

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Wednesday, December 12, 1979, 9:00 a.m. and Thursday,
December 13, 1979, 9:00 a.m.

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

Members Present: Representative Laverne W. Schroeder, Chairman; Senators
Edgar H. Holden and Dale L. Tieden; Representatives
Betty J. Clark and John E. Patchett.
Not present: Senator Berl E. Priebe, having reported
he would be vacationing.
Also present: Joseph Royce, Staff; Brice Oakley,
Administrative Rules Coordinator.

AGRICULTURE

At the request of Robert Lounsberry, Secretary of
Agriculture, the Committee allotted time for him to brief
them about events which had transpired since Representa-
tive Davitt petitioned the Department to amend [30--
10.31(206)], dealing with application of pesticides toxic
to bees. Lounsberry noted the Department is involved in
litigation and he distributed copies of the attorney gen-
eral's opinion he had requested on the validity of the
Committee objection filed September 12, 1979.

Also present were: Mark Taylor, Jr., Winton Etchen, and
B. C. Brandenburg, Iowa Fertilizer and Chemical Company,
Steven C. Schoenebaum, attorney, and Dr. E. A. Brown,
Pennwalt Corporation.

Lounsberry recalled one suggestion was to have a 24-hour
alert prior to aerial spraying. He indicated a voluntary
plan had been in effect this year.

Oakley pointed out that the special local needs permit
matter was not before the Committee but would be published
in the December 26, 1979 IAB. [ARC 0799, 10.6]

Lounsberry distributed copies of the decision by an
"impartial" DEQ hearing officer regarding the Department's
authority to withdraw the Special Local Need Regis. No.
IA 78007, which had been granted to Pennwalt Corporation.
He advised the Committee that Duncan, legal counsel, had
filed a petition for amendment to clarify the decision and
order. In conferring with federal officials, Lounsberry
learned their intent was to give states more authority
regarding special local need permits. Lounsberry com-
mented that the Agriculture Department wanted to establish
their position with regard to the law.

AGRICULTURE
Cont'd

Oakley opined that the position of his office would be one of not becoming involved in the litigious side of the matter. Schroeder suggested Royce and Oakley be prepared to brief the Committee and he asked Lounsberry to prepare a summary for them. Lounsberry thanked the Committee for their time.

HEALTH
DEPARTMENT

The following persons represented the Health Department: Peter Fox, Hearing Officer, Grace West, Executive Secretary, and Joyce Williams, Board Member, Cosmetology Examiners, Kenneth Choquette, General Health Services Division, Dr. Herbert Roth, Vice Chairman, Board of Psychology Examiners, Wanda Walker and William W. Magine, Engineering, and Keith Rankin, Director, Barber Division.

Also present were: Jon H. Johnson, Vice President, Jack Johnson, Secretary, Wayne C. McLaughlin and Richard A. Ogden, Iowa Water Well Association; George L. Shawver and Gary R. Shawver, Shawver Water Well Company, Dr. Al Austin, Research, Iowa State University, Dr. R. J. Cowles, DVM, Des Moines County Health Department, Orville Van Eck, Iowa Geological Survey, Lee Friell, University Hygienic Laboratory, A. J. Strubel, Valley Steel Products Company, and Buck White, Howard White & Sons.

The following rules were before the Committee:

HEALTH DEPARTMENT[470]

Notice Terminated, Nonpublic water wells, ch 38 ARC 0702	531
Notice, Nonpublic water wells, ch 38 ARC 0682.....	531
Notice, Psychology examiners, disciplinary procedures. 140.212(14) ARC 0701.....	536
Notice, Barber examiners, fees, 160.6(3), (8), (9) ARC 0674	540
Filed, Cosmetology examiners, student examinations, 149.3(1), 149.7 ARC 0677	554

Published IAB
11/14/79

In re 149.7, Schroeder reiterated his disapproval of the mandate that applicants use only mannequins. No Committee action. In re chapter 38, Fox said the notice of intended action had been withdrawn.

Choquette acknowledged the question as to whether the Department has authority for rules governing small water well systems was debatable. He presented an attorney general's opinion that the Health Department, under certain Code provisions, has authority. In perusing the letter, Royce noted that it did not state specifically the Department had authority to promulgate rules. It was his contention that chapter 135, Code 1979, did not address the subject of water. Choquette replied that in terms of public health, sanitation, etc., the Code did refer to water. He contended it was their responsibility to set guidelines for boards of health as well as for contractors.

Schroeder reminded Choquette that unless a water system contained more than fifteen connections, it would not be considered public. He declared their jurisdiction did not extend beyond testing water. Schroeder cited areas where dug wells would be illegal under the rules.

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Water
Wells

Austin, Professor, Civil Engineering, Iowa State University, and Assistant Director of the Iowa State Water Well Institute, summarized information which had been compiled from existing data and research completed by the Health Department. He commented that certain types of well construction tended to contain a higher percentage of water which would not meet current drinking water standards. Seven wells, consisting of auger and drilled construction, were tested and the Department determined that, in shallow-augered wells, bacterial counts increased rapidly after heavy rainfall. The same fluctuation does not appear in drilled wells. He concluded improperly constructed wells pose potential problems. In response to Tieden, Austin advised that bacteria would not live in the underground system for a long period of time and wells used for testing were at the same relative depth. Tests were taken weekly over a one-year period, or in periods following heavy rainfall.

Schroeder made the point that bacterial count would be reduced more slowly in a dug well and unless both tests were taken simultaneously, it would be unfair. Austin said properly constructed auger water wells would not retain bacteria.

There was discussion of significance of nitrate contaminants. Austin explained they had been testing for coliform bacteria organisms. He cited one documented case of "blue baby syndrome" attributed to nitrate contaminants in the drinking water. In response to Holden and Tieden, Austin indicated the location of wells in relation to sources of pollution would be important. He stated the source of nitrates was difficult to determine and eliminate and more research was needed. Some sort of ionic change would be required--sunlight would not suffice. Tieden expressed interest in knowing if concentration of nitrates would affect reproductive systems of small animals and was told problems would not likely occur unless very high concentrated nitrates existed.

McLaughlin, Executive Secretary, Iowa, Ohio and Texas Water Well Associations, discussed the possibility of pumping out pollutants from the shallow wells. He commented that pollution would get into water-bearing formations and would not necessarily pump out. He expressed concern that entire water bearing formations would be polluted. According to McLaughlin, Texas has a licensing law and more than half of the states have rules governing water wells to protect the public health. He concluded the aquifer is of major importance, not just individual wells.

Clark preferred that contractors be apprised of standards rather than setting them out in administrative rules.

Van Eck responded to Tieden's question by stating that there is accurate statewide geological information as to areas prone to contamination through natural forces. Drillers have the

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material available for use and Van Eck added that drillers are sufficiently knowledgeable.

Clark discussed the problem of responsibility in digging wells. Richard Ogden explained drilling problems in northeast Iowa because of lime rock, shale and sandstone formations. He made the point that nitrates could go right down into an improperly constructed deep well. Tieden asked how one could be absolutely certain a well was constructed and sealed properly. Holden was curious as to how a person would become aware of seepage from other wells. Ogden replied that standards for construction would address the problems. Tieden was informed the rules would help correct the problems in northeast Iowa.

There was discussion as to the number of nonpublic water wells in the state, with Choquette predicting an increase in the number of these wells. There are approximately 200,000 water wells in active use in addition to 150,000 that are abandoned. Tieden could envision tremendous enforcement problems. Choquette emphasized enforcement would have to be initiated through the contractor, who would be legally obligated to follow criteria established by the rules. He contended Iowans are looking for guidelines and licensing of contractors, which is not addressed, would be the next step. Schroeder reasoned the rules are legislating. Clark doubted rules were necessary, but Johnson declared that the pollution of aquifers cannot be reversed.

Jon Johnson, Bettendorf, stated the National Association has been assisting states in drafting workable laws to protect groundwater supplies. He added that the rules have the full support of both the Iowa and National Water Well Associations.

Dr. Cowles stressed the importance of the rules and declared "It is safer to be born a Grade A calf in Iowa than it is to be born a baby." He urged legislation for standards by which county boards of health may write rules.

Howard White, who personally opposes excessive regulation, spoke in support of the rules and thought implementation would improve workmanship in well drilling.

Schroeder called out of the meeting. Holden took the chair and reiterated the Committee was basically concerned as to whether there was sufficient statutory authority for the rules. Fox reviewed status of the rules. They were published under notice February 21, 1979, and a public hearing had been held June 20, 1979. The current draft was essentially the same as the February version and another hearing had not been scheduled. Oakley reasoned that, assuming the rules were reasonable, the department should be more explicit as to how they would be administered. He referred to 38.3 and took the position that local boards do not have rulemaking authority as the rule in-

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licated. Fox contended Chapter 137, The Code, contained the authority. [137.6(2)] Choquette sought guidance from the Committee.

Oakley recommended that the Department work with his office and Royce in an attempt to resolve the legal question as well as other gray areas surrounding the rules. Choquette was amenable and Holden advised him the Committee would take no official action until rules were filed.

Board of
Psychology
Examiners

Dr. Roth and Peter Fox led discussion of psychology examiners subrule 140.212(14). Roth indicated the Board intended to revise the subrule prior to final adoption, particularly in the area of confidentiality. Fox noted that Civil Liberties Union officials had expressed concern with respect to the confidentiality provisions.

Clark recommended that, where applicable, dates certain be supplied throughout the amendment. (140.212(14)i(11))

Oakley observed that, in the event the subrule would be substantially revised, they might want to consider publishing the revision under notice. Holden raised a question as to "how d(9) fits with q(7)."

Holden questioned the enforceability of 140.212(14)c(3), the last sentence, with respect to moral and legal standards, and in his judgment, it bordered "on lobbying." Roth thought it would be the citizen's responsibility to be attentive in these areas.

Patchett thought there might be inconsistency between 140.212(14)c(3) and provisions under confidentiality. [140.212(14)e] Roth said preliminary planning is in process for changing the rule and paragraph 1 would be deleted.

In re 140.212(14)e(2), Patchett questioned the language "clearly concerned with the case" as to whether or not law enforcement officers would be included. Roth replied that would depend upon the law, except that the privacy of the individual would be respected. Patchett was interested in rights of patients to obtain information in reports which might be used against them. Roth took the position that this data would be the property of the client and the matter was addressed in The Code.

Schroeder returned -- 11:08 a.m. Schroeder took the chair.

In answer to Holden's concern that 140.212(14)d(9) and 140.212(14)q(7) would be difficult to enforce, Roth said the responsibility would rest with the licensed psychologist to challenge the person claiming to be a psychologist. Holden suggested the language read: "accept the obligation to correct

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Psychology
Examiners

others who may misrepresent themselves as psychologists." He contended the rule gives the impression that one psychologist can challenge another's qualifications. Roth said the rule was not designed to settle disputes between practitioners. No further discussion.

Barber
Examiners

Rankin, Director, Barber Division, explained amendments to 160.6(3, 8, 9). In answer to Tieden, Rankin said continuing education costs are borne by the barber. Increased fees provided in the amendments allow the board to meet its budget and to remain fiscally sound and self-supporting.

Nursing
Home
Adminis-
trators

Irene Howard, Director, Licensing and Certification, was present for review of the following:

NURSING HOME ADMINISTRATORS[600]
 Filed, Examination scores, out-of-state, 2.6(2)"f" 559
 ARC 0675 559
 Filed, Reciprocity, 2.7 ARC 0676 559

Howard indicated the Board preferred to maintain some control when an applicant crosses state lines. In response to Schroeder, Howard was aware of allegations that some examinations were not legitimate. She advised the Committee that the Board had recently signed reciprocal agreements with 3 states.

In re 2.7(1, 2), Howard stated the examination consists of two parts--one national, and if an applicant has taken that part in another state, Iowa does not require the individual to retake it. All applicants are required to take the state exam even with the reciprocity. Tieden could not see the advantage of the practice. Howard said that the Board preferred every applicant take the state exam. Patchett agreed with Tieden that reciprocity had no impact whatsoever.

Oakley recalled previous discussion of the rule and was of the opinion the premise had never been there would be absolute reciprocity. Oakley recalled Priebe had recommended change in 2.7(2) re equivalency health-related qualifications and he asked why the Board had rejected this concept. (See minutes, pg. 997, 9-12-79) Fox explained that, because of conflicts, board members were unable to attend this meeting. Oakley was not critical of the Health Department but thought it would have been advisable if some board member had been in attendance at today's meeting and he indicated he would recommend veto of the subrule--2.7(1)(2).

Schroeder considered 2.7(2)d(2) to be arbitrary. He was doubtful the licensing criteria would "hold up in court" and, after brief discussion, it was decided delay would be advisable at this time with possible objection later.

DELAY
2.7(1)(2)
VOTE

Patchett moved a 70-day delay on 2.7(1)(2)[IAB 11/14/79]. Short form requested by Tieden. Motion carried viva voce.

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Clark called attention to the explanatory paragraph at the end of the rules as needing clarification with respect to the references.

Patchett thought the Board should appear before the ARRC and explain their concept of reciprocity. The Committee concurred that the Board should make a presentation.

Schroeder recessed the Committee for a five-minute break.

MENTAL
HEALTH
ADVISORY
COUNCIL

Sally Titus Cunningham, Staff Coordinator, was present for review of alternative diagnostic facility, chapter 2, IAB 11/28/79. Also present were James West, representing the Iowa Medical Society, Dr. Herbert Roth, American Academy of Psychotherapists.

Cunningham commented the rules define "facility" and outline the functions and standards to be maintained for the facility. Holden was concerned that 2.3(2)c would establish qualifications that an MSW (master social worker) could not meet and he thought that it should be someone with a medical degree.

West spoke in opposition to 2.3(2)a as being restrictive to physicians, especially family physicians and said 2.3(3) permits family physicians to act only in the event the clinical mental health facility does not have a professional available. He continued that the Iowa Medical Society recommends amending 2.3(2)a and deleting 2.3(3). West called attention to letters from the Iowa Medical Society Committee on Psychiatric Care and the Iowa Academy of Family Physicians.

Dr. Roth, speaking as a practicing professional, thought the physician evaluating a person's mental health should be trained in that field. Schroeder reminded all present there would be a public hearing on the rule and suggested all interested persons submit comments.

Clark commented that eliminating the family physician from the rule when the social worker is included is particularly insulting.

SOCIAL
SERVICES

The following rules were reviewed:

SOCIAL SERVICES[770]

ADC, responsibilities of recipients, 40.7(4)	ARC 0686	F	11/14/79
ADC, period of adjustment, 41.8(4)	ARC 0687	F	11/14/79
Medical services, payment, 78.1(11)	ARC 0688	F	11/14/79
Medical assistance, skilled nursing homes, 78.12	ARC 0689	F	11/14/79
Intermediate care facilities, approval, reviews, 81.3, 81.7, 81.8, 81.10(3, 4), 81.13(14)	ARC 0690	F	11/14/79
Intermediate care facilities, report, out-of-state care, 81.6, 81.10(6)	ARC 0691	F	11/14/79
Child abuse, 135.1-135.11	ARC 0692	F	11/14/79
Children in need of assistance or delinquent children, 141.5	ARC 0693	F	11/14/79

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Food stamp program, 65.3	ARC 0726	N	11/28/79
Medical services, psychologists, 77.22	ARC 0715	N	11/28/79
Medical services, psychologists, 78.24	ARC 0716	N	11/28/79
Child care centers, 109.1(10), 109.2(2), 109.5(2), 109.7(2)"e"	ARC 0717	N	11/28/79
Legal services, 159.1(2), 159.5	ARC 0699	N	11/14/79

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The following people were present for discussion of Social Services rules: Judith Welp, Rules & Manual Specialist, Harold Poore, Jim Hennessey and Kathy Grovenburg, Children Services, Kathi Kellen and Gary Gesaman, Medical Services, Dr. Herbert Roth; Sheehan Sherzan, Director, Iowa Council for Children, Karen Tulane, Day Care Center and Mrs. Dorothy Woods, Montessori House, Council Bluffs, and Patrick F. Sullivan, Ia. Psychological Association.

Chairman Schroeder announced that amendments to Chapter 109 would be taken up out of order and that there would be special review of certain areas which were not specifically before the Committee.

Welp advised the Committee that amendments before them were those that had been recommended at their September meeting, i.e., the procedure for posting guidelines for child abuse reports; child's record of professionally prescribed treatment; minimum requirements for floor space in rooms where cribs are used.

In response to question by Oakley, Schroeder explained some persons involved in child care centers were concerned about staff ratios to the number of students which could be placed in a home versus the number they thought could be reasonably accommodated. Oakley was also informed that petition for rule-making had not been initiated.

Woods was recognized by Schroeder and summarized her concerns from the following text which was supplied to all members:

The following is submitted to:

The Legislative Rules Review Committee
Chairman, LaVerne Schroeder and Committee members

From:

The Montessori Children's House
210 Meadow Lane
Council Bluffs, Iowa 51501

We, Dorothy Woods and Irene Dawson, doing business as the Montessori Children's House, Council Bluffs, Iowa, respectfully submit the following concerns and recommendations regarding the following designated rules and regulations from Chapter 109, Child Care Centers.

I. 109.3(1) states "The child care center shall require each preschool age child to have an admission physical examination report signed by a licensed physician. This report shall include an immunization record that is in compliance with the Iowa state health regulations. This written report should include past health history, status of present health and recommendations for continued care where necessary. A new physician examination and report shall be obtained annually..."

Our concerns are:

1. An annual physical examination and report should not be required for preschool children. The cost of an annual physical is a major expense for a family. In Council Bluffs the range of costs for a physical examination such as the one currently required ranges from approximately \$13.00 with no urinalysis or complete blood count to \$45.00 with a urinalysis and complete blood count.
2. An annual physical examination may be the most desirable kind of health care, but should be left to the discretion of the parents to make that decision since the medical expense incurred may be a real burden to them. Routine physical examination are not usually covered by health insurance companies.

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3. Children under five years of age usually see a physician quite frequently because of the high incidence of illness at the preschool age. Consequently, their health has adequate professional monitoring by their physician.
4. The report form to be completed by the physician should not require the inclusion of an immunization record. This is redundant reporting since each preschool child must have an Iowa State Department of Health Certificate of Immunization card signed by their licensed physician or a person designated by the local Department of Health.
5. Medical report forms used by Iowa child care providers are not uniform in the information or tests they request. Physicians feel responsible to provide the information requested on each form if they are to attest to the child's health. This accounts for justified differences in medical charges for a physical examination.
6. Physicians are being inundated with some unnecessary paper work; currently having to complete an annual health report for each preschool child that attends a licensed child care center in the state of Iowa and having to complete an Iowa State Department of Health Certificate of Immunization.

The obvious end product, since a physician must pay an employee to complete these reports, can only be a further escalation of health costs.

Our recommendations are:

1. Develop a standard medical report using the expertise of a physician/physician as resource guidance in developing one which is inclusive of necessary information without requiring unnecessary testing and examining. This medical report form would then be used by every Iowa child care provider.
2. Each child care center shall require an admission physical examination and report signed by a licensed physician. No further annual physical examination should be required.
3. Each preschool child is already required to provide the child care center he/she attends an Iowa State Department of Health Certificate of Immunization.

We submit there will be no increased threat of being exposed to a contagious child by not requiring an annual physical examination since regulation 109.3(3) states "Each child shall have direct contact with a staff person upon his arrival for the early detection of apparent illness, communicable disease, or unusual condition or behavior which may adversely affect the group." Thus, the child is by regulation 109.3(3) screened upon his arrival each day.

II. 109.4(3) states "Staff ration shall be as follows:

Age of children	Minimum ratio of staff to children
Two weeks to two years	One to every four children
Two years	One to every six children
Three years	One to every eight children
Four years	One to every twelve children
Five years to ten years	One to every fifteen children
Ten years and over	One to every twenty children

Our concerns are:

1. The above age range from two weeks to ten years and over is inclusive of the ages of children who might be needful of day care. The term day care has come to represent centers usually providing more hours of care (the average being approximately 10 hours) and a more inclusive type of care. Their service is more that of a surrogate home, providing meals, intellectual stimulation, facilities for rest and playtime - both indoor and outdoor. According to Iowa Code 237A.1 DEFINITIONS. #7 states "CHILD DAY CARE" means the care, supervision, or guidance of a child by a person other than the

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parent, guardian, relative or custodian for periods of two hours or more or less than twenty-four hours per day per child on a regular basis in a place other than the child's home, . . ." The foregoing definition makes it quite clear what a day care center is and the large block of time a child may be present in such a center.

2. There are child care centers in the state of Iowa which provide a program for preschool children of a very different nature than the one described as day care. These centers have come to be known as preschools. Children are in attendance from two hours to two and one half hours. Such centers have never been defined in Iowa Code 237A.1. Such centers offer a very different type of program than day care centers. As the word "preschool" indicates, it is a program which aims to prepare the preschool age child for school.
3. We believe these centers known as preschools should be granted a separate staff ratio based on the following reasons:
 - a. The age range of most preschool children is three years to five years. This age spread of children served is in marked contrast to two weeks to ten years and over which may be used by a day care center. (Refer to 109.4(3))
 - b. There is a designated length of time children may be present in a preschool. The usual time period is two and one half hours per child. Again, there is a marked contrast to the two hours or more or less than twenty-four hours per day per child a day care center may elect to use.
 - c. The activities of the children in a preschool are directed solely toward development of social, intellectual and fine and gross motor skills. There is no need for a preschool to provide meals, rest time or outdoor play time which would require a more intensive need for one to one assistance on the part of the child.

109.4(3)a. states ". . . Combinations of age groupings shall have staff determined on the age of the youngest child."

Our concern is:

1. Because of the type of program provided in a preschool where the attendance time is limited to two and one half hours, we do not believe the age of one child should determine the size of the group. Such a rule in effect can easily destroy the desirable practice of placing each individual child in the group where his/her needs can best be met. For example, a precocious three year old might be better suited intellectually and in some areas developmentally to a group of young four year olds than a group of three and one half year olds.

Our recommendations are:

1. Establish a separate staff ratio for preschools providing a two and one half hour program.

A suggested method of determining the staff ratio might be as follows:

109.5(2) states "The child care center shall have thirty five square feet per child of usable indoor floor space maintained in a clean and sanitary manner. . . ." This existing rule would be used to determine the maximum group size per room.

Suggested Staff ratio would be as follows from existing ratio:

Age of Children	Minimum ratio of staff to children
Three years	One to every eight children
Four years	One to every twelve children
Five years	One to every fifteen children

Suggested method of determining the size of combinations of age groupings:

Combinations of age groupings should have a staff determined on the ages of one half the group plus one child the same age.

EXAMPLE: If a room licenses for twelve children, the ages of seven children would determine the staff ratio.

Ages of children	Minimum ratio of staff to children
If seven children are three years	One to every eight children
If seven children are four years	One to every twelve children
If seven children are five years	One to every twelve children*

* 109.5(2) Thirty five square feet per child would never be violated.

III. 109.7(2) Discipline

- a. states "Corporal punishment including spanking, shaking and slapping shall not be used."
- b. states "Punishment which is humiliating or frightening shall not be used."
- c. states "Punishment shall not be administered because of a child's illness, or progress or lack of progress in toilet training, nor shall punishment or threat of punishment be associated with food or rest."
- d. states "No child shall be subjected to verbal abuse, threats, or derogatory remarks about such child or such child's family."
- e. states "Nothing in this rule shall preclude the use of professionally prescribed treatment for the severely retarded or handicapped."

Our concerns are:

1. We are concerned with the negative connotation 109.7(2) a - e seems to use in approaching discipline. We think of discipline as part of the direction and training that helps develop self-control and self-discipline. It is an essential part of our program. Without it there would be no order and without order, no learning can occur. Effective discipline helps direct children in living democratically, receiving respect and giving respect to others.
2. Although probably not intended, the general use of terminology without definition causes us great concern. We would ask, "What does humiliating or frightening mean?" "What is a threat?" In general, we have the impression that our hands are tied as far as discipline is concerned, even though we understand that was not the intent of these rules.
3. Our concern has led us to consult our insurance company for their opinion of the ramifications of the rule 109.7(2) a through e to child care centers. Our insurance company has made recommendations that we increase our liability insurance coverage.
4. Our liability insurance has increased 38% since September 1, 1979, due to 109.7(2) a through e.
5. We have consulted our attorney for his opinion of the ramifications of 109.7(2) a through e. He encouraged us to increase our liability insurance immediately. In addition he has advised us that unless 109.7(2) a - e are defined and amended, we will have no alternative but to incorporate because of our increased vulnerability to litigation. This will be another expense for our business to absorb in addition to the 38% insurance increase, which will be higher next year. We would prefer incorporation be a route we pursue because we want it for our business, not because we are forced to do it because of our increased vulnerability.

Our recommendations are:

1. Rewrite Rule 109.7(2) a-e defining discipline and all other definitive terminology used to discuss discipline.
2. We do not object to there being rules on discipline, but we would suggest they be more directive, helping providers understand acceptable methods of disciplining.

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3. There may be need of workshops in the thirteen child care areas under the direction of the Department of Social Services so that providers may be educated in proper discipline.

SOME GENERAL CONCERNS:

1. We did not have any knowledge not did any other of the providers we have talked to of the proposed rule changes until June, 1979. We were told about them by our Licensing Consultant, Kris Thompson. She volunteered to make them available to us, which she did. The copy we received from Kris in June was labeled IAB and dated 11/29/78. We were told these rules would become effective September 1, 1979, and that there was probably too little time to do anything about them before the effective date.
2. We strongly protest that proposed rule changes do not have to be made available to providers at the earliest possible date. We believe there would have been great benefit to all involved if the proposed rule changes which were published in the IAB, 11/29/78, had been made available to all providers at that time. We further recommend that public hearings on proposed rule changes be held in enough localities in each of the thirteen districts that all providers will have an opportunity to voice their opinions and concerns before the proposed rule changes become effective. We would hope these opinions and concerns from providers would be of value to the Department of Social Services; that from such input the most effective, valuable kinds of rules and regulations might result. The primary purpose of these rules and regulations would be to insure a safe, comfortable, wholesome atmosphere where the children being served could grow toward development of their fullest potential. At the same time it is hoped that these rules will serve to help the child care centers provide the aforementioned atmosphere. We believe this is a primary goal for most child care providers.
3. At the same time that we are concerned about meeting the needs of the children we serve, it must be remembered that we are businesses operating for the purpose of providing gainful employment. With some of the rules as written it is becoming almost impossible for us to continue in business. In talking to other providers in our district, we find that we are not the only business with this serious concern. We know of two child care centers that closed because they could no longer provide service to the children and gainful employment for themselves and their employees. We have talked to the owner of a center in a low income area of Council Bluffs who is contemplating closing next year because she can no longer make a reasonable profit. The smaller centers seem to be the ones most effected.

We respectfully petition the Iowa Legislative Rules Committee to consider our concerns and recommendations. We believe that it is possible to continue in a profitable business and comply with reasonable rules and regulations.

Woods pointed out that the rules had remained unchanged since their adoption in 1975. She urged revision of 109.3(1) to eliminate the annual physical requirement and to require only an admission physical.

Sheehan Sherzan, Director, Iowa Council for Children, explained that the rules had been written to meet the needs of the safety of children as well as the providers. She conceded certain areas needed clarification, but the rules were basically acceptable.

Welp, regarding the staff ratio, said the law required one public hearing on the first rules draft and that hearing had been well attended.

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Patchett suggested public hearings in various cities would allow for additional input. Oakley contended the impression was being given that the Department had been unresponsive and insensitive to request for changes in the rules. "If that is not an appropriate position, then it ought to be stated that the Department has been responsive," he concluded.

Schroeder stated he had advised the people that it would be preferable for the Department to initiate action for a broad review. He reminded the Committee that when these rules were first written, they were very controversial.

In answer to Oakley, Poore said the Department has an appropriate advisory committee meeting on a continuing basis--at least every two months--to review the rules. He said that anyone may petition that committee.

Re 109.4(3)a--determining staff on the age of the youngest child--Woods believed the age of one child should not be the determining factor. The rule destroys the desirable practice of providing for individual needs of each child. Another area of concern was the lack of a Code definition for preschools since that type of operation differs from day care centers.

Schroeder agreed to apprise respective education committees of the legislature that area should be evaluated to determine if a separate category would be advisable.

Karen Tulane, Day Care Center, supported Woods and commented that state regulations are very lenient.

Patchett questioned whether or not the rules could delineate the difference between preschools and child care centers. Welp was of the opinion they could not. There was general discussion of the pupil-teacher ratio. In response to Patchett's question, Poore replied that an attorney general's opinion had been requested on the matter.

Schroeder requested Welp to initiate action at the Department level and she said Poore would take the recommendations to the advisory committee.

LUNCH

Chairman Schroeder recessed the Committee for lunch at 12:15 p.m. to be reconvened at 1:30 p.m.

Reconvened

The Committee reconvened at 1:50 p.m.

SOCIAL
SERVICES
RESUMED

Welp and Kellen reviewed 77.22 and 78.24. Welp said the rules would allow independent medical psychologists to be considered medical vendors in the Medicaid program. This was in response to a petition from the Committee. The rules were acceptable as published.

SOCIAL
SERVICES
Cont'd

40.7(4) was acceptable as published.

Welp explained that 41.8(4) would preclude situations where the parent and the absent parent never live together or the parent and child go to the home of the absent parent--in that case, the absent parent is not returning home. Revision was made to include those situations.

In re 78.1, criteria for obesity surgery, Schroeder questioned the fact that the age limit is 55, unless specific conditions warranted. Welp replied the type of operation was very serious, with many side effects, and a person over 55 would be more susceptible and would require a longer recovery period.

Clark opined the language in 78.1(11)a(3)(5) needed a dictionary for interpretation. Welp said that "refractiveness" should be "refractoriness" meaning resistant to a different type of medical therapy, and "nonreversible sequela" means "after effect," i. e., a stroke.

Rules 78.12 and 81.3, 81.7, 81.8, 81.10(3)(4) and 81.13(14) were promulgated as a result of the transfer of the review function for need of care to the professional standards review organization in Iowa. The ICF rules have been clarified. Amendments to 81.6 and 81.10(6) were basically for clarification.

In re 81.10(6), Oakley noted the Department had not made the change requested and Welp agreed to substitute more suitable language for the word "residence."

In re 135.1-135.11, Welp commented the Department had tried to be responsive to the many comments concerning the rules. They tried to "tighten the rules and incorporate the denial of critical care concept." Also, she noted that the definition had been changed.

Welp, in response to Patchett, said the schools were removed from the definition of institution [135.1(6)] as a result of an attorney general's opinion. Patchett asked if the Department planned to propose a change to the legislature. Hennessey replied they are awaiting the action of the Teaching Practices Commission in promulgating rules covering abuse of children in the schools.

Kathy Grovenburg noted that 141.5 had been filed emergency simultaneously with a Notice in July, but no comments were received. The rule addresses computation of the base cost requirements and reporting procedures on reimbursement to counties for juvenile shelter detention homes. Patchett opined that the legislative appropriation or the statute itself allowed the Department to fund up to a certain percentage. Oakley inter-

SOCIAL
SERVICES
Cont'd

preted the statute to permit the department to expend up to \$660,000 and if the amount was insufficient, the department must notify the comptroller and the respective appropriations committees, and, then, by December 1, report to those same committees. There was general discussion of the legislative intent, the consumer price index, and the method used by the Department in calculating the amounts to be reimbursed. Schoreder requested the Department, upon completion of their report for the appropriations committees, send a copy to Royce in order for him to forward copies to the ARRC.

Patchett indicated there was some concern in the counties that the Department planned to withhold funds from this program in order to cover shortfalls in other programs. Welp replied that was not their intent. Oakley interjected there had never been any suggestion that the money would go any place other than to this program. Mechanical difficulties have caused delays--and as a matter of policy, this is an "open-ended operation"--there is no incentive for counties to hold down costs under such a program.

Welp noted the dates had been changed in 65.3 to comply with federal regulations. Holden recalled complaints of a constituent that Iranian students were obtaining food stamps. Welp said they could be eligible since these students do not receive sufficient funds to cover all expenses. It was Clark's understanding that the colleges were responsible for advising foreign students of amounts needed to live in certain communities and there was general agreement that wrong information had been disseminated.

Amendments to 159.1(2) and 159.5 were acceptable as published.

ENERGY
POLICY
COUNCIL

- Budrudden Karachiwala represented the Council for review of the following:

ENERGY POLICY COUNCIL(380)

Technical assistance and energy conservation grants, 6.6(2)"b", 6.6(4)"a, d" ARC 0725N..... 11/28/79
Technical assistance and energy conservation grants, 6.6(2)"b", 6.6(4)"a, d", filed emergency ARC 0724 .. 11/28/79

Karachiwala advised the Committee their amendments were technical in nature and necessary because of a change in federal interpretation of the federal grant program. The state was required to submit a plan, by August, 1979, which was approved by the federal regional office of the Department of Energy. In order to obtain \$3.5 million, the EPC found it necessary to use the emergency rule procedure. In answer to Tieden, life cycle cost procedures were recommended by the federal government. No formal action was taken.

ENVIRON-
MENTAL
QUALITY

Odell McGhee, Hearing Officer, Darrell McAllister, Charles Miller, James Wall and Gail Heyn, Environmental Quality, were present for review of the following:

ENVIRONMENTAL QUALITY[400]

Emission standards for contaminants, 4.5(3)"b, c" ARC 0706.....F..... 11/14/79
Water quality, wastewater treatment facilities, 16.2(5), 17.8(2) ARC 0705 ...F..... 11/14/79

ENVIRONMENTAL QUALITY[400]

Air quality, odors, 1.2(35-37), 4.4(12), 4.5(1, 2), 14.3(3) ARC 0707.....N..... 11/14/79

Also present were: Mike Telford, Executive Director, Iowa Pork Producers Association, Darl Reynolds, President, Iowa Pork Producers Association, Chuck Bjstrom, Vice President, Iowa Pork Producers, John E. Hawes; and Bruce Berven, Iowa Cattlemens Association.

McGhee introduced George Osborne, Chairman, Air Quality Commission, for review of 4.5(3). Osborne explained that the rules were drafted as a result of legislation, research by Dr. Stuart Melvin and from information gleaned from public input. He discussed the Dakota aquifer located in northwest Iowa and its high sulphate level. The agreement was that those counties would have a smaller loading rate than the rest of the state to compensate for the sulphate. However, in testing water, if the sulphate level is found to be low, the same loading rate as the remainder of the state could be used.

In answer to Schroeder, Oakley opined there was a reasonable basis for making the distinction between areas of the state.

Holden pointed out the rule needed consistency in use of "less than", "more than", rather than "fewer" and "more"--he thought DEQ should decide which words to use. Oakley suggested allowing the words to stand until the page has to be amended or rewritten in order to save cost. All concerned were willing to await substantive changes.

Oakley had reservations as to whether the rules were an appropriate balance. Osborne said the livestock industry is equally interested in solving the odor problem.

In re 16.2(5) and 17.8(2), McGhee explained their hope is that the elimination of intensive stream surveys will save DEQ staff hours. McAllister advised the Committee that meetings had been held regarding classification of streams. Tieden asked what changes were planned to expedite applications of cities. McAllister replied that, for some streams, there would be no changes. Tieden was concerned with the classification of streams and McAllister said the rule addresses the procedure for the flow to be used in calculating the wastewater treatment.

ENVIRON-
MENTAL
QUALITY
Cont'd

General discussion of stream flow with McAllister stating the Department has initiated review of classifications as required by the federal government. McGhee reminded the Committee the rule relating to odors will be further delayed. Miller commented that this was not the first time these rules had been delayed as the Department has not had the staff or the budget to implement them.

Schroeder suggested DEQ withdraw the rules but Miller said the Air Quality Commission was of the opinion this could not be justified.

John Graves, Newton, read from a prepared statement and spoke in support of the anerobic lagoon rules and urged implementation of the nuisance rules even though total enforcement won't be possible.

Recess

Chairman Schroeder recessed the Committee at 2:20 p.m. Reconvened at 2:30 p.m.

IOWA
DEVELOP-
MENT
COMMISSION

Ronald Kraft and Doug Getter appeared for review of the following:

IOWA DEVELOPMENT COMMISSION[520]
Speculative building loan Act. 4.3(16, 17) ARC 0673.....N..... 11/14/79

Kraft notified the Committee the Commission had modified 4.3(16) to include the date of publication of the Underwriters Laboratory Class 90. The amendments were acceptable as published.

PUBLIC
INSTRUC-
TION

Charles Moench, Director Area Schools Division, reviewed the Industrial start-up training program, chapter 27 [filed emergency IAB 11/14/79]. The last session of the general assembly funded the program which is intended to complement the work of the local development commissions and the Iowa Development Commission. Schroeder questioned the emergency filing and Moench replied it was based on the fact that, in past years, a small amount of vocational funds (\$50,000) had been set aside for working with the new and expanding business program. Recently, there has been more interest in the program and most of the funds have been utilized.

Tieden stressed the fact that area schools had been created to fulfill that requirement and they were to remain flexible. In answer to Tieden, Moench replied that people from the Development Commission, once they were aware of the additional attraction, have worked with industry officials. He continued that funds would be appropriated and once application is made, it is reviewed by an advisory committee to ensure there is coordination.

12-12-79

TRANSPORTA-
TION

John R. Kelly, Motor Vehicle Enforcement, and Frank Sherkow, Deputy Director, Public Transit Division, appeared for review of the following:

TRANSPORTATION, DEPARTMENT OF[820]

Motor vehicle safety equipment, [07,E] 1.2(4, 14, 15, 16"e", 17, 19"h, i", 21"b", c, f"), 1.4 ARC 0700...F... 11/14/79

TRANSPORTATION, DEPARTMENT OF[820]

Advance allocations of state transit assistance funding, [09,B] ch 2, filed emergency ARC 0710..... 11/14/79

In discussing 1.2 (14), Kelly said the rule had been changed to include mud flaps on truck tractors and trailers. Schroeder inquired if mud flaps were being mandated. Kelly replied that in order for a vehicle to pass safety inspection, some type of device is required to prevent debris from being thrown to the rear--not necessarily mud flaps. Schroeder questioned how six-wheel drive vehicles could comply and Kelly said no waiver exists. He thought these vehicles could come under special equipment types. Kelly reminded the Committee the change had been made at their request.

With respect to bumpers in 1.2(15)[07,E], Royce observed that, for clarity, the subrule should be divided. Kelly indicated the terminology was excerpted from the federal motor safety regulations.

In answer to Tieden, Kelly said the change in 1.2(15) was made because federal regulations require some type of rear end protection device on trucks and truck tractors. Tieden noted that the rule did not meet with the approval of many truckers. Discussion of vehicles containing bumpers which are too high with Schroeder contending that issue should be addressed. Kelly advised Schroeder that, in western Iowa, the registration on one vehicle had been suspended after a federal consultant had made a determination. He continued the alteration of vehicles was a very serious matter.

Shields for exhaust pipes were discussed with Schroeder expressing concern for additional cost. Kelly admitted the term "shielded" was broad and Schroeder could foresee a problem of compliance for cities.

Schroeder questioned the degree limitation of the front slope on the front fork of motorcycles. Kelly advised the Committee that manufactured motorcycles do not exceed the 45-degree slope and he said they had consulted the motorcycle manufacturers when drafting the rule.

Schroeder raised question concerning the restriction in 1.4(3). Kelly cited several instances of people installing oversize engines on motorcycles including an auto engine. Schroeder thought the rule was too restrictive and locked in the motorcycle manufacturers as the only supplier. Holden preferred limiting the engine size to a certain cubic inch or horsepower.

TRANS-
PORTATION

Schroeder further contended the rule blocked the use of "will fit" parts and Kelly agreed to try to refine the rule to answer Committee concerns.

In re chapter 2, Sherkow commented the rules provide for advancement of funds before actual costs have been incurred thus avoiding long delays involved in the reimbursement process. Cash flow problems of many publicly owned transit systems will be eased. The rules were based on a significant amount of input solicited from 33 transit systems. Although he supported the concept of the rules, Holden reiterated his opposition to emergency rules, generally.

Patchett could foresee repeal of emergency provisions of chapter 17A if they are misused. He cited a situation where Coralville was asked to refund part of their grant share. He wanted to know if there were rules covering this. Sherkow explained that the legislature appropriated the funds for assistance to transit agencies. This was not an entitlement or grant per se, and up to the advance allocation process, everything had been on the basis of reimbursement of actual cost. In Coralville, the first two years ('77-'78), DOT was operating under contracts which allowed them to proceed on the basis of line items, regardless of the amount derived from fares. After a number of difficult negotiation sessions involving DOT auditors, comptroller and state auditor, Sherkow stated "DOT was coaxed into position where, in fiscal 1979, the contract was one of 'funder of last resort'." In other words, DOT made advance allocations, and if there were less of a deficit than the transit company had budgeted, then other sources of revenue had to be utilized before DOT money could be used. Also, the state employee subsidy program for bus passes was implemented in 1979--\$65,000 was taken from the transit appropriation to fund the program and DOT paid 50 percent of the cost of employees' bus passes. In fiscal 1980, DOT will no longer be a funder of last resort. Patchett thought that should have gone through the rules process. Sherkow said it was a matter of how "reimbursement" was defined and the original appropriation had a great deal to do with giving transit systems assistance in what they wanted to accomplish. Tieden noted that the bill which allowed paying in advance was to help eliminate that situation. He asked what "teeth" DOT had to ensure return of funds in situations of overpayment.

Sherkow answered that it was handled through contract language--DOT contract with local transit systems under their rules on reimbursement. He reiterated "It gets down to that fine definition as to what is reimbursement." He added "The rules stand up the way they are" but perhaps legislation should define "block print", "reimbursement" and "who can share in deficit savings."

TRANS-
PORTATION
Cont'd

Patchett was concerned that the potential existed for favoritism of one city over another.

Sherkow declared every effort is made to be fair in dealing with cities. Schroeder contended the DOT policy should be in rule form--not inter-department memos. Sherkow said DOT had considered rewriting the reimbursement rules which would take some time. He pointed out that, in this particular case, DOT must be sure the procedure would be capable of being audited. Sherkow noted that rule 2.9 states very clearly that the transit system must repay the DOT the difference between the total advance allocation, or that joint participation agreement, and the total eligible amount.

In answer to Tieden, Sherkow indicated contracts were written to allow termination either by default or through convenience. There was discussion of contracting authority. He said individual contracts are not written--there is a standard contract. If changes are needed, it would apply to all systems for one year. Sherkow explained the state comptroller and state auditor would have a great deal of influence in the formulation of definitions.

At the request of Royce to defer review of special fuels--licensing meters was deferred until Thursday. Use of liters on gasoline pumps was discussed.

PRIMER

In response to Committee as to progress of the Rules Primer, Royce thought it would be completed in about a week.

Miscel-
laneous
Business

Royce requested installation of a speaker in his office to enable him to monitor the legislative session. Estimated cost would be \$200 maximum. There was general agreement by the Committee to comply, but that the Republican caucus should be approached about the matter.

Patchett brought up the matter of Royce's salary and suggested the Committee should have a policy re staff salary perhaps commensurate with pay scales for LSB attorneys. Schroeder preferred to delay any action.

Holden presented a claim for purchase of a Bunn coffee brewer for committee use--\$38.60. It was decided Holden should be reimbursed from committee funds.

There was brief discussion as to the most expeditious and appropriate manner to apprise all agencies of the Committee's opposition to the adoption of rules which vary substantially from the Notice of Intended Action. Barry pointed out that, at one time, the Committee had considered publishing a directive in the IAB. Committee concurred this would be less costly.

To accommodate Oakley, commerce and credit union review was reversed. Chairman Schroeder recessed the Committee at 4:20 p.m.

RECESS

RECONVENED The Administrative Rules Review Committee was reconvened at 9:05 a.m., Thursday, December 13, 1979, in Senate Committee Room 24 with Chairman Schroeder presiding. Members present were Senators Holden and Tieden, Representatives Clark and Schroeder. Senator Priebe absent; Representative Patchett arrived 9:40 a.m. Also present was Joe Royce, Committee staff.

**COMMERCE
COMMISSION**
Gas
Lights

Ray Vawter, Utilities Division, Commerce Commission, presented proposed amendment 19.3(1)e which pertained to natural gas for outdoor lighting, published IAB 11/28/79. Prohibition on use of gas for this purpose was implemented as a result of the Power Plant and Industrial Fuel Act of 1978, part of the National Energy Act. The Economic Regulatory Administration promulgated rules on criteria for which exemptions could be granted and then delegated that authority to the states under federal law. There was discussion as to types of lanterns using gas. Vawter advised the Committee that chapter 478A of the Code prohibits sale of gas lights. However, portable camp lanterns and gas lamps are excluded in that law. Holden found it interesting that the federal government could find only this means of conserving energy. No action taken.

**ACCOUNTANCY
BOARD**

In a matter not officially before the Committee, Holden was concerned that a so-called report by the Board of Accountancy appearing in their monthly publication was, in fact, an administrative rule that was being enforced in violation of the Administrative Procedures Act. Holden asked Royce to look into the matter.

**CREDIT
UNION
DEPARTMENT**
Chs 6, 9

The Credit Union Department was represented by Betty Minor, Administrator, James Brody, Deputy who presented filed rules Chapter 6--Branch offices and Chapter 9--Second mortgage loans, published in IAB 11/28/79. Other interested persons included: Gary Plank and Al Jordan, Iowa Credit Union League; Richard Thornton, Iowa Bankers Association and Marcia Hellum, Iowa Consumer Loan Association.

Schroeder recalled previous discussion when the Committee had recommended limitation of 4 branches. Minor responded they considered that to be unnecessary. She added that other changes had been made as a result of ARRC review and a public hearing. One substantial change was made in 6.2(1) wherein a credit union desiring to move its branch must apply in the same manner as it did for the first location. The Review Board had approved the changes, according to Minor.

Clark indicated that supporters of share draft legislation were concerned that credit unions were getting into the banking business and perhaps should be subject to rules governing banks.

In answer to a question by Minor, Holden said section 524.1201 of the Code restricts the number of branch banks. Tieden wanted Minor to explain her position on unlimited branches. Minor stated that having the opportunity initially is innovative and

CREDIT
UNION
Cont'd

only a few large credit unions will be opening branch offices-- 15 or so referred to as "multiple" or over \$10 million. At the most, they would open 2 to 4 branches.

Holden concurred with Clark's statement and was alarmed at the rapidity of credit unions to exceed the intent of the law. Clark theorized that some people will conduct all their business through credit unions creating an adverse effect on the banking business.

Tieden was dissatisfied with the response to his question as to why credit unions should have unlimited branches. He asked Minor if she envisioned John Deere of Dubuque maintaining a branch outside the city. Minor answered in the affirmative. Tieden cited problems that banks in smaller communities would encounter if credit unions were established in those areas.

Plank recalled the history of the Act dealing with this subject-- it was requested by the Superintendent of Banking to address a problem with another credit union in Dubuque. He reasoned that branch offices are opened within a plant as a convenience to current members. He could see no problem with inserting the number "4" or "2".

Thornton spoke of limitations faced by bankers and thought that population of an area should be a factor. He indicated a preference for similar rules governing both banks and credit unions.

Clark mentioned that Royce thought 6.1(4), a and b exceeded the law. She was supportive of limitation of 4 branches.

Hellum expressed concern for the philosophy and intent of the rules. She was critical of the shared office concept. She could foresee a small credit union being subsidized by a larger one.

Patchett arrived.

Discussion of a branch office being established to support its membership. Hellum maintained the rule exceeded statutory limitation for establishing a branch. Plank cited instances where plants have two different credit unions sharing one facility. Tieden thought it preferable to spell out in the rule that limited service would be given. Plank said the administrator would have the responsibility for ensuring that records of each credit union sharing a facility would be maintained separately.

Thornton restated their interest in consistency and guidelines for the administrator.

Jordan addressed the issue of competition between banks and credit unions. He said few credit unions compete with each other with exception of three. The spirit of free enterprise seemed workable in his opinion.

Recess
Reconvened

Chairman Schroeder announced a ten-minute recess. Committee reconvened at 10:05 with Oakley having arrived.

CREDIT
UNION
Cont'd

Clark reasoned that, in her community with one bank, establishment of a credit union would be, to some degree, competition with the bank.

Oakley questioned the meaning of "reasonably necessary"--it was his contention that the rule addressed whether or not the convenience and needs of the members were going to be served by a branch. He thought the legislation provided, in effect, that a branch office must be an integral part or acquired part or is necessary to maintain that credit union as a service to its members. He continued that a convenience was something different and wondered why the Department chose not to define "reasonably necessary for service to ..." Minor said the rules were written in support of the legislation which states that they be "reasonably necessary." Oakley also felt the rules lacked guidance to applicants. He further questioned use of "but not limited to" in 6.1(4) since the Department was, in fact, limited by statute. Brody took the position that if the legislature had intended it to be "necessary" they would have been specific. He considered the term to be "undefinable".

It was Plank's opinion that the administrator should have discretionary power to make judgments. He declared credit unions were being "sold out." He was puzzled by the challenge of the establishment of credit union branches when the legislature had spoken.

Oakley contended the law required the Department to identify the criteria which would be applicable--"admittedly, the other side of rulemaking is the adjudication," he added.

With respect to the joint venture and contractual agreements by the administrator, Oakley preferred more explicit language. Responding to question by Oakley, Minor said she envisioned joint facilities as two or more credit unions renting or building a facility in a certain area; e.g., those who serve statewide membership with the main office in Des Moines opening branches in Cedar Rapids or Davenport. Agreements would include those entered into regarding renting a facility and setting out how costs would be shared.

Discussion of the possibility of one employee working for all credit unions sharing a facility, with Minor explaining that the employee could be paid by all of the credit unions. Oakley was disturbed by this concept and Schroeder thought it could be considered a holding company. Oakley declared the Department was "setting an important public policy."

Schroeder suggested possible delay for further study. Consideration was also given to imposing an objection on the rules.

Motion

Clark moved to delay Chapter 6 of Credit Union Department rules for 70 days beyond the effective date of January 2, 1980.

Discussion of the motion.

Patchett indicated that originally he preferred a 45-day delay (into the GA). Patchett was not prepared to vote an objection at this time.

There was general agreement by the Committee that questions

CREDIT
UNION
Cont'd

raised here today should be addressed by the Department. Tieden concurred with Patchett that the limitation on branches would be a legislative responsibility. Responding to Tieden, Minor said she had not had an opportunity to discuss Oakley's concerns with the Board.

Oakley stressed that he was more concerned about omissions in the rules rather than whether they exceed statutory authority. In fairness to the Committee, he doubted any of the rules would be vetoed. However, he planned to recommend expanding the rules to define how the Department would regulate.

Patchett commended the agency for their co-operation thus far.

Delay
Ch 6

Question was called on the Clark motion to delay. Short form was requested by Holden. The 70-day delay of Chapter 6 carried unanimously. Priebe absent and not voting.

Ch 9

Chapter 9 relating to second mortgage loans was acceptable as filed.

Recess

Chairman Schroeder recessed the meeting for 5 minutes.

Reconvened Meeting was reconvened at 10:50 a.m.

PROFESSION-AL AND OC- CUPATIONAL REGULATION COMMISSION-Dick Woods, Assistant Director of the Professional and Occupational Regulation Commission, and Jean Comstock, Office of Programming and Planning, appeared for review of Chapters 1 to 4 of their rules which were filed under Notice as ARC 0709 and Emergency as ARC 0698, published in IAB 11/14/79.

Woods told the Committee that the Commission, which was created by the 68th GA, was designed to set up administrative procedure, provide definitions and set general standards for people requesting recommendation for licensing.

Royce called attention to 2.2(2) with respect to voting. He pointed out that the Committee has insisted on a "majority of the entire membership to pass a measure and these rules require only a majority of those present and voting."

Woods replied that the point had been discussed but due to the fact that their legislative members may not attend during session, the Commission would be left with only five members and any one dissenting vote could have the effect of a veto.

Schroeder thought legislative members could be available for a vote. Oakley interjected that some legislators would not vote--they have poor attendance records because of many duties and the Commission would be hampered if the rule does not stand as drafted.

Clark questioned whether definitions set out in 1.1(2) and 1.1(3) were standard. She considered it arbitrary to require specialized knowledge to serve on the Commission. Woods noted the definitions were from the dictionary--"profession and occupation" are used together throughout the rules.

No action taken by the Committee.

REVENUE

The following rules of the Revenue Department were before the Committee; however, there were no questions and the Department was advised that a representative would not be necessary:

REVENUE DEPARTMENT[730]

Dispensing of special fuel by licensed users, effective date, 65.8, filed emergency ARC 0722.... 11/28/79
Assessor education commission, 125.2 ARC 0704N..... 11/14/79

CONSERVA-
TION

Dr. Allen Farris, Bob Barrett and Richard Bishop, representing the Conservation Commission, were present for review of the following rules:

CONSERVATION COMMISSION[290]

Falconry regulations, 18.1637c" ARC 0727.....F..... 11/28/79

CONSERVATION COMMISSION[290]

Wildlife habitat stamp revenue cost assistance program on private lands, ch 22 ARC 0728 ...N..... 11/28/79
Cost-sharing wildlife habitat stamp revenues, 23.10, filed emergency ARC 0684..... 11/14/79
Migratory game bird regulations, ch 105 ARC 0729.....N..... 11/28/79

Also present was former Senator E. Kevin Kelly.

Falconry regulations were acceptable as filed.

Discussion centered on the wildlife habitat stamp revenue cost assistance program on private lands--chapter 22. The rules would guide the expenditure of cost-sharing funds on private lands, basically with the switchgrass program. A public hearing was scheduled for December 28, 1979. The program would encompass seven southern counties with plans for future expansion.

Clark was of the opinion that 22.5(2)f was unnecessary and she inquired as to how the eligibility was determined. Farris explained that counties were chosen for their "cow-calf operations and their importance." Manpower capabilities were perused, with Ringgold being the county with the most switchgrass planted. Personnel, their availability and their workloads, were considered also.

In answer to Tieden on apportionment of habitat stamp funds, Farris said ten percent of the total funds are generated by the habitat stamp and twenty percent of the estimated part, the state will have--there is fifty percent of it that is supposed to go to cost sharing with the counties which leaves about a half million dollars. Conservation Commission estimates the program will take \$100,000, so it would be twenty percent of that.

In 22.9(1), Tieden asked if the law stipulated how these funds were to be used. Farris said the law requires "fifty percent for cost sharing" which basically would be used by county conservation boards. The balance would basically be used for creation or acquisition of wildlife habitat. They plan to use the funds for other than operations and this special program would put habitat on private land.

Tieden did not recall that the bill spoke to the fifty percent.

CONSER-
VATION
Cont'd

Farris said they will be entering into contractual agreements with landowners and prefer to establish a rule for the procedure. Barrett was of the opinion that two different rules were being discussed. He said the amount appropriated for the switchgrass program was in the budget which had been approved by the legislature. Tieden wanted to know if the amount were listed in the minutes of the Commission and Farris wasn't certain, but had presented the amount to the Commission on two different occasions. Tieden preferred that Farris see that it is on record.

Barrett said rule 23.10 contained an editorial change made at the request of the ARRC.

STEEL
SHOT

Review of chapter 105. Schoreder thought there should be an economic impact statement on behalf of the hunters. Farris noted that 105.3(3) would require use of steel shot in virtually all areas of the state, except for streams, ditches, the upper ends of the major rivers and artificial impoundments of less than 5 acres and temporary sheetwater.

Farris explained traditionally, waterfowl are hunted over water with lead shot. Lead shot, when picked up by a duck feeding, causes lead poisoning. Lead poisoning problems have been documented since the 1940's and 1950's among waterfowl. Some type of nontoxic shot has been tried since that time. He added that lead shot in ducks also causes loss of flight capabilities and muscle control. "Die-offs" are most spectacular in January and February in the northern climate.

Farris continued U.S. Fish and Wildlife have had the program for about 10 years seeking to resolve the problem. Farris said there has been tremendous political activity. He mentioned the Mississippi Flyway, consisting of Minnesota, Wisconsin, Michigan, Ohio, Indiana, Illinois, Iowa, Missouri, Arkansas, Louisiana, Kentucky, Tennessee, Alabama and Mississippi. In 1976, certain designated zones required use of nontoxic shot in 12 gauge shot-guns only. The Iowa Conservation Commission was opposed to that.

Since then, studies have been conducted and much controversy surrounded the issue. Shell quality has been improved. Iowa, in 1976, instituted nontoxic shot use in Mills and Freemont Counties. Because of its unavailability, the plan was rescinded to be reinstated 1977-1979.

In 1978, the U.S. Fish and Wildlife Service wanted Iowa to enforce nontoxic shot use on the Upper Mississippi Wildlife Refuge. Congress adopted an amendment prohibiting enforcement of steel shot regulations unless permission was granted by the states. Iowa did not grant the permission, but in 1979, the Conservation Commission placed that in their rules. U. S. Fish and Wildlife has promulgated a rule requiring steel shot, so the Commission thought it time for Iowa to implement an even broader rule.

CONSERVA-
TION
Cont'd

Farris related availability of steel shot in the state for the current hunting season. Schroeder said only 12-gauge was available in his area.

Patchett reasoned "It is rather ironic to save them so we can kill them."

Farris indicated the Commission would take advanced action on the rules at their January 9 meeting, thus allowing sufficient time for suppliers to be prepared for the 1980 fall waterfowl season. Orders are placed in January and February.

Discussion of availability of different gauges with Farris saying manufacturers probably would not make 16 or 20 shot.

Kelly commented there was no proof that steel shot would not "scour gun barrels." Farris said manufacturers claim it will not but admitted there could be distortion of older guns.

Patchett referred to Code sections and the federal Act which seemed to be limited to high concentration areas. Barrett and Farris said there was nothing in the federal law requiring use of steel shot--the Migratory Bird Treaty Act does not contain that stipulation. Apart from the federal law, Patchett contended there must be some statutory authority for Iowa to impose the rules. Barrett cited §109.48 and the Migratory Bird Act but Farris agreed there was no direct authority.

Schroeder took the position the Commission had exceeded their authority in interpreting the federal Act to permit the state to exceed federal requirements. He concluded the state honors federal regulation only when mandated.

Bishop remarked that the federal government is encouraging the state to expand zones where steel shot may be used.

Tieden was inclined to believe the Commission was "overreacting" in a matter which will "create a great deal of public reaction." He opined that hunters who load their own shells would be forced to discontinue the practice. He favored rules which set out more definitive and restrictive areas.

Oakley proposed that the Committee indicate its position, as a matter of policy, and he recommended that the matter be included for discussion in January. He was of the opinion that, simply delaying the process would, in effect, kill the rule. He favored apprising the Commission in January as to what action was contemplated by the Committee as well as the Governor. It was noted that results of the public hearing would be available in January.

Holden thought the subject should be presented to the Legislature.

CONSERVA-
TION
Cont'd
Ch 105

Royce spoke of a problem with enforcement of the federal Act-- "there is very little, if any, support under Iowa law to control the ammunition used in shot guns, but we do have a federal Act." He continued, "This Act delegates power to an agency, not to the Iowa legislature, and, in effect, it avoids rather plain provisions of Iowa's conservation statutes."

Patchett asked how policing of lead shot use for other types of hunting would be enforced. Barrett indicated the burden would be on the state. Patchett was curious as to how close the rule would come to eliminating lead shot in Iowa and Department officials it would only affect waterfowl hunting.

In answer to Clark, Farris said the length of stay in Iowa for a Mallard depends on the individual duck. Barrett added that the average stay would be two or three weeks in the spring and the same time in the fall.

Clark questioned use of "although not limited to" in 105.3(7) and Barrett advised that the language was derived from the federal Act. As to 105.5(1), Farris said it addresses the identification of species.

Responding to Oakley, Farris stated that several surrounding states use steel shot. Southern states do not and this creates problems.

Discussion of costs to the hunters. Bishop indicated there was much support for use of steel shot.

Holden was informed that steel shot is not available for .410 shotguns.

Kelly indicated he was not opposed to steel shot per se but doubted its use was as advanced as was being presented.

Tieden wanted the rules modified and Schroeder preferred restriction to shallow waters. Patchett reiterated his opinion that the Commission might be circumventing the Iowa law.

Holden recommended introduction of a bill at the next legislative session.

Farris asked if the Committee wanted the rule withdrawn.

Schroeder suggested that Farris prepare a summary for presentation at the next ARRC meeting.

Farris distributed a summary on steel shot for 1980 and indicated it had been distributed to county conservation boards.

MINUTES

The following corrections were noted for minutes of the November meeting:

Minutes
Cont'd

Clark noted that "Oxford" should be "Augsburg", in the sixth paragraph, page 1070.

Holden noted that "report" should be substituted for "claim" in the first and second paragraphs of page 1048; the name Joseph Bervid was not included in the list of names of Employment Security representatives; p. 1052, the words "accept new employment" in line 3 of the eighth paragraph should read "receive benefits". There being no further changes, the minutes were acceptable as amended.

Emergency
Amendments
Objection

Schroeder called attention to a question posed by Barry with respect to the status of emergency rules after an objection has been filed. According to Section 17A.4(2), the emergency rule or amendment would cease to be effective 180 days following the date the objection was filed. Barry cited an example in amendments to Health Department rules dealing with staffing for activity programs in care facilities--57.23(2)b; 58.26(2)b; 59.31(2)b and 63.21(3)b. Emergency amendments are incorporated in the appropriate rules and revised pages are printed for the IAC. Barry asked for guidance as to her editorial responsibility. After some discussion, Schroeder directed Oakley, Royce and Barry to prepare corrective language to be included in the bill to amend Chapter 17A.

Amend
Ch 17A

There was further discussion of additional proposals to amend the Administrative Procedures Act.

Schroeder favored authority for the Governor or the Committee to review and object to any rule in effect. He thought the time allowed for the Governor to act should be extended to 60 days after the effective date of a rule.

Patchett suggested the 45-day delay into the General Assembly should be increased to 60 days. However, he wasn't sure he concurred with reviewing any rule at any time.

Committee
Business

Holden suggested that an hour be allowed at each Committee meeting for the purpose of considering Committee matters such as those just discussed. Members concurred and Oakley and Royce agreed to advise them in advance of any business to be taken up.

January
Meeting

Discussion of January meeting dates. It was noted that the statutory date was January 8. Patchett wondered about the possibility of scheduling a special meeting prior to convening of the G. There was general agreement it might be advisable to recess the regular meeting to the following week to allow for disposition of in-house matters or unfinished business.

Rules
Acceptable

The following rules were acceptable as published.
No representative was asked to appear.

12-13-79

NO
REPRESENTATIVE
CALLED

APPEAL BOARD, STATE[60] County indemnification fund, ch 4	ARC 0712	N	11/28/79
AUDITOR OF STATE[130] Real estate loan charges, 1.23, filed emergency	ARC 0713		11/28/79
BANKING DEPARTMENT[140] Interest rate, small loans, 21.8	ARC 0693	F	11/14/79
CITY DEVELOPMENT BOARD[220] Urban revitalization areas, ch 5	ARC 0714	F	11/23/79
COUNTY FINANCE COMMITTEE[292] Generally, chs 1-3	ARC 0711	F	11/23/79
LABOR, BUREAU OF[530] Reporting occupational injury or illness, 4.4(2), filed emergency	ARC 0719		11/28/79
MERIT EMPLOYMENT[570] Certification and selection, ch 7	ARC 0697	F	11/14/79
Appointments, 8.1-8.12	ARC 0695	F	11/14/79
Emergency appointment, 8.8	ARC 0708	F	11/14/79
Vacation and sick leave, 14.2, 14.3	ARC 0694	F	11/14/79
MERIT EMPLOYMENT[570] Extraordinary duty, 4.7, filed emergency	ARC 0696		11/14/79
PUBLIC SAFETY[680] Flammable and combustible liquid codes, 5.305(2, 3)	ARC 0703	N	11/14/79
REGENTS, BOARD OF[720] Conduct of public hearings, 11.4	ARC 0685	N	11/14/79

ADJOURNMENT

Chairman Schroeder adjourned the meeting at 12:40 p.m.
Next regular meeting scheduled for Tuesday and Wednesday,
January 8 and 9.

Respectfully submitted,

Phyllis Barry

(Mrs.) Phyllis Barry, Secretary
(Assistance of Vivian L. Haag)

APPROVED

Chairman