

MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting

The special meeting was held Tuesday, Wednesday and Thursday, August 19, 20 and 21, 1986, in lieu of the statutory date of August 12. The meeting was held in the Senate Committee Room 24, State Capitol, Des Moines, Iowa, at 10:00 a.m.

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. Also present: Barbara Booker Burnett, Governor's Administrative Rules Coordinator.

The following rules were before the Committee and it was noted that certain functions of the two agencies would now be the responsibility of the Department of Economic Development created by 1986 Acts, SF 2175:

IOWA
DEVELOP-
MENT &
OPP

IOWA DEVELOPMENT COMMISSION[520]
Regional economic development co-ordination plans, ch 11, filed emergency ARC 6739 7/16/86
Iowa business-industry information and training network, ch 13 ARC 6737 also filed emergency ARC 6737 7/16/86
PLANNING AND PROGRAMMING[630]
Iowa job training partnership program, 19.2, 19.17 to 19.23, 19.48 to 19.52, 19.77 to 19.82, 19.86(4) ARC 6746 7/16/86

ch 11

Diane Foss said the existing Chapter 11 was rescinded and new rules will be developed which accurately reflect suggested elements of the plan. All fifteen Regional Coordinating Councils will be involved in the rulemaking.

O'Kane took the Chair.

ch 13

Mary O'Keefe, Business and Industry Training, Bureau Chief, Economic Development, explained Chapter 13 which addresses one phase of the Iowa business industry training network. O'Keefe said the one per cent was an administrative fee on the sale of certificates under Code chapter 280A. The administrative funds will be used for oversight of the new program. Parker recalled an exemption from the one per cent for the new jobs training program. Parker suggested that O'Keefe investigate possibility of flexibility for larger jobs not to exceed 1 per cent. He reasoned that 1 per cent across the board was adequate. O'Kane took the position that the 280B bonding process was complex and that administrative costs were justified.

JOB
TRAINING
PARTNER-
SHIP

ch 19

Jeff Nall, Acting Administrator, and John Bargman, Technical Assistant and Oversight Supervisor, Division of Job Training, presented amendments to chapter 19. According to Nall, all JTPA plans will be organized under three Divisions in chapter 19 which will outline procedures concerning incentive grants award system, reallocation policies, compliance review system, auditing, federal cost categories, financial management and procurement--everything needed to administer federal programs. The rules are intended to provide a 2-year planning cycle. Technical definitions will be revised.

JOB
TRAINING
PARTNERSHIP

19.3
19.21(2)

Discussion of "family income," definition in rule 19.3. Clark raised question as to the individual whose family income would be received in the first 6 months of the year. Nall responded that annualization of income was part of federal statute. It was noted that "fifty" should be "fifty-four" in the definition of "family of 1"--19.3, "15." Responding to Clark re percentages in 19.21(2), Neff said 3 per cent was reserved for economically disadvantaged who are 55 and over and 8 per cent was for vocational education services. Tieden observed many changes from the old rules language. Nall discussed impact of federal guidelines which they consider to be binding, in many cases. He described the state as a "grantee from the federal government." Department of Labor standards are followed when federal officials monitor the state. Nall added that some of the proposed rules resulted from new interpretation of old regulations. O'Kane recommended possible clarification as to qualification for foster care--19.3. Chairman O'Kane recognized Curt Sytsma, Attorney, representing a JTPA subcontractor, Iowa Comprehensive Manpower Services, Inc., SDA 11 and Local Private Industry Council. James D. Underwood, Executive Director of ICMS was also present. Sytsma submitted copies of a letter wherein he expressed opposition to various aspects of the proposed rules. He contended they were "anti-competitive" in their application to the selection of entities to deliver JTPA services. Sytsma cited 19.46(5)d and f as "offending" provisions. He interpreted the law to mandate competition in these situations. Sytsma continued that "corruption" is invited when a local administrative entity delivers and monitors a system. A second area of concern to Sytsma was the proposal to make the "JTPA Handbook" with its "update series" the equivalent of a rule--19.23(2). He declared that rulemaking by handbook violates the IAPA including the review committee's role. Sytsma could foresee entities being liable for "questioned costs" if they violated a requirement set forth in the handbook or an update--19.79(4). Sytsma concluded that although the rules are a vast improvement over existing ones, they should not be adopted until appropriate modifications are made. Nall indicated the Department followed what they interpreted the law to require but admitted there was disagreement. He suspected the issue would ultimately be settled in court. Nall knew of no prior rules.

19.46(5)d,f

19.23(2)

19.79(4)

O'Kane was told that the JTPA Handbook was distributed to about 150 individuals who have oversight responsibility or distribute the programs but it is available upon request as provided by rule. Nall clarified that it was their intent to provide a source of information not promulgate policy via the handbook. He considered the possibility of deleting reference to the handbook. No Committee action taken.

Senator Priebe resumed the chair and the following rules were considered:

WATER, AIR AND WASTE MANAGEMENT

Registration of water well contractors, ch 37 ARC 6721 F 7/16/86
Use of recycled oils for road oiling, dust control, and weed control, 140.1, 140.7, ch 143 ARC 6722 7/16/86

ch 37

Division representatives were Mark Landa, Randy Clark and Jim Humeston. Randy Clark called attention to changes from the Notice of chapter 37, which included clarification that each business entity, or any of its employees or officers, may be a water well contractor. The change will make the entity more accountable for compliance.

143.2

Landa provided history on rules pertaining to use of recycled oil which were quite controversial after public input. The adopted rules were modified to apply only to commercial suppliers and applicators. Priebe favored a clearer definition of "used oil"--143.2. Doyle referred to definition of "recycled oil" for clarification. Priebe contended that under the terminology, refined oil would have to be sold as used oil. Landa advised that use of synthetic oil was minimal and O'Kane wondered if it could be used on roadways since it was not derived from crude oil. Landa indicated legislation would be sought if necessary.

Responding to Tieden, Landa said that EPA is moving toward a total ban on road oiling. No ARRC action.

ALCOHOLIC BEVERAGES DIVISION

Rules of the Alcoholic Beverages Division, Commerce Department, were before the Committee as follows:

License and permit division, 5.7(1)"c," 5.7(2)"b," 5.8(4), 5.9(3) ARC 6756 F 7/30/86
Advertising, 6.1(10), 6.1(11) ARC 6757 F 7/30/86

Organization, license and permits, surcharge, trade practice regulations, 150--1.2, 1.5(1) and "c," 1.6, 4.1(1), 4.1(2), 4.1(6), 4.7(7), 4.7(8), 4.20"4," 4.25, 5.18, 5.19, 16.1(4), 4.39 ARC 6759, also filed emergency, ARC 6758 NYFE 7/30/86
Changes in department's name and certain personnel titles, 150--chs 1 to 16, filed emergency ARC 6760 FE 7/30/86

Patrick D. Cavanaugh, Department Director, and William Armstrong, Alcoholic Beverages Division, were in attendance.

6.1(10)

No questions re 5.7 et al. Armstrong noted that by removing "not" from 6.1(10), industry may furnish wine lists or menus to retailers. The change resulted from comments received from wholesalers at the public hearing. Armstrong stated that Code section 123.45 pertaining to this issue was vague and difficult to construe.

123.45

1.2 et al

Organization rules 1.2 et al reflect 1986 legislation which became effective July 1, 1986. Armstrong was willing to substitute "these" for "such" in 1.6. Tieden asked about the policy for accepting checks in state liquor stores. Armstrong answered that a drivers license and another identification will be required--4.20(123) and Tieden thought the policy should be included in the rule.

1.6

4.20(123)

Priebe asked how bad checks would be handled. He wanted to be on record as opposed to the acceptance of personal checks. Armstrong said the Division had contracted with a collection company which pays the state more than the face value of the check, e.g., a \$20 dollar check will have a \$10 collection fee of which the state will receive

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ALCOHOLIC
BEVERAGES
DIVISION

a percentage. Parker was interested in knowing the chain of events which ultimately reversed administrative policy on the check issue. Cavanaugh recalled the legislation which will become effective next March 1. When amending Code chapter 123, the legislature repealed the prohibition against checks. There was no bill to allow checks to be accepted but there appeared to be a possibility that checks could be accepted in the state stores. Cavanaugh was aware of a provision that law relative to operation of the stores remains in effect until stores close in March. He discussed the cost effectiveness of the process. No other questions.

Chs 1-16

Amendments to 150--chs 1 to 16 intended to reflect changes in department name and personnel titles were acceptable. It was announced by Chairman Priebe that Cavanaugh had requested review of the following agenda originally scheduled for 9:30 a.m., Thursday, August 21:

COMMERCE
DEPART-
MENT

Organization and operation, ch 1 ARC 6762, also filed emergency ARC 6761 *N. F. F.* 7/30/86
Petitions for rulemaking, ch 2 ARC 6764, also filed emergency ARC 6763 *N. F. F.* 7/30/86
Declaratory rulings, ch 3 ARC 6766, also filed emergency ARC 6765 *N. F. F.* 7/30/86

Cavanaugh described chapter 1 to 3 as basics required by by Code chapter 17A for all agencies. He displayed an organization chart for the Commerce Department and indicated a preference for name changes of two divisions: "Gaming Division" to "Racing and Gaming Division" and "Utilities Board." Committee consensus was that the changes would require legislation. Request could be submitted to the Legislative Oversight Committee. It was noted that the rules re petitions for rulemaking and declaratory rulings were products of the Governor's Task Force on uniform rules.

According to Cavanaugh, both Gaming and Professional Licensing Divisions will be moved to Ankeny within a few weeks making a total of three divisions there. Three divisions are located in the Lucas Building where Cavanaugh also maintains a small office. The Banking Division is currently located in the Liberty Building but will likely be moved along with Credit Union and Savings and Loan Divisions to a location where resources can be shared: i.e. clerical staff, automobiles and coordination of the financial institutions with respect to exams, etc.

PUBLIC
HEALTH
DEPARTMENT

Mike Guely, Irene Howard, John R. Kelly, Daniel Fries, Michael Magnant, Public Health; Etta Chesterman, Inspections and Appeals; William Vanderpool and Jim Krusor, Board of Medical Examiners, were present for the following rules:

Outpatient diabetes education program, 9.7(1)c and "d" ARC 6801 *F. F. F.* 7/30/86
Intermediate care facilities and skilled nursing facilities--personnel, 58.11(1)f, 59.13(1)f ARC 6740 *F.* 7/16/86
Speech pathology and audiology examiners, license fees, 155.7(1), 155.7(7) ARC 6690 *F.* 7/16/86
Speech pathology and audiology aides, 157.2 ARC 6691 *F.* 7/16/86
Swimming pools, ch 15, filed emergency after notice ARC 6804 *F. F. F.* 7/30/86
Plumbing code, 25.1, 25.2, filed emergency after notice ARC 6803 *F. F. F.* 7/30/86
Vital records, 96.5 ARC 6802 *N.* 7/30/86
Deaf services of Iowa, ch 126, notice ARC 6522 terminated ARC 6708 *N. T.* 7/16/86
Medical examiners, 135.301(7), 135.301(15), 135.101(4), 135.204(11) ARC 6741 *N.* 7/16/86
Mortuary science examiners, CE, 147.105, 147.106 ARC 6724 *N.* 7/16/86
Speech pathology and audiology, CE, 156.2(2) ARC 6692 *N.* 7/16/86

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PUBLIC
HEALTH
DEPARTMENT
(Cont.)

58.11
59.13

Also present: Josephine Hame, Judy Lucas and Juan Cortez, Advocates for Care Review Committee.

No questions re 9.7(1).

Review of amendments to 58.11 and 59.13 which require all inexperienced aides in intermediate and skilled care facilities who have not completed a state-approved training program to participate in on-the-job training. The 20-hour program is in addition to any facility orientation.

Lucas presented petitions from people who view the amendments as "a step backward." Representative Doris Peick had urged tightening of the training requirements. The training is being developed by Health Occupation personnel at the University of Iowa.

Cortez spoke for Older Iowans and emphasized the importance of aides who are sensitive to the needs of patients. She advocated training prior to employment to reduce the number of accidents by incompetent help.

Lucas also spoke of the importance of proper training for care facility employees before they work with patients. Royce advised that the Department had appropriately followed procedures.

Priebe suggested that the Older Iowans Legislature prepare a resolution on the issue and submit it to the ARRC who could ask for legislation.

Tieden expressed concern for additional costs with stringent rules, particularly in rural areas where competent aides would be available. Lucas disagreed that fewer problems existed in smaller facilities and she cited sexual abuse problems of last year. Clark concurred there were problems. She declared that many patients are "victims of their circumstances." No formal action by Committee.

No questions re amendments to chapters 155, 157, 15, 25, 96.5 and 126.

Medical
Examiner
ch 135

Under the proposed amendments to chapter 135, Krusor advised that voluntary agreements entered into in another state to restrict a license to practice medicine and surgery must be reported by a physician seeking licensure in Iowa.

In response to Tieden, Krusor said that under a national system being created, the Board will be alerted as to physicians with problems. Other amendments address informal settlements and establish guidelines for granting continuances. No questions re 147.105, 147.106 or 156.2.

Committee in recess at 12:10 p.m.

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Reconvened
Commission
for the
Blind
Special
Review,
Library
Services

Chairman Priebe reconvened the Committee at 1:30 p.m. and called on Catherine Ford and Elizabeth Sheets for special review of library services for the blind. Also present: Joseph Van Lent and Bill and Nyla Fulton, National Federation of the Blind.

Ford recalled a previous meeting with the Committee where there was discussion of the need to develop rules governing transcription of materials. She reported that leaders of consumer organizations and Blind Commission staff are reviewing a draft of rules which they anticipate will be published as a Notice in September. Current practice will be set out in rule format.

O'Kane was disturbed that the process was taking so long and he referenced a constituent who originally brought the matter to his attention. Ford assured O'Kane that his constituent's concerns were being monitored. In addition to transcription, they also include acquisition of books and materials. Extraordinary efforts have been made to be responsive to his needs. Ford continued that O'Kane's constituent had asked for 130 leisure-time titles to be transcribed and, to date, they have finished five. O'Kane recalled that the constituent had been told the titles he requested were too trashy to be transcribed.

According to Ford, the proposed rules provide priority to persons with existing vocational rehabilitation. Reading material will be transcribed to meet those needs within the limits of the Commission's resources. O'Kane suspected that requests of his constituent would be low on the priority list.

Ford spoke of the difficulty in finding volunteer transcribers. She emphasized that the Commission is not engaged in censorship, but cannot compel volunteers to transcribe the material. Ford pointed out that volunteers identified by the constituent had failed to produce positive results.

O'Kane requested a copy of the draft and urged completion of the rulemaking by the end of this year. Van Lent commented that, in the past, brailers performed this service. Ford pointed out that the subject matter was of violence and, in this instance, the person lacks braille skills. She agreed to keep O'Kane informed.

Representative Parker in the Chair.

REVENUE
DEPARTMENT

Carl Castelda, Deputy, James Hamilton and Clair R. Cramer were present for the following:

Income tax credit for increasing research activities, 42.2(6), 52.4(5) ARC 6727	7/16/86
Practice and procedure, taxation—excise, individual income, corporation, franchise, generation skipping, hotel and motel, 7.17(5), 7.21, 7.24(2), 11.6(2), 13.14, 18.45(1), 18.45(6), 43.2, 53.10, 55.2, 58.5, 60.2, 88.3(1), 88.3(3), 103.14(2), 103.14 ARC 6796	7/30/86
Taxation—excise, use, individual income, corporation, franchise, motor fuel, property, inheritance, fiduciary, hotel and motel, penalty and interest, 10.2 to 10.5, 12.10(4), 12.10(5), 30.10(1), 30.10(2), 44.3(4) to 44.3(7), 46.3(2), 46.6(3), 52.6(6), 52.6(6), 58.6(5), 58.6(6), 63.8(4) to 63.8(6), 75.2(2), 75.2(3), 81.8(1)b and "c," 81.8(2)b and "c," 86.2(19), 86.2(20), 89.8(7), 104.8(3), 104.8(4) ARC 6797	7/30/86
Sales and use tax, exemptions, 17.20, 18.46, 32.4 to 32.7 ARC 6728	7/16/86

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REVENUE
DEPARTMENT
(Cont.)

Taxes—individual income, corporation income, local earnings, 38.9, 40.9, 40.26, 42.5, 42.6, 43.5, 46.1(1)(e), 46.4(1) to 46.4(3), 46.4(5), 47.1(1), ch 49, 52.4(3), ch 113 ARC 6729.....N..... 7/16/86
Taxes—individual, corporation, franchise, fiduciary, 39.2(2), 39.2(3), 52.2(4), 52.2(5), 58.2(3), 58.2(4), 89.5(1) to 89.5(4) ARC 6730.....N..... 7/16/86
Corporation income tax, consolidation, basis, abatement of tax, 53.15(1), 53.15(3)(c), 53.15(6), 53.15(8), 54.1, 55.4 ARC 6731.....N..... 7/16/86
Corporations—minimum tax, additions to federal taxable income, 52.5, 53.8 ARC 6738.....N..... 7/30/86
Motor fuel, special fuel, 63.10, 63.23, 64.3, 64.9, 64.15, 65.15(1) ARC 6732.....N..... 7/16/86
Property tax, board of review, homestead tax credit, 71.20(1)(e), 71.20(4)(a), 80.1(1)(a) ARC 6733.....N..... 7/16/86
Cigarettes and tobacco, inheritance and estate taxes—appeals, returns and payment due, 81.11(3), 86.4, 87.3(7) ARC 6734.....N..... 7/16/86

- 42.2 Castelda gave brief explanation of 42.2 and 52.4.
52.4
- 7.17 et al Tieden questioned substitution of "will" for "shall" throughout amendments to 7.17(5) et al. Castelda took the position that "will" was more common terminology and since the statute uses "shall" it would prevail, in any event.
- 4.1 Code section 4.1, definitions of "shall," "will" and "must," was perused. The Committee disagreed with the Department's approach and recommended reinstatement of "shall". Castelda explained that amendments to 7.17(5) et al implement provisions of 1986 Acts, HF 2471. A number of changes will reduce amount of paper used. Savings will be realized by use of ordinary mail rather than certified mail.
- 10.2 et al Discussion of 10.2 et al. Castelda noted that the "See"
12.10 reference at the end of 12.10(5) would be corrected to read
10.5(421) 10.5(421). Also, the reference re use tax penalty was overlooked and that will be added. Subrule 30.10(3) will be modified by substituting ten for fifteen per cent in line 9. Priebe was informed that less than 50 but more than 12 frivolous returns are received each year--10.4.
- 10.4
- 17.20 Section 17.20 deals with exemptions for sales and use tax as a result of legislation. Castelda supplied the following description of use tax and sales tax. In general principals, a sales tax is basically a transaction tax. It is imposed every time there is a change of title for consideration whether it is in money, barter, or whatever. A use tax is imposed on the right of exercise or control basically associated with ownership. Therefore, something brought into the state, over which an individual exercises the right of control, can be taxed. A use tax presupposes a sale and according to the statute, at the time of purchase, there must be an intent that the item be for general use in the State of Iowa. In theory, and from a legal standpoint, the taxes are different. They are complementary--most exemptions that apply in sales tax also apply in use tax, and in most cases, the rates are basically the same. Generally, they are imposed on the same types of items because it is tangible personal property. Again, the theories differ, one is a transaction tax, one is an ownership tax.

There are, Castelda continued, different types of use tax: Normally, sales tax would be imposed on vehicles subject to registration, but the General Assembly, in order to maintain the road use fund, has called it a use tax. A consumer's use tax is applied on purchases made outside of Iowa but brought into Iowa for use here--a 4 per cent tax.

REVENUE
DEPARTMENT
(Cont.)

A retailer's use tax is generally a collection burden placed on retailers out of state and has some minimal connection with Iowa. Clark noted that some places list percentages for states and then others do not. Castelda responded that Iowa is in a Compact and has adopted a uniform exemption certificate. Castelda advised that no use tax is collected on catalog sales. Castelda discussed cooperative agreement with bordering states on this matter. He cited the Bellas Hess (mail order) issue as one which various states want Congress to address.

38.9 et al Castelda reported that amendments to 38.9 et al incorporate provisions of several 1986 House Files where numerous changes were made. No Committee recommendations.

With respect to federal pensions, Doyle mentioned that some states are able to get withholding and he wondered if Iowa were participating. Castelda indicated that Iowa has reached an agreement with the military but not with civil service since administration costs make it infeasible.

Judicial retirement Doyle and Castelda discussed status of tax exemption for judicial retirement. Several bills had been in process, including two governor-vetoed bills. However, Castelda said that provision exempting this retirement from tax did become law.

42.5 Discussion of 42.5 which mandates copy of the withholding statement to receive tax credit. Doyle was interested in Iowa's policy when tax preparers are unable to obtain W-2s from a defunct business. According to Castelda, the Department will accept a statement to that effect. Hamilton noted there are federal forms for this purpose.

39.2(2) Priebe took the Chair and called for review of 39.2(2) et al which will implement provisions of 1984 Act, chapter 1117, dealing with filing of tax returns and penalties. Tieden called attention to differing language on extension of time in 39.2(2) and 52.2(4). Castelda thought the matter was statutory and was probably overlooked in 52.2(4). Hamilton said the Department has made an effort to coincide their time for filing and extension with federal requirements but they vary by tax. Doyle was advised that the statute provides for filing of partial returns for good reason and the Revenue Department has created a form for the extension request. Doyle noted that "reason" was not requested on the form. Hamilton clarified that automatic extensions are granted without a reason by tax type but must be justified.

chs 53, 54, 55 Further discussion of amendments to Chapters 53, 54 and 55. No questions.

Castelda advised there is uniformity in about 95 per cent of the taxes--differences occur with cigarette and tobacco taxes and the change in use tax just identified.

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REVENUE
DEPARTMENT
(Cont.)
63.10 et at

Amendments to 63.10 et al will implement 1986 Acts, House Files 717, 764, 2471 and 2484. Department officials noted that the fuel tax industry, distributors and major oil companies are concerned about administration of the provisions. The Department plans to terminate the proposal and work with industry for alternatives to mandatory bonding for special fuel licenses.

71.20(1)e

In review of 71.20(1)e, it was pointed out that authority to increase the size of the Conference Board was found in HF 2481. Castelda called attention to proposed amendments to 81.11(3) and 81.11, which will be terminated.

LABOR
BUREAU

Walter Johnson presented the following:

Occupational safety and health standards for general industry, 10.20 ARC 6745, also filed
emergency ARC 6744.....N.Y.F.E..... 7/16/86
Occupational exposure to ethylene oxide and cotton dust, 10.20 ARC 6743.....P..... 7/16/86

No questions were raised.

HUMAN
SERVICES
Special
Review
NAs

Mary Ann Walker represented the Department of Human Services for special review of Title XIX, direct payment for nurse anesthetists. Appearing with Walker were: C.S. Ballinger, Dan Gilbert and Don Herman. Other interested persons included: Tim Gibson, Iowa Medical Society; John H. Tinker, Professor and Chairman of the Department of Anesthesia, University of Iowa College of Medicine; Marvin Silk and Robert Eggers, Iowa Society of Nurse Anesthetists; Marty Owen, NA, and Richard Mishler, President, Iowa Association of Nurse Anesthetists.

Mishler spoke to inequities which the IANA believes exist between them and the Department of Human Services, Title XIX of the state Medicaid system. Mishler contended that state would cut costs by use of the direct reimbursement of nurse anesthetists. His group had petitioned the Department for this procedure but were refused twice by what he considered to be "one judge and jury." He suspected abuse of the reimbursement system. Mishler pointed out that many physicians and hospitals prefer to contract for services and avoid the employer/employee relationship. He continued that both certified registered nurse anesthetists and physician anesthesiologists are legally licensed. It was his intent to stimulate competition.

Herman explained the Department's position. In 1985, a survey of all state Medicaid programs and information from BC/BS revealed that Medicare was not making direct payment to NAs. Also, more than half of state Medicaid agencies were not making direct payment to NAs so the request for rulemaking was denied.

Priebe asked if law change were needed and Herman answered that direct payment could be implemented by administrative rule. However, he had no evidence there would be any change in level of reimbursement if direct payment were made. The

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physician receives no additional fee nor is he paid for filing claims. Priebe asked if NAs and physicians received the same fee but Mishler had no statistics. Priebe was interested in saving money and requested information on the billing.

Tinker clarified that most anesthesia is directly administered by an anesthesiologist or supervised by one. Mishler, as a registered nurse, viewed himself as being responsible and pays \$5100 annually for liability insurance. Tinker interjected that a lawsuit would be "filed against everybody, including the hospital."

Silk knew of no state which permits a certified registered nurse anesthetist to practice unsupervised. He stressed the importance of medical judgment in administering anesthesia and pointed out that the physician has direct supervision with accompanying legal liability.

Silk reasoned that direct reimbursement was, in effect, "a double bill" since the supervising physician would also submit a bill.

Mishler referenced a 1930 case holding that administering anesthetic was definitely a nursing function. He disagreed that it is the practice of medicine--of the 16,000 NAs in the U.S., only 3,000 are certified by the American Board of Anesthesiology.

Owen emphasized that NAs were not advocating change in current practice--only the ability to bill directly for reimbursement. Herman stated there were many areas of the Medicaid program where the Department follows Medicare policy for purposes of consistency among the medical community. The Medicare program has not made direct payment to certified nurse anesthetists.

Mishler reiterated that increase in competition for the health care dollar had prompted interest of the NAs. Eggers viewed reference to the 1930 court case as "stretching credibility." He described the procedure followed by the anesthesiologist physician.

Herman corrected comment re survey which was done in cooperation with the Iowa Hospital Association and the Iowa Medical Society.⁺ O'Kane was told that the licensing of ARNPs in Iowa was authorized three years ago and the Board of Nursing had not been consulted on the matter. O'Kane wondered if there were similar situations in other specialties and Mishler cited Home Health Care, an ever-increasing industry.

O'Kane asked if the physicians felt "threatened" by NAs. Gibson responded that the physicians in attendance had come to hear Mishler's presentation and be available for questions. They did not wish to advocate a particular position at this time.

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(Cont.)

Clark could foresee confusion in allowing NAs direct payment for Medicaid patients but not for others. Mishler agreed. Clark recalled a similar situation with radiologists being allowed direct billing. She saw no difference in quality of service as a result.

Royce
Review

O'Kane requested Royce to review the matter; in particular, Gibson's comment about the legally stated relationship between the two professions within the Board of Nursing rules. Mention was made of possible referral to the General Assembly. However, O'Kane recalled the many turf battles between the professions and he preferred research. No formal action.

Recessed

Chairman Priebe recessed the Committee meeting at 3:50 p.m.

Reconvened

Chairman Priebe reconvened the meeting, Wednesday, August 20, 1986, 9:20 a.m. All members and staff were present. Campaign Finance Disclosure Commission was rescheduled for 11:30 a.m.

Racing
Commission

The following rules of the Racing Commission were presented by Jack Ketterer:

Greyhound racing, mutuel departments. 7.811"e," 7.841"a," 8.241"q"(12) ARC 6800 ..N/..... 7.30.86

Number of Stewards will be increased from one to two to provide more control in the steward stand and allow licensee representation for decision making.

Priebe was informed that additional cost would amount to \$65 per performance. Licensees will be required to pay for the drug testing program. Total cost, depending on number of performances, would be \$40,000. No comments had been received on the statutory provisions. Priebe questioned Ketterer as to why the Director of racing or the Secretary could not fill in as the second steward. According to Ketterer, the Commission was opposed to doubling those positions. Priebe questioned the advisability of "spending another \$40,000 when the state is trying to hold the line." Ketterer pointed out that several states assume the chemical testing program which costs licensees \$340 per performance. Iowa State University is performing the testing this year.

COMMITTEE
BUSINESS

Rules
Publication

There was discussion of ensuing problems in the rule-making process to implement reorganization. It was also noted that publication costs for the large volume of rules will increase greatly over the next several months.

Priebe suggested possible omission from the Bulletin the text of adopted rules when they are identical to the Notice. Barry had observed this practice in some other states.

COMMITTEE
BUSINESS
(Cont.)
Motion

Doyle moved to authorize the editors of the Iowa Administrative Bulletin to initiate a cost-saving procedure for processing certain adopted rules by omitting from the IAB those adopted rules which are identical to the Notice of Intended Action. Discussion of the motion. Burnett wanted to study the matter. There was Committee consensus that nonsubstantive changes could be made if the preamble to the rules clearly enumerated those changes. It was clarified that the full text of the rules would be included in the Iowa Administrative Code.

In the event of opposition from the Attorney General to implementation of the procedure, the Committee asked that he be invited to the September meeting for further discussion of alternatives.

Vote

The Doyle motion carried. Parker arrived.

CORRECTIONS
DEPARTMENT

Carrie Mineart and Fred Scaletta represented the Department for the following:

Work release, violations—transfer hearings, 44.6(6)	ARC 6807F.....	7/30/86
Institutions administration, 20.10(6), filed emergency	ARC 6805FA.....	7/30/86
Iowa state penitentiary, 21.2(1), 21.2(2) "a" and "b", 21.3(5), 21.3(2), 21.3(4), 21.5(1) "a"	ARC 6806N.....	7/30/86
Community-based corrections administration, 40.5(8), filed emergency after notice	ARC 6714FAN.....	7/16/86

The Department made the minor change recommended by the ARRC and no other comments were received.

20.10(6)

No questions were raised concerning 20.10(6), which reflects changes directed by HF 2484. Mineart distributed a modified version of proposed amendments to Chapter 21 which were intended to address negative response on the Notice published in 7/30/80 IAB. Royce advised that the latest draft contained extensive changes. O'Kane pointed out the importance of allowing public input on the rules. After discussion, the Corrections Department was directed to terminate the ARC 6806 Notice and renote the modified version. Mineart was not aware of changes being made relative to visiting privileges for grandparents but she would check for Royce. Scaletta interjected that area was under his jurisdiction and he was aware of a change in definitions to include grandparents in funeral and bedside visits. In some types of Indian cultures, children are reared by grandparents.

21.2(1)
et al.

40.5(8)

Mineart defended the emergency after Notice adoption of 40.5(8) as conferring a public benefit and no comments had been received at the hearing. Mineart explained to Priebe that the "50 per cent of growth in local funds" could be carried over and used for programs of enhancement and to improve main programs. The original contracts are between the district and state departments. Priebe wanted assurance that Corrections would not be seeking additional funding from the General Assembly. Mineart clarified that approval of the Department would be required to use funds for something other than those set out in the original plan.

CORRECTIONS
DEPARTMENT
(Cont.)

Referral

O'Kane recalled apprehension by the ARRC as to the discretionary fund use when the amendment was proposed and he was of the opinion it should go through the normal rulemaking process. Mineart could foresee difficulties with the time frame because of their Board meeting schedule. Doyle asked unanimous consent that the matter be referred to the fiscal bureau and to the Speaker and the President of the Senate for referral to the appropriate committees. So ordered:

PUBLIC
SAFETY
DEPARTMENT

Connie White, Mike Rehberg, Don Appell and Bethann Cox were in attendance for the following:

¹Devices and methods to test blood for alcohol or drug content. 7.6 ARC 6717, also filed emergency. ARC 6716 ~~ARC 6716~~ 7/16/86
State building code. 16.110(1), 16.110(3), 16.120(2) to 16.120(6), 16.121(1), 16.121(3), 16.130(7), 16.130(14),
16.140(1), 16.300, 16.400(1), 16.500(1), 16.626(1), 16.626(2), Table 6A, and Figure 3 at end of 16.629, 16.701(2),
16.701(7), 16.701(15), 16.704(4), 16.705(1), 16.705(2), 16.705(5), 16.705(8), 16.705(11), 16.705(12), 16.706(1),
16.800(3), 16.800(4) ARC 6718. ~~ARC 6718~~ 7/16/86

Also present: James Champion, Lowell H. Bauer, B.K. Lunde, John W. Mayfield, Marvin E. Franke and William C. Leachman, all members of the State Building Code Advisory Council; Patrick Huelman and Laurent Hodges, Iowa State University Energy Extension.

7.6(1)

After brief overview of 7.6(1) by White, it was noted that the + symbol appeared correctly in the IAC. The subrule was deferred temporarily.

ch 16

Appell told the Committee that amendments to chapter 16 would update the State Building Code to the most recent uniform editions and would also implement statutory requirements on use of home heating index for one- and two-family homes.

Leachman, Chairman, Building Code Advisory Council, spoke to Division III, Part VII, of the rules and expressed the Council's concern that HF 341 passed without their concurrence even though the Council had asked for input. Leachman predicted the state would "shoot itself in the foot" again by needlessly accelerating costs of buying and owning a home in Iowa. He contended that HF 341 adds to existing excessive requirements for energy conservation--increased costs will surpass any savings. He presented statistics to enforce his argument. Leachman recommended repeal of the law.

O'Kane had read the statute and was doubtful it would be repealed since Iowa is an energy importer--approximately 90 per cent comes from other states. He was reasonably certain the General Assembly would favor continuation of energy efficiency standards in new construction which were implemented 7 or 8 years ago. O'Kane indicated he would carefully review the technical rules to ensure they are within confines of the statute.

Champion stated that the Council had been trying for years to get some consistency in the building codes of many jurisdictions. In so doing, they had relied on the National Model Energy Code and concurred with the need to conserve energy. However, he viewed the new law as confusing the entire issue.

PUBLIC
SAFETY
DEPARTMENT
(Cont.)

16.800(4)

Priebe did not recall being contacted by opponents of the bill. Chapman advised him that lobbyists for the homebuilders and architects had generated some change in the legislation. It was noted that public hearing on the proposed rules was scheduled for this afternoon. He discussed the prescriptive standards which homebuilders consider to be excessive--16.800(4). In reply to question by Tieden, Champion voiced opposition to the law and rules. Priebe reminded that the ARRC could take action on the rules only. Champion considered the home heating index requirement in the Act to be the problem. He was willing to keep options open for the prescriptive standards.

Parker reasoned that the state building code is somewhat ridiculous since it can be exceeded by local jurisdictions. Leachman reiterated that the energy code is applicable to all who build houses in the state. Mayfield declared that less construction will occur which will be counter-productive to an already distressed building industry in Iowa.

Discussion of the home heating index developed by the physics department of Iowa State and the fact that council members believe the University to be inflexible. Mayfield pointed out that the numbers established by Iowa State were not available at the time the bill was being passed. He objected to the cost ineffectiveness of the HHI requirements. Huelman clarified that Iowa State had not been involved in the rulemaking or lobbying regarding the HHI but served as a technical resource to the Energy Policy Council. The EPC made the survey and, in turn, served as technical resource to the Building Code Advisory Council. The goal was established through random sampling.

O'Kane interpreted the statute to provide exemption from the standards and he suggested that fact be included in the rules. Appell mentioned a conflict which precludes the Department from exempting one- and two-family dwellings. Priebe suggested that both factions work together for a resolution of the problem. Clark pointed out language in 16.800(4)i, the Note, which she considered to be vague... "or any other recognized method." Priebe recommended that opponents of the law contact their respective legislators.

7.6

Discussion of 7.6 was resumed. Martin Francis, Legislative Service Bureau, offered his opinion on the question of whether or not the Department has authority to draft a rule on the statute regarding margin of error in chemical devices. Case law is recognized that an agency may draft a rule if there is authority expressly or inherently implied in the statute and the rule does not contradict the statute or legislative intent. Francis saw no express authority for the rule. He discussed statutory construction regarding margin of error. The two words that "turn on this instance" are "inherent" and "established". On that basis, the rule contradicts the statute. He presented copies of a letter

PUBLIC
SAFETY
DEPARTMENT
(Cont.)

8-20-86

to Senator Welsh. Rehberg contended that rule 7.6 was based on the scientific operation of the instruments used.

Rehberg asked for guidance in developing appropriate language to achieve the desired goal. Doyle wondered if, under the drunk driving bill, there were a margin of error and would that alone give the Department statutory authority or was it dependent upon each case? Royce commented that a rule adopted under proper authority is a law and the court must accept that rule as law unless it is invalid. He and Francis concurred that there was no specific statutory authority to draft a margin of error rule. Royce continued that, "the court can look at whatever you do, but you are not going to be bound by it." He had no problem with the rule being promulgated as long as it was identified as "interpretative" rather than "substantive". Doyle commented that an interpretative rule which provides an "average is plus or minus 5 per cent" could be viewed by the court as a guideline, and defense would have a right to say, "In this particular case, there were other errors because..." Since the emergency adoption, Rehberg had been challenged each of the eight times he had testified. Francis spoke briefly on legislative intent.

Francis advised that Rehberg would be free to provide a list to prosecutors, police, etc. as to what is the margin of error--but not in the form of a rule. Doyle viewed the rule as ultra vires--lacking statutory authority and he moved to object to 7.6 as it stands exceeding statutory authority. Motion carried. The following objection was prepared by Royce:

MOTION TO
OBJECT
680-7.6

At its 20 August meeting the committee voted to object to ARC 6716 on the grounds that it exceeds the authority of the department. This filing appears in IX IAB 2 (7-16-86) and is codified as 680 IAC 7.6. In essence this rule establishes a margin of error for OWI chemical tests. The authority for this rule-making is grounded in 1986 Acts, H.F. 2493; this legislation creates a new Code chapter. It provides in part:

THE RESULTS OF A CHEMICAL TEST MAY NOT BE USED AS THE BASIS FOR A REVOCATION OF A PERSON'S MOTOR VEHICLE LICENSE OR NONRESIDENT OPERATING PRIVILEGE IF THE ALCOHOL CONCENTRATION INDICATED BY THE CHEMICAL TEST MINUS THE ESTABLISHED MARGIN OF ERROR INHERENT IN THE DEVICE OR METHOD USED TO CONDUCT THE CHEMICAL TEST DOES NOT EQUAL AN ALCOHOL CONCENTRATION OF .10 OR MORE.

Pursuant to this authority the department has emergency adopted rules to specify a margin of error at five percent. In essence, whatever a suspect "blows" into an intoxilyzer will be reduced by that percentage to determine whether the person has a .10 level. This estimate is used by the officer to determine whether there is probable cause to arrest the person and perform blood or urine tests. This same margin of error will then be applied to these evidentiary tests.

It is the committee's opinion that the department does not have statutory authority to promulgate a

PUBLIC
SAFETY
DEPARTMENT
(Cont.)

margin of error as a substantive rule. This type of rule has the force and effect of law and may be promulgated when an agency has express or necessarily implied authority to issue a rule.

- 1) STATUTE ITSELF MUST BE CONSTITUTIONAL.
 - 2) STATUTE MUST SPECIFICALLY OR IMPLIEDLY AUTHORIZE THE PROMULGATION OF RULES.
 - 3) PROCEDURE SPECIFIED FOR THE ADOPTION OF RULES MUST BE FOLLOWED.
 - 4) THE RULE ADOPTED MUST BE WITHIN THE AUTHORITY DELEGATED BY THE STATUTE AND BE REASONABLE.
- Revenue Dept. v. Iowa Merit Employment Comm.,
243 NW2d 610 (Iowa, 1979)

It is the opinion of the committee that House File 2493 does not contain express or implied authority for the department to promulgate a substantive rule establishing a margin of error as a matter of law which is binding on Iowa's courts. If the department wishes to establish a margin of error as a matter of opinion, it may do so by an "interpretive" rule. This type of rule does not need specific statutory authority, but it is not law; such a rule merely expresses the department's opinion and in no way is binding upon a court. These interpretive rules are entitled to "respectful consideration" by a court, but the court is entitled to substitute its own opinion for that of the agency. ARC 6716 has all the appearances of a rule, except for the lack of specific statutory authority. Without that authority it is merely the department's opinion, and should specifically state that fact..

HUMAN
SERVICES
DEPARTMENT

The following agenda was before the Committee:

In-home health related care, payment, 177.4(9) ARC 6706.....	F	7/16/86
Fair hearings and appeals, 7.1, 7.3, 7.5(1), 7.5(2), 7.6, 7.7(2)"b", 7.7(3), 7.7(4), 7.8(5), 7.8(7), 7.10, 7.10(3), 7.10(4) and "b", 7.13(2), 7.16(4), 7.16(6), 7.17 to 7.20, 7.21(2), 7.22(1), 7.22(3), filed emergency ARC 6712	FE	7/16/86
ADC, granting assistance, 41.7(3) ARC 6710	N	7/16/86
Supplemental and medical assistance, payments, foster family homes, in-home health related care, 52.1(3), 54.3(15), 78.2(2)"a", 78.12(11)"b" and "d", 79.1(2), 79.1(3)"g", 81.6(16)"b", "c" and "e", 150.3(5)"p" and "r", 154.6(1), 156.7(1), 177.4(3), 177.9(3), filed emergency ARC 6713	FE	7/16/86
Food stamp program, administration, 65.3, filed emergency ARC 6707	FE	7/16/86
Food stamp program, utility allowance, 65.3(1), 65.3(3), filed emergency after notice ARC 6704	FEAN	7/16/86
Work incentive demonstration program (WIN/CMS), 90.12, 90.13, 90.13(2) and "a" and "e", 90.13(3), 90.13(4)"d", "e" and "m", 90.16(1), 90.16(2), 90.16(4), filed emergency after notice ARC 6705	FEAN	7/16/86
Eldora training school, 103.20, 103.21 ARC 6711	N	7/16/86

Department representatives present were: Mary Ann Walker, Linda Foster, Lorena L. Griffith, Will Miller, Eric Sage, Mary Nelson, Robert G. Schoene, C.S. Ballinger, Bob Lipman. Also present: John Terrell, Inspections and Appeals. No questions re 177.4(9).

7.16(4) Clark observed that the commissioner need not listen to verbatim record of a hearing on appeal, 7.16(4), second paragraph. Department officials indicated that legal services corporation had requested the provision.

General discussion of appeals procedure under state reorganization. Hearing officers from the Department of Inspections and Appeals will conduct hearings and issue proposed decisions for various departments. In the case of Human Services, they will continue to maintain responsibility for setting policy, screening and making final decisions on appeals. As to the complexity of this procedure, Royce advised that other states follow a similar pattern which works after a time.

HUMAN
SERVICES
DEPARTMENT
(Cont.)

Terrell had been designated Bureau Chief for appeals of the Human Resources Bureau. He admitted there would be many technical problems in terms of coordinating the case responsibility. However, he thought the responsibilities of the departments were quite clear.

Doyle raised question as to the way rule 7.18 was written-- ex parte communications. General discussion. Royce commented that the rule could govern appellants who have no representation but should not be applied to a lawyer who would be aware of ex parte communications. Terrell was amenable to clarifying the language.

- 41.7(3) O'Kane questioned the last sentence of 41.7(3) which was amended to read, "Funds made available to ADC eligible group exclusively for their needs are considered income." Walker explained that this would always apply to shared living arrangements--two people or two households living together. Griffith added that if income is not specified to meet the common needs of both groups, it would not be income. O'Kane wondered if that would be a rare circumstance and she concurred.
- 52.1 et al Walker said that amendments to 52.1(3) et al implement 1986 Acts, HF 2484. Clark viewed the formula in 54.3(15) as complicated. She was told that it reflects the budget cutback and some figures were based on percentages of federal and state programs. Clark thought that was unfair--different incentive factors. Miller said that had existed for 12 or 14 years and he had no knowledge as to why it was that way. Priebe asked that it be checked and he be notified.
- 65.3 O'Kane called attention to two amended dates in 65.3 re the food stamp program. Walker said the April 1 program had to be implemented before July 1 and the Department wanted to indicate that March 28 was relevant to this rulemaking. The date will change again with subsequent rules. Tieden was told that Iowa did appeal the \$700,000 liability for food stamps for FY 1984.
- 65.8 In discussing amendments to 65.8, O'Kane questioned the need for emergency filing after Notice. Walker said that request had come from Legal Services and the rule does confer a benefit to the client.
- 90.12 et al Walker mentioned copies of comments on 90.12 et al which were sent to Committee members. No changes had been made since Notice. Lipman described Job Club as a national concept. WIN clients are normally assigned to the club for four weeks and are taught techniques of vocational skills and interests, how to access job market, and finally there is a 3-week intensive job search. The program is supervised by Human Services and Employment Services at seven project locations and has been very effective. O'Kane pointed out that the Job Training Partnership Act provides similar programs and this kind of competitive situation

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HUMAN
SERVICES
DEPARTMENT
(Cont.)

improves the training. Tieden was interested in accessibility for all areas of state.

In re 103.21(2)a, it was noted that quorum requirements were set out by statute. Department officials were aware of the fact that "committee" should be substituted for "council" in the last sentence of 103.21(4). Brief discussion of proposed method for providing medical services through HMOs in an attempt to save state funds. Any comments generated as a result of the proposal should be forwarded to Royce.

CAMPAIGN
FINANCE
DISCLOSURE
COMMISSION

The following rules of the Campaign Finance Disclosure Commission were offered by Kay Williams, Executive Director:

Revisions, campaign contributions to state officeholders and candidates for state office. 3.1, 3.3, 4.1 to 4.7, 4.13, 4.16, 4.22, 6.5, ch 7 ARC 6735

7/16/86

3.1 et al

Williams gave brief overview of the amendments with background information on 6.5(56)--nonpayment of penalties. She indicated that a small claims judgment has been imposed against persons who still owe \$15 since January 1985. Williams continued that the Commission decided several meetings ago to review their procedure for assessing fines. The Commission is hopeful that the proposed penalty schedule will provide an incentive to pay and solve some problems. Priebe questioned statutory authority for the action. Williams said their Assistant Attorney General reviews all of the rule drafts and had approved the \$400 limit. The highest fine permitted by statute is \$100 and the proposed schedule progresses that to \$400 after 90 days. Royce was directed to review the matter.

Royce
Review
4.1

Consensus of the Committee that 4.1 was "wide open" in requiring "committees to submit information not specifically delineated..." by law. Williams cited address or telephone number as examples. Suggestion was made that the rule should be rewritten or corrective legislation should be sought.

7.1(3)

Clark was informed that language in 7.1(3) was suggested by a lawyer to avoid circumvention of the rule by depositing funds to an account without the depositor's knowledge.

4.13(1)

Doyle asked for explanation of a "verified (sworn) statement registration form" required to accompany the contribution--4.13(1). Williams said this would contain general information about their PAC and must be attached to the out-of-state check. No formal action taken.

Noon
Recess
Reconvened

Committee was recessed at 11:55 a.m. and reconvened by Chairman Priebe at 1:30 p.m.

LAW
ENFORCEMENT
ACADEMY

Ben Yarrington, Director, and William Callaghan, Counsel, presented the following:

Definitions, mandatory psychological testing and administrative procedures. 1.1, 2.2 ARC 6770, filed emergency, ARC 6769. FE

7/30/86

Mandatory psychological testing and administrative procedures. 2.2, filed emergency ARC 6694. FE

7/16/86

LAW
ENFORCEMENT
ACADEMY
(Cont.)

Also present: Roger Nowadsky, League of Iowa Municipalities. Yarrington discussed the sequence of rulemaking for psychological testing of law enforcement applicants since Dr. Wollack had withdrawn his ALERT cognitive test for use in Iowa because of a contractual dispute.

2.2

It was noted that rule 2.2(80B) as published in 7/16/86 IAB was superseded by the version in 7/30/86 IAB. According to Yarrington, 1.1 and 2.2 were promulgated to implement HF 2484, section 411, which mandates the Academy to provide psychological testing to applicants at half cost to nonstate candidates for law enforcement positions. Testing requirements were reduced to one personality test and the SRA test--replacing the Wollack test. Use of test results is limited by the rules.

Clark took the position that definition of "final selection process" should be rewritten for clarity. Nowadsky concurred. Yarrington described the normal selection process. Callaghan said that if they really use it as a process, they would have to mandate that more than one person take it. Committee members pointed out other areas where the definition was in use in the rules. Nowadsky called attention to the Noticed version of 1.1 and 2.2 which was deficient in the time allowed for written comments--ARC 6770, 7/30/86 IAB.

The Academy amended that Notice in 8/27/86 IAB to extend the time and Nowadsky was still in the process of soliciting comments from cities. Yarrington indicated he would cooperate with Nowadsky. Doyle asked if there were time periods for retaking the psychological test and Yarrington said guidelines were being developed--2.2(8)c.

General discussion of testing and scoring. Parker was advised that the test must be validated for the particular population that is taking the test. Score was established on the basis of experience of other states. Callaghan said validity studies had been conducted and Yarrington added that they had to rely on the professionals involved in testing law enforcement applicants in Iowa.

PERSONNEL
DEPARTMENT

Clinton P. Davis, Deputy Director, represented the new Department of Personnel (formerly Merit Employment) and the following agenda was considered:

Definitions, coverage and exclusions, classification plan, examinations, eligible lists, certificate requests, transfer, voluntary demotion, disciplinary actions and reduction in force, grievances and appeals, 570--1.1, ch 2, 3.1(1), 3.1(2), 4.4(1), 5.1, 6.1, 7.2, 10.2, 10.4, 11.2(3), 11.3(2) and "b" to "e," 11.3(3)a, 11.3(5), 11.3(6)b, 12.1(1), 12.2(1)b, 12.2(7), 12.2(8), filed emergency ARC 6773... *FE* 7/30/86 269

No recommendations.

Royce
Research

Royce was requested to work with Ed Moses on the questions he had raised at previous ARRC meetings with respect to ranking and certification lists for promotion from the top six names.

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SOIL
CONSERVATION

James B. Gulliford appeared on behalf of Division of Soil Conservation of the Department of Agriculture and Land Stewardship for the following:

Iowa financial incentives program for soil erosion control, appropriations, 5.41, filed emergency after notice ARC 6788 F.E.A.N. 7/30/86

Priebe asked about the 10-year setaside program advocating trees. He recalled that \$20,000 was provided for fences and he wondered if those with the tree program would qualify for fences. Gulliford said they had not approached that situation. It was his understanding that over 1000 acres would be in trees. State dollars would not be used for fences. Gulliford indicated that eroding woodlands would be fenced for protection. Last year, districts had one year to utilize those funds. Twelve districts have used \$1000 each and the remaining funds will be allocated to districts that had made applications--5.4(10). Gulliford was confident the funds had been used wisely.

Insurance
Division

Sharon Henry appeared for the Insurance Division of the Commerce Department for the following:

Insurance
Department

INSURANCE DIVISION[193]
Property and casualty insurance rate and form filing procedures, 510-20.4(4) to 20.4(7) ARC 6793 F. 7/30/86
Life insurance policies, life insurance companies--variable annuities contracts, variable life insurance model regulation, 510-30.5, 31.3(2), 33.4(1) ARC 6794 F. 7/30/86
Accident and health insurance, individual accident and health--minimum standards, 510-35.4, 35.7, 36.11 ARC 6795 F. 7/30/86

INSURANCE DEPARTMENT[510]
Name change, chs 1 to 57, filed emergency ARC 6755 F.E. 7/30/86
Insurance holding company systems, 45.3, 45.5, 45.6(2), 45.9, 45.10(3), 45.10(6) ARC 6715 N. 7/16/86

20. 4(5)

Henry assured Priebe that the twenty-day requirement in 20.4(5) would not create problems. She noted that the "deemer" provision in 20.4(7) was modified in response to request by ARRC. Henry gave brief description of amendments to chapters 30, 31 and 33. No questions.

35.4 et al

Henry pointed out there was no "deemer" provision in this group since medical policies are more highly regulated than other policies. Doyle inquired if an increase in premium or change in the deductible would require approval. Henry thought all rates were approved by the insurance industry but pointed out that did not pertain to the area under consideration. However, she would provide an answer to his question later.

In a matter not officially before the Committee, Henry confirmed that DOT sells information re motor vehicle violations. A statutory change would be required to change that policy and Henry cited Code chapter 515D. No questions on chapters 1 to 57.

45.3

Amendments pertaining to insurance holding companies were considered with Henry pointing out the need to comply with HF 2390.

Changes recommended by the Principal Group were incorporated. Grammar will be corrected in the third paragraph of Form "C" when the rules are filed.

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Insurance
Division,
Insurance
Department
(Cont.)

Clark referenced Form D, Item 4, on reinsurance and requested rewording of the date provisions for clarity. Although the language was copied from a model regulation, Henry agreed to change it. Clark noted use of "deposes and says" in the certification portion of the Forms. Doyle was of the opinion that "acknowledges" was more widely used. No other comments.

Elder
Affairs

The following agenda was before the ARRC with Ron Beane in attendance:

Aging,
Commission
On

AGING, COMMISSION ON[20]
Definitions, service requirements--elderly nutritional services. 1.7(1), 8.45(3)b and "c." 8.46(2), 8.46(3), 8.47,
4.44(2), 8.49(3)a and "b." 8.49(4), 8.50(1)c, "8.50(2)b," "e" and "h" to "l" ARC 6789 7/30/86
Retired Iowans community employment program. 8.71 ARC 6790 7/30/86
ELDER AFFAIRS, DEPARTMENT OF[21]
Retired senior volunteer program, ch 12, filed emergency ARC 6791 ..FE..... 7/30/86

1.7(1)

The Department of Elder Affairs was created to supersede the Commission on Aging, effective 7/1/86. Beane said that nonsubstantive changes were made after the Notice. Doyle wondered about the population gap between "rural" (2,500) and "urbanized areas" (50,000)--1.7(1). Beane admitted that a gap had not been defined. Priebe referenced 1.7(1)"af" definition of "minority" and asked, "Could a Jewish person, an Italian, Polish, be a minority if they speak a language other than English?" Beane replied in the affirmative if the language were their first language. Priebe voiced opposition and Beane stated they were attempting to reach people who would have trouble assimilating because of language barriers. It does not determine eligibility for services. No questions re 8.71, retired Iowans community employment program.

ch 12

In re chapter 12, Beane pointed out this was the second year for Retired Senior Volunteer Program (RSVP), which was formerly administered by OPP. No questions.

TRANSPORTA-
TION
DEPARTMENT

The following agenda was reviewed by Julie Fitzgerald, Al Chrystal, Ruth Skluzacek, Jan Hardy, Will Zitterich, Tom McElherne, Specifications Engineer. Also present: Eugene Varian, Urbandale School Bus Driver.

Contested cases. (01.B) 3.2, 3.4 to 3.15, filed emergency ARC 6699 FE..... 7/16/86
General requirements for highway construction. (06.G) 1.1 ARC 6719 N..... 7/16/86
City requests for closure of primary road extensions. (06.L) 2.1(1), 2.1(3), 2.1(4), 2.1(6) ARC 6720 N..... 7/16/86
Denials, cancellations, suspensions and revocations. (07.C) 6.22(1), 6.22(2), 6.22(4)b, "c" filed
emergency ARC 6700 FE..... 7/16/86
(07.T) and implied consent. (07.C) ch 11, filed emergency ARC 6701 FE..... 7/16/86
Seat belt exemption. (07.C) 13.16, filed emergency ARC 6702 FE..... 7/16/86
Transporter plates. (07.D) ch 5, filed emergency ARC 6703 FE..... 7/16/86
Motor vehicle equipment. (07.E) 1.1, 1.1(3), 1.1(4)b and "c" ARC 6698, also filed emergency ARC 6697 N, FE..... 7/16/86
General requirements for implementing the rail assistance program. (10.C) ch 1, filed emergency ARC 6775 FE..... 7/30/86

Fitzgerald commented that [01,B] chapter 3 on contested cases was the DOT minimum requirements. Under the state reorganization, the new Inspections and Appeals Department will be conducting contested case hearings. The jurisdiction of Inspections and Appeals begins when the file is sent to them and ends when the decision is made by DOT. This new procedure generated a great number of obsolete rules.

TRANSPORTA-
TION
DEPARTMENT
(Cont.)

Doyle questioned need for rule 820--[01,B]3.14(17A) and Fitzgerald said the Assistant Attorney General had requested it since attorneys were uncomfortable with delegating to the paralegals without a rule. Fitzgerald had no figures on the number of paralegals in the workforce.

[06,G]1.1

According to McElherne, amendment to [06,G]1.1(307A) reduces the number of documents to be included with the bid. Priebe offered a suggestion to reduce costs of building roads. It was his opinion that the number of flagholders and lead cars could be reduced and 2-way radios utilized. McElherne defended the procedure as a safety measure. Priebe also complained about the new road north of Mason City which had deteriorated. He wondered if an effort had been made to pursue liability of the contractor. He asked for follow up on that subject.

No questions on [06,L]2.1(1) et al or [07,C]6.22.

ch 11

Chrystal stated that new [07,C] chapter 11 implements legislation pertaining to work permits following arrest for OWI.

[07,C]13.16

In review of [07,C]13.16--seat belt exemption. Priebe questioned need for the form to be signed by a physician. Chrystal said it was needed since some doctors' handwriting on a prescription pad is difficult to read. About 2000 requests have been completed and DOT has learned that in some counties, physicians will refuse to sign exemptions.

Chairman Priebe recognized Varian, who distributed information on the history of seat belt use dating to 1964. In 1973, the harness or 3-point seat belt became standard equipment in all automobiles in North America. There are 5000 to 6000 school buses in the state and none has a harness type belt. He provided a quote from the Journal of Trauma which attributed fatal injuries to use of lap type belts--in an accident at speeds of only 12 mph. Varian supported use of harness-type seat belts. A report from National Transportation Safety Board released August 11, 1986, does not recommend lap belts in the rear of autos. With the lap belt, lower back and abdominal injuries result from a secondary impact.

Varian urged action to provide immediate exemption of all school buses not equipped with harness seat belts from the Iowa seat belt law or immediate retrofitting of all school buses with harness seat belts.

Chrystal made the point that belts in school buses would not be that effective. Varian agreed that high padded seats had served to protect the children. Seat belts could be "added weapons." He was concerned that the driver would be forced to use lap belt. Chrystal envisioned that if minimum standards were met, there would be no opposition to installing an additional shoulder harness for those drivers who request them. Royce pointed out that a driver

TRANSPORTA-
TION
DEPARTMENT
(Cont.)
Motion
Carried

[07,D],ch 5
[07,E]1.1,
et al
[10,C],ch 1

is not assigned to a particular bus.

O'Kane moved that the matter of harness belts or lack of them in school buses, and the lap belt problem be referred to the next General Assembly. Motion carried.

No recommendations were offered for [07,D] chapter 5
[07,E]1.1 et al.

Brief review of [10,C] chapter 1. O'Kane did not recall that the enabling statute required an audit. Department officials agreed to pursue the matter.

Committee was recessed at 4:40 p.m.

Reconvened
AGRICULTURE
AND LAND
STEWARDSHIP
DEPARTMENT

Committee was reconvened August 21, at 9:02 a.m. with the Agriculture Department. Representative Edward Parker, not present. The following agenda was before the ARRC:

AGRICULTURE DEPARTMENT[30]

Use of pesticide Command 6EC, 10.46 ARC 6696, also filed emergency ARC 6695 *N.F.F.* 7/16/86

AGRICULTURE AND LAND STEWARDSHIP, DEPARTMENT OF[21]

Bonded warehouses, licensed grain dealers and agents, grain indemnity fund, name change, 250—chs 12 to 14 transferred to 21—chs 60 to 62, also rule 250—12.27 amended ARC 6815, also filed emergency ARC 6814 *N.F.F.* 7/30/86

The Department was represented by: Robert Lounsberry, Bette Duncan, Chuck Eckermann, Wallace Dick, Grain Warehousing.

10.46

In reviewing 10.46, Tieden was interested in knowing if research had been done on the harmful effects of the pesticide. Drift was mentioned as having a major impact. Duncan knew of much adverse reaction to the pesticide. Iowa State specialists indicated fewer problems would be experienced if the pesticide were incorporated in the soil as a preplant application. Eckermann had compiled a summary of comments on the issue. Eckermann was aware of fir trees which were not recovering from the chemical use. Early predictions from manufacturers that symptoms would be temporary proved to be untrue. Iowa State weed specialists view the problem as minimal. No action.

Duncan provided history for bonded warehouses rules. A hearing was scheduled today for the Noticed version. As a result of study, comments, suggestions, including recommendations made by the Grain Warehouse Advisory Committee, the Department has emergency adopted and implemented a second rule which was distributed [9/10/86 IAB]. There was discussion of proper buildings to be used for grain storage and aeration--temporary or permanent buildings and fans. Dick said a temporary building would have no roofing and would not meet licensing requirements. Priebe had problem with specific cubic feet being spelled out. Discussion as to what would constitute a temporary building. Priebe favored flexibility in aeration provisions.

Lounsberry said they were hopeful that farmers could get loans for 1986 crops even for temporary storage.

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Utilities
Division

Ray Vawter, David Lynch, Dean Stonner, Cindy Dilley were present for the Utilities Division of the Commerce rules as follows:

Rate regulation election procedures for electric cooperative corporations and associations. 250-7.4(10).
7.12 ARC 6809 F 7/30/86
Telephone utilities, directory assistance. 22.3(10)"b" ARC 6810 F 7/30/86
Rate case procedural schedule. 250-7.7(15)"a" and "b," notice ARC 6606 terminated ARC 6808 N.T. 7/30/86

Also present: Ken Ludlow and Bob Skinner, IGFA; Steve Schoenbaum, Des Moines attorney; Serge Garrison, Iowa Life Insurance Association; Richard Thornton, Iowa Bankers Association, Richard Berglund, Iowa Independent Bankers; Betty Biondi, Iowa Association of Life Underwriters; Tim Waddell and Denny Degroote, Iowa Credit Union League.

7.4(10)
7.12 Dilley described the process utilized in developing 7.4(10) and 7.12. Responding to Tieden, Dilley said no comments had been received.

7.4(10)c The number of days for initial decision by the Board to become final was changed from 20 to 15 to be consistent with rules for investor-owned utilities--7.4(10)c.

22.3(10)b Re 22.3(10)b, Stonner commented that the number of free directory assistance calls was being reduced from 4 to 2; 39 parties filed supporting comment and the rules were adopted without change from Notice.

No questions on 7.7(15).

COMMERCE
DEPARTMENT
chs 1, 3

Chairman Priebe announced that chapters 1 to 3 of rules of the Commerce Department would be open for discussion to allow interested persons an opportunity to speak. The rules were considered on Tuesday at the request of Patrick Cavanaugh. [See also page 3396]

1.4 Thornton spoke of concerns of the Bankers Association. He contended that the director of the Department of Commerce had expanded his duties beyond the statute [SF 2175, §702(1)] by inserting "supervises" in the first sentence of 1.4. In addition, Thornton expressed opposition to 1.4(1) which lists the divisions which will be a part of the total department. He argued that inclusion of an Administrative Services Division exceeds the statute in SF 2175, §702(3). Thornton continued that the Legislature contemplated the supervisory power capacity to be within each division within the Department and not within the Director of the Department. His association had no problem with the need for petitions for declaratory ruling and rulemaking--chapters 2 and 3.

Royce concurred that the rulemaking "does reflect supervisory power that is not in the statute."

Clark saw no need for an administrative division. Berglund concurred with Thornton. He recalled that the "whole argument in the General Assembly was to change the power of this Department." Royce called attention to the sunset

COMMERCE
DEPARTMENT
(Cont.)

Motion to
Object

Carried

clause on the Department. Discussion of Committee options.

Doyle moved that the ARRC object to inclusion of the word "supervises" in 1.4 and to subrule 1.4(1) on the grounds that they exceed the statutory authority of the Department. Doyle requested Royce to ask for an Attorney General's opinion on the subject and that the matter be referred to the Legislative Oversight Committee for consideration. Royce defended the emergency filing, in this instance, since the agency must have rules in place to operate legally. Motion carried. Royce drafted the following:

At its 20 August meeting the committee heard additional testimony on ARC 6761, specifically relating to the creation of the administrative services division and the role of the department in supervising the functions of the agency. Following this discussion the committee voted to object to the inclusion of the word "supervise" in rule 1.4, and to the creation of the administrative services division in subrule 1.4(1) on the grounds that they exceed the authority of the department. These provisions appear in IX IAB 3 (7-30-86) and are codified as part of rule 181 IAC 1.4.

1986 Acts, S.F. 2175, section 702 specifies that the department was to "coordinate and administer" the various functions of the department. It was the opinion of the committee that the department could not expand these duties to include supervision over the various divisions of the department. Sections 703 through 710 of the Act then enumerate the divisions of the department. The committee believed that this listing is exclusive and precludes the department from establishing an additional division by rule.

Employment
Appeal
Board

William R. Whitten appeared for the Employment Appeal Board for the following:

Organization, definitions, unemployment insurance appeals, personnel action, peace officer and capitol security
appeals, chs 1 to 3, 5 and 6, filed emergency ARC 6753 FE 7/16/86
Name changes, address change, 610—ch 1, filed emergency ARC 6751 FE 7/16/86

Whitten described the EAB as the former Job Service Appeal Board, under Job Service and now, under the newly created Inspections and Appeals Department, applicable rules were "rolled over." Clark questioned use of "reasonable time" and preferred a time limit. Whitten pointed out that the Review Board does not hold hearings under normal operation. Frequently, considerable time passes before a printed transcript of evidentiary hearing is ready. Under federal guidelines, 40 per cent of the appeals could be accomplished 45 days after the appeal is filed. Including a fixed time would be difficult. In response to comment by Doyle, Bervid agreed to reference open meetings law in rule 3.6.

3.6

Discussion of conflicts between Employment Security and the Employment Appeal Board and Royce asked if the two departments had agreed on the rules. Joseph Bervid (Employment Security) still had a number of concerns, e.g., 3.7(3), (4) proceeds to dictate the procedure for the Division of Job Service in terms of the Claims Department and hearing officer.

3.7(3), (4)

2.1

The definition of "aggrieved person" in 2.1 would preclude the Division of Job Service from appealing an appeal board decision which they believe to be contrary to the law. Further, the definition of "employer" is contrary to

Employment
Appeal
Board
(Cont.)
3.1(15)
3.1(6)
3.7(1)

chapter 96 and he quoted from §96.19. Subrule 3.1(17), which allows taking of late appeals for good cause, was contrary to the law since 17A does not allow good cause exception on late appeals. Bervid contended that the word "appeal" in 3.1(15), line two, should be "appear". He noted another misstatement in 3.1(6) as to misinformation given to the Department. Whitten conceded that 3.7(1) was out of their jurisdiction and would be terminated.

Bervid insisted that the rules were taken out of context and were substantially different from those which have governed the appeal board. Problems still exist.

Discussion of possible Committee action.

Doyle made the point that these rules should have been filed under Notice. He recommended sunset provisions to allow time for legal problems to be resolved. Whitten was amenable. Burnett approved of that action. General agreement that the rules would be filed under Notice, rule 3.7 would be rescinded, sunset provisions would be adopted and the two departments would seek a resolution to the problems. No questions re 610--chapter 1.

INSPECTIONS
AND
APPEALS
DEPARTMENT

Kim Schmett, Xinda Lindel-Prine, and Peter Fox were present for review of the following:

Administration, petitions for rulemaking, declaratory rulings, contested case hearings, investigations and hearings relating to professional licensure within the department of public health, Medicaid provider audits, investigations, cns 1 to 7, filed emergency ARC 6749 FE 7/16/86
Name and address change, outpatient diabetes education program - appeal process, 470-9.11, 9.12, amendments to 470-chs 56 to 59, 63, 64, 73, 74, 80, 111, 132, 173, filed emergency ARC 6750 FE 7/16/86

1.5(10)

Schmett said the minimal rules were filed emergency to provide basic guidelines for the new department. Clark was informed that language in 1.5, paragraph 10, was taken from the law. The 4 divisions are: Inspections, Appeals, Audits and Investigations. In addition, 4 semi-autonomous boards or divisions are attached to the department.

3.5(8)

Schmett clarified that 3.5, paragraph 8, refusal to issue a ruling for good cause was addressing a question where the decision had already been made.

5.8

Clark was interested in knowing how costs for transcripts would be assessed in 5.8. Fox saw no problem in that it would depend upon who handled the fiscal matters. Clark

7.4

thought rule 7.4 on food establishments was confusing. Department officials were hopeful for clarification.

It was noted that inspectors for Boards of Barbers and Cosmetologists have been transferred to the new Department of Inspections and Appeals with the same personnel and by agreement, the Public Health Department retains responsibility for the rules. Doyle apprised Department officials of a shortage of inspectors in NW Iowa to respond to complaints. Schmett spoke of confusion resulting from reorganization.

INSPECTIONS
AND APPEALS
DEPARTMENT
(Cont.)

as to jurisdiction over rules. It was decided that amendments set out in ARC 6750 were, in effect, responsibility of the Health Department. Corrective rulemaking will be initiated. Priebe noted use of "will" in 7.4 and expressed ARRC preference for "shall".

COLLEGE AID
COMMISSION

Gary Nichols, Director, explained amendments to chapter 10 of their rules on the Iowa guaranteed student loan program, ARC 6748 Notice and ARC 6749 Emergency, 7/16/86 IAB. Park arrived.

Doyle recommended addition of "in collecting" following "due diligence" in 10.69(261). Nichols agreed to pursue question raised by Doyle as to whether "credit bureau" organization was a trade name--10.51(261).

EMPLOYMENT
SECURITY

Bervid gave brief overview of the following rules:

EMPLOYMENT SECURITY[370]
Name changes in chs 1 to 7 and 10 except rules 10.b and 10.9: appeals. IPERS—advisory investment board. 7/30/86
1.1(2), 1.1(5), 8.1 filed emergency ARC 6771 FE.....
Employer records and reports, employer's contribution and charges, 2.3, 2.3(1), 2.3(6), 2.4, 3.4(15) ARC 6799 F..... 7/30/86
EMPLOYMENT SERVICES DEPARTMENT[341]
Organization, ch 1, filed emergency ARC 6772 FE..... 7/30/86

EMPLOYMENT
SERVICES

ENERGY
POLICY
COUNCIL

Frank McNiff, Natural Resources Department, presented rules of the Energy Policy Council as follows:

The state energy conservation program and energy extension service, ch 18 ARC 6812, also filed emergency ARC 6811 N FE..... 7/30/86

McNiff referenced internal procedures and Doyle was concerned about lack of rules on policies carried over from EPC to Natural Resources. McNiff was directed to work with the staff in drafting their appeals procedure as rules.

CONSERVATION
COMMISSION

The following agenda of Conservation Commission (transferred to Natural Resources Department 7/1/86) was considered:

NATURAL
RESOURCES
DEPARTMENT

CONSERVATION COMMISSION[290]
Cost assistance program to promote wildlife habitat on private lands, ch 22 ARC 6785 F..... 7/30/86 222
Snowmobile fund allocation, 32.3(6) ARC 6786 F..... 7/30/86 225
Land and water conservation fund grants-in-aid for local entities, 72.1, 72.2, 72.5(1), 72.5(2), 72.5(5), 72.5(6), 72.6, 72.7, 72.8, 72.13(2), 72.13(5), 72.15 ARC 6813 F..... 7/30/86 265
Mussels—methods and seasons, 12.1 ARC 6781 N..... 7/30/86
Mussels—methods and seasons, 12.1(5), filed emergency ARC 6778 FE..... 7/30/86
Speed and distance zoning, 30.18, 30.28 ARC 6782 N..... 7/30/86
Motor regulations, 40.4(2)b ARC 6783 N..... 7/30/86
Crow and pigeon regulations, 101.2 ARC 6784 N..... 7/30/86
Commercial fishing, 110.5, 110.6, 110.8, 110.9, filed emergency ARC 6779 FE..... 7/30/86
Turtle regulations, ch 115, filed emergency ARC 6780 FE..... 7/30/86
Forfeited property, ch 116 ARC 6777, also filed emergency ARC 6776 N FE..... 7/30/86

70-DAY-DELAY

Trapping limitations, ch 114 ARC 6665 F 7/2/86

Those in attendance were: Robert Fagerland, Allen L. Farris, Terry Little, Rick McGeough, Marion Conover, Berniece Hostetter, Sam Kennif, Bob Walker and Victor Kennedy. Also present: Anna Marie Scalf, Barb Hutton, Iowa Trappers Association; George Scalf, Director, National Trappers Association; Cindy Hildebrand, Iowa Audubon Council; Bruce C. Hutton, Iowa Trappers Association; Ron Salsburg, Presto-X-Co.; Robert F. Comito, DMI Pigeon Racing Association; Ferris K. Scott, Ankeny, Iowa, Pigeon Assn.; Winton Etchen, Iowa Fertilizer; James McCarragher, representing the Trappers; Robert Andersen, Iowa Sportsmen and Iowa Wildlife Federation; Bill Broyderick, Mississippi

CONSERVATION
COMMISSION

Valley Shell Co.; Butch Ballenger, Muscatine, Iowa;
and several other interested persons.

NATURAL
RESOURCES
DEPARTMENT
(Cont.)

Little, Wildlife Bureau, presented Chapter 22. Priebe inquired if the ASCS offices were involved in the set aside. Residents of his area were desirous of an increase in pheasant population.

Little suggested an experiment by leaving stacked hay for a year in a habitat demonstration area--22.5(3).

Parker discussed bond acquisition and the low price of land.

Motion to
Delay
22.7

Discussion of contracts and breach of contracts and penalties--22.7(107,110). Doyle noted that breach of contract is a civil matter and expressed concern about the penalty. He moved to delay rule 22.7(107,110) for 70 days for further study. Motion carried.

Carried

No recommendations were offered for 52.3, 72.1 et al, 30.18, 30.28, 40.4(2), 110.5 et al and chapter 115.

12.1(1)
12.1(5)

In discussion of 12.1(1), Conover pointed out that with the emergency rescission of 12.1(5), the inland waters restrictions on harvest of mussels, noticed version, will reinstate the restriction oversight on his part.

Under the Notice provision, the method of take will be limited to hand or crowfoot bar--this has been a long-time practice.

Ballenger urged extending the season to October 15 and allowing clamming in inland waters.

There was discussion of seasons in bordering states and Tieden expressed a preference for reciprocity.

Hildebrand cautioned that the mussel resource was endangered. Any small population could be annihilated--she urged closing of inland waters.

Broyderick reiterated points made at the May meeting [see also p. 3339 of May minutes].

O'Kane saw no need for additional rulemaking on inland waters but suggested opponents could petition an agency. No formal action taken.

No questions re 30.18, 40.4(2)b, 110.5 et al, and chapter 115.

ch 116

There was brief discussion of 116.2, definition of forfeitable property, in particular, paragraph 4, "...offered or given to another as an inducement for the commission of a criminal offense." Department officials pointed out

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NATURAL
RESOURCES
DEPARTMENT
(Cont.)

ch 116

that this rule implements 1986 Acts, HF 2460 and will not be implemented indiscriminately by Conservation officials and there will be court involvement.

Discussion of criteria to be utilized by Natural Resources officers to determine disposition of property the court declares to be forfeitable.

McGeough cited 1986 Acts, HF 2460, as authority for the rules. No Committee action.

Chairman Priebe announced that rule 101.2 and chapter 114 would be considered after lunch. He stressed the fact that the ARRC is always willing to allow time for interested persons to speak on any rule.

Noon
Recess

Recessed for lunch at 12:15 P.M.

Reconvened

Reconvened at 1:18 p.m.

101.2

Chairman Priebe called for review of rule 101.2. Terry Little, explained that the Notice intended to implement 1986 Acts, SF 166, which added pigeons to the game bird list.

Doyle questioned whether a "wildlife biologist" could issue an order--101.2(3). Farris said the intent was flexibility for immediate response. He was willing to substitute "director". Farris and Royce will draft suitable language.

Etchen spoke of the fact that the Act specifically provided "chemical repellants", yet the rules use "nontoxic" or "nonlethal". He knew of no such nonlethal product and suggested substituting "or any current EPA and Iowa registered pesticide repellant". This would cover new products "coming down the pike." Conservation officials were interested in ensuring that songbirds would not be poisoned as a result of pigeon control. In addition, the reproduction factor was a consideration. Etchen reasoned that songbirds would not be found with pigeons which will be controlled in roosting and nesting areas. He was willing to work with the Department to develop criteria.

Comito, Pharmacist and pigeon grower, voiced objection to the law as being vague and wanted explanation of "nonlethal chemical". He challenged conservation officers about the safety and health hazards since other animals would be vulnerable. Comito contended his expensive pigeons could be shot when flying. Pigeon racers had recommended a specific season. Comito pointed out dangers in allowing farmers to shoot indiscriminately and he opposed hunting under bridges. He concluded that the law should be specific.

General discussion. According to Farris, the season was based on input from pigeon growers and racers. It was his understanding there was no flying in late fall and early spring. He mentioned the pest problem with pigeons in the cities. Farris said the Department had attempted

NATURAL
RESOURCES
DEPARTMENT
(Cont.)

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to address all concerns which Farris quipped was "a myth in government." Tieden favored removal of pigeons from farm buildings to control disease. Priebe concurred.

Discussion of flyway for racing pigeons and the lack of control of birds in flight. Scott stressed the value of the racing pigeon which is banded and identified. It was noted that neighboring states release pigeons for racing. Injury to those birds would create poor public relations. Royce quoted Code section 109.59 which makes it unlawful to "...shoot, detain...or interfere with any homing pigeon..." which is a simple misdemeanor.

Priebe asked Farris to investigate as to whether permission of DOT was needed to hunt under bridges. No formal action.

ch 114

Trapping limitations set out in Chapter 114 were before the Committee for further consideration. A 70-day delay was imposed on the rules at the July meeting. See also page 3385 of the minutes.

Farris provided history of the rulemaking and comments heard at the January, February, March, April and June Commission meetings. After Notice was approved by the Commission at the April meeting, five public meetings were held and the rules were returned to the Commission for final action at the June meeting. Changes were made on loop and snare size and staking requirement; body-gripping (essentially, the same); seasonal limitations were removed from the final draft; foothold and leghold traps establishing maximum jaw spread and eliminating serrated or toothed jaws remained; trap tag requirements were remaining.

Kennedy commented that he is a trapper and member of NRA, a farmer who owns dogs, and a Commissioner. It was clarified that, initially, Kennedy had supported use of the 12-inch snare but it was a Staff recommendation after the public hearing. Kennedy admitted there were problems. They chose to review both sides of the issue before finalizing the rules. Three main controversies include "snare size from 12" to 8"; rubber or serrated jaw; inspection of untagged traps. Kennedy emphasized that written and oral comments were reviewed and decisions were based on them. Traps and possession were proposals of the Trappers Association and there are enforcement problems.

Kennedy discussed the fact that in Illinois and Wisconsin and the southern half of Minnesota, snares are illegal. In Kansas, they cannot be set within 50 feet of road right of way. Nebraska has no restrictions. Trappers oppose restrictions and dog owners, bird hunters and farmers oppose snares. The eight-inch snare was decided upon after the rule was scaled down to eliminate chances of most pets from being caught.

NATURAL
RESOURCES
DEPARTMENT
(Cont.)

McCarragher, representing Furtakers and Trappers Association, asked about specific facts which prompted the Commission to determine there was an adequate basis for implementing more trapping restrictions in 1986. Farris quoted from Code chapter 109 and cited increasing concern about the use of snares and conibears and lack of regulation.

Conservation officials reiterated it was wiser to have acceptable limitations on use of implements rather than cause trappers to lose their privilege because of public reaction. Farris did not believe the law required scientific information in order to implement the rules.

Royce advised that clearly some sort of investigation is necessary, and he pondered, "Is it research, public testimony and comment of the rulemaking process?" He concluded there was no absolute definition of investigation.

Chairman Priebe enumerated ARRC options with respect to Chapter 114.

McCarragher stated that in order to promulgate a more restrictive regulation, there should be a well-defined problem and the least restrictive way of solving it should be pursued. He contended that approach was not used with this rulemaking. Kennedy responded that he wanted to ensure the Commission understood ramifications of changing the snare from 12 to 8 inches.

Motion

O'Kane moved to lift the 70-day delay on Conservation rules chapter 114, and asked for a roll call.

Royce said the effect of the motion would allow the rule to go into effect on August 21. Priebe stated that if the motion carried, the review would be over.

Substitute
Motion

Doyle moved a substitute motion to delay the rules and refer them to the next General Assembly since it was obvious from the last 2 meetings that changes have been made and controversy prevails.

Carried

Chairman Priebe called for the vote and, on motion, it was carried by voice vote. O'Kane reminded that a roll call had been requested. Roll call revealed 4 ayes by Priebe, Doyle, Tieden, and Clark and 2 "no" votes by O'Kane and Parker.

No Reps

No Agency Representatives requested to appear for following:

ATTORNEY GENERAL[120]
Public information, 1.441 ARC 6723.....*FE*
FOSTER CARE REVIEW BOARD, STATE[445]
Change of name, 1.111, 2.111, 3.221, 4.221 *filed emergency* ARC 6734.....*FE*
INDUSTRIAL COMMISSIONER[500]
Continued exam, 4.981, 4.27, 4.29 ARC 6728.....*FE*
INDUSTRIAL COMMISSIONER[500]
Name change, purpose and function, 1.1, 3.1, 4.6, 4.7, 4.15, 4.24, 7.11, 7.2 *filed emergency* ARC 6725.....*FE*
Petition for judicial review, 4.29 *filed emergency* ARC 6709.....*FE*
MANAGEMENT, DEPARTMENT OF[541]
Name change, 270-rhs 1 to 6, *filed emergency* ARC 6792.....*FE*
PROFESSIONAL TEACHING PRACTICES COMMISSION[640]
Name change, 1.321 *filed emergency* ARC 6774.....*FE*
REAL ESTATE COMMISSION[700]
Lending transactions, 1.26 ARC 6742.....*N*
SECRETARY OF STATE[750]
Election forms and instructions, ch 11, notice ARC 6594 terminated ARC 6787.....*NF*

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Minutes Doyle moved approval of the minutes of the July meeting.
Motion carried.

Adjournment Doyle moved to adjourn the meeting at 2:40 p.m.
Carried.

The next regular meeting was scheduled for Tuesday and
Wednesday, September 9 and 10, 1986.

Respectfully submitted,

Phyllis Barry
Phyllis Barry, Secretary
Assisted by Vivian Haag and
Bonnie King

APPROVED:

Bert E. Lief
CHAIR