

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, February 9, 1982.

Place of Meeting: Committee Room 116, Statehouse, Des Moines, Iowa.

Members present: Representative Laverne W. Schroeder, Chairman; Senator Berl E. Priebe, Vice Chairman; Senators Edgar Holden and Dale Tieden; and Representative Ned Chiodo. Excused due to illness, Representative Betty J. Clark. Also present: Joseph Royce, Legal Counsel; Brice Oakley, Governor's Coordinator; Phyllis Barry, Deputy Code Editor; Vivian Haag, Administrative Assistant.

The regularly scheduled meeting was delayed from 7:00 a.m. to 1:30 p.m. due to the historic visit of President Ronald Reagan who addressed the General Assembly.

Convened Chairman Schroeder convened the meeting at 1:35 p.m. in Committee Room 116.

**TRANSPORTATION
DEPARTMENT**

The following rules of the Department of Transportation were reviewed:

TRANSPORTATION, DEPARTMENT OF [820]
Handicapped identification devices. (07.D), ch 1 ARC 2621 F 1/6/82
Vehicle registration and certificate of title. (07.D), 11.1(4), 11.2, 11.4, 11.4(1)^e, 11.5 to 11.7, 11.20, 11.22, 11.46 ARC 2622 F 1/6/82
Public transit, financial assistance. (09.B) ch 1 ARC 2623 N 1/6/82

Department officials present were Carol Coates, Vehicle Registration and J. P. Golinvaux.

ch 1 Coates informed Schroeder that amendments to 07D, chapter 1 were identical to those published under Notice. In the matter of vehicle registration and certificate of title, Holden asked about the meaning of "house car" in 11.1(4). According to Coates, the rule would apply to either a truck or bus body that is converted or when a motor home unit is added to a one-unit cab and chassis.

09B, ch 1 Golinvaux provided a brief explanation of 09B, ch 1 which was intended to provide a predictable and clear-cut method of distribution of the state transit system (rural or urban) assistance appropriation which is the responsibility of DOT. In the past several years, approximately \$2 million have been appropriated annually for improvements. With respect to program eligibility DOT tried to balance two competing transit systems in the funding methods. Golinvaux noted that the 16 regional operations vary greatly from urban systems such as MTA in the Des Moines area. He called attention to the appendix to the rules which provides the detailed charted formula used to determine annual assistance. Golinvaux added that transit systems representatives are often confused as to the purpose of state transit assistance.

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TRANSPORTATION
DEPARTMENT

The transit systems want more funds so the criticism focuses on the amount of appropriation rather than the method of distribution. Responding to Schroeder, Golinvaux said all transit company managers are under the direction of boards. DOT wanted to ensure that someone would be accountable as the contract administrator for the system receiving the funds. DOT preferred control at the administrative level. Priebe was informed that the 75% regional operational expense remained intact for eligibility. Programs are designated by county supervisors in the respective county of a region. Golinvaux cited Region 3 as an example.

Responding to Priebe, Golinvaux said if the 25% reduction were waived by the Director, the Commission would give final approval--all projects are approved by the DOT commission.

No further questions. Public hearing will be held at Ames February 16, 1982. Iowa City will present a case at that hearing. The remainder support the rules.

APPEAL BOARD

Local Budget
Law

Representing the Appeal Board were Maurice Baringer, State Treasurer, Ronald J. Amonson, Comptroller's Office, and Fran Larew, Treasurer's Office. Procedure for determining protests of local budgets, rules 5.1 to 5.2, were before the Committee. [ARC 2646, IAB 2/6/82]

Baringer distributed background information on the chronology for local government budgets and appeals. The first 14 pages contain background on the budget appeal process. The context of the proposed rules begins with page 15. The Appeal Board took the position that the statute [ch 24] was quite clear and, previously, found it unnecessary to write rules. However, they have attempted to repeat the statute in a somewhat simpler rule form, whenever possible. The intent is to protect the right of citizens to be heard in protesting budgets. Baringer continued that there is some disagreement as to whether budget appeals are contested cases under the provisions of 17A. He indicated the Board operates on the basis that they are not and, therefore, are not subject to a more liberal interpretation of Rules of Civil Procedure. Baringer referred to litigation last year which directed the rules to be implemented. They were hopeful final rules could be effective for the budget appeals which begin in April.

Baringer pointed out the Board has drafted clarifying procedures in connection with the rulemaking which are in the hands of Senate and House State Government Committees in study bill form.

Priebe expressed concern that the "handout" presented by the Board had not been published in the IAB. He took the position local citizens should have input in the hearings.

APPEAL Amonson interjected that a hearing had been held. Priebe noted BOARD a definition of "cash reserve" although he had understood there Cont'd had been disagreement on that issue. Baringer clarified the cash reserve definition was not part of the rule--only background material as to how cash reserves have been treated in budget hearings in the past. Larew stated that cash reserves were addressed in the study bill only by reference--they were not defined.

Baringer favored a statutory definition. He informed Oakley that the Board anticipated an April 7 effective date for the rules. He added that three written responses were received but no one attended the hearing on January 28.

Oakley defended the Board's action of summarizing their subject matter under Notice of Intended Action. He said that because there is so much statutory direction, the rules will highlight possible problem areas. Oakley doubted it would be necessary to Notice the final draft before adoption. Baringer pointed out a final draft was included in the handout on page 15. Baringer discussed the type of questions that had been raised about the lack of rules. Even though the statute allows agencies to generalize in their Notices, Priebe was opposed to that practice. He asked if various political subdivisions were aware of the final draft. Also, he contended Royce should have received a copy.

Schroeder commented that most of the time frames are statutory which would be stronger than rules. Royce questioned whether the Notice was adequate. Amonson asked for alternatives. Schroeder suggested emergency filing and Notice process simultaneously.

Oakley reminded Committee members that they have sanctioned the idea of generally noticing subject matter and raising questions for public comment--so much is statutory anyway. He didn't view the final draft as a great departure from statutory requirements and doubted the necessity for renote. He concluded the adopted rules would be subject to all the sanctions of the Committee, and the people affected--local governments--have their "watchdogs."

Baringer recalled the Association of Counties had input in the rulemaking and their points have been addressed.

In response to Chiodo, Baringer said the Board had received a 1½-page letter from Polk County. Some of their concerns had been addressed but not fully resolved. He emphasized no attempt was made to address issues that are in litigation. Baringer agreed to submit copies of the rules to the Association of Counties and Taxpayers Association. No formal Committee action.

ENVIRON- Odell McGhee, Hearing Officer, and Charles Miller, Director, Air
MENTAL and Land Quality Division, were present for review of the following
QUALITY DEQ rules:

ENVIRONMENTAL QUALITY DEPARTMENT[400]
Emission standards for contaminants, 4.3(3) and paragraphs "a" and "b". ARC 2637.....N.....1/6/82

McGhee commented that amendments to chapter 4 revise the sulfur dioxide emission standards for solid-fuel (coal) burning stationary sources and liquid-fuel fired boilers that are not subject to the federal new source performance standards. The rules have been in

ENVIRON- process since 1972 and industry did respond at the public hearing.
MENTAL : McGhee stressed that the prime purpose was to eliminate the present
QUALITY dual standard and, hopefully, some Iowa coal can be used.
Cont'd

There was general discussion of the facilities and their maximum emission rates set out in charts under "Modeling Results". McGhee reminded Chiodo that these facilities are not subjected to the new source performance standards. Miller declared that Polk County Standards could be different from DEQ but not less stringent. Iowa Power emits at 5 pounds per million BTU's at this time and DEQ would allow another half. They are burning some washed Iowa coal. He assured Chiodo no one was being forced out of business by these standards, and referred to options for emission reduction.

McGhee stated that many violations are attributed to low stacks (any under 100 feet). He cited Wilson and Company of Cedar Rapids as an old company with a low stack.

Miller admitted the standards were tight but added that EPA would prefer more stringent regulation. Schroeder asked Department officials to check Ohio laws. It was his understanding that coal emission standards were repealed with no reaction by the EPA.

Miller had done so and the modeling used by Iowa was identical to that used throughout the country. He added that Iowa is using the turning adjustment. If EPA does not allow that, the standards will be considerably tighter. Standards could not be less restrictive and comply with EPA standards.

Oakley questioned Miller re public comment. From the comments Miller had read, no one had contended that Iowa's standards were stricter than EPA. Air Quality and Environmental Quality Commission agree that monitor data should be used as opposed to modeling data. It was noted that there are eight monitors in the state. Priebe recalled the Appropriations Committee had been told that monitors would be moved around the state. Miller replied the stacks were being modeled individually--based on the terrain. They are unable to calibrate the model, source by source. Holden pondered whether the coal industry had been destroyed.

No further comments.

ENERGY Ben Guise, Program Coordinator, and Diane Storms, Administrative
POLICY Assistant, represented the Energy Policy Council for review of
COUNCIL the following:

Grant programs for schools and hospitals and buildings owned by units of local government and public
care institutions. 6.1(2), 6.4(1), 6.4(5), 6.5(1), 6.5(3), 6.6(1), 6.6(2), 6.8(1), 7.1, 7.1(2), 7.2(1), 7.2(2), 7.3(2)
7.4(2), 7.6(2), 7.6(3) to 7.6(5) ARC 26291/6/82

Guise informed the Committee that amendments to chapters 6 and 7 were necessitated by a change in the 1981 Federal Register and on the basis of staff experience with the first three grant cycles, comments by auditors, and applicants involved.

Holden questioned the preamble statement, "The Energy Policy Council gave the director of energy policy authority to adopt the final rule when it became ready." There was discussion of the practice and Guise agreed to call it to Council's attention.

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ENERGY
POLICY
COUNCIL
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He assured the ARRC there was no intent to usurp authority of the Council. The Committee advised Guise that Council minutes should reflect their action on the rules.

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COMM.

Richard Woods, Director, Economic Analyses Division, and Jose Mendosa, Planning Intern, were present on behalf of the Professional and Occupational Regulation Commission for evaluation of professions and occupations rules, 5.3, 5.4, ARC 2638, IAB 1/6/82 under Notice. According to Woods, the procedure for evaluation of new professions wishing to be licensed has been rewritten. A public hearing will be required if significant increase in regulation of any profession or occupation is proposed.

Minutes

Chairman Schroeder called for disposition of minutes of the January meeting. Holden asked that "department" be changed to "Association" on page 1639, line 2. He then moved approval of the minutes as amended. Motion carried viva voce.

No Reps

No representatives were requested to appear for the following agencies:

AGRICULTURE DEPARTMENT[30]
Standards and weight classes for shell eggs, 35.1 ARC 2654 F 1/20/82

ARCHITECTURAL EXAMINERS[80]
Continuing education, ch 3 ARC 2634 N 1/6/82

BLIND. COMMISSION FOR[160]
Promotions, demotions, transfers, terminations, 6.2 to 6.6 ARC 2639 F 1/6/82

Personnel policies and procedures, 7.3, 7.5, 7.7(5), 7.7(6) ARC 2640 N 1/6/82

EMPLOYMENT SECURITY[370]
Employer records and reports, 2.5 ARC 2653 F 1/20/82

Employers contribution and charges, 3.4(2)a and "e", filed emergency ARC 2615 1/6/82

EXECUTIVE COUNCIL[420]
Disaster contingency fund, amendments to ch 15, ARC 1343 terminated, ARC 2618 1/6/82

HEALTH DEPARTMENT[470]
Podiatry, license fees, continuing education, 139.3, 139.101(1), 139.101(2), 139.101(5), 139.105, 160.2 ARC 2662 N 1/20/82

Hearing aid dealers, biennial renewal, continuing education, license fee, 145.5(1), 145.6(2), 145.10, 160.8 ARC 2663, N, ... 1/20/82

Speech pathology and audiology, continuing education and ethics, 156.2(1), 156.2(2), 156.2(4), 156.11(2), 156.11(3) ARC 2624 F 1/6/82

LANDSCAPE ARCHITECTURAL EXAMINERS BOARD[540]
Registration, biennial renewal and fees, 2.b, 2.10 ARC 2661 N 1/20/82

MERIT EMPLOYMENT DEPARTMENT[570]
Pay for internship appointments, 7.3(1)c ARC 2642 F 1/4/82

Internship appointment, 8.11 ARC 2643 F 1/6/82

MERIT EMPLOYMENT DEPARTMENT[570]
Separation and disciplinary action, 11.1, 11.2, ARC 1862 terminated, ARC 2641 1/6/82

PHARMACY EXAMINERS, BOARD OF[620]
Peer review committees, 10.2, 10.5 ARC 2645 F 1/6/82

PHARMACY EXAMINERS, BOARD OF[620]
Refilling of prescriptions, 8.12(9), filed emergency ARC 2619 1/6/82

REGENTS, BOARD OF[720]
Temporary suspension, 2.2(5), 2.3(5) ARC 2627 N 1/6/82

Braille and sight saving school, admission requirements, 5.10, 15.9 ARC 2630 N 1/6/82

SUBSTANCE ABUSE, DEPARTMENT OF[850]
Substance abuse treatment programs, complaints, 3.14 ARC 2631 N 1/6/82

REVENUE
Manufacturer's samples, 22.10 ARC 2647 F 1/6/82

COLLEGE
AID
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Willis Ann Wolff, Executive Secretary, and Gary Nichols appeared for review of the following College Aid Commission rules:

COLLEGE AID COMMISSION[245]
National guard educational benefits, 9.1(1) ARC 2635 F 1/6/82

Organization and operation, ch 12 ARC 2636 F 1/6/82

Scholarship and tuition grant programs, advisory council, due process, amendments to chs 2, 4, 5 and 6, ch 11, ARC 1969 terminated, ARC 2633 N 1/6/82

Scholarship and tuition grant programs, advisory council, due process, 2.1(4)b", 2.1(5)b", 2.1(7)d", 2.1(8)b", 4.1(4), 5.1(3), 6.1, ch 11 ARC 2634 N 1/6/82

Iowa guaranteed student loan program and Iowa parental loans for undergraduate students program, ch 10, filed emergency ARC 2651 N 1/20/82

Rulemaking and declaratory ruling, ch 13 ARC 2652 N 1/20/82

COLLEGE
AID
COMMISSION
Cont'd

Nichols explained that matters under litigation were not included in the rules. In re 9.1(1), no questions.

Oakley requested Wolff to advise ARRC of possible emergency filing as a result of further revision at the federal level. Wolff agreed they are obliged to comply with federal regulations.

ch 12

Priebe had a problem with 12.2(3)c--quorum requirements. He called attention to the fact that, although the statute allows otherwise, the Committee prefers that a "majority of commission members be present and voting on any official action," not just a "majority of those present." After discussion, Commission officials were amenable to the request. It was pointed out that quorum information appears in the "General Information" portion of Volume I, IAC.

2.1(5)b

Scholarship and tuition grant programs were discussed. Priebe asked about the change in 2.1(5)b(1), monetary awards from \$100 to \$200. Nichols said the minimum has been increased by the Commission to be more cost effective. Few partial awards are being made.

2.1(8)b

Priebe made the point that renewal applications, 2.1(8)b, should be mailed. He was informed that students were accustomed to obtaining forms from the financial aid offices or the Commission office and mailing costs would be 60¢ for each set. Nichols explained that provision applies to approximately 600 students out of a possible 30,000 students in the applicant pool. Wolff added the renewal applications are from sophomore students who, in most cases, find it quicker to pick them up at the college financial aid office. She took the position that it could be confusing to require only one form to be mailed. Priebe recommended addition of "upon request." Department officials could foresee no problems for students.

ch 10

Discussion of guaranteed student loan program. Wolff reviewed changes from previous rules which included the interest rate increase from 7 to 9 percent; length of grace period after student leaves school reduced from 9 to 6 months; students pay an origination fee of 5 percent. Schroeder interjected that was points. Major change, according to Wolff, was that anyone with an adjusted family gross income of \$30,000 and over would be required to pass a needs test in order to qualify for a loan.

13.2(4)

Schroeder could envision problems with 13.2(4)--request for supplemental written presentations. In response to Tieden, Nichols said many students are refused because they miss the filing deadline. Schroeder could see advantage to a flexibility in the March deadline. That precipitated general discussion of the deadline. Nichols emphasized that most students need the earlier deadline in order to make meaningful decisions. Schroeder suggested all information except the final tax figure could be submitted. Nichols contended that timely application is imperative due to the lack of funds. He preferred that students supply the most current income information available. No formal action taken.

Recess Chairman Schroeder called for a five-minute recess.

COMMERCE David Conn, Diane McIntire and Alice Hyde, Commerce Counsels, appeared for review of the following rules:
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COMMERCE COMMISSION[250]
 Practice and procedure 7.2(10), 7.4(6), 7.4(6)"e", 7.4(11), 7.4(12), 7.7(1), 7.7(6), 7.7(9), 7.7(13) to 7.7(15). 1/20/82
 7.10, 7.1(4) ARC 2665 F 1/6/82
 Consumer comment hearing, 7.7(17) ARC 2626 F 1/6/82
 Customer notification of an increase, 7.4(1)"f"(2) ARC 2625 N 1/6/82
 Winter utility shutoffs, 19.4(15)"h"(4), 19.4(15)"i"(2), 20.4(15)"h"(4), 20.4(15)"i"(2), filed emergency ARC 2620 1/6/82

ch 7 Tieden asked McIntire to explain the phrase "13-month average of month-ending balances" referenced throughout chapter 7 amendments. She responded that it is the average for the test year--traditionally, rates are set by use of an average-rate base--December 31 - January 31, which is actually a 12-month average. Tieden asked who was the "examiner" in 7.4(2)d, and was told that two hearing examiners assist the Commission but their decisions can be appealed.

7.7 Hyde described the major changes in 7.7 which clarify procedures for consumer comment hearing. Tieden was informed that the Commission made the decision to waive a public hearing in 7.7(17)f.

7.4(1)f Conn explained that 7.4(1)f(2) had been renoticed to restore the language existing prior to recent amendment re customer notification of rate increase. Oral presentation was held and all utilities favored the change. The rule had been delayed for further study by the ARRC.

Responding to Chiodo, Conn said the Commission had published the rule as it existed prior to last November--essentially, the format used in the IAB Notice of Intended Action. The effective date of the rules to impose restrictions on separate mailing was delayed by the ARRC. Discussion of how mailing costs are absorbed.

Priebe was interested in how the Commission arrived at the percentage of profit allowed the [utility] company.

19.4 Hyde reported that amendments to 19.4 and 20.4 were adopted under
 20.4 emergency provisions of chapter 17A to clarify the Commission's
 Winter intent which was to authorize rather than mandate disconnect service
 shutoff by utilities.

Schroeder announced there would be a combined meeting of legislative utility subcommittees on 2/10/82 to discuss some of the problems.

No recommendations were made re Commerce rules.

Recess The Committee was recessed at 3:30 p.m. and reconvened at 4:00 p.m.

BEER & William Armstrong, Legal Counsel, and Rolland Gallagher, Director, represented Beer and Liquor Control Department for review of retail
 LIQUOR liquor licensees, retail beer permittees, storage of beer, 4.31,
 CONTROL ARC 2667, Filed, IAB 1/20/82. According to Armstrong, the rule is contrary to chain stores warehouse distribution system but was in conformance with a district court ruling. Mention was made of possible legislation to remedy the problem. Originally, the department based their position upon a 1954 AG opinion--copies of which were distributed by Armstrong.

General discussion.

BEER &
LIQUOR
CONTROL
Cont'd
REVENUE
DEPT

Laird addressed the Committee as to additional cost to distributors as a result of the deposit law. No committee action.

Carl Castelda, Deputy Director, and Michael Cox, Division Director, Property Taxes, appeared on behalf of the Revenue Department for review of the following rules:

Interest rates, 9.1, 9.4, ch 10, 12.10, 39.2(2), 44.7, 52.2(3), 52.5(4), 52.5(9), 58.2(2), 58.5(4), 58.5(8), 63.10,
75.2, 86.2(15), 86.2(18), 86.3(3), 87.3(9), 87.3(12), 88.3(14), 88.3(17), 89.7(1), 89.7(2), 89.7(3), 104.8(1),
104.8(2) ARC 2664 1/20/82
Property tax, military service tax exemption, 80.2(2)"o" and "p" ARC 2628 N 1/6/82

No questions were raised with respect to ARC 2664.

- 82.10 Castelda informed the Committee that an emergency rule had been filed to rescind 82.10 to allow the Department an opportunity to review Royce's report regarding manufacturer's cigarette samples. In addition, the rule has no tax impact and Revenue was optimistic there would be a compromise between manufacturers and Iowa's Cigarette Association.
- 80.2(2) Cox described amendment to 80.2(2) as a reflection of the Department's policy relating to military service tax exemption on jointly owned property. Cox anticipated the fiscal impact would be negligible.

No other questions or comments.

NATURAL Mike Smith, Staff Coordinator, was present for review of the fol-
RESOURCES lowing: NATURAL RESOURCES COUNCIL[580]

Oil, gas and metallic minerals, 12.1(20), 12.1(37), 12.2, 12.4, 12.5, 12.6(1), 12.6(2), 12.6(7) to 12.6(10),
12.15, 12.15(1) ARC 2632 N 1/6/82

- ch 7 At Schroeder's request, Smith briefed the Committee on the status of chapter 7 which was before the Committee in January, in particular, the written application for removal of small dams.

Oakley inquired as to disposition of the rock quarry rules. According to Smith, the controversy continues with the limestone producers. The Department has deferred action on these rules to allow for more input by limestone producers.

- ch 12 In the matter of amendments to chapter 12, Smith called attention to HF 632, 69GA, ch 41, sponsored by DeGroot. The Act amended the Natural Resources Council's authority over oil and gas wells to include drilling of wells for exploration.

The geological survey, acting as administrator of the law for Natural Resources, will regulate construction of the wells to avoid pollution of surrounding water supplies--ground water.

Schroeder questioned need for records of metallic minerals and not for others. Smith pointed out that for uranium, oil or gas, the well could be as much as one mile deep. The product would be removed over the aquifers and Smith emphasized importance of sealing them properly. Rules in draft form had been mailed to Exxon. No comments were received at the February hearing.

Holden discussed a telephone call he had received about the Bettendorf Flood Control--Smith said the Corps of Engineers had designed a levee along an industrial area but question remained

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NATURAL as to whether homeowners would be required to relocate since a
RESOURCES referendum on the matter had been defeated.
Cont'd No further discussion re Natural Resources.

SOCIAL The following rules of Social Services Department were before
SERVICES the Committee:

Mental health and mental retardation commission, 1.6 ARC 2656, also filed emergency ARC 2655 1/20/82
Adult correctional institutions, prison overcrowding, 16.10(2) ARC 2657 1/20/82
APC, support information, 41.2(6)b ARC 2658 1/20/82
Care facilities, determining allowable rental and leasing costs for operators of, 54.3(1)f, 81.6(1)f, 82.5(1)f
ARC 2659 1/20/82
Medical assistance, oral prophylaxis, 78.4(1)b(12) ARC 2660 1/20/82

1.6 Judith Welp, Rules and Manual Specialist, and Sally Cunningham, Chief, Community Services Bureau, provided the background information for 1.6(1-8) intended to implement SF572[69GA,ch78]. The Mental Health-Mental Retardation Commission was appointed by Governor Ray and assumed its full responsibilities January 1, 1982. Rules were filed emergency and notice simultaneously.

Tieden called attention to 1.6(2) and requested inclusion of the requirement that the quorum be two-thirds of the membership to take formal action. Cunningham agreed to an amendment.

16.10(2) Welp explained the last sentence of 16.10(2) was stricken at the Governor's request.

41.2(6) No recommendations were offered for amendment to 41.2(6)b.

Care Welp informed the Committee that amendments to chapters 54, 81
facil- and 82 would change the method of determining allowable rental
ities and leasing costs for operators of care facilities for the mentally retarded. Members discussed the problem of fraud in sales transactions when refinancing increases cost which is passed on to the patient.

78.4(1)b Amendment to 78.4(1)b, according to Welp, would allow oral prophylaxis more than once in a six-month period for persons with physical or mental disability who are unable to maintain adequate hygiene.

Recess Committee in recess at 4:40 p.m. to be reconvened at 5:00 p.m.

INSURANCE Bruce Foudree, Commissioner, Janet Griffin and Tony Schrader,
DEPT. Deputy Commissioners, appeared for review of the following:

INSURANCE DEPARTMENT(510)
Administrative hearing, of contested cases, appeals, 3.9(4) ARC 2617 1/8/82 915
(Accident and health coverage, ch 36 eff. date delayed 70 days from 12-31-81)

Also present: Paul Brown and Jim West, representing the Insurance Industry; Dennis Dolan, Iowa Association of Life Underwriters; Bill Fox, TriState Insurance Consultants; Ramona Zabski, OASIS; Paul W. Aardsma, Commission on the Aging; Carroll Callaway, Associate General Counsel, Health Insurance Assn. of America.

3.9 No questions were posed re administrative hearings of contested cases, appeals, 3.9(4). Attention centered on chapter 36 and coordinating amendments 37.1-4, 15.31 and 15.9.

INSURANCE
DEPARTMENTch 36
37.1-4
15.31
15.9

The Insurance Department presented a video excerpt from the Twenty-twenty TV Program wherein agents were observed preying on elderly Iowans by selling overlapping coverage to supplement Medicare. Foudree stressed that this was the single biggest problem faced by the Department. One third of the complaints received involved abuses in the sale of insurance to the elderly.

Dolan offered a brief statement on behalf of the 2600 members of Iowa Life Underwriters Association. They favor uniformity in regulation at state level and assurance that the public is well-protected and honestly served. Dolan urged adoption of the National Association of Insurance Commissioners model regulation rather than one unique to Iowa. He cited two general problems with the proposed rules -- duplication and mandated loss ratios. He opposed "stacking" of policies but opined the rules may go too far and as a result, some good companies may be forced out of the state. Dolan endorsed the 65 percent loss ratio figure as stated in the model legislation.

Fox basically concurred with Dolan but questioned the need for 65 percent loss ratio. He considered 60 percent to be fair. He stressed the importance of incentive for companies to sell policies in Iowa, otherwise the consumer will suffer. He readily agreed, however, that "stacking" cannot be tolerated. Priebe questioned the 20 percent annual figure for the agent to serve a policy.

Schrader questioned the accuracy of Fox's figures with respect to company operational expense. In Schrader's experience, there was no commission by the third year of policy service.

Brown reiterated that Iowa industry does not condone "stacking" and has been a leader in curbing that kind of activity. He recited the "troublesome deviations" which, in his opinion, should be corrected, e.g., minimum loss ratio should be 60 percent.

The Commissioner discussed proposed language which had been presented to the industry for comments. Foudree admitted the concept needs to be refined. Chiodo was interested in the distinction between the present rule and the proposal. Foudree said that part of the regulation responds to the duplicate coverage prohibition in the unfair trade practices laws. The present regulation allows ten categories but new language provides "two or more in any one of the ten categories would be duplicate coverage."

Priebe voiced opposition to use of "knowingly" in the rules and Foudree was amenable to striking the word. Tieden asked about enforcement procedures and Foudree replied that the agent who sells more than two policies is very obvious. There are complaints. Oakley observed that "knowingly" was a word of art. He wondered how an agent would be protected if he or she was unsure of a client's existing policies. Foudree stated that licensed agents are charged with knowing the law and they have a duty to determine existing coverage. Brown called attention to the fact that the word "knowingly" was statutory [507B]. There was dis-

INSURANCE
DEPARTMENT
Continued

cussion as to when the prohibition would apply and Schrader advised there was no statutory mandate for areas not under Medicare. Oakley did not entirely agree with Schrader's evaluation--the law states "two". Discussion of possible mail order sales and Foudree declared it would be impossible to regulate. Foudree added that the Department is interested in sales by agents in the state.

According to Brown, the Unfair Trade Practices Act applies to both agents and companies. Foudree insisted that unless the company is licensed in Iowa, there would be little the Department could do. In the matter of a 60 or 65 percent ratio, Foudree indicated they were reviewing the information collected from various states so a judgment could be made. He made mention of the procedure to be followed regarding duplicate coverage. In the matter of coverage for intermediate care patients who might need skilled nursing care, Foudree was concerned that the consumer be aware that duplicate coverage would be unnecessary.

Chairman Schroeder was of the opinion there was a meeting of the minds between the industry and the insurance commission so rules could go into effect. He asked if it were a fair statement that changes, acceptable to both sides, would be instituted.

Chiodo asked for clarification. Schroeder reiterated that the Committee would allow the rules to go into effect as they were published. He assumed the Commissioner would not enforce the objectionable language and would implement changes immediately under the regular or emergency rulemaking process. Foudree indicated they did not intend to utilize emergency provisions.

Chiodo made the point he was not totally clear as to what change would be made re duplicate coverage. He wanted to reserve the right to object at some point in the future. Schroeder understood it would be narrowed to the medical aspects that were mandated in the Act passed last year. Oakley cautioned against emergency rulemaking without also allowing for public comment. Schroeder could foresee that someone might initiate action on the existing rule if it is not rescinded. Priebe thought it preferable to emergency amend with sunset provisions and follow the normal process simultaneously to avoid any gap in the rules.

West pointed out that the prohibition against sale of duplicate Medicare supplement insurance is statutory. Chiodo interpreted the rule to allow waiver of the 65 percent--"The benefits shall be deemed reasonable if the anticipated loss ratio is 65 percent." He reasoned, "A company could anticipate that loss ratio but because of unforeseen circumstances, show a reason why it should not be sixty five." Chiodo contended that with this in the rule, if companies could show statistical basis for something different, there would be authority to allow it.

Schroeder's recommendation to the Department was to emergency rescind the problem areas with emergency correction, but also publish the regular notice to allow public participation. Committee members generally concurred that the 60-65 percent ratio matter could be dealt with by the Commission.

INSURANCE
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In response to Tieden, Foudree said the rules covered anyone buying a Medicare supplement. Fox, on a point of information, understood that 33 states had adopted the 60 percent ratio. Schroeder had information that it involved 6 or 7 states.

In closing remarks, Chairman Schroeder understood there was "a meeting of the minds" to rescind a portion of the rules by emergency amendment and to reinstate new language by emergency rule at the same time the normal process would be followed.

Brown introduced Callway who spoke in support of the 60 percent loss ratio minimum standard. A detailed written statement was distributed.

Tieden was excused due to previous commitment.

Aardsma distributed a letter in support of a 60 percent loss ratio minimum standard. His comments addressed undesirable alternatives if adequate loss ratio is not permitted, e.g., companies will leave the market or cut back on services to insureds.

Schroeder adjourned the meeting at 6:10 p.m.

Following adjournment, questions were raised as to the status of Insurance Department rules. The following letter of clarification was distributed on February 10:

Dear Mr. Commissioner:

In order to clarify the committee action of 9 February 1982, this letter confirms that the intention of the committee is that the current seventy day delay imposed upon ARC 2527 will automatically lift upon the "emergency" adoption and implementation of amendments to 510 IAC 15.9, relating to duplicate medicare supplement policies. The general outline of these amendments was discussed at the February 9th meeting. It was the consensus of the committee this "emergency" filing would be accompanied by a notice of intended action, to ensure adequate opportunity for public review and participation.

ARC 2527 appeared in IV IAS 11 (11-25-81) with an original effective date of 31 December 1981. That date was delayed by the committee to 11 March 1982

B. E. Priebe
(Berl E. Priebe)
Vice-chair

Sincerely,

Laverne K. Schroeder
(Laverne K. Schroeder)
Chairman
Dale L. Tieden
(Dale L. Tieden)
Edgar H. Holden
(Edgar Holden)

Respectfully submitted.

APPROVED:

Laverne K. Schroeder
Chairman

Phyllis Barry
Phyllis Barry, Secretary
Assisted by Vivian Haag