstances.

CORRECTIONS
DEPARTMENT
(Cont.)

Chairman Priebe recognized Angrick who spoke of an investigation by his office concerning classification and institutional movement of inmates in the correctional system. The investigation had been requested by a state legislator following the robbery of a grocery store and killing of a Newton police officer by two inmates from Riverview Release Center. A series of recommendations were acceptable to the Department. However, the Department and Ombudsman continue to disagree as to the necessity of promulgating the custody classification system--policy and procedure--as administrative rules. The Ombudsman also believes the Department should describe the custody classification score override which allowed these two particular inmates to go from high-medium placement scoring to a minimum security institution. Angrick presented copies of extensive staff discussion on the recommendation. Royce concurred that this was an administrative rule matter. He mentioned the exemption in Code chapter 17A for policy statements which have no impact upon the public. He continued that criteria for moving inmates from one classification to another was of immediate interest to the public and, more particularly, to the governor's office and the ARRC. He referenced court decisions which hold that exemptions from rulemaking are extremely narrow. Royce advised that questions of applicability should be resolved in favor of promulgating rules.

Motion

O'Kane moved that ARRC send a formal communication to the Board of Corrections requesting rulemaking on the subject discussed by Angrick. Motion carried.

Carried

IOWA
FINANCE
AUTHORITY

Larry Tuel represented Iowa Finance Authority for mortgage credit certificates, Chapter 10, ARC 6627, Noticed in IAB 6/18/86. He indicated that the Authority had taken advantage of the new federal program by trading some unused federal bonding capacity cap and converting it to use for mortgage credit certificates. A first-time home buyer is allowed a federal income tax credit to help subsidize the cost of the home. O'Kane was told that the extremely attractive tax credit of 20 per cent of the mortgage amount was limited to single families. O'Kane was informed that there would be no restriction on resale but credit attaches to the individual, not the property. Tuel indicated there were 60 lenders and 2 workshops will be conducted to generate interest. No other comments.

SOIL
CONSERVATION
DIVISION of
Agriculture
Department

Ken Tow and Bill McGill presented the following:

Iowa financial incentives program for soil erosion control, appropriations, 5.41 ARC 6597N 6/4/86 1/17

Tow stated that a \$6 million plus appropriation was created for soil erosion control. Tow pointed out the the Legislature authorized use of up to 30 per cent of the funds for no-till planting and management practices. Specific rules will be promulgated.

SOIL
CONSERVATION
DIVISION
(Cont.)

McGill referred to the 7/2/86 IABulletin for specifics on management practices--no-till, ridge till, strip till, contouring and contour strip cropping. Priebe preferred the two sets of amendments be adopted simultaneously. Tow explained that the various practices would not be eligible until they are defined. Some will not be implemented until next spring. Brief discussion of Soil 2000 Project.

CAMPAIGN
FINANCE
DISCLOSURE
COMMISSION

Kay Williams appeared on behalf of the Commission for the following clarifying amendments:

Reporting requirements, costs of copies, 4.19, 4.21 to 4.24, 5.10 ARC 6603 F. 6/4/86 1327

Williams touched briefly on the cost of mailing forms and duplication of same. No formal action.

WATER, AIR &
WASTE MANAGE-
MENT DEPT

The Water, Air and Waste Management Department was represented by Mark Landa, Ubbo Agena, Wayne Reed, Morris L. Preston, Diana Hansen, and Pete Hamlin for the following agenda:

Wastewater construction and operation permits, 64.2(9)b" ARC 6641 F. 6/18/86
Wastewater construction and operation permits, 64.2(9)c" to "e," 64.3(6), 64.5(4)d," 64.6(5)f," 64.9, 64.10, 64.12 ARC 6640 F. 6/18/86
Fees for disposal of solid waste at sanitary landfills, 100.1, ch 109 ARC 6642 F. 6/18/86
Hazardous waste, identification, listing, and exclusions of, 141.2 ARC 6643 F. 6/18/86
Unuerground storage tanks, 135.2, 135.4 to 135.12 ARC 6639 N 6/18/86

64.2(9)

Hansen gave brief description of amendments to design standards for wastewater construction and operation permits. No questions re 64.2(9)b. Discussion of additional amendments to chapter 64. Priebe challenged grant of variance by the director without the Commissioner's approval--64.2(9)c. Hansen replied that this process was appealable to the Commission. Priebe recalled earlier opposition by the ARRC and wanted assurance that the approval would be from the Commissioners. Discussion of possible impact of reorganization, SF 2175. Hansen assumed the new Environmental Protection Commission would have the right to review the requests.

Motion to
Delay--64.2(9)
c

Clark moved to delay 64.2(9)c 70 days for further study and that the matter be placed on the July 31 agenda of the ARRC meeting. Discussion of the motion. Motion carried.

Landa reviewed rule 100.1 and chapter 109 which reflect modifications to coincide with the categorization of commercially generated solid wastes with residential wastes. Landfills will be required to document tonnage of waste. In response to Clark, Landa said that landfill designs must provide for a "wet weather area." He admitted to Clark that covering was a problem for many landfills. Landa agreed to pursue a matter in Cerro Gordo County where a constituent of Clark's had received citations from WAWM.

WATER, AIR & O'Kane raised question as to statutory authority for
 WASTE MANAGEMENT excluding from regulation sludge generated by the Maytar
 DEPARTMENT Company in Newton. Landa quoted from an appropriation
 (Cont.) bill which addressed the hazardous waste program,
 "...this authority is suspended for the permitting
 aspects but is not suspended for abandoned or uncon-
 trolled sites..." Landa continued that three program
 areas were impacted and the language was interpreted
 to mean that even though DWAWM cannot regulate this
 waste in a way that EPA would follow, it is still
 impacted by hazardous waste rules.

According to Department officials, a major part of
 135.2 et al. pertains to monitoring systems to detect
 presence of leaks in underground storage tanks. Rules
 will be effective on May 1, 1988, for tanks installed
 prior to May 1, 1986. Priebe questioned statutory
 authority for the rulemaking to allow a different
 type of well if the groundwater table were more than
 40 feet below the ground. Priebe noted that the
 40-foot requirement had been removed from the legis-
 lation and he was surprised to see subrule 135.5(1)c.
 O'Kane concurred with Priebe as to the legislation and
 Royce was asked to research the matter. Preston
 reiterated their intent was to specify a limit as to
 depth of well that could be required. Royce agreed
 to report to ARRC at the July 31 meeting.

NO AGENCY

REPRESENTATIVES No agency representatives were requested to appear
 for the following:

AGING, COMMISSION ON THE[20]			
Grants to area agencies, 4.9(1), 4.9(3), 4.9(6), 4.9(7), 9.11(2), 9.14(2)	ARC 6599	F	6/4/86 1323
Fiscal requirements, priority service, 9.4	ARC 6629	F	6/18/86 1900
ATTORNEY GENERAL[120]			
General definitions — line of credit, ch 16	ARC 6589	F	6/4/86 1326
REAL ESTATE COMMISSION[700]			
Preliminary education and continuing education, affirmative marketing, 3.1, filed without notice	ARC 6636	F	6/18/86 1904
REVENUE DEPARTMENT[730]			
Special fuel, key/card activated pumps, 65.21	ARC 6637	F	6/18/86 1904
SECRETARY OF STATE[750]			
Election forms and instructions, constitutional amendments, 11.2(4)	ARC 6596	N	6/4/86 1377

COMMITTEE
BUSINESS

ARRC meeting
 Dates

Committee agreed that rules with an effective date
 prior to August 19 should be reviewed at the July 31
 meeting. The August meeting was scheduled for
 August 19 and 20. September 9 and 10 were tentative
 dates agreed upon.

Motion
 Carried

Royce asked permission to purchase Prof. Bonfield's
 new book on Administrative Law. Doyle so moved
 that purchase of the book be authorized. Motion carried.

CFR Cites

Clark brought up for discussion the matter of increas-
 ing numbers of citations to federal regulations, e.g.
 rules of Human Services and Transportation Departments.
 Clark moved that the ARRC request agencies to provide
 copies of federal regulations being cited as authority
 for rulemaking. Discussion of motion. Doyle called

7-2-86

attention to a Supreme Court decision summarized in IAB 7/2/86, re food stamps and disability exemptions. Suggestions were made to notify some agencies by letter or publish documentation in the IAB. Priebe favored inclusion of the federal regulations with the rule. O'Kane took the position that the Administrative Rules Coordinator should be involved in the issue. He was not sure that publication in the IAB was a good source for distribution of information. Clark's motion was carried viva voce. Clark moved that notice to all agencies re federal citations be published in the IAB. Motion carried.

Motion
Carried


Committee agreed to review their rules of procedure in general at the August meeting.

Adjourned

Chairman Priebe adjourned the meeting at 1:30 p.m.
Next meeting was scheduled for July 31, 1986, at
10:00 a.m.

Next Meeting

Respectfully submitted,


Phyllis Barry, Secretary
Assisted by Vivian Haag,
Bonnie King

APPROVED:



CHAIRMAN