

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, March 11, 1980, 7:05 a.m.
Thursday, March 13, 1980, 7:00 a.m.

Place of Meeting: Senate Committee Room 24, Statehouse, Des Moines, Iowa.

Members Present: Representative Laverne W. Schroeder, Chairman;
Senator Berl E. Priebe, Vice Chairman; Senators
Edgar H. Holden and Dale L. Tieden; Representatives
Betty J. Clark and John Patchett.
Also present: Joseph Royce, Committee Staff

REVENUE

The following rules of Revenue Department were before
the Committee:

REVENUE DEPARTMENT[730]

Forms, 8.1(7), 57122 ARC 0854 ..F.....	2/6/80
Forms, 8.1(7) ARC 0886 ..F.....	2/20/80
Tax liens, time of filing, 9.5 ARC 0887 ..F.....	2/20/80
Sales and use tax, amendments to chs 12, 13, 16 to 18, 20, 26, 29, 30 and 34 ARC 0856 ..F.....	2/6/80
Motor fuel tax, 64.7(5)"a", 65.8 ARC 0885 ..F.....	2/20/80

Carl Castelda, Deputy Director, advised that changes
requested by the Committee had been made.

Tieden called attention to two contradictory letters
from Revenue advising a constituent as to responsi-
bility for sales tax on appliances. Castelda was
not aware of the situation but thought the rule
clearly provided that the retailer collects the
sales tax. Castelda was willing to work with Tieden.

18.39

In re 18.39, Castelda explained the department had
no knowledge of existing agreements and was not aware
of a problem. Revenue has contacted the Iowa League
of Municipalities and the Iowa Association of Counties
requesting examples for review.

The Revenue Newsletter will contain an article ad-
dressing the sales tax permit, asking cities and
counties to cancel their permits in order to remove
them from the mailing list. Since some municipali-
ties have been collecting tax unnecessarily, Revenue
is working with them to send refunds. The Department
was unaware of existing third party agreements in
municipalities but should that situation occur, the rule
would be expanded. Under the law, the definition of
"person" can be all inclusive.

REVENUE
Cont'd

Tieden did not support taxing of wrapping paper. Clark reminded the Committee that the purchased package is not taxed; but only large scale lots of wrapping paper. Castelda concurred.

17.9(5)

Committee discussion centered on 17.9(5), tax exemption of fuel consumed in implements of husbandry. Schroeder inquired if electricity used for grain drying and, for example, pig brooders, would be included. Castelda noted inquiries about the matter were the impetus behind the rule. Grain drying electricity is exempted by statute and the Department takes the position that a building is not an implement. In answer to Schroeder's concern about taxation of a portable or moveable building, Castelda admitted this was a troublesome area but it would be considered a "building". He recalled two bills introduced in 1979 which would exempt from tax the electricity used in farm buildings.

ch 73

Schroeder questioned Castelda as to whether complaints had been received re proposed amendments to chapter 73 dealing with property tax credits and rent reimbursements. The matter was not on today's agenda and Castelda was not prepared to speak to that.

CONSERVATION
COMMISSION

Robert Barrett, Superintendent, Wild Life Section, was present to review chapter 22, wildlife habitat on private lands, filed emergency after notice, IAB 2/6/80. There was discussion of the availability of funds derived from sale of wildlife habitat stamps and the formula for distribution of the funds. Question was raised as to possible inequity of the program. In answer to Clark, Barrett said the comments presented at the public hearing had come from one person--"a perennial critic of the Conservation Commission." There was discussion of the fact that the Commission should hold open meetings. Barrett concurred and said the meetings were open to the public.

Priebe inquired whether Conservation cross checks so that farmers are not paid by the FCS (Federal Conservation Service) and the state CC simultaneously. Barrett answered in the affirmative. No action taken by the Committee.

HEALTH DEPARTMENT

Cooper Parker, Health Planning, Janet Dunn, Licensing, and Peter Fox, Hearing Officer, were present for review of the following rules:

HEALTH DEPARTMENT[470]

Physical therapy ethical conduct and practice, 138.112(7)	ARC 0848	2/6/80
Certificate of need program, ch 202	ARC 0889	2/20/80
Acute care bed need, ch 203	ARC 0890	2/20/80

HEALTH DEPARTMENT

Cont'd

ch 202

Clark asked for explanation of emergency waiver in 202.6.(10). Parker stated it would cover emergency situations and acts of God....he cited an example of a boiler explosion. With the rule, they would not have to go through the review process. General discussion of the rule.

7:40 a.m.

Patchett arrived.

202.7(1)e

Clark expressed reservations about 202.7(1)e as to possible interference from persons outside the council. Parker said it would be illegal for any person to discuss that application, except in an open meeting and health systems agencies make every effort to apprise all who are affected by a project.

In answer to Tieden question, fees are deposited in the general fund. Parker responded to further question by Tieden that population is a very important criteria for issuing Certificates of Need.

138.112

According to Dunn, the clarification change requested by the Committee had been made in 138.112(7)c. Holden said he still had problems with the subrule. Dunn stressed the Department does not want the facility to charge for physical therapy if the physical therapist is not present--there is potential for abuse in the area. Holden reiterated concern that professions delegate tasks for which they are licensed to assistants. He questioned further the importance of the licensing initially. Dunn agreed that it was a problem area.

Schroeder questioned 138.112(7)b and thought caution to be of importance. Dunn responded the profession is changing so much. She pointed out situations where persons needing artificial limbs might be sent to Des Moines or Omaha to receive training not available in their areas. Priebe was informed that no complaints had been received from ICF's. In answer to Tieden, Dunn said there were 900 licensed physical therapists in Iowa and 500 to 600 maintain current licenses.

Schroeder expressed interest in border areas and problems with people from Omaha coming into Iowa. Dunn advised the Committee that out of state people must be licensed.

138.2(1)

Holden questioned the difference between the fifteen and twenty-hour requirements for continuing education. Dunn replied there are many administrative courses for department heads, etc. where the instruction would be on the administrative level and not care-related. The hope was to have those people have

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HEALTH DEPARTMENT
Cont'd.

some direct-patient training. Holden expressed support for that concept.

138.112

Ch 203

Temporary
Objection

In re 203.7, Clark contended the filed rules were all new and had not been Noticed. Clark moved a temporary objection to the rule in order to allow time for clarification. The motion was adopted. [objection lifted, see page 1162]

ENERGY POLICY
COUNCIL

The Energy Policy Council was represented by Douglas True, Deputy Director, and Douglas Gross, Director of Fuel Division, for review of the following:

ENERGY POLICY COUNCIL[380]

Council meetings, filed without notice, 2.5(1) ARC 0858 ..F.V.M. 2/6/80
Petroleum set-aside, ch 3 ARC 0849 2/6/80

2.5(1) was acceptable as published.

3.15(93)

In 3.15(93), Schroeder was concerned about the terminology "...director has reason to believe".... with respect to misuse of state petroleum set-aside and stated his preference for "cause". General discussion by the Committee. Royce did not envision problems with the language in question. Patchett could see the potential seriousness of the matter. Clark noted the rule stated "may be rescinded". According to Gross, the rule was designed to allow the director to give notice to present opportunity for a case. Then, if the director determines a misuse or misrepresentation has occurred, the recipient should be ineligible for a reasonable period of time.

Patchett opined the question is what should it take to actually initiate the contested case proceedings--the mere reasonable belief or probable cause. Gross declared the approach in these rules is reasonable belief. In answer to Patchett as to reason for choosing reasonable belief, Gross said the attorney general's office drafted the language. Patchett suggested implementing the rule for awhile to see if there were problems. Schroeder was of the opinion the wording provided a "broad authority".

Tieden wondered how many and what kind of requests were received for confidentiality treatment. Gross explained they have an average of five each month for information on the number of releases and the amounts and method of distribution. An attorney general's opinion states that EPC may release information as to names of those who receive set-aside fuel, the amounts and the purpose. However, the A.G. office has not yet ruled as to whether or not information given on ap-

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ENERGY POLICY
COUNCIL
Cont'd
3.15(93)

plications can be made public. If the applicant considers certain information relating to monthly sales should not be released to the public, this fact should be indicated on the face of the application and the confidential information submitted to EPC on a separate copy. This type of information would probably deal with marketing problems where a competitor might have an advantage.

Holden was upset about the fact that confidentiality had been raised by the Department. He recalled legislators had asked questions prior to confidentiality rules and now, suddenly, EPC seems to have "backed into a confidentiality statute." He continued, "The industry, apparently, was not worried about confidentiality, but when some legislators began to investigate, EPC raised the confidentiality issue on its own initiative." Holden contended EPC was protecting the Department more than the dealer.

Gross said they had released all requested information. General discussion of process used in releasing confidential information. He commented to release the name of the initial importer of the product would be contrary to statute.

True declared the federal statute sets out rather severe penalties. Gross stated they are required to keep confidential the information in the disaggregate form and the individual form. The A.G. has advised EPC that material which related to prime suppliers should remain confidential. Releasing all information requested would have been acting contrary to the statute. Schroeder wondered how EPC addressed the issue of the public's right to know about "public allocation." Holden expressed an opinion that EPC had been too "tight with information".

True said they acted prudently because the federal statute had rather severe penalties which would be imposed on the Department. Gross declared "You can get almost any information you might request, except the names of the prime suppliers."

In answer to Schroeder, Gross said all companies such as Texaco, Standard, Houston Oil, etc. contribute to the "grand kitty", but EPC cannot reveal individual company contribution, according to the A.G. opinion.

Schroeder contended EPC was dealing with known quantities since each company contributes on a per-

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ENERGY POLICY
COUNCIL
Cont'd

3.36(93)

centage basis. Gross concurred. Department representatives responded to question by Schroeder concerning the basis for the A.G. opinion. They explained that it, in essence, stated that allocations to specific recipients would be a matter of public record with exception that §93.7(3) of the Code does prevent identifying details which would disclose information submitted by suppliers.

Discussion of method of determining gas tax. Holden and Schroeder pointed out that the number of gallons coming into Iowa for each company is a matter of record in the Revenue Department. They wondered what difference it would make whether information was given out by Revenue or EPC. Gross stated EPC records gross input into the state whereas Revenue deals with actual sales made by a company. Holden contended that gas tax is paid on bulk, not on sales. He added that Iowa collects tax when gas is first pulled into Iowa from the pipe--EPC gets 3 percent of that. Gross said that EPC gets three percent of the gross input, which could be more than Revenue would report and often times is. In response to Holden, Gross said exports are not subtracted from gross input. However, Revenue does subtract exports.

Holden wanted to know the difference. Gross the gross input doesn't subtract exports. Revenue does extract exports. Holden contended they did not get a percentage of what they export. Gross said they did get a percentage of the gross input--the total amount into the state, whether or not it is going to remain in the state in a given month. Committee members were concerned that Iowa was being "shortchanged".

Gross offered to provide copies of the A.G. opinion to the Committee. Schroeder asked Royce to request an explanation from the attorney general as to the basis for his opinion concerning the confidential information contained in state petroleum set-aside authorization orders.

There was lengthy discussion of the "set-aside" process generally. It was noted that the rules do not prohibit "cross-branding". It was Holden's opinion that there had been very little "cross-hauling" over the last few months.

DELAY
3.36
Vote

Schroeder favored a 70-day delay to allow time for further study of the rules and to await response from the attorney general. So moved by Holden. Motion carried.

ENERGY POLICY
COUNCIL
Cont'd
3.14
3.17

Clark pointed out two places where feminine gender should have been added: p. 889, 3.14(2), second paragraph, and p. 890, 3.17, 4th line. It was Patchett's understanding Standard Oil contracts do not allow transfer to a spouse after the lessee husband is deceased.

True asked for clarification of Committee action. Royce responded the effective date of rule 3.36 would be delayed until March 12, 1980. This will allow the Committee further time for study and consideration of any additional comments of the attorney general concerning the confidentiality portion of the rules. True said EPC will continue to abide by the opinion they have and he offered to provide a copy for Royce.

Patchett expressed interest in EPC doing more thinking about the proposed modified rule on distribution. True indicated that the distribution policy would be discussed at their next council meeting in April, and he would have more details then. No further committee action.

TRANSPORTATION
DEPARTMENT

The following were present for review of Transportation rules: Art Oppel, Director, Motor Vehicle Division, Representative Richard Welden, representing the state review board, and Candace Bakke, Director, Office of Operating Authority.

TRANSPORTATION, DEPARTMENT OF [820]

Driver license, speed violation, [07,C] 13.13(7)"c" ARC 0841.....N..... 2/6/80
Functional classification review board, [08,C] 3.15(6)"c" ARC 0833.....N.....F.. 2/6/80
Primary road control ARC 0817.....F.. 1/9/80

TRANSPORTATION, DEPARTMENT OF [820]

Special permits, excess size and loads, [07,F] ch 2 amendments ARC 0871 .F..... 2/20/80

Schroeder asked for unanimous consent to take up functional classification review board.

Patchett requested the Social Services portion of the Thursday, March 13 agenda be expanded to include special review concerning prohibition against ADC recipients working as census takers.

[08,C] 3.15(6) f

Welden explained the state functional classification review board amended the rule to eliminate review of evidence which has not been presented to the county board. Acceptance by county boards is not necessary. However, the rule has to be presented with the hope of settling matters at the county level.

In response to Royce question as to what would happen when new evidence is uncovered, Welden commented the request would be returned to the county board for consideration.

TRANSPORTATION
DEPARTMENT
Cont'd

Clark challenged use of 307.10 as authority for rule [07,C]13.13(7)c. She took the position that it should be 321.210.

13.13(7)c

Schroeder questioned the validity for tightening the rule with respect to suspension of licenses for speed violations. Oppel cited two reasons--one being fuel economy and the other, safety. Under fuel economy, if 70% of the people exceeded 55 mph in 1979, the state lost 5%. The average interstate speed was discussed with Oppel noting it was between 57-59 mph.

Holden doubted that the Department could rely on chapter 321 as authority for the rule and Oppel concurred.

Schroeder produced a chart containing suspension periods under the old speed limit and the projected suspension under the new 13.13(7)c and questioned justification of some of the changes.

In answer to Clark, Oppel said the rule provided flexibility in that an informal hearing would be held in the local area before a DOT hearing officer for a serious violation. If the person is dissatisfied with the hearing decision, another hearing could be requested from a different hearing officer or an appeal can be made to the Director of the Motor Vehicle Division.

Clark noted that, according to the rule, maximum suspension would be no more than a year which, in her opinion, was inadequate. Schroeder thought with SF 278, the rule was unnecessary.

Oppel responded to Patchett as to how the determination would be made to suspend a license under the "may" provision; e. g. DOT would take into consideration where the speeding occurred, whether near a school or on the open highway and weather conditions at the time of violation. He added it would be almost impossible to have different speed limits for different types of automobiles. Oppel concluded a basic law of physics would apply. Oppel reiterated that energy and safety were the impetus behind the rule.

Holden thought DOT was clearly beyond their cited authority of 307.10 and he moved an objection to the rules. [See page 1170 for text of objection]

Discussion followed as to disposition of the rules if they are adopted and filed. Schroeder posed the question with respect to the possibility that initiating suspen-

TRANSPORTATION
Cont'd
13.13(7)c

sions for 16 mph over the limit would ultimately clog the court system. Oppel indicated DOT did not anticipate a problem.

Priebe expressed his interest in towns having uniform speed zones. Patchett concurred. Patchett suggested an economic impact statement was needed on this issue directed at the increased cost of hearing officers, court time, etc.

Objection
VOTE

Schroeder called the question on the motion by Holden to place an objection on [07,C]13.13(7)c as exceeding the authority of 307.10. Motion carried viva voce.

Patchett moved that the Department prepare an economic impact statement on the proposed rule. Motion adopted by voice vote.

[06,C]ch 1

Clark noted that [06,C]ch 1, re primary road access, had been revised as requested by the Committee. Royce inquired if the Committee desired to remove the 70-day delay imposed at the February 12 meeting. Action was delayed until Thursday, March 12, 1980.

HEALTH
DEPARTMENT
203.7
Temp. Objection

Barry reported that filed 203.7 of Health Department rules was published as 203.6 in the Notice, 8/8/79 IAB. Schroeder asked and received unanimous consent to remove the temporary objection.

Motion to
Reconsider
13.13(7)c

Patchett asked unanimous consent to reconsider the Holden motion to object to 13.13(7)c. He thought it advisable to expand the objection on the basis that the rule was arbitrary and unreasonable in addition to being beyond statutory authority. No opposition voiced. Royce agreed to prepare a draft for Committee consideration on Thursday. The Holden motion was deferred until Thursday.

Deferred

[07,F]ch 2

In answer to Schroeder, Bakke said she did not expect any problems from the rules. They were acceptable as filed provided Tieden was satisfied after visiting with Department officials. If not, Bakke was amenable to returning on Thursday.

COMMERCE

Filed rules of Commerce, being chapters 12 and 13 dealing with bonded warehouses were acceptable as filed.

Minutes

Priebe moved to approve the minutes of the previous meeting. Motion adopted by voice vote.

Recess

The Committee recessed at 9:20 a.m. to be reconvened at 7:00 a.m. Thursday, March 13, 1980.

Committee
Reconvened

Senator Berl Priebe, Vice Chairman, reconvened the recessed meeting at 7:10 a.m., Thursday, March 13, 1980. Other members present were: Senators Edgar H. Holden and Dale E. Tieden; Representatives Betty J. Clark and John E. Patchett. Representative Laverne Schroeder, Chairman, indicated he would be present intermittently due to other legislative commitments. Also present: Joseph Royce, staff and Brice Oakley, Administrative Rules Co-ordinator.

CREDIT UNION
DEPARTMENT

Present for discussion of the following Credit Union Department rules were: Betty Minor, Director, Jane Brody, Deputy; John Sullivan, Iowa Credit Union League, and Marcia Hellum, attorney.

6.1(4)a

Holden referred to 533.4(19) and asked why the Department excluded from 6.1(4)a the words, "in the best interest of". Minor was amenable to adding the words.

6.3(2)d

Schroeder questioned whether there would be separate windows if 2 or more credit unions shared a facility and he thought bylaws should be consistent. Minor replied that most CU's do operate under a standard set--they may change their bylaws with Department approval. Minor commented that the position of the Department was that shared facility concept should be allowed. Many CU's would be unable to establish individual offices--particularly those who serve a state-wide membership. She continued, "It is not that we feel we have written law, we feel we have just expanded on the law that is already there by allowing the CU's to offer a service to their members."

Holden and Tieden took the position the Department lacked statutory authority for dual facilities even though it would be practical.

Oakley suggested that if it were viewed from an operational standpoint, it was an integration of physical facilities--not an integration of policy. It would seem to encourage both efficiency and economy and offers an option not denied by statute in his opinion.

Tieden and Holden noted that other financial institutions were not allowed to use this practice. Holden commented he would move to object to the rules if they were not modified before filing. He contended the area of branch offices was one which should be addressed by the legislature.

HEALTH
DEPARTMENT

John Eure, Director, Radiation Protection, was introduced by Peter Fox, Hearing Officer, to review the following rules:

HEALTH DEPARTMENT[470]

Radiation emitting equipment, chs 38 to 42 ARC 0839.....*N*..... 2/6/80
Physical therapy continuing education, 138.2(1). (4) ARC 0847 *N*..... 2/6/80
Radiation therapy, certificate of need review, amendments to ch 203 ARC 0857 *N*. 2/6/80

chs 38 to 42

Eure advised that the rules were implementation of 136C, The Code, and were extracted from a document prepared by several federal agencies. They are based upon the experience of a number of states and include provisions for the registration of radiation emitting equipment and radioactive material which is not regulated by any other agency. Also included were provisions to ensure the safety of equipment and proper training of operators in the use of the equipment.

38.2 (7)

Clark thought 38.2(7) defining "calendar quarter" to be unnecessary and Eure agreed to omit it in the filed rule.

Clark pointed out several areas where gender revision was needed. She also called attention to grammatical errors as well as printer's errors.

38.2 (4)

In answer to Clark re the table in 38.2(4), Eure responded the neutron cross-section, which is its sensitivity to the neutron radiation, is not linear, and does fluctuate, As you get down to lower energies, there may be increased sensitivity.

38.7

Responding to Clark's question as to the circumstances when 38.7 would be enforced, Eure cited a facility that was extremely contaminated because of an accident. Eure agreed to include the words "be knowledgeable" in 39.14(4)a.

Patchett was curious as to reasoning in support of the licensing provisions and questioned the continuing education provisions in the rules.

ch 42

Eure said the language in question in chapter 42 of the rules was based on §136C.31, The Code. A major item would be establishment of training standards to ensure competent operators.

Patchett pointed out that when the legislature specifically wants to establish minimum training standards to license a profession, it specifically sets out the standard.

HEALTH DEPARTMENT
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Oakley observed that one sentence in the legislation had generated 180 pages of rules. He discussed possible problems with the Professional and Occupational Regulation Commission also. However, he considered the CU Department to be within the purview of the law. He also pointed out expertise from private and public sectors had been used in developing the rules.

Holden expressed concern that, on other occasions, other agencies have attempted to register, etc. and this was not an isolated situation. He preferred the agency to say, "We believe this ought to encompass licensing and continuing education."

MOTION

Patchett mentioned methods by which legislation might be enacted this year, but there was general agreement it would be unlikely. After discussion, Patchett moved that Royce prepare a request to the leadership of both the House and Senate to initiate legislation to license or certify operators of radiation emitting equipment under chapter 136C and to include them under the continuing education provisions of chapter 258A.

Royce agreed this could present a problem with the Occupational and Licensing Board and was not sure whether, by law, all licensing Acts had to be presented to them first. Oakley commented the point could be argued that the legislature had already made that policy decision-- it is just that they didn't do it articulately. He reminded the Committee that a summary of the rules was available. In the matter of policy questions, Oakley said it is essential there be a 28E agreement among department of health, bureau of labor and environmental quality.

Vote

The Patchett motion was adopted by voice vote.

SOCIAL SERVICES

The following people were present for review of the following rules: Judith Welp, Policy, Research and Analysis, Roger Herr, Bureau of Financial Assistance, Miriam Turnbull, Administration; Jerry Kopke, Polk County Juvenile Home; Dwight Saunders, A.A.U.P., Iowa Conference; and Marie Wilson, Drake University.

SOCIAL SERVICES DEPARTMENT[770]

ADC, 41.1(5)a, 41.2(7), 41.2(7)a(1, 4), "b", "c", 41.2(9), 41.3(1, 3, 4), 41.4, 41.4(7), 41.6(2), 41.7(2)e, 41.7(2)e" (3, 7), "f", 41.7(8), 41.8(1, 2), 41.10(3)d", 41.10(4)b" ARC 0812	N	1/23/80
ADC, trusts, 4.16(8) ARC 0831	N	1/23/80
Medical assistance, transportation, 78.13, 78.13(5-8) ARC 0830	N	1/23/80
Intermediate care facilities, 81.6(11)f", 81.6(12) ARC 0829	N	1/23/80
Intermediate care facilities for mentally retarded, 82.5(11)c(4-6), "g", 82.5(12), 82.14(4)d", "f", 81.14(5), 82.17 ARC 0828	N	1/23/80
Work incentive program, appeals, 91.5(2) ARC 0818	N	1/9/80
Juvenile home, visits, 101.2(4, 8, 9) ARC 0826	N	1/23/80
Mitchellville training school, visits, 102.2(1, 4, 8, 9) ARC 0827	N	1/23/80
Eldora training school, visits, 103.2(4, 8, 9) ARC 0825	N	1/23/80
Chore service, 146.1(2-7), 149.2(2), 149.3, 149.4(6), 149.6 ARC 0819	N	1/9/80

SOCIAL SERVICES
Cont'd

Amendments to 65.3 and 78.1(11)a were acceptable as filed.

7.7

Amendments to 7.7 deal with a change in the adequate and timely notice revision. There would be no entitlement from one Title XX plan year to the next for services

Clark thought there should be some way for notifying those affected that these services cannot be guaranteed beyond one year. She was concerned that many recipients would be "permanently upset." Clark asked if there were any way to work a half-way measure. Welp replied the matter would be reviewed when comments are received on the rules of service of eligibility in general.

ch 55

Amendments to chapter 55 contain several changes in the individual education training plan program--some are geared toward cost containment, more successful completion of training plans and the protection of children.

55.2

Clark questioned reason behind last sentence in 55.2, "Failure to do so may result in late approval of the plan with subsequent delay in the start of training expenses." Welp said they are trying to allow time to develop and assess the plan and make all arrangements within a minimum of 3 weeks. Welp continued, the Department limits all training programs to a 3-year maximum.

Tieden asked how the person would obtain the credit to enter college at the sophomore level. This creates a problem for the private colleges. General discussion of the problem, with agreement that the freshman year of college costs just as much as the sophomore. There was general consensus that it might be preferable to provide the first three years instead of the last three.

Oakley was of the opinion that the dollars should not be available for people who haven't shown enough initiative to attend one year.

Clark responded that Oakley's theory would not apply to people who are burdened with mental and emotional problems. She added there are other considerations--some are not even sure they can carry college workload. Welp said there would be the problem of no assurance the individual would finish the 4th year if the first 3 were provided for under 55.2(16). She continued that to be in this program, the person is supposed to be working toward a particular vocational or professional job which could not be accomplished in 3 years.

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SOCIAL SERVICES
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Saunders spoke in support of providing the first three years of training.

Holden said the question for the ARRC is whether or not the Department is within their authority in determining which 3 years and if, in fact, 3 years are appropriate. Royce responded that the Department does have the authority to make that decision. Holden commented that the Committee, then, had the grounds to suggest the Department think about that problem.

55.2(17) Clark thought 55.2(17) was somewhat confusing. Welp stressed the Department had only approved out-of-state training when it was unavailable in-state. The rule was being expanded so those living in border cities could attend college without relocating in another state.

55.4(1)a In answer to Clark re 55.4(1)a, Welp replied a full-time training plan was generally defined as 15 credit hours per quarter, and it could include work as well as classroom hours.

55.5(1) There was discussion of requirements to obtain education and training money.

55.9(4)a Clark questioned 55.9(4)a as to the requirement for certified mail in that the cost could be prohibitive. Priebe resumed the chair.

55.9(5) Re 55.9(5), Clark wanted every possible impetus for people to get off state programs and become self-supporting because that is the way to respect.

Responding to Patchett, Welp cited 249C.12 as authority for 55.5(1)(2). Patchett could not see the need for more than the first sentence. Welp emphasized they wanted to assure children would receive proper care while parents were away in training. Patchett did not interpret 249C.12 as permitting this. Oakley noted he had asked for some more rationale and was willing to discuss the rule further since it was under notice. Clark concurred with the Department.

130.3(1)c Welp advised that 130.3(1)c relates to possible lowering of income eligibility amounts for services. The amount would be contingent upon the funding received for the Title XX program which may be cut drastically. Clark opined that if and when that kind of thing would happen, she would assume there would be adequate notice to recipients. Welp said, in this type of case, it would be individual notices.

SOCIAL
SERVICES

cont'd

106.3(1)&(7)

110.5(5)d

Discussion of funding mechanism. According to Welp, the Title XX program operates from July 1 to June 30.

Brief review of 106.3(1), (7) and 110.5(5)d.

ch 160

Welp explained chapter 160 addressed the domestic abuse program.

Re 160.2(1), Clark preferred more flexibility. Welp thought the language was excerpted from the law, but agreed to check it again. Clark pointed out redundant language in 160.4(1)b.

160.2

Priebe questioned use of "will" as opposed to "shall" or "may" in 160.2. Welp responded it is not an "on-going type program" and could be omitted from the appropriation bill any year.

Tieden challenged Welp's statement re 160.2(1) that it was from the law. He pointed out that the percentages were not in the law. [68GA, ch 8, §21] Welp agreed and said the Department had placed the percentages in the rule. They chose three years as being logical to reduce it by one-third. The Act used "declining amount". Tieden reminded Welp that 621 stated legislative intent. Welp indicated percentages would be further reviewed.

Wilson explained that Drake currently was operating a "start-up" program. She recommended that the rule reflect consistency with §21 of the legislation and include "where possible". Welp said they would take the suggestions under consideration.

161.1(1)

Clark pointed out the law does not include "under employed" in defining a displaced homemaker--161.1(1). She added that "is no[t] longer eligible for such assistance" would probably be removed from the legislation. General discussion as to whether or not the program would be funded.

Wilson emphasized that the Department, at the Federal level, has ordered agencies to work together for clients and suggested the same procedure could apply at the state level.

ch 105
juvenile
detention

Welp noted that ch 105 contained standards for approving a juvenile detention home or juvenile shelter care home and they were acceptable to most.

105.5(1)a

Holden reported a Scott county supervisor had expressed concern that the requirement: "Co-ed detention homes

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 Cont'd
 105.5(1)a

shall and shelter care homes should have both male and female staff on duty at all times." would be very costly for a home with only a few clients. The supervisor cited a procedure of confinement used in Colorado where it had worked very well with much less staffing than this rule would require.

Turnbull had discussed the Colorado confinement with people responsible for the detention facility, which has a capacity of 13, with an average occupancy of 4 or 5. She doubted detention facilities being developed in Iowa would have that kind of capacity. Turnbull commented the concern had come to her attention after the rule had been filed.

At Holden's request, Turnbull agreed to contact Mrs. Tinsman at Davenport. Priebe declared the rule would shift another burden onto the taxpayer.

Clark questioned the Department's practice of inserting language in their manual which was converse to the rule. She recommended Committee objection and discussed the possibility of using volunteers to avoid keeping an individual on the payroll full time.

MOTION TO OBJECT
 105.5(1)a

Holden moved the following objection to subrule 105.5(1)a

The committee objects to 770 IAC 105.5(1)a, relating to staffing requirements for juvenile detention and shelter homes, on the grounds they are unreasonable. This paragraph appears as part of ARC 0866 in II IAB 17 (2-20-80), and in essence requires homes to have a minimum staff of two on duty at all times and that co-ed detention homes have both male and female staff on duty at all times. It is the feeling of the committee this provision will place an undue burden on the smaller co-ed homes. Under this provision no matter what the male/female ration is staff must be provided of each sex, even if only residents of one sex are currently present. For example, if a co-ed home had at that time only four residents, one of whom was a girl, both male and female staff would have to be present, even though single sex homes would need to have only one staffer on duty. The impact of this rule will be to impose a financial burden on smaller co-ed homes which will encourage the development of single-sex homes to avoid that burden or larger homes that have greater financial resources available. The committee believes it to be important to encourage the development of smaller, co-ed detention facilities which can present at least a bit of a home like atmosphere. In cases where security or discipline problems arise additional staffers of the appropriate sex can be kept on call and made quickly available.

Motion adopted viva voce.

105.6(2)

Patchett challenged use of "court" in 105.6(2) and Turnbull was amenable to removing the words "or court".

105.6(3)

In answer to Patchett re 105.6(3), Kopke explained the reasons for self-referral are considered and flexibility is a part of the process.

105.10(3)h

With respect to 105.10(3)h, Patchett was informed the child's attorney would be contacted right away. However,

SOCIAL SERVICES
Cont'd

105.10(3)h

there was no specific guideline. Kopke said a child has reasonable rights to telephone calls.

Schroeder returned.

105.16 (2)

Re visitation privileges in 105.16(2), Clark preferred the notice language.

TRANSPORTATION

13.13(7)c

Priebe deferred social services discussion temporarily to dispose of DOT subrule 13.13(7)c.

Objection

Discussion of grounds for objection. Patchett moved objection as follows:

The committee objects to the provisions of ARC 0841 on the grounds they exceed the authority cited by the department as the basis for that action and on the grounds those provisions are unreasonable. ARC 0841 appears as a proposed amendment to [07, C]13.13(7)c in II IAB 16 (2-6-80). In essence this proposal lowers the speeding violations at which Iowa motorists may have their licenses suspended.

As authority for its action the department cites §307.10, The Code. The only applicable subsection appears to be §307.10(4) which empowers the department to "identify methods of improving transportation safety in the state and develop programs appropriate to meet these needs". This provision is general in nature and does not provide adequate authority for a regulation which is quasi-criminal in nature. Instead this provision is more suited to non-penal types of programs to increase road safety, such as drivers education or more legible types of road signs.

This argument is supported by the fact that a statute exists precisely for the purpose of providing the department with a specific authority to suspend a drivers license "for a serious violation of the motor vehicle laws". §321.210(7), the Code. Only under this subsection may the department promulgate rules to suspend licenses.

It is also the opinion of the committee these provisions are unreasonable because the current rule has adequately protected the public against speeders who pose a real and direct threat to the public safety; and that by tightening the provisions the only tangible result will be to greatly increase license suspensions with little additional protection for the public safety. The current provisions have been in effect since at least July of 1975. While it is true the mere passage of time and changing circumstances may render a rule obsolete broadening the definition of a "serious violation" should be an action taken only with great caution and only after careful study to ensure the solution is not more drastic than the problem.

The committee questions whether the proposed amendment to 820 IAC [07,C]13.13(7)c is the result of careful study and whether the scope of the problem justifies the solution. Suspension of the privilege of driving is a very serious penalty in a state where distances are vast and the availability of public transit systems limited. By broadening the application of that penalty hardships will certainly result. This rather drastic remedy can be justified only upon a showing the problem itself is both real and no less oppressive remedy is available.

Vote

Economic Impact

[Draft prepared by Royce] carried viva voce. There was unanimous consent of Committee members to request an economic impact statement on 13.13(7)c.

Schroeder excused.

SOCIAL SERVICES

109(1)(2)(5)(7)

Social services resumed.

Subrules 109(1), (2), (5) and(7) were acceptable as filed.

SPECIAL REVIEW
ADC - Census
takers

Patchett commented that Iowa was one of only 5 states which effectively prohibits ADC recipients from working

SPECIAL REVIEW
Cont'd

five weeks for the census without it being counted against their funds.

Herr advised the Committee they had received information that the state had the option to disregard the ADC income. The DSS chose not to exercise that option for many reasons. By regulation, ADC recipients who find employment are automatically given a "30 and 1/3 disregard". That was built into the regulation as an incentive to find employment. The Department also thought it unfair to other clients who find employment with other governmental agencies.

Herr continued the Department continually tries to make the rules of the ADC program consistent with the regulations set down by USDA in the food stamp program. He said there is a misconception that the receipt of salary for 5 weeks would result in grand cancellation of ADC funds.

At request of Clark, in a matter not officially before the Committee, Welp agreed to review with staff problems connected with the drop-in lunch program held in churches or YWCA facilities.

Committee Business Discussion of meeting time for the April meeting. Priebe suggested perusing rules for which no representative was called. It was agreed Landscape Architects should be on April agenda. Revenue and Conservation Commission rules would be reviewed when filed.

Priebe suggested meeting on the statutory date in April to consider rules which would become effective shortly thereafter and possibly recess the meeting until April 20. Priebe set the time for April 8 meeting at 7:00 a.m.

REGENTS

Present for review of the following were Robert Barak, Director of Academic Affairs:

REGENTS, BOARD OF [720]

Committees and mission statements, 11.1(8), 12.1, 13.1(1), 15.1(1), 16.1(1) ARC 0869 .N... 2/20/80

According to Barak, the rule has been updated in terms of various committees. Two new committees serve in an advisory capacity for the Iowa School for the Deaf and the Iowa Braille and Sight-saving School.

12.1(1)

Tieden questioned the dates and Barak agreed they should be changed. Tieden was also concerned as to how to eliminate the old programs, e.g., those with tenured professors or personnel.

Barak responded that a new program is reviewed after five years. Last year, three were eliminated on that basis.

REGENTS
Cont'd

Another program is scheduled for termination--business education at the University of Iowa. Barak said the Board has tried to approach the matter of terminating personnel in a humane way--by attrition, retirement, etc. A tenured professor can be terminated with due notice, etc.

Patchett asked why there was nothing on University of Northern Iowa and Barak stressed the fact that their mission statement had been approved by the ARRC several months ago. New programs would have to be consistent with the mission statement.

INSURANCE

Bruce Boudry, Commissioner, was present for review of the following:

INSURANCE[510]

Unfair discrimination, 15.80 to 15.82 ARC 0882. *F*..... 2/20/80

He reminded the Committee the rule is a product of a special task force by the National Association of Insurance. It is basically model regulation except it covers all types of insurance.

Oakley stated the questions which had been raised by the National Federation of the Blind were no longer pertinent and had been resolved.

Robert Bray, Legal Services Corporation of Iowa, based on complaints received from a number of area Aging Commissions, requested addition of aging as a category. Priebe suggested Bray work with the Department on a possible amendment.

COMPTRROLLER

Dale Nelson, Director, Data Processing, was present for consideration of 5.3--Access to records, IAB 1/23/80 which was delayed 2/13/80.

Rules were filed originally to cover the data processing division but were expanded to include the entire comptroller's office. It was intended to implement 68A, The Code.

MOTION TO REMOVE
DELAY 5.3

Schroeder returned to the meeting and moved to lift the 70-day delay on rule 5.3. Motion carried viva voce.

In answer to Oakley, Royce opined the removal of the delay allowed the rule to become effective immediately. At Oakley's request for clarification, Schroeder asked unanimous consent to incorporate into his motion to lift the 70-day delay that the rules would go into effect at 12:01 a.m. on 3/14/80. No opposition. So ordered.

ENVIRONMENTAL
QUALITY

Odell McGhee, Hearing Officer, and Keith Bridsen, Water Quality, were present for discussion of the following:

ENVIRONMENTAL
QUALITY
ch 17

ENVIRONMENTAL QUALITY(400)

Water quality, effluent and pretreatment standards, ch 17 amendments ARC 0881 F.W.N... 2/20/80
Special bacterial testing for water wells 400 IAC
Ch 22

McGhee noted the rule was filed without notice since DEQ was basically adopting federal standards on pre-treatment. Federal references were updated.

Holden commented merely updating the rules should not be automatic without hearing, unless the state has no latitude. McGhee advised the Committee that DEQ cannot be more lenient or less stringent.

Schroeder and Holden thought there should be a hearing for exposure purposes, even if it is a forced mandate. McGhee took the position the Department action was legal.

SPECIAL REVIEW
ch 22

Special review of ch 22 was suggested by the Committee in order to afford Representative Kenneth Miller opportunity to express his opposition to rules dealing with bacterial testing for water wells. It was his contention the requesting of several water tests for wells was costly. He expressed the opinion that at the time of the 1972 Clean Water and Air Act, the testing procedure was introduced by DEQ to the legislative Natural Resources Committee and was not clearly presented. He spoke in opposition to testing water 12 times more than before. When testing was performed by the state, only the cost of testing was involved. Miller had special concern for costs when the state begins testing of chemicals contained in water.

In answer to Priebe, Bridsen said Iowa is not more restrictive than the federal. All of the present standards existed prior to the safe drinking water Act of 1972. The requirement for two samples was reduced by rule change to one at Miller's request for supply serving from 25 to 1000 people.

Holden cited examples where people had to drive several miles to accomplish the bacterial water testing. Bridsen said the cost for the small supply was 12 cents per person per month. Miller questioned rationale of 25 - 1000 scale and then up to 2500.

Discussion of truck stops being exempt and Holden thought it unclear whether or not restaurant owners were liable. According to Bridsen, supplies from which a person might take a drink once or twice in their life are considered on a different basis.

ENVIRONMENTAL
QUALITY
Special Review

Bridsen said chemical testing would be once in 3 years at a cost of \$120 to \$170. Miller thought the state should pay for bacterial monitoring. Oakley reminded Miller that this was a "user fee" and it had been decided that the people who benefit ought to pay. He said this matter was legislation at one time and was a mandate to the DEQ. He declared that the "first time someone dies as a result of a well not being tested right, the legislature would be the first to criticize the administration because they weren't doing their job."

Schroeder asked DEQ for alternatives to prevent magnifying the problem.

Bridsen said DEQ constantly opposes and debates proposed standards and existing standards with EPA. They are caught between the supplier and EPA.

MOTION TO REMOVE
DELAY [06,C,]ch 1

Schroeder moved to lift the 70-day delay on ([06,C]ch 1), primary road access control. Motion carried viva voce.

No representative called for the following and they were acceptable as published:

- BEEF INDUSTRY COUNCIL[145]
Organization, rules of practice, excise tax, chs 1-3 ARC 0821 *N*..... 1/23/80
- COMMERCE COMMISSION[250]
Soil conservation protection standards, ch 9 ARC 0832 *F*..... 1/23/80
- COMPTROLLER, STATE[270]
Access to official records and information, 5.3 ARC 0823 *F*..... 1/23/80
- ENERGY POLICY COUNCIL[380]
Procedures for rulemaking, declaratory rulings, contested case proceedings, chs 7-9
ARC 0820 *N*..... 1/9/80
- HEALTH DEPARTMENT[470]
Barbers, license fees, 140.6(3, 8, 9) ARC 0822 *F*..... 1/23/80
- HEALTH DEPARTMENT[470]
Mortuary science examiners, 146.1(1-8, 11), 146.2, 146.3(6,7), 146.4(2-4), 146.5(1, 2, 5-7, 9, 12), 147.1, 147.2(2, 3, 5, 7, 12, 13), 147.3, 147.4(1-6, 8), 147.5, 147.7 ARC 0807 *N*..... 1/9/80
Barber examiners, continuing education, 152.10(1) ARC 0806 *N*..... 1/9/80
- MENTAL HEALTH ADVISORY COUNCIL[566]
Organization, ch 1 ARC 0808 *F*..... 1/9/80
- NURSING HOME ADMINISTRATORS[600]
Reciprocity, 2.7(1), (2), filed emergency ARC 0809 *N, F, E*..... 1/9/80
- PUBLIC INSTRUCTION DEPARTMENT[670]
Graduate teacher education programs, ch 20 ARC 0824 *N*..... 1/23/80
- REGENTS, BOARD OF[720]
Conduct of public hearing, 11.4 ARC 0815 *F*..... 1/9/80
University of Northern Iowa, 14.1 ARC 0816 *F*..... 1/9/80
- REVENUE DEPARTMENT[730]
Assessor education commission, 125.2 ARC 0831 *N*..... 1/23/80

Adjournment
April Meeting

Schroeder moved to adjourn at 10:40 a.m. Carried.
Next regular meeting scheduled for April 8, 1980, 7:00 a.m.

Respectfully submitted,

Phyllis Barry
Phyllis Barry, Secretary
Assistance of Vivian Haag

APPROVED

Laurie Schroeder
Chairman