

MINUTES OF THE SPECIAL MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting The special meeting of the ARRC was Thursday, July 31, 1986, 10:00 a.m., Room 22, State Capitol, Des Moines, Iowa.

Members Present Senator Berl E. Priebe, Chairman; Representative James D. O'Kane, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; Representatives Edward G. Parker and Betty Jean Clark. Staff present: Joseph Royce, Committee Counsel; Phyllis Barry, Deputy Code Editor; and Vivian Haag, Executive Administrator. Not present: Barbara Burnett, Governor's Administrative Rules Coordinator, on vacation.

Meeting Convened Chairman Priebe convened the July 31 meeting at 10:00 a.m.

AGRICULTURE The Agriculture rules were presented by Bette Duncan, Charles Eckermann, Sue Kirkhart, Agricultural Development Authority; Fred Stout, Lillian M. Moore, John D. Hinshaw and John R. Whipple, Department of Agriculture and Land Stewardship. Also present: Winton Etchen, Iowa Fertilizer.

On-site containment of pesticides, ch 9 ARC 6682 ..... N 7/2/86  
 Registration of Iowa-foaled horses and Iowa-whelped dogs, 14.42, 14.12(1), 14.13\*8, 14.22(1), 14.23\*8, 14.32(1),  
 14.3\*8, 14.15(3)\*a, 14.16(2), 14.25(3)\*a, 14.26(2), 14.35(3)\*a, 14.36(2) ARC 6681, also filed emergency N+FE 7/2/86  
 ARC 6680 ..... N 7/2/86  
 Animal welfare, 20.1 ARC 6683 ..... N 7/2/86  
 Dairy trade practices, gifts and promotions, 25.6 ARC 6684 ..... N 7/2/86

O'Kane assumed the Chair.

Kirkhart gave brief explanation of the operating loan guarantee program. No questions.

ch 9 Duncan reviewed chapter 9 pertaining to on-site containment of pesticides. The process is to be conducted in areas draining into a secondary containment structure--exception to requirements would include product mixing and rinsing of tanks in the field. Public hearing resulted in many favorable comments. Responding to Tieden, Eckermann said the recommendation was to have a facility to collect "rinsates" and recycle them into a vat used for spraying. Eckermann described the process used in handling 55-gallon drums. The empty container would be triple wrenched and the drum recycled. A sanitary landfill would accept empty containers. O'Kane asked about certification and officials knew of none. It was noted that many bulk tanks designed for mobile transfer are exempt from the rules. O'Kane was told that potential for spill is the same. Priebe was concerned about impact on small businesses and Duncan agreed to review the matter. Eckermann pointed out that several businesses had been contacted re cost. Duncan agreed to investigate as to whether blending of products would be allowed. Priebe resumed the chair. No questions re amendments to chapter 14 pertaining to registration of Iowa-foaled horses and Iowa-whelped dogs.

ch 14

In re 20.1, after brief explanation by Duncan, Royce was puzzled by inclusion of fish in the rule. Duncan thought the rule would be clarified to indicate that fish apply only to those in pet shops. No questions re 25.6 which will authorize use of coupons.

*Rule 15*  
Committee Business Tapes

Discussion of request from a newspaper reporter to purchase tapes of the ARRC meetings. The Committee decided against setting a precedent by honoring the request. When the staff has finished with tapes, opportunity to listen to them could be provided. Copies of the minutes are available.

BEER AND LIQUOR DEPARTMENT

The following agenda of the Beer and Liquor Control Department (renamed Alcoholic Beverages Division, Commerce Department, 7/1/86) was reviewed by William Armstrong.

Liquor licenses -- beer permits -- wine permits. 4.19, 4.21, 4.22, 4.32, 4.39	ARC 6650, also filed emergency	N+FE	7/2/86
ARC 6649			
License and permit division. 5.1(11), 5.10, 5.10(1) to 5.10(3), 5.11, 5.11(1) to 5.11(3), 5.12, 5.12(1) to 5.12(9), 5.13, 5.13(1) to 5.13(3), 5.14 to 5.17	ARC 6652, also filed emergency ARC 6661	N+FE	7/2/86
Transportation and warehouse, shipment into state. 3.2(1)	ARC 6654, also filed emergency ARC 6653	N+FE	7/2/86
Private wine sales. 14.3, 14.8	ARC 6656, also filed emergency ARC 6655	N+FE	7/2/86

In reviewing 4.22, Armstrong explained that as of July 1, licensee tax decals were eliminated. Discussion of need for corrective legislation with respect to '86 Acts, HF 2484, section 741, which limits retail licensees and permittees to buying wine from class "A" permittees. Armstrong continued that liquor sold to new class "E" licensees will have an environmental stamp as an identifying mark, effective March 1.

ch 5

Amendments to chapter 5 were considered. It was noted that Class "B" licenses held by motels and hotels were increased 30 per cent. Priebe pointed out that the increase in 5.11(3) was less than 30 per cent. According to Armstrong, the surcharge was less for licenses F, G, and H--Items 7, 8, and 9--since the total cost included a \$500 wine fee last year. Priebe thought that fact should be reflected in the rule and Armstrong agreed to clarify. Armstrong informed Royce that new rules will address a complaint relative to Class "E" licenses.

Brief discussion of wine donated by industry.

14.3, 14.8

Amendments to 14.3, 14.8 reflect the fact that Iowa is no longer a wholesaler of wine. No questions.

PUBLIC SAFETY DEPARTMENT

Wilbur Johnson, Fire Marshal, appeared for the following:

Fire marshal, flammable and combustible liquids. 5.301, 5.304(5), 5.305(2), 5.307, 5.308, 5.350, 5.400.		F	7/2/86
5.450	ARC 6672		

He explained that grammatical changes since the Notice were those requested by Representative Clark. No action taken.

EMPLOYMENT SECURITY

Joseph Bervid, Paul H. Moran and Jim Hunsaker represented Job Service for the following:

Employer's contribution and charges, claims and benefits. 3.10(5), 3.10(6), 3.10(10), 3.12, 3.13(17), 3.19, 4.7(2), 4.25(28), 4.40(3), filed emergency	ARC 6675	FE	7/2/86
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EMPLOYMENT SECURITY 4.7(2)

According to Bervid, the amendments were taken directly from the statute--86 Acts, SF 2283, and HF 2484. O'Kane questioned deletion of "weekly" from 4.7(2) since it would appear to permit some sort of lump sum distribution. Moran responded that unless workers' compensation was paid on a weekly basis, the Department would disallow the privilege of getting a base premium claim and thus penalize some workers. The word "weekly" was repealed from Code chapter 96. Responding to Tieden, Bervid said participation in voluntary payment was quite popular since an employer can save a great deal of tax money.

ch 96

INSURANCE DIVISION and HEALTH DATA COMMISSION

Sharon Henry, Insurance, and Pierce Wilson, Health Department, were present for consideration of:

- INSURANCE DEPARTMENT[510] Agents' licensing, fees, 10.18(6) ARC 6669 .....N. 7/2/86
- HEALTH DATA COMMISSION[465] Submission of data, 6.1, 6.3 to 6.6 ARC 6558 .....F. 5/21/86

ch 6

No questions re 10.18(6). Amendments to chapter 6 of Health Data Commission rules were before the Committee having been carried over from the June meeting where a 70-day delay had been imposed on 6.4(2). The subrule stated that "In no event, shall third-party payers submit data which identify a patient by name, address, or patient identification unless authorized by the patient." Henry reported that Department intent was to reinstate the former definition of the patient identification number which has been in place for the last five years. Wilson said that change to the original language identifies the number that is assigned by a hospital or physician.

TRANSPORTATION DEPARTMENT

Don Alexander was present for Iowa Department of Transportation. Brief discussion of the following:

- Petroleum overcharge funds, (09.B) ch 4 ARC 6645 .....F. 7/2/86

According to Alexander, no changes had been made since the Notice. He stated that the rules apply to Amoco refund money--the Exxon money. Tieden asked about 4.4(1)d.

IOWA DEVELOPMENT COMMISSION

Mary O'Keefe appeared on behalf of the Iowa Development Commission. The following agenda was reviewed:

- Iowa industrial new jobs training program, ch 5 ARC 6646 .....N. 7/2/86

5.4(1)

Responding to Priebe, O'Keefe described "new industry" as one being in existence less than six months and creating a new increase of jobs. Priebe mentioned his concern as to the restrictive criteria. Tieden questioned the ten-day requirement in 5.4(1) and he was informed that districts often may not have sufficient advance knowledge so opportunity for telephone notification is necessary.

Brief discussion of funding which is according to federal guidelines. O'Kane expressed support for the additional definitions which, in his opinion, clarify the process.

O'Keefe indicated that the rule on standby property tax levy--5.8(280B)--was inadvertently included in the Notice.

IOWA  
DEVELOPMENT  
COMMISSION  
(Cont.)

Recessed  
Reconvened

WATER, AIR  
AND WASTE  
MANAGEMENT

64.2(9)c

455B.181

Refer to G.A.  
Motion  
Carried

PLANNING &  
PROGRAMMING

19.86(14)a

The subject is covered by statute.

Chairman Priebe recessed the meeting at 11:55 a.m. He reconvened the Committee at 1:35 p.m. and called on Water, Air and Waste Management officials, Diana L. Hansen, Wayne Reed and Michael Murphy for the following:

Wastewater construction and operation permits. 64.2(9)c to "e," 64.3(6), 64.5(4)d, "64.6(5)j," 64.9, 64.10.  
64.12 ARC 6640

6/18/86

Discussion centered on 64.2(9)c which was carried over from the July 2 ARRC meeting where a 70-day delay had been imposed. Hansen had researched the statutes as to the Director's authority to issue variances from design standards for wastewater treatment systems. Hansen cited Code section 455B.181 as the Director's authority. Royce concurred that the law clearly embraces the concept and he pointed out that there is an appeal process. Priebe interpreted the section as limited to public water supply systems, not wastewater systems. Royce advised that the statute was very broad. Hansen called attention to changes as a result of reorganization (SF2175) which include substituting "director" for "executive director", "department" for "commission". It was noted that 1986 Acts, SF 2175, broadens the appeal process. Hansen and Royce discussed their interpretation of the statute. O'Kane moved that the 70-day delay imposed on 64.2(9)c be lifted and that the Lt. Governor and Speaker be apprised of Committee concerns. Motion carried.

Melanie Johnson and JoAnn Callison were present for OPP [Certain functions transferred to Economic Development, effective July 1, 1986]. Callison reported that the green thumb program, with a few minor changes, was transferred to the newly created Department of Economic Development Department. The program was previously under the authority of the Conservation Commission.

Johnson reviewed amendments to the Job Training Partnership rules. A hearing was held July 22, but no comments were forthcoming. Existing complaint procedure had been updated. O'Kane viewed the complaint procedure as "very extensive" and "extremely onerous." Johnson pointed out the availability of a translation for enrollees and participants. The amendments were an attempt to respond to a number of questions by those who are involved in the procedures, e.g. attorneys. Johnson did not envision problems.

With respect to conduct of hearing--time--in 19.86(14)a, Doyle asked who would request the time and he was doubtful that 30 days was adequate. Johnson answered that, although the request normally comes from the complainant, it could be from either party. She suggested insertion of "by complainant" after "If requested". It was noted that the federal statute provides for 30 days. Royce concurred with Doyle that an issue could surface at a

PLANNING & PROGRAMMING (Cont.)

hearing, be addressed, and disposed of without knowledge of the reviewing authority. Johnson said intent was to allow discretion to the hearing officer if one party wanted to address a related issue without formal complaint. Doyle suggested allowing amendment of the complaint so a record is provided. O'Kane questioned confidentiality provisions in 19.86(1)e. Johnson spoke in support of the confidentiality and stressed that it was consistent with due process and a fair determination of issues. Informal resolution of some issues was possible.

PUBLIC INSTRUCTION

Orrin Nearhoof, Bureau Chief in Teacher Education, Dee Ann L. Wilson, Public Instruction Department--Department of Education as of July 1, 1986--presented the following:

Issuance of certificates and endorsements, 70.18, 70.20, 70.21 ARC 6671 ..... F 7/2/86

Nearhoof noted that changes to the rules were outlined in the preamble. A number of comments had been received since the rulemaking commenced in February 1985. Nearhoof informed Doyle that the amendments address driver education only in terms of requirements for a teacher of the course. Doyle referenced new legislation which requires each student to study two hours of drunk driving laws. Nearhoof agreed to examine the matter as to the procedure to be followed to ensure that teachers are qualified to explain the law. Doyle wondered about possible joint effort with the Department of Safety.

Responding to question by Tieden, Nearhoof explained that "economics" and "consumer studies" are synonomous. The term "consumer studies" evolved in response to segments of professionals who contended it was more commensurate with business. Nearhoof pointed out that in the social studies area, economics is retained-- 70.21(18). Nearhoof continued that the course is usually required in the social studies segment at the high school level and those teachers are still certified in economics. Nearhoof added that the Department has tried to clarify the process and an Elementary-secondary Advisory Committee will be appointed in August to begin reviewing the areas of interest to become part of the rules. Tieden recognized consumer studies as a prominent section of economics but he felt it was regrettable to skip over other important elements of economics in business. Nearhoof was willing to convey Tieden's concern to the appropriate officials.

Priebe and Doyle raised some general questions as to the effectiveness of the Driver Education Program which Nearhoof agreed to refer to the Transportation Division.

SOIL CONSERVATION

Ken Tow was present for review of the following:

Surface coal mining and reclamation operations, 4.52(15)(c) and "x" ARC 6686 ..... F 7/2/86
Oil, gas and metallic minerals, drilling, 29.6(7) ARC 6687 ..... F 7/2/86
Local financial incentives program for soil erosion control, 5.51(1)(c), 5.56, 5.60(1)(b), 5.60(5), 5.82(1), 5.82(2)(a) and 5.84(12) to 5.84(15) ARC 6685 ..... A 7/2/86

Priebe expressed his opinion that land reclamation costs were exhorbitant. Tow said that amendments to 4.522

SOIL  
CONSERVATION  
(Cont.)  
29.6(7)

dealt with regulatory side of the active coal mine and with detention time for sediment funds. The change reflects new federal rule. In presenting amendment to 29.6(7), Tow pointed out that rules governing oil, gas and metallic minerals were now under Natural Resources Department. Action taken to adopt the amendment was taken prior to July 1. Priebe took the position that the new Department should also appear before the ARRC.

ch 5

After general discussion, the ARRC decided that in similar situations, both the previous agency representative and the new agency representative should appear before ARRC. No recommendations for chapter 5 amendments.

Reorgani-  
zation

Chairman Priebe recognized Barry who apprised the Committee of problems which have developed in the rulemaking process as a result of reorganization. A recent example: Health Department officials contend that amendments to their rules were filed without authority by the newly created Inspections and Appeals Department and were published in IAB 7/16/86 as ARC 6750. Barry continued that editorial work by the Administrative Code editors and proofers was extensive and additional printing costs would be incurred if the rulemaking were reversed.

Priebe reasoned that both factions affected by a rulemaking should sign off on the filing. Committee consensus was that the Administrative Rules Coordinator should scrutinize such rules. Royce advised that authority for all groups involved was vague.

Motion

*Sign off on  
rules*

Clark moved that both agencies (previous and new) in a rulemaking be requested to consult on an issue before it is submitted for publication. Discussion of the motion. Royce counseled that the ARRC lacks authority to sign off on any rulemaking.

Discussion as to who has authority to rescind rules of an agency whose duties have been transferred or repealed. O'Kane suggested that detailed information be included in the preamble to the rules. Barry also mentioned continuing problems with incorrect citations as to authority and statutes being implemented.

Motion  
Carried

After further discussion, the Committee authorized publication of notice to all agencies regarding this matter. Motion carried.

The following notice was published in the 8/13/86 IAB:

In those cases where rules are to be transferred from one department to another pursuant to 1986 Iowa Acts, Senate File 2175, the document containing those changes must include the following information in addition to currently required language:

1. The preamble must contain a reference to the precise statutory authority for the transfer of those rules, and
2. The document must be signed by both the responsible agency official in the agency taking jurisdiction over the rules and a responsible agency official in the agency relinquishing the rules.

This policy is necessary to avoid newly formed agencies from asserting jurisdiction and transferring rules without clear authorization to make the transfer. In the event an agency official fails to sign the document, it will not be accepted for filing or publication.

7-31-86

Reorganiza-  
tion Cont'd

The ARRC directed Royce, Burnett, Barry, Wheeler and Osmann to seek a solution to the problem between Health and Inspections and Appeals.

COLLEGE AID

Gary Nichols, Acting Director, appeared to answer questions re amendments to the following rules:

Low a guaranteed student loan program. 10.10, 10.17, 10.57, 10.57(1) ARC 6666 ..... F 7/2/86

No questions.

HEALTH  
DEPARTMENT

Irene Howard appeared for Health Department to explain physical therapy, continuing education, 138.3(4), ARC 6648, IAB 7/2/86. Doyle was told there was no way to monitor self-study.

CONSERVATION  
COMMISSION

The following agenda was before the ARRC:

Crow hunting season. 101.1	ARC 6660	.....	F	7/2/86
Rabbit and squirrel hunting season. 102.1 to 102.3	ARC 6661	.....	F	7/2/86
Mink, muskrat, raccoon, badger, opossum, weasel, striped skunk, fox, beaver, coyote, otter and spotted skunk seasons. 104.1 to 104.4, 104.7	ARC 6662	.....	F	7/2/86
Deer hunting regulations, ch 106	ARC 6663	.....	F	7/2/86
Common snipe, Virginia rail, sora, woodcock and ruffed grouse hunting seasons, ch 109	ARC 6664	.....	F	7/2/86
Trapping limitations, ch 114	ARC 6665	.....	F	7/2/86
State parks and recreation areas, fees. 45.3	ARC 6659, also filed emergency ARC 6658	.....	NY FF	7/2/86
Park user fee, permit affixed. 51.5(3)	ARC 6657	.....	N.	7/2/86

Chairman Priebe announced that trapping rules would be considered last. Agency officials included Richard Bishop, Chief of Wildlife Bureau, Nancy Exline and Al Farris, Mike Murphy, the Department of Natural Resources. Also Present: Thomas G. Monroe, Wayne Junke, James A. Beyer, Ames, Bernie R. Barringer and Larry L. Kielhorn, Holstein, Iowa Trappers Association, George Scolf, Ottumwa, National Trappers Association and Iowa Trappers Association; Dean Wecker and Loren Meyers, Fred Stooky, C.A.C.T.A.S.; Neil J. Bork, Owen Hall, Kenny Mervin, Iowa Coonhunters Association; and several other interested citizens. Bishop pointed out that shooting hours were dropped altogether for crow season in response to complaints from crow hunters.

102.1 to  
102.3, ch 104

No recommendation offered for rules 102.1 to 102.3, ch 104.

ch 106

Bishop reviewed changes in chapter 106 which included date change to meet request of muzzleloader and bow hunters; free any sex licenses to landowners for both seasons; a landowner will be required to purchase one license. Priebe had received complaints that special privileges were afforded to bow hunters since no one else can get two licenses or two deer--not even the farmer who feeds them. In his opinion, the deer population is excessive. Bishop stated that this sentiment had not been conveyed at the public meeting on the rules. Bishop estimated a kill of 50,000 deer unless the weather interferes. Brief discussion of chapter 109, no action.

ch 109

CONSERVATION  
COMMISSION  
(Cont.)  
45.3

According to Exline, amendment to 45.3 will allow the Department of Natural Resources Director to waive or reduce fees for rental facilities for Commission-sponsored events in state parks. The rule legalizes current practice. Priebe was doubtful that the director had this authority. Royce read Code section 111.47 and concurred that the rulemaking was questionable. O'Kane recommended that the Commission review the rule and make any necessary change when the rule is adopted after Notice. Parker saw no problem with the rule. Priebe did not disagree with the concept but stressed that the ARRC is charged with upholding the law.

111.47

Refer to  
General Assembly

After further discussion, Doyle suggested notification of the problem to the Speaker and Lt. Governor and that Royce contact Mike Smith, Assistant Attorney General. Royce pointed out that the Commission has authority to set fees, not waive them. Suggestion was made for a special review of the matter at the September ARRC meeting. Priebe learned that this matter had not been before the Commission previously and Exline assumed the question came from their attorneys. Exline reported approval from the Administrative Rules Coordinator for the emergency adoption of 45.3. She concluded that fee reduction has been provided by the director for three years. Priebe recommended proposal for a statutory change in 1987. No other questions.

September  
Meeting

45.3

51.5(3)

Amendment to 51.5(3) will clarify that a park user permit must be attached to the vehicle by its own adhesive and not transferable from one vehicle to another. Exline offered statistics on the fees. A 7 to 8 per cent reduction in park use has been attributed to a wet spring. Estimated revenue from park user fees was \$800,000 per year and, as of July 21, the Department had collected \$609,000 in revenue from the sales. Free permits amounting to \$43,000 have been given to persons over 65 and food stamp or medical assistance recipients. O'Kane was interested in the administrative cost but Exline had no information.

ch 114  
Trapping

Farris reviewed the history of chapter 114 from 1985, commenting that rule 114.1 re limitation of snares and conibear-type traps on roadside ditches is identical to the proposal last year. Rule 114.2 prohibits snares on roadside right of way from being within touching distance of a fence parallel to the right of way and sets a maximum 8-inch loop size for snares used on dry land--a change from 12 inches. Snares cannot be attached to drags, which is a change. The public objected to snares being driven into the ground. Body-gripping or conibear-type traps are prohibited on public road right of way within 5 feet of any fence. Noticed provision for seasonal limitation on use of snares and conibears during coyote and beaver season was deleted before adoption; Rule 114.4 sets maximum

CONSERVATION  
COMMISSION  
(Cont.)

size of foothold or leghold trap at 7 inches and prohibits serrated or toothed jaws; no change from Notice for leghold traps.

Farris continued that the Commission received public comment at January and February meetings last year. At the January 1986 Commission meeting, there were requests for ban of snares and that conibears be no longer than 4 1/2 inches for use on dry land. This subject was discussed at all meetings through June. In addition, five public meetings were held around the state in May without agreement.

Chairman Pricbe announced that anyone wishing to speak would be given opportunity to be heard.

ch 114

Monroe presented a petition with 329 signatures opposing chapter 114. They believe the rules "unfair and objectionable" to both trappers and landowners. Monroe offered background of the rules over the last three years. He referenced the House study bill to outlaw use of snares. With only three days' notice, he and 150 other trappers appeared in the House chamber for a hearing on the bill. Over 20 speakers had defended the use of snares. Monroe recalled that Les Lichliter, former Commissioner and Executive Secretary of Isaac Walton League also spoke in defense of trappers that evening. The next spring, Conservation staff contacted leadership of the Trapping Association and a meeting was held at Chelsea. They were informed of a "steam-roller of pressure" against conibear and snare traps. Monroe had used both types and there had been no problem in his area. At the Chelsea meeting, he also heard that the Coonhunters Association was planning to become "antitrap." Monroe had requested a copy of the complaints on trapping since it was the responsibility of the Trapper's Association to resolve them. He then learned that, statewide, there were no more than five complaints out of approximately 15,000 trappers. Monroe read from a synopsis of events which, by reference, becomes a part of these minutes. Monroe expressed willingness of the Trappers Association to work with the Commission even though they do not see "eye-to-eye" at this time.

107.24(6)

James McCarrier, Iowa City lawyer, spoke on behalf of Furtakers and the Iowa Trappers Association. He addressed what he considered to be the unlawful adoption of the rules. He urged objection on the basis that the rules are contrary to and exceed Department authority in 107.24(6). McCarrier argued that the rules were also arbitrary, capricious and unreasonable. He declared that too much restriction was placed on trapping when no problem exists. McCarrier quoted from Code §109.38 which provides "...and after an investigation, alter, limit, restrict methods and

CONSERVATION  
COMMISSION  
(Cont.)

means... if the investigation reveals that the action would be desirable or beneficial in promoting the interests of conservation..." He maintained there had been no "investigation" and, in his opinion, the rulemaking was unlawful.

107.24(5)  
109.38

Farris referenced §107.24(5) rather than subsection 6 for clear authority. He added that §109.38 further clarifies that authority and "investigation" does not imply a scientific investigation. Farris explained that the Notice to the public informed them that the agency was considering adopting restrictions. O'Kane concurred with Farris that the issue had been before the Commission and Staff for a number of years. He recalled that the Commission was represented at the public hearing in the House three years ago. McCarrier argued that restrictions on conibears and snares were all new subjects brought up at the January and February meetings. O'Kane pointed out that the proposal three years ago in the study bill was to ban all snares. He was serving as Chair of the subcommittee at the time. Other Committee members concurred with O'Kane on the subject.

McCarrier viewed the entire action as objectionable, since Commissioners failed to cite principal reasons for and against the rules adopted.

Royce was quizzed re time frame for concise statements. He noted that a court case determined 6 months was too long. The Supreme Court avoided that and refused to determine a good time. Royce thought 2 months was probably within the law and, maybe, 3-4 months. He added that the concise statement is aimed more toward court action than committee deliberation, although that probably should have been reversed.

McCarrier contended that the rules did not meet the recommendations of Code §17A.4(1) since they were changed after the Notice. O'Kane asked Royce if he viewed the changes as substantive. It was Royce's opinion that the rules passed muster in terms of legality of the Notice. He continued that change is permitted between the Noticed and adopted rule; otherwise, there would be endless series of Notices. Under Supreme Court doctrine, they hold that substantive change can be made so long as it is in character or keeping with the original notice. Royce did not consider change of snare size to be substantive change. Priebe believed the Commission had statutory authority to change the rule. McCarrier continued to argue his point that the APA intent was to avoid substantial change. Farris contended that Notice was given since, up until this time, there had been no limitation on the size of snare loop. General disagreement between Farris and McCarrier.

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COMMISSION  
(Cont.)

O'Kane agreed that McCarrier's point was arguable since the ARRC has often insisted on renoticing rules covering different subject than published in the notice.

114.5 McCarrier took the position that the Commission had altered the statute by placing a restriction on tag requirements--114.5.

109.92 Discussion of the trap tag requirements with Farris stating there was question as to meaning of "used" in the Code and the Commission was attempting to clarify it. They construe it to mean an instrument used for the "taking of," not an implement that is set in the field. Committee consensus was that Conservation had exceeded their authority, in this instance. Farris recalled the most common complaint during trapping season involves untagged traps. They encounter individuals with untagged traps in back of a truck or vehicle. Hunters will usually promise to do the tagging when the traps are set. The Commission is striving toward enforcement in this area. Individuals with untagged traps in use are subject to citation. Clark observed the rule did not give confiscation authority. Farris responded that 17A gives authority to promulgate rules for clarification and he referenced §109.92 again. Committee members wondered what other use those traps would have. McCarrier saw that as the most important point.

Bernie Barringer, Forest City, commented that most tags on traps are chewed off when the animal is caught. If a game warden observes the trapper working with untagged traps, the trapper would be subject to fine. Barringer noted that a 33 1/3 reduction on snare loop is not a percentage reduction. He made the point that you "can't cram coyote in the Asian snare."

Beyer spoke of the frustration of trappers being confronted with different proposed restrictions. He referenced the fact that two Commissioners had requested input from the Iowa Trappers Association. He added that furtakers were not notified of the proposals. He contended proposals had been inadequately investigated as to need and impact. Beyer doubted that 114.4 re serrated jaw traps would have little impact since trappers do not use them on land at this time. A closer scrutiny of the rule reveals that padded jaw trap which has rubber jaws would be illegal since the pad is serrated. Beyer was doubtful the Commission would favor outlawing this "valuable tool." In conclusion, Beyer urged careful consideration of the full impact of the rules. His association's goal is to educate all trappers and work actively to resolve the complaints.

CONSERVATION  
COMMISSION  
(Cont.)

Scolf reported that the National Trappers Association was dissatisfied with the rules. He was of the opinion that their suggestions to the Commissioners "fell on deaf ears." He supported more law enforcement and recognized that officers have their "hands tied." Kielhorn of Holstein addressed economics of the fur industry: "1974 and 1975 harvest was \$4.8 million; '76-'77, \$8.9 million; the \$10 million mark was topped between '78-'82; fox topped \$1 million and raccoon between \$8 and \$9 million; a dollar turns over 3 times in the state before profit is out." Kielhorn concurred that Commission restrictions could significantly reduce the fur harvest. Trappers save farmers millions of dollars through predator control.

Decker demonstrated various devices which are considered "harmless" to pets, livestock, etc. and distributed pictures to discount that argument. Farris and Decker disagreed as to size limit on loops. Decker said snares with some restrictions used under water might be acceptable. In his opinion, trappers should run traps every 24 hours and many problems could be avoided.

Myers Maxburg, farmer, landowner, auctioneer, trapper and coon hunter spoke of his use of conibears and contended that a dog can be released from the trap. Fred Stooky, hunter, sportsman and fisherman offered support for Farris "who has done a good job." One of Stooky's dogs had been killed in a tagged snare and one in an untagged conibear. The hunting dogs were not allowed to run loose. Anna Scolf challenged certain actions by Farris at some of the meetings. O'Kane defended Farris and Wilson, pointing out they were merely acting on behalf of the Commission. Barringer encouraged enforcement of existing laws. He cited importance of road ditches for trapping and he asserted that trappers have become paranoid--antitrapping sentiment seems to prevail. He viewed the Commission as being antagonistic and he urged "education" for the average trapper. "Big-time" trappers are knowledgeable. Tieden estimated a large increase in license fees would be needed to fund more law enforcement which would undoubtedly generate "a hue and cry." He recalled a "continuing fight" since he came to the legislature twenty-years ago. However, he was sympathetic with the problem.

McCarrier assured the Committee that trappers prefer a good public image but prefer a study to document need for further restrictions. We have had suggested pro-trapper articles to the media. Further, his group had made an attempt to educate the public re damage by feral cats and dogs--wild cats being the

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(Cont.)

most prominent predator in the state. He referenced recent legislation to deter the practice of "dumping" cats and dogs. Owen continued that trappers, prior to fur harvester licenses, were required to buy licenses that were strictly for trapping. On the back of that license, notation indicated that "fishermen and hunters contribute \$85 million per year to Iowa's economy." He contended that trappers should also be recognized since an average trapper, 22,000 Iowa trappers in 1984, spends \$273 dollars before he ever sets a trap. Owen estimated over \$13 million for the total economic gain for the state. He urged objection by the ARRC to the rules.

Mervin took the position that as a coon hunter he had a right to turn his dog loose without worry that it would be killed in a snare or conibear trap. A survey of his association revealed that approximately 95 per cent of them favored ban on snares and underwater conibears over size of 220. However, they recognize the hardship which the trappers would incur and support the rules as they are published. Mervin recalled that the 330 conibear was outlawed a few years ago and it is the same size as the 12" snare for underwater use only. He reasoned that the solution was to protect rights of other sportsmen with minimum infringement on trappers.

Clark was informed that a survey from 91 respondents revealed that four dogs were killed during last year's hunting season. Clark noted that a number of people were also shot or killed by hunters. Priebe recognized this as an emotional issue but both sides must be heard. He explained that the function of the ARRC was to decide whether the Department had exceeded its authority or acted in a capricious manner. He suggested asking Commissioner Kennedy to appear at the August ARRC meeting. An opponent demonstrated the method for setting a snare for beaver, and he opposed reduction of the snare diameter from 12 to 8 inches. Neil Bach concurred that it would be very difficult to catch a beaver in an 8-inch loop, and he declared that the foot trap was not the total answer. In addition, a female trapper would have difficulty setting the 8-inch trap.

Priebe interjected that most of the arguments had been heard and he spoke in defense of Farris and Bishop.

Discussion of possible formal action by the ARRC. O'Kane took the position that the Commission was within their authority and only possible grounds for objection would be that the filed rule contained provisions not in the Notice. Royce concurred that there was substantial change from the Notice and he

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Continued

had never argued otherwise. He continued that was not the point and referenced the 1983 Iowa Supreme Court case that held substantial changes can be made as long as they are within the character of the original notice. Clark saw reaction to an 8-inch snare as quite different from reaction to a 12-inch snare and substantive in that sense. Priebe favored delay until August for further study. He suggested that Kennedy and one other Commissioner be requested to attend. O'Kane and Royce saw no reason for delay.

Doyle wondered what neighboring states were doing and Farris provided detailed information, which revealed that each differed in their requirements.

Clark wondered if there were statistics on amount of trapping in those states. Farris guessed that Illinois, Minnesota, Wisconsin and Missouri have at least as many if not more than Iowa. He assumed Kansas, South Dakota, and Nebraska would have fewer. Someone from the audience said that Minnesota and Wisconsin were the biggest trapping states with Iowa close behind. Doyle reasoned that any action would be arbitrary since every state differed in their regulation. He had problems with the body-gripping and tagging requirements. In addition, he had problems with a rule or law which makes possession alone a crime.

Motion to delay

Doyle moved to defer rules on trapping, chapter 114, for seventy days for further study and that they be placed on the agenda for further review at next meeting on August 21. Also, that Conservation Commissioners be requested to appear at that meeting.

Discussion of the motion. Priebe declared that if the Commissioners do not feel strongly enough to appear and defend their positions, he would move an objection to the rules. He added, "If they do not have 'guts' enough to defend their positions, they don't belong on there."

Motion was carried. O'Kane voted "no."

NO AGENCY  
REP'S

No agency representatives were requested to appear for:

- COMMERCE COMMISSION[250]  
Energy conservation improvements — pilot programs, ch 30 ARC 6674 ..... *N.* 7/2/86
- HUMAN SERVICES DEPARTMENT[498]  
ADC, "central office" defined, resources — trusts, 40.1, 41.6(8) ARC 6667 ..... *N.* 7.2/86
- INDUSTRIAL COMMISSIONER[500]  
Substance and interpretive rules, payroll tax tables, 8.8, filed emergency ARC 6668 ..... *FE.* 7/2/86
- MERIT EMPLOYMENT DEPARTMENT[570]  
Early retirement and early termination, 8.1, 8.7, 11.1(1) and "c" ARC 6677, also filed emergency ARC 6676 *N+FE.* 7/2/86
- REGENTS, BOARD OF[720]  
Administration of the pay plan, 3.39, 3.39(1)(b), 3.39(2), 3.39(3), 3.39(7)(d)(1), 3.39(7)(2), 3.39(12), 3.39(13), filed emergency ARC 6673 ..... *FE.* 7.2/86
- SECRETARY OF STATE[750]  
Electronic voting systems, 10.1(2)(c), 10.1(4)(c), 10.2(1), 10.2(2), filed without notice ARC 6679 ..... *FWN.* 7/2/86

7-31-86

It was agreed that Commissioners Sam Kennedy and William Ridout, and any other Commissioners who wish to attend, would be requested to appear at the August 21 meeting.

ADJOURNMENT

Chairman Priebe adjourned the meeting at 6:10 p.m.

Next meeting was scheduled for August 19, 20 and 21.

Respectfully submitted,

Phyllis Barry  
Phyllis Barry, Secretary  
Assistance of Vivian Haag  
and Bonnie King

APPROVED

Bert E. Priebe

Chairman