MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, January 8, 1980, 9:20 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; and Representative Betty J. Clark.
Not present: Senator Berl E. Priebe, having reported he would be vacationing, and Representative John E. Patchett, having reported he would be absent.
Also present: Joseph Royce, Staff.
Brice Oakley, Administrative Rules Coordinator, having arrived 10:35 a.m.

CONSERVATION COMMISSION

Dr. Allen Farris, Director, Fish & Wildlife and Lester Fleming, Superintendent, grants-in-aid, were present for review of the following rules:

CONSERVATION COMMISSION[290]
Grants-in-aid program, 72.4, 72.13 ARC 0782 ..... F 12/26/79
Wild turkey hunting, ch 111 ARC 0790 ..... F 12/26/79

Fleming announced the Commission had amended the rule by which the Land and Water Conservation grant program is administered to local entities in an attempt to fund more worthwhile projects. He cited main areas of change: (1) a decrease in the annual grant ceiling for any one local entity during one calendar year to make donated real property eligible for assistance and (2) ceilings on grants for swimming pools and golf courses.

Responding to Schroeder, Fleming said the maximum grant of $240,000 had been decreased to $200,000 and the lowest ceiling of $140,000 had been decreased to $50,000 for smaller communities.

In answer to Tieden, Fleming advised that the Commission, in 1979, received over $4 million as their portion of the fund. A decrease of approximately $900,000 will occur in 1980. Funding sources are offshore oil and gas leases, sale of excess government real property and federal recreation area user fees. Fleming said using population as criteria seemed to be the most equitable way to allocate funds. No formal action.

Farris explained they had held a public hearing with respect to chapter 111 and received comments from two people. He called attention to a change from notice: The proposed use of decoys was stricken because of potential risk to hunters.

CONSERVATION COMMISSION Cont'd

Clark reminded Farris she had requested a change in the format by restructuring 111.2(2) to eliminate repetition. Farris had not been informed of the recommendation but was amenable to making the change when the rules are revised.

Farris discussed distribution method for licenses; the applicant requests the zone and season (in 1980, they will be allowed a second choice), the information is recorded by zone and season into a computer, and a random drawing is conducted. By law, if license vacancies remain, they would be issued on a "first-come, first-served basis" in Des Moines. Farris indicated that there were some licenses remaining last year--all for northeast Iowa. Greatest demand is for zones 1 and 3, public forest areas.

Tieden, out of curiosity, requested, and Farris supplied, the names of persons who testified at the hearing: Roger Rousch, West Des Moines, President, Wild Turkey Federation in Iowa, supported the rule, and George Rutledge, Woodburn, spoke concerning use of decoys. Farris reported that eleven people had presented comments at the hearing on steel shot. Committee members will be furnished a transcript.

TRANSPORTATION

Present for discussion of the rules were Robert Forrest, Director, License Office, Candace Bakke, and Charles Sinclair, Vehicle Registration.

TRANSPORTATION, DEPARTMENT OF[820]

Driver license, [07,C] 13.5(3-9) ARC 0772 ..... N 12/26/79
Mobile home dealers, manufacturers and distributors, [07,D] ch 7 ARC 0751 .... N 12/26/79
Travel trailer dealers, manufacturers and distributors, [07,D] ch 8 ARC 0752 ..... N 12/26/79
Mobile homes, sale or transfer, [07,D] 10.8 rescinded ARC 0753 ..... N 12/26/79
Vehicle registration and certificate of title, [07,D] 11.7(8), 11.12, 11.30, 11.32(5), 11.43, 11.57, 11.58 ARC 0754 .. N ... 12/26/79
Special permits, excess size and loads, [07,F] 2.1(5, 7, 8, 11, 12, 14, 15"d", 16, 17), 2.2, 2.3(1-3), 2.4-2.6 ARC 0741 .. N .. 12/12/79

Also present were: Gary Thomas and E. Kevin Kelly, Manufactured Housing Association; Dave Ripley, Vice President, Ripleys Inc.; J. Warren Smith, J. W. Smith Manufactured Homes, Inc.; Sandra Jordan, Val-Vista Estates; C. L. Cornelius, Ottumwa; and V. A. "Bud" Ewell, Iowa Association of Realtors.

Forrest commented that the rules were the result of legislative changes dealing with procedures for issuance of operator licenses. Major changes were (1) Deletion of provision for temporary driving permits for age 16. Schroeder indicated some driving instructors had questioned the wisdom of that change. Tieden, however, supported the concept. (2) Probationary operator licenses requirements were enumerated in 13.5(4). Schroeder was advised the rules did not address work-permit licenses. He recommended this area should be included in the rules. Forrest requested and received permission to address the issue in forthcoming DOT rules.

TRANSPORTATION Cont'd

In the matter of the probationary license, DOT was taking a restrictive view because of problems of private school students being unable to receive driver education. Affidavits are required stating the student cannot obtain driver education at any time. Schroeder doubted licenses would be denied in these situations.

The provision, allowing the county sheriff to issue a 15-day chauffeur license, was removed by legislative action. The procedure for the instruction permit was included and regulations for mopeds were updated. In response to Schroeder, Forrest agreed to supply information as to how many 15-day chauffeur licenses had been issued by sheriffs.

Clark questioned DOT alerting DPI re dates for driving tests. She did not think students should know whether or not they would be required to submit to a driving test at the time of obtaining a license. Clark suggested allowing teachers to inform students of the possibility of a spot-check on the driving test. There was general consensus that a random knowledge test would be more effective.

In 13.5(5)c, Clark recommended deletion of redundant language. Forrest was amenable. Referring to 13.5(5)f(5), Clark questioned the exception to taking the chauffeur's knowledge examination. Forrest replied the rule would be applicable to certain classes of vehicles, i. e., taxicabs. DOT takes the position that driving a taxicab requires no more skill than driving an automobile. The law, however, requires a chauffeur's license to transport individuals for hire.

Clark was of the opinion 13.5(5)g(1 & 4) were not necessary. Forrest said intent was to clarify that an applicant for chauffeur's license for a school bus would be required to pass the driving test in such a vehicle. In (1), there was always some question as to what was a truck tractor, because of gooseneck trailers, pickups, etc. Clark suggested leaving the heading "Driving examination" in "g" but eliminating the sentence which followed since it was redundant. Forrest was willing to make the changes as well as grammatical corrections in 13.5(6). Schroeder could foresee the possibility of obtaining a chauffeur's license without taking the knowledge test. Holden thought the original chauffeur's license should include an inscription indicating restriction to a specific vehicle. Forrest said he would review the matter.

In a matter not officially before the Committee, Holden indicated he would sponsor legislation to extend the hours for students, under age 16, to drive to and from school. This would accommodate private school students. Forrest stated the Department of Public Instruction had jurisdiction over that matter.

TRANSPORTATION Cont'd

Forrest reviewed the changes in the "moped" rules--13.5(7). He noted driver education courses had been required prior to operating a "moped", but that was repealed. All "moped" drivers must have a valid operator or chauffeur license. There was general agreement that law enforcement was difficult.

Discussion centered on licensing of mobile home dealers, chapter 7 [07D], and travel trailer dealers, chapter 8 [07D]. Sinclair reviewed amendments to the rules, primarily to implement SF 450, 68th GA, and he advised the Committee that DOT had met with the Manufactured Housing Association representatives. In addition, the proposed rules were mailed to the National Manufactured Housing Institute and also to the enforcement office of the DOT. Copies of [07D, ch 8] were sent to the Iowa Recreational Vehicle Association, Director of the Public and Legislative Affairs, the Recreational Vehicle Industry Association, DOT enforcement office, AAA and to county treasurers.

In answer to Holden, Sinclair said trailer dealers were licensed under the motor vehicle dealers licensing Act--chapter 322--which was amended two years ago to define "motor vehicle" to include only self-propelled vehicles. Trailer-type vehicles were no longer covered under that provision.

In answer to Tieden, Sinclair said DOT peace officers are under the direction of the motor vehicle enforcement office, they are not uniformed, but classified as investigators with police authority. Tieden questioned the logic of 7.2(4) pertaining to licensing separate places of business for mobile home dealers.

C. L. Cornelius, Ottumwa, licensed real estate broker, spoke in opposition to portions of the rules. He had obtained a bond in order to secure a mobile home dealer's license, but now finds that he must obtain another location apart from his real estate office to park mobile homes for display purposes. He thought the restriction to be unreasonable and persons wishing to sell mobile homes could be at the mercy of the mobile home park operator.

Holden requested response from Department officials. Sinclair defended the rules as being reasonable because of the potential problem should DOT make exceptions. He continued DOT thought most people, interested in purchasing a mobile home, might prefer a place where they could look at one. Holden wanted to know what DOT was trying to control. Sinclair responded facilities should be available. Holden doubted that was state business. Sinclair indicated they were paralleling the statutory requirements on travel trailer and motor vehicle dealers.

TRANSPORTATION Cont'd

Tieden feared the rule would have a tendency to limit trade. Schroeder encouraged all interested people to submit oral or written comments by January 22, 1980. Cornelius inquired as to whether or not he could enter into a contract with the mobile home park operator for display space. Sinclair did not believe that could be done.

Royce reminded the Committee that no formal meeting had been scheduled regarding these rules. Sinclair offered to discuss the matter with Cornelius after the ARRC meeting.

V. A. "Bud" Ewell expressed the fact they had inquiries from other real estate brokers and he asked when the rules would be before the ARRC again. Schroeder reasoned it could be after April.

Cornelius reiterated he wanted to obtain a license to sell mobile homes through his present real estate office. In Schroeder's estimation, under existing statute, Cornelius could renew his license. Sinclair pointed out that would not be a renewal, but an initial application.

Sinclair commented he had indicated to Cornelius that the DOT was administering the law as though the rule were basically in effect. Royce reminded Sinclair that the DOT could not do that--the application must be processed in a timely manner. Sinclair said he understood that, but the problem was the place of business. Holden thought it should be clarified that the DOT could not impose rules prior to their effective date.

Re amendments to 07,D, ch 11, Sinclair pointed out vehicles owned by nonresidents will now be registered by the county treasurer.

Holden requested a date certain be inserted in 11.58(1) with reference to the Federal Motor Vehicle Safety Standard Number 122.

Bakke discussed three substantive changes in rules pertaining to special permits for excess size and loads [07,F], ch 2(1), 2.1(14). The amount of LPD insurance is to be increased from $20,000 to $50,000. Schroeder inquired as to the reason for the change and asked about increased cost. Bakke indicated most oversized carriers already have the higher coverage but some attorneys had recommended the rule change. She agreed to check the matter further. Schroeder could see no reason for increasing if carriers are "getting by". New language in 2.3(2)g(5) would clarify situations under which emergency permits may be issued. Bakke called attention to an error in 2.3(2)i(3). The sentence beginning with "The permit", line 6, and ending with "permit office." should have been stricken. [Item 26]

TRANSPORTATION Cont'd

In re 2.1(12)[Item 5] pertaining to the towing unit for mobile homes, Schroeder thought many three-quarter ton pickups with 6500 lbs GVW (gross vehicle weight) rating, 4 wheel drive, would probably be as safe or safer than some of the 10,000 lb GVW short-coupled "for hire vehicles" that are required in the rule. Bakke noted the enforcement people who cover accidents recommended this regulation. Schroeder requested statistics to support the rule. Bakke was amenable. Holden was of the opinion the rule should be based on the GVW rating—a known figure. He thought the axle distance should be considered and close coupling should be checked also.

Tieden expressed opposition to the rear escort requirement and asked if DOT had sought uniformity with other states. Bakke said the rules had been gleaned from those of other states. Tieden noted Illinois had just eliminated the requirement for a rear escort. Bakke cited two instances requiring rear escort; on the interstate. The other instance is for the extremely wide or heavy loads. Tieden found that acceptable. Bakke cited paragraph 2.4(2)e and noted the heavy or wide loads are required to center line on bridges for safety reasons, thus the need for rear escort.

Bakke said the DOT did a survey in surrounding states and, basically, rules are as uniform as the statute allows. Clark pointed out that 2.4(2), paragraphs a, c, e and i were incomplete sentences. [Item 30]

In re 2.4(2)e, Tieden requested explanation of circumstances addressed by distance requirements. Bakke gave an example of the 300,000 lb. magnet which had been transported across the state. No further discussion or questions.

Oakley arrived.

INSURANCE DEPARTMENT

Bruce Foudree, Assistant Attorney General, represented the Insurance Department for review of amendments to 15.80-.83 re physical or mental impairment discrimination. [Notice, IAB 12/12/79]. Also present were Sylvester Nemmers and Curtiss Willoughby, National Federation of the Blind of Iowa.

In response to Schroeder, Foudree said the language is model, promulgated by a task force in May, and adopted in December by the NAIC. Schroeder pointed out that interested persons could make comments until January 14, 1980.

Nemmers commented that the blind are seeking fair and equitable treatment in insurance and, if blind persons are a greater risk, they should be rated as such. He was concerned they were not being rated by actual facts.

INSURANCE DEPARTMENT Cont'd

He noted the old rule referred to the blind, the partially blind and the physically disabled. The new rule refers to the physically and mentally impaired--making no reference to the blind or the partially blind as the former 15.83. Nemmers added "From the legal standpoint, it would probably include the blind or the partially blind," and use of "same class" was disturbing to him. He thought "reasonably anticipated" left loopholes and use of "actual" would be preferable.

Curtiss Willoughby had many of the same concerns expressed by Nemmers and thought it desirable for the Committee to be aware of the history because that placed the whole thing in perspective. Willoughby contended that the omission of blind would leave doubt as to whether they were included in the intent of the rule.

Schroeder pointed out that the blind have continually maintained they do not want special treatment. Holden recommended a better approach would be to define "physical or mental impairment...".

Royce offered a solution--petition the department for a declaratory ruling asking the specific question whether the general term "disability" includes the blind or partially blind. Willoughby was amenable to Royce's suggestion, but was advised a ruling could not be made until the amendments were adopted. Foudree said their intent was to adopt broad language to encompass all disabilities. He favored a declaratory ruling. There was discussion of the time frame and procedure with respect to a declaratory ruling.

According to Willoughby, the question of "reasonably anticipated" had been a sticky issue in other states and he requested language "based on objective evidence" or "based on objective documentation of some sort" be included for easier interpretation.

MERIT EMPLOYMENT

Wallace Keating, Director, was present for review of the following:

MERIT EMPLOYMENT DEPARTMENT[570]

Work time and geographic list, 1.1(20, 48)	ARC 0749	N		12/26/79
Classified service, 2.2(4)	ARC 0795	N		12/26/79
Pay increase eligibility, 4.5(2)"b"	ARC 0744	N	N	12/12/79
Extraordinary duty pay, 4.7	ARC 0746		N	12/12/79
Probationary period, 9.1-9.6, 9.8-9.11	ARC 0796	N		12/26/79
Promotions, reassignments, transfers, 10.1(2-5), 10.2, 10.3, 10.4(1, 2)	ARC 0797		N	12/26/79

In answer to Tieden's question, Keating indicated that hourly scheduling was under jurisdiction of the appointing authority. He said it could be in the contract. In response to Holden, Keating explained the amendment to 4.7 will cover the 6 or 8 employees who are permanently assigned outside the state.

MENTAL HEALTH AUTHORITY

Carolyn Brewer and Nancy Snyder represented the Mental Health Authority for review of proposed amendment to chapter 2, IAB, 12/12/79. Brewer reported amendments included word changes clarifying the intent of the rule and, in keeping with national trends, a new funding category had been added. Their hope is to develop community support programs for mental health.

Holden declared the definition in 2.3(2) was nebulous. Clark reminded the Committee that it was quoted from federal language. Holden thought the words "mental health" should be included. There was brief discussion of the funding, with Tieden suggesting the agency should be prepared to contact the legislature if the federal level funding is discontinued. He favored the concept of community support systems.

Recess
Reconvened

Schroeder recessed the Committee for a five-minute break at 11:00 a.m. Reconvened at 11:05 a.m.

BONFIELD PRESENTATION

Arthur Bonfield, Professor of Law, University of Iowa, appeared before the Committee to present his recommendations for amendments to Chapter 17A of the Code. There was discussion of the following document, which he had presented prior to the meeting:

Amendment #1

Amend IAPA Section 4(1)(b) as follows:

If requested to do so by an interested person, either prior to adoption the effective date or within thirty days thereafter, the agency shall issue a concise statement of the principal reasons for and against the rule it adopted, incorporating therein the reasons for overruling considerations urged against the rule. The agency shall issue a timely requested concise statement within thirty days after receipt of the written request or thirty days after publication of the rule in the Iowa Administrative Bulletin. A certified copy of the concise statement shall be filed with the rule to which it pertains in the office of the administrative rules coordinator as well as transmitted to the code editor and the interested person timely requesting it. When such a statement of reasons for a rule has been filed, the code editor shall indicate that fact in the Iowa Administrative Bulletin and in the Iowa Administrative Code adjacent to the rule to which it pertains.

DRAFTER'S COMMENTS

Changes:

(1) Uses "effective date" specified in IAPA section 5 rather than current "adoption" date to fix timeliness of request for statement of reasons thereby eliminating an unfortunate ambiguity since "adoption date" as distinguished from "effective date" is sometimes unclear.

(2) Sets time limit within which agency must file statement of reasons. Now there is no time limit except limit of "reasonableness".

(3) Assures public knows that statement of reasons for rule exists, and that statement is preserved officially for purposes of judicial review of rule based on that statement. These objectives are achieved by requiring a copy of the statement to be filed with the rule, and publication of a notice of its existence in the Administrative Bulletin and Code.

BONFIELD
PRESENTATION
Cont'd

Note

The Administrative Rules Review Committee should, under IAPA section 4(1)(b), request such a statement of reasons for any rule it has questions about. This would help the committee and the public.

Amendment #2

Amend IAPA Section 3(1) by inserting after (b) and before (c) the following:

'(c) as soon as feasible and to the extent practicable, adopt rules to codify principles of law or policy lawfully declared by the agency as the basis for its decisions in particular cases.

(d) as soon as feasible and to the extent practicable, adopt rules embodying appropriate procedural safeguards in addition to those required by this Act, and embodying appropriate standards and principles which the agency applies to the law it administers.

DRAFTER'S COMMENTS

Paragraph (c) would require an agency, "as soon as feasible and to the extent practicable," to adopt rules to codify principles of law or policy lawfully declared by the agency as the basis for its decisions in particular cases. Agencies would usually seem to have that discretionary authority in any event. See e.g., National Petroleum Refiners Assn. v. FTC, 482 F.2d 672 (D.C. Cir. 1972), cert. denied, 415 U.S. 951 (1974). And Iowa agencies are normally deemed to possess authority to make policy ad hoc on a case-by-case basis, relying on prior cases as precedent in a common law fashion, as well as by rule. See Young Plumbing v. Iowa Natural Resources Council, 276 N.W. 2d 377 (1979).

Law and policy expressed in rules, however, is more readily available than case precedent to affected members of the public, hence gives them fairer notice than case precedent. Law or policy expressed in rules is also frequently more easily understandable to laymen than case precedent, and is almost always more highly visible to those who monitor the performance of agencies. In addition, the general public has an opportunity to participate in law or policy made by rule, while its opportunity to do so with respect to policy made on a case-by-case basis is very much more limited. In addition, the Administrative Rules Review Committee has an opportunity to effectively review policy made by rules while it does not have that opportunity with respect to policy made ad hoc by adjudicatory order.

Consequently, in so far as "feasible", and to the extent "practicable", agencies should be required to reduce to rules specified principles of law or policy developed in their case precedent law that in practice and in effect have become of general applicability.

Paragraph (d) is an effort to force agencies, "as soon as feasible and to the extent practicable", to further structure their procedural and substantive discretion so as to minimize arbitrary action, and give fair notice to the public. See Holmes v. N.Y. Housing Authority, 398 F.2d 262 (2nd Cir. 1968); Davis, "A New Approach to Delegation", 36 Univ. Chicago L. Rev. 713 (1969); K. Davis, Administrative Law of the Seventies, section 3:15 (second ed., 1978). Of course, the issuance of rules is not the only means by which to accomplish this goal. But several reasons favoring policymaking by rule are noted in the discussion of paragraph (c) above. In addition, it should be stressed that policymaking by rule is prospective, while policymaking by adjudication is inherently retrospective. See NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). These factors suggest that to the extent an agency can feasibly and practicably further structure its discretion by rule to avoid arbitrary action, and give fair notice to the public of the precise content of the law it administers, the agency should be required to do so.

BONFIELD
PRESENTATION
Cont'd

Amendment #3

Amend IAPA Section 4(4)(a) as follows:

4.a. If the administrative rules review committee created by section 17A.8, the governor or the attorney general finds objection to all or some portion of a proposed rule, whether published or unpublished, because that rule is procedurally or substantively unlawful, ~~deemed to be unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to the agency,~~ the committee, governor or attorney general may, in writing, notify the agency of the objection stating therein the reasons for such action. ~~prior to the effective date of such a rule. In the case of a rule issued under subsection 2, or a rule made effective under the terms of section 17A.5, sub section 2, paragraph b, the committee, governor or attorney general may notify the agency of such an objection within seventy days of the date such a rule became effective.~~ The committee, governor or the attorney general shall also promptly file a certified copy of such an objection in the office of the Administrative Rules Coordinator ~~Code editor within the above time limits~~ and a notice to the effect that an objection has been filed shall be published in the next issue of the Iowa administrative bulletin and in the Iowa administrative code when the rule is printed in it. The burden of proof shall then be on the agency in any proceeding for judical review or for enforcement of the rule heard subsequent to the filing to establish that the rule or portion of the rule ~~timely~~ objected to according to the above procedure is ~~not unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to it~~ procedurally and substantively lawful.

DRAFTER'S COMMENTS

Changes:

(1) This provision makes it completely clear an objection may be filed against a rule on wholly procedural as well as substantive grounds. This is desirable since an agency may issue a rule beyond the scope of its authority because it does not follow all proper procedures as well as because the rule is beyond its substantive powers.

(2) The provision substitutes the word "unlawful" for the prior words "unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to the agency" because the word "unlawful" is clearer and more comprehensive than the former, and expressly includes procedural defects rendering a rule improper as well as substantive defects which would have that result. Note that the IAPA already expressly states in section 19(8) that an agency rule is unlawful if it is "(b) in excess of the statutory authority of the agency..., (d) made upon unlawful procedure..., (g) unreasonable, arbitrary or capricious or characterized as an abuse of discretion or a clearly unwarrented exercise of discretion."

(3) This provision eliminates any time limit on the filing of objections. A rule that may have been lawful in 1970 may be unlawful today because what was reasonable in the circumstances of one era may be unreasonable in the circumstances of another. Therefore, a rule should be subject to objection by directly politically accountable officials at any time it appears to be unlawful because it is unreasonable even though the reviewing agency disagrees. A court would then decide whether the agency or the objecting official is correct.

(4) The provision makes clear that an objection must contain reasons. This is current practice and in any case is required by Schmitt v. Iowa Dept. of Social Services, 263 N.W. 2d 739 (1978).

BONFIELD
PRESENTATION
Cont'd

Amendment #4

Amend IAPA Section 4(6) as follows:

6. To the extent the agency itself would have such authority, the governor may rescind the whole or any portion of an ~~adopted~~ rule by executive order ~~within thirty five days of the publication of the rule~~ stating therein the reasons for such action.

DRAFTER'S COMMENTS

Changes:

(1) This eliminates any time limit on gubernatorial power to rescind a rule. A rule that may have been in the public interest in 1970 may be contrary to the public interest in 1980. Years after its adoption, therefore, such a rule should be subject to rescission by the state's chief executive who is directly politically responsible, even though the issuing agency chooses not to rescind it on its own motion.

(2) The provision makes clear the governor's rescission authority extends to a portion of a rule as well as to an entire rule.

(3) The provision makes clear that which is gubernatorial practice in any event - the reasons for such a rescission must be contained in the executive order.

(4) The provision makes clear that the governor may rescind such a rule only if the issuing agency itself would have the legal authority to do so.

Amendment #5

New Section [Agency Review of Rules.]

At least [annually] each agency shall review all of its rules to determine whether any new rule should be adopted or any existing rule should be amended, repealed, or suspended. In the process of that review, each agency shall prepare a written report summarizing its findings, the reasons therefor, and any proposed course of action. For each rule, the [annual] report must include at least once every [7] years, a concise statement of:

(1) the rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached;
(2) criticisms of the rule during the previous [7] years, including a summary of any petitions for waiver of the rule tendered to the agency or granted by it; and
(3) alternative solutions to the criticisms and the reasons they were rejected, or the changes made in the rule in response to those criticisms and the reasons therefor. A copy of the [annual] report must be sent to the administrative rules review committee and the administrative rules coordinator and be available for public inspection.

DRAFTER'S COMMENTS

Sunset provisions for agency rules do not promise to be a very effective method of insuring actual periodic agency reconsideration of their rules. Nor are the benefits of such sunset provisions worth the great cost of automatic termination of all agency rules after a specified period, with an accompanying required replay of full rulemaking proceedings to extend their life. This draft provision is intended as a practical substitute for the more drastic sunset proposals to assure periodic agency reconsideration in fact of their rules.

BONFIELD PRESENTATION Cont'd

Some brief comments on variances between the text of an adopted rule and the text of the published notice of proposed rule adoption.

Under the Iowa Administrative Procedure Act it is clear that an agency may not adopt a rule that is substantially different from the proposed rule contained in the published notice of proposed rule adoption. It similarly seems clear to me that as a matter of law an agency and the courts, would consider the following in determining whether an adopted rule is substantially different from the published proposed rule upon which it is required to be based:

(1) The extent to which all persons affected by the adopted rule should have understood that the published proposed rule would affect their interests;

(2) The extent to which the subject matter of the adopted rule or the issues determined therein are different from the subject matter or issues that were involved in the published proposed rule; and

(3) The extent to which the effects of the adopted rule differ from the effects that would have occurred if the published proposed rule had been adopted instead.

In short, a rule of reason is involved in ascertaining whether the agency gave fair notice to the public of the contents of the rule actually adopted in the required published notice of proposed rule adoption. If the adopted rule is substantially different from the notice of proposed rule adoption, based on a reasonable consideration of the above three factors, the rule is void. See also my Iowa Law Law Review article on the Iowa Administrative Procedure Act, 60 Iowa Law Review 731 at 851-52 (1975).

Amendment #6

New Section [Model Rules of Procedure.]

Model rules of procedure appropriate for use by as many agencies as possible shall be adopted by the attorney general in accordance with the rulemaking requirements of this Act. The model rules shall deal with all general functions and duties performed in common by several agencies. Each agency shall adopt as much of the model rules as is practicable under its circumstances. To the extent an agency adopts the model rules, it shall do so in accordance with the rule-making requirements of this Act. Any rule of procedure adopted by an agency that differs from the model rules must state the reasons why the applicable provisions of the model rules were impracticable under its circumstances.

DRAFTER'S COMMENTS

This section is a combination of modified Montana Act, section 82-4203(3), and modified Utah Act, section 63-46-11. Obviously it is desirable to secure as much uniformity among the procedural rules of the several agencies as "is practicable" in light of their differing circumstances. That is all this provision seeks to accomplish.

Complete transcript and ensuing discussion may be obtained by contacting the secretary.

Recess - Lunch

The Committee recessed for lunch at 12:30 p.m. to reconvene at 1:35 p.m.

Reconvened

Reconvened by Chairman Schroeder at 1:40 p.m.

AGRICULTURE DEPARTMENT

Bette Duncan, Legal Counsel, Agriculture, appeared for review of rule 10.6 [filed, IAB 12/26/79], pertaining to state registration of pesticides.

Also present were Steve Schoenebaum, attorney, representing Iowa Fertilizer and Chemical Association, Winton Etchen, Iowa Fertilizer and Chemical Association and Robert Galbraith, representing Pennwalt Corporation.

Schroeder commented that the Committee had received material concerning part of the rules and presented a copy to Duncan.

Duncan explained changes since the public hearing held October 24, 1979. Rule 10.6 is essentially identical to the one published under notice as Item 5 with one exception--"environment" was eliminated from the filed version. "Any organism to which the application was not intended" was amended to read "any nontarget organism for which the application was not intended and which may have significant economic value." Duncan continued that the filed rule addresses only special use registrations and permits--section 24C permits (federal) can be issued by the state for a particular use. Any pesticide will have many registrations. If a special local need exists, the 24C permit would allow the use of a previously prohibited pesticide.

According to Duncan, the prior rule on registration revocation had not been amended or updated for over a decade. During the interval, FIFRA (Federal Insecticide, Fungicide and Rodenticide Act) was passed and, later, the amendment 24C. She concluded "Rules are needed to apprise the public of revocation procedures."

Schoenebaum requested that October 24, 1979, correspondence from Etchen to the Department of Agriculture be incorporated in these minutes. The letter details opposition to 10.6 and points out that revisions made do not alleviate the concerns or opposition of Association members. He said the rule disregards section 206.12(5)c of the Code and goes beyond the scope and authority of the Code. Further, the rule is in contravention with federal law.

My name is Winton Etchen and this statement is being presented on behalf of the 1300 members of the Iowa Fertilizer & Chemical Association.

With regard to the proposed changes in rule 30-10.6, this association did request a public hearing by the department because we believe these proposed changes if adopted could have a very significant economic impact on Iowa Agri-Business and Iowa Agriculture in total. This hearing comes at a very busy time of the year for our people, however, we know they are vitally concerned and have expressed a desire to comment on this proposal for the hearing record.

Beginning then with some general comments on the proposed rule changes, rule 30-10.6 (206) was proposed and adopted in June of 1976 following necessary legislative changes made in the Iowa Pesticide Act in 1974 to comply with requirements of the federal amended FIFRA Act of 1972.

AGRICULTURE DEPARTMENT Cont'd

Recent amendments to FIFRA have not necessitated any additional changes in the Iowa Pesticide Act to date.

For the record this revised Iowa Pesticide Act and its adopted rules including 30-10.6 was included and cited by the Iowa Department of Agriculture as part of the cooperative state plan submitted to EPA for approval in August of 1977. This state plan was approved by EPA and found to be adequate to fulfil the requirements including Sec. 24 of the FIFRA Act dealing with authority of states to issue special local need registrations for pesticides. It was also found to be adequate authority for the state of Iowa to exercise the necessary controls over their SLN registered uses. This state plan was approved, there have been no problems with this area of authority then or now according to a telephone conversation we had on Friday, October 19th, with John Wicklund, Chief Pesticide Branch, U.S., E.P.A. Region VII, Kansas City, Missouri.

A key point is that the proposed rule changes to 30-10.6 are contrary to what is written in the Iowa Pesticide Act, Chapter (206) the Amended FIFRA Act now in force, and the cooperative state plan approved by E.P.A.

For example the definition of the term "unreasonable adverse effects on the environment" is specifically defined in 206.2 (28) exactly as it is defined in amended FIFRA Sec. 2 (bb).

This association spent many hours in conference with University extension people, E.P.A., legislators, and representatives of the Iowa Department of Agriculture revising the Iowa Pesticide Act to comply with the amended FIFRA. This definition was considered by us to be one of the key changes necessary in the Iowa law to attain a common denominator of understanding between the Federal and State Laws for registration and enforcement purposes.

We believe the Iowa Department of Agriculture must retain this definition as written in both the amended FIFRA and Iowa Pesticide Act because it is clearly beyond the authority delegated to the department to change this definition of the term in any proposed rules.

In addition the Iowa Law under 206.12 (5) specifically states that a registrant shall be notified of the manner in which the article labeling or other material required to be submitted fails to comply with registration requirements of this chapter so as to afford the registrant an opportunity to make the necessary corrections. The proposed rule interpeting the intent of this section must reflect this language and deletion of it from the existing rule is clearly beyond the authority delegated to the department to arbitrarily remove it.

The Iowa law also specifically provides that every pesticide registered with the department shall be renewed annually [see 206.12 (1)] in which event expiration date shall be extended for each year of renewal registration or until otherwise terminated.
This point is further made in 206.12 (4) that if the pesticide complies with the requirements of this chapter the secretary shall register the article. This section very specifically makes no allowance for a renewal of registration of any pesticide to be treated as an initial application for registration. To set out the 24.C SLN registration for special treatment in this rule is clearly beyond the scope of authority granted to the department in the Iowa Pesticide Act.

AGRICULTURE DEPARTMENT Cont'd

Suffice to say that registration of any pesticide except experimental and emergency compounds must first be obtained federally under Section 3 of FIFRA which requires the E.P.A. to issue guidelines on the type of data necessary to register or reregister a pesticide and Sec. 6 outlines the circumstances and procedures for the administrator to cancel or suspend a registration. The U.S. Congress wrote these safeguards into the FIFRA Act and these should be the same criteria used at the state level to determine when sale of a pesticide product should be terminated.

A critical key point in that approval for registration is Sec. 3 C.5.(C) & (D).
(C) It will perform its intended function without unreasonable adverse effects on the environment.
(D) When used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.

This then brings us back to that common denominator refered to earlier between the Federal & State Acts and the importance of maintaining the identical definitions of "unreasonable adverse effects on the environment."

Additionally we would call to your attention that the directions for disposal of a pesticide are now being incorporated on all pesticide labels because industry through the National Ag Chemical Association has taken the lead and petitioned E.P.A. to require this label information. Manufacturers are providing this information on pesticide labels currently in production. Federal law provides that no state can require or put into effect any requirements for packaging or labeling in addition to or different from those required in the FIFRA Act. (See Sec 24.B)

In summary we find none of the proposed rule changes to 30-10.6 in legal accord with the language of the Iowa Pesticide Act or FIFRA as amended and ask that they be dropped.

We propose instead that the AD HOC Committee of University Specialists, E.P.A. Trade Association Representatives and Department of Agriculture Personnel be called together again to discuss The Iowa Pesticide Act and its adopted rules for possible changes.

We appreciate this opportunity to be heard.

They urged Committee objection to the rule.

Galbraith, representing Pennwalt, again spoke in opposition to the rule and concurred with comments by Schoenebaum. It was their contention the statute makes no provision for the cancellation of annual renewals. He continued "It is premature to promulgate state guidelines when the federal regulations are not adopted." Galbraith noted that federal guidelines were anticipated in late February and he argued it was premature to promulgate state guidelines.

Oakley asked if Pennwalt believed there was no way to revoke the license. Galbraith referred to litigation where they are contesting current rules and guidelines. In response to Oakley, Galbraith agreed the rule was promulgated according to §206.11, 1979 Code.

AGRICULTURE DEPARTMENT Cont'd

Oakley said, "Let's assume the proposed rules were within the delegated stated standards to man or other vertebrate animals--would it be your position that the Department would not still be able to revoke if circumstances arose to show the violation of that standard?" Galbraith replied, "If there were no standards, clearly they are." Oakley asked, "Within §206.11, what are the penalties associated with that--are there criminal penalties?" Galbraith thought there were criminal and civil(penalties).

Etchen advised Oakley that federal law preempts state with respect to registration. A federal label is required, except for use of experimental products. Special local needs registration--24C--can be applied for by a state for a period of one to five years, and automatically terminates under FIFRA. Duncan challenged that statement saying that under those provisions, it is to be reviewed periodically. Duncan requested opportunity to respond in a written communication, after she has studied materials submitted today. She pointed out changes in the rule were made at the suggestion of Etchen's organization, and contended ample time had been given for public comment.

Duncan recognized the matter of statutory authority was not a single issue. Inherent in that consideration were two other questions that must be addressed--opponents ask if the department has statutory authority to promulgate a rule and spell out grounds for revocation of the 24C permit. Another question is did the department, in the very beginning, have authority to grant the 24C permit and, if so, was there department authority for issuance of the 24C permit?

Duncan continued that there are, presently, approximately two dozen 24C permits and their status must be considered. Under common law, the cases hold that implied in a grant of authority to issue a license is the authority to revoke it. She said, "Secondly, the grounds that are necessary, the prerequisites, if you will, that are required before you can issue a license are essential for the retention of a license. If for some reason, one of those prerequisites no longer exists, that is of itself, grounds for revocation." She cited 206.9 which provides the Secretary of Agriculture can enter into cooperative agreements with the federal government in enforcement of the federal pesticide control laws. According to Duncan, a special local needs permit involves a special type of registration to allow states to take care of a special problem for a limited period of time when the need exists.

Royce recommended delaying Committee action. Schroeder dis-

AGRICULTURE DEPARTMENT Cont'd

cussed the possibility of placing a 70-day delay on the rule to allow for further study. Oakley was interested in sorting out the relationship between the federal Act and state implementation. He understood that 206.9--cooperative agreements--was the legal basis upon which the Department enters into a FIFRA agreement. Duncan confirmed this. Oakley questioned Duncan as to her interpretation should there be something in FIFRA regulations contrary to state law. Duncan doubted there would be any conflict since the initial state plan was in compliance with FIFRA.

Duncan explained that federal standards use the term "to prevent unreasonable adverse effects" which is not defined. Opponents thought the language was vague and the rule was redrafted for clarity. Duncan noted the interim agreement provides that Iowa will be enforcing the federal law and regulations.

Tieden stated his support of Royce's suggestion to allow Duncan time to prepare written response. There was discussion of the effect on the Department if a 70-day delay were imposed. Duncan said that would prejudice the Department.

DELAY 30--10.6(206)

Clark moved to impose a 70-day delay on 30--10.6(206). Discussion followed. In answer to Royce, Duncan said the twelve 24C permits expired December 31, 1979. Royce emphasized the rule now being discussed would not apply to those permits. Duncan added the Department has cases to support their policy of relying on the rule in effect at the time a decision is made with respect to licesning. Royce wanted to review the cases and Duncan was willing to work with him. Schroeder suggested delaying the rule and placing it on the February agenda. Oakley indicated the governor would make a decision before January 30, 1980. Schroeder recommended that Duncan set up a meeting between the opposing factions to work out a suitable compromise. Duncan doubted this would serve a useful purpose since much time had already been devoted to the issue. An impasse was evident. Tieden expressed interest in allowing Royce time to consider the matter further and advise the Committee.

Holden wondered, aside from the fact that the Department was ready to implement the rule, what serious objection they had to a delay. Duncan replied that under 17A they are under a mandate to promulgate a rule relating to the revocation of the 24C permits and it was her opinion they should indicate the grounds. The decision has to be made on an annual basis.

Recess

The Committee agreed to recess this meeting until Wednesday, January 23, 1980, 7:00 a.m. where disposition of the Agriculture rule would be decided. Clark withdrew her motion to delay. Duncan agreed to provide Committee members with her written response.

Motion Withdrawn

SHORTHAND REPORTERS, BOARD OF EXAMINERS

William L. Fairbank, Attorney, one of two public members of the Board of Examiners, appeared for review of the following:

SHORTHAND REPORTERS, BOARD OF EXAMINERS[760]
General provisions, continuing education, disciplinary procedures, chs 1-3 ARC 0774 ...N..... 12/26/7

Also present was Ann Steele, Ames. According to Fairbank, the Board has been operating under emergency rules which are substantially the same as those contained in chapter 1. Chapters 2 and 3 are new rules. Holden raised question as to whether or not it was appropriate for a member of the bar to serve as a board member. Fairbank explained he serves in a voluntary capacity and his practice is entirely administrative on a federal level. By coincidence, his secretary is a certified shorthand reporter. He concluded that he had succeeded Judge Herrick, who had daily contact with shorthand reporters.

Tieden asked for interpretation of the law as to whether annual license reneweal is required. He had received complaints about the continuing education programs for various professions. Royce said that by inference the law requires annual renewal. Fairbank commented that 258A required the Board to promulgate rules on continuing education but to the best of his knowledge, there were no renewal provisions in the Code for shorthand reporters. He said the three shorthand reporter board members do approve continuing education on an annual basis. It was Holden's opinion that members of the profession had a "vested interest in keeping others out."

Ann Steele, Ames, discussed a summation which was presented to the Committee. She voiced opposition to the narrow definition of shorthand which excluded the stenomask and oral stenography systems of court reporting. She was a stenomask reporter who had been denied certification in Iowa and explained that legislation was being drafted to update the 1924 statute. In answer to Tieden's question as to the other states which exclude stenomask and oral stenography, Steele replied, "California, New York, Illinois and Forida." Royce quoted Webster's definition of shorthand as a "system of written....". Steele said some dictionaries include oral stenography in their definitions. Fairbank reported the test is administered to approximately 140.

Holden asked the position of the remainder of the Board of Examiners and Fairbank said they would like to abide by the court ruling, which opposed admitting stenomask. Discussion of fallacies of shorthand reporting systems. Committee members concurred they could take no action since this was a legislative matter. Discussion of notice of disciplinary action [3.5] with Clark inquiring re the appeal procedure.

SHORTHAND REPORTERS, BOARD OF EXAMINERS Cont'd

Fairbank did not have a specific answer. Rules of various other licensing boards were perused. Discussion of peer review committee--3.4. Clark wondered if an individual should have an opportunity to appear before the Board for rebuttal. Fairbank said the license holder or certificate holder has an option to request the peer review committee or to go before the Board. Royce tended to disagree and cited 17A which provides that before a license is revoked, a person must have an evidentiary hearing in front of the decision maker. He referred to 640--IAC as an example.

Holden asked to be excused briefly and, at his request, the Committee agree to defer discussion of Nursing Board rules until he returned. Oakley out of the meeting.

Fairbank sought guidance from the Committee as to procedure the Board should follow in reviewing the rules. Schroeder recommended that they work with Royce and Oakley. No further discussion.

ENVIRONMENTAL QUALITY

Odell McGhee, Hearing Officer, Darrell McAllister, Program Supervisor, and James Wulff, Air Quality, were present for review of the following:

ENVIRONMENTAL QUALITY[400]

Air quality, pollution control, 3.5, 4.3(2)"c"(2)	**ARC 0791**	N	N	**12/26/79**
Air quality, emission standards for contaminants, 4.1(2)	**ARC 0792**	N	N	**12/26/79**
Chemicals and water quality division design manual, 19.2(9)"b"	**ARC 0793**	N		**12/26/79**

McGhee indicated the rules were further modification of rules concerning nonattainment areas with respect to "rural fugitive dust." He noted this is the state implementation plan (SIP). Tieden asked if the rules were more stringent than those of the federal government. To Wulff's knowledge, there are identical federal requirements.

Schroeder wondered if external emissions offset[3.5(5)j] was modified and Wulff said they had changed the location.

Responding to Clark's question concerning the problem of dust from cement plants near Mason City, Wulff said EPA has recently revised their policy on rural dust and is addressing nonattainment areas only. He admitted the Mason City problem was not completely resolved.

In re 3.5(1)e, line 10, Clark pointed out that the word "be" should be inserted before "limited." McGhee explained rule 4.1(2)a would make a separate definition for fossil fuel-fired steam generators, excluding it from definition of electric utility generators. In answer to Tieden, Wulff said the rule meets EPA standards to allow increased use of Iowa coal.

ENVIRONMENTAL QUALITY Cont'd

McGhee noted that, in 19.2(9)b, DEQ is adopting another chapter of their policy manual dealing with sludge and sludge handling. Responding to Tieden, Mc Allister said chapter 17 of "Chemicals and Water Quality Division Manual" contains design standards and was prepared to assist cities and consulting engineers in designing facilities for sludge handling at wastewater treatment centers. Tieden asked if that would be more restrictive. McAllister replied it pertains to new systems and DEQ has tried to follow what is commonly called "ten-state standards"--also, they worked with a subcommittee of consulting engineers.

McGhee reminded the Committee the rules are under notice and there would be a public hearing. Tieden requested written explanatory information on the rule. Schroeder requested Royce to attend the hearing and provide the Committee with condensed information on the matter. Royce asked McGhee to supply all the notes and suggestions made at the hearing. McGhee was amenable.

In a matter not before the Committee, Schroeder requested McGhee to research chapter 12 reference to secrete systems, a specific type of system which should be referred to in the Iowa Standards for Sewer Systems, pertaining to individual systems. No further discussion.

HEALTH DEPARTMENT

Peter Fox, Hearing & Compliance Officer; Muriel Cole, Supervisor, and Jennie Shaw, Administrative Assistant, Vital Records; Ronald D. Eckoff, Ted R. Ellis, Al Ackerman, Bob Leggett, Harry Grant and Kenneth Choquette, representing the Department of Health; Dr. R. J. Cowles, Health Director, Burlington, were present for review of the following:

HEALTH DEPARTMENT[470]

Mobile home parks, ch 71 ARC 0737 ..... N 12/12/79
Chiropractic examiners, 141.1(9, 16, 17), 141.11(2), (3)"d", 141.13(1),"d", "f", "g", 141.13(3, 4, 11), 141.24(3)"a", 141.24(5)"a", 141.24(6)"a", 141.24(7)"a"(2), 141.24(27), 141.62(4), 141.66(1), 141.73
ARC 0800 N 12/26/79

Health facilities council, meetings, 202.8(5)"c", filed emergency after notice ARC 0773 ..... 12/26/79
Certificate of need programs, appeals, 202.9, filed emergency ARC 0732 ..... 12/12/79
Local boards of health, 77.1(2), 77.2(2), 77.3(1)"a" ARC 0759 ..... F 12/26/79
Public nursing services, 79.1, 79.2(4), 79.5(1) ARC 0760 ..... F 12/26/79
Vital statistics, 96.1 ARC 0758 ..... F 12/26/79
Diagnostic pharmaceutical agents, 143.7 ARC 0757 ..... F 12/26/79

Also present were: Peg Lundahl, Executive Secretary, and Dr. Lloyd Cutler, Vice Chairman, Board of Chiropractic Examiners; Gary Thomas and E. Kevin Kelly, Legal Counsel, Manufactured Housing Association; Dave Ripley, Ripley's Inc.; J. Warren Smith, J. W. Smith Manufactured Homes, Inc.; Sandra Jordan, Val-Vista Estates; Guy Patten, Iowa Engineering Society; and Glen Jackson, Ottumwa.

HEALTH DEPARTMENT Cont'd

Schroeder announced that rules 96.1 and 143.7 would be taken up out of order. Fox said amendment to 96.1 added the words "relationship of the person making the request to the registrant" requiring the person who applies for the copy of the vital record for another person to specify the relationship to that person. Cole advised the Committee that requests had increased greatly. People were using information for fraudulent purposes or trying to learn about a natural or adopted individual.

Schroeder asked if the requester had no relationship to a person, would that person be denied the information. Cole answered that information is issued to immediate family members only. Children attempting to locate natural mothers, or vice versa, has increased the number of requests in this area. Clark thought this rule would still allow that. Cole said some natural parents have been able to learn the adopted name of their child.

Clark said there was more concern about health records than identifying or locating people. Cole indicated some records could be obtained at the county level without conflict with the rule.

Oakley expressed hope that the legislature would reconsider restrictions state has placed on availability of information sought by adult adoptees about their background since the process has probably reached the point of being counter-productive--it becomes a question of perseverance and economics.

In re 143.7, Fox noted the rule implemented the law passed by the last session of the legislature providing optometrists, licensed before January 2, 1980 wishing certification to utilize diagnostic drugs, must pass the examination with a grade of not less than 70 percent.

Discussion moved to chapter 71, mobile home parks. Choquette introduced interested people in attendance and explained there are 1100 parks in Iowa, housing about 70,000 people. He highlighted changes from existing rules. The Department, as required by law, issues construction permits and handles licensing of these parks. In terms of inspection and enforcement, half of the parks are delegated to local boards of health. The Department favored removal of some restrictions in the present rules; i. e., presently, use of plastic water or sewer lines is prohibited. New rules would permit use of plastic and contain standards for engineers.

In answer to Schroeder, Choquette said the ASTM standard is being used. Schroeder wanted to know about the supplier and preferred that more than one supplier have the pipe. Choquette assured the Commitee that the Department is using standards followed nationwide.

HEALTH DEPARTMENT Cont'd

Royce asked why the Department wasn't following AWWA standards as used by DEQ. Choquette said they were the same except ASTM was more universal.

Choquette emphasized "stop and waste valves" had caused problems in the past and the Department considers them to be hazardous so will prohibit their use. Schroeder thought the "freezeless hydrant and stop and waste valves" had the same function. Choquette said the "freezeless hydrant" without the "stop and waste valve" would be used. He thought Schroeder was referring to the "Iowa hydrant" which most farmers use. In answer to Tieden, Choquette said the rule would apply to new construction.

Schroeder asked what was being gained by barring the "stop and waste valve" and spoke in support of them. Choquette said the mobile home park owners would testify to the fact that "freezeless hydrants" are more convenient and eliminate contamination of water systems. There was discussion of management personnel in mobile home parks.

Choquette, in answer to Schroeder's question re expiration of permits [71.4(1)]within two years, said it would be appropriate for the Department to suggest eight years--homeowners suggested the change. Schroeder preferred six years. Choquette was amenable.

In 71.7(3), Schroeder inquired as to the rationale for determining pipe sizes and was interested in the size of distribution pipes. Choquette said the size requirement had been doubled, and there are no state standards on systems of less than 6 inches. The primary reason DEQ requires larger mains is because of fire protection. Choquette pointed out 71.12(7) provides variance to the rules and engineering plans are required.

Oakley indicated DEQ might be inviting some administrative problems when criteria are not developed. It was his understanding, from the rules that were placed under notice, that the Department was contemplating some modification. In his opinion, the Committee should be informed of those areas.

Choquette had a copy of the changes, and Oakley was advised quite a few of them had been discussed. Oakley said it was apparent there were some difficulties in enforcement because of the nature of the legislation and thought the Department might consider going into district court. He noted there was no provision for administrative hearing with regard to licens suspension. He preferred deletion of the last sentence of 71.12(5). Choquette was amenable. Oakley suggested submitting an analysis of the changes for the final copy to Royce.

HEALTH DEPARTMENT Cont'd

Clark pointed out transposed letters in two words contained in 71.4(2) and 71.7(1), and Oakley pointed out the National Code citation should include a date certain. No formal action taken.

ch 141

Cutler explained amendments to chapter 141 were essentially those requested by the Committee. In 141.62(4), Item 9, concerning continuing education, Schroeder questioned whether the Board had statutory authority to reduce the years from 3 to 2. Cutler referred to chapter 258A, The Code, which provided that if a person accummulated more than the required twenty hours of continuing education, for any single year, then for up to two years, that time could be carried forward and applied to the next year's license.

Oakley requested Cutler to respond to questions posed by Oakley in a letter to the Board.

Cutler admitted that 141.11(2) was poorly drafted. Oakley suggested substituting "which is recognized" for "as recognized by". In 141.13(1)f, Cutler agreed to add an "s" to "date" and "license".

In 141.13(3), Cutler said the "shall" made it mandatory. Clark pointed out use of "or" created inconsistency but Cutler preferred the language as published. The change in 141.73 to extend time for notification of noncompliance Cutler said was made as an economy measure because the Board cannot meet monthly. General discussion of the rule and time frame involved. Oakley was opposed to the rule as drafted. Clark suggested changing the word "sixty" in only one place in the rule. Cutler agreed to review the suggestions with the Board.

Health Facility Council

Layne Lindebak, Assistant Attorney General, told the Committee the amendment to 202.8(5)c was changing the regular monthly meeting from the fourth to the second Thursday of the month and was needed to coincide with various meetings of ASHA's which submit recommendations to the Health Facilities Council.

Lindebak said 202.9 was intended to implement 68GA, ch 42, §3. The rule addresses appeals to the health commissioner.

Royce pointed out the Commissioner does not have the authority to overturn the council's decision. No formal action taken.

Amendments to chapters 77 and 79 were acceptable as published.

NURSING BOARDS

Lynne Illes, Executive Director, Board of Nursing Examiners, and Kay Myers, Nurses Association, were present for discussion of 1.2(3), grounds for revocation or suspension of license [Notice, IAB 12/26/79]. In Holden's absence, Tieden presented questions posed by Holden. Clark thought language in 1.2(3)c(5) could be construed as "blowing the whistle" on a doctor or a hospital. Illes replied that was the correct interpretation. She added that they are attempting to alleviate fear for one profession reporting on another. Clark wasn't sure the rule really provided protection. Illes said the Code, under the immunity section, [258A.8] states that a person shall not be civilly liable as a result of filing a report or complaint with a licensing board. It was noted a public hearing was scheduled.

Tieden read one of Holden's questions: "Why was 1.2(3)c limited to "unethical conduct." Holden thought "harmful, fraudulent or detrimental" should be included. Clark suggested substituting "include" for the phrase in question. Illes said their intention was to define each item listed in 1.2(3)c.

Holden returned to the meeting. He reiterated his concern about ethics rules in general. He wasn't sure all 18 subparagraphs would be considered unethical practice. Holden took the position Boards were being too lenient in the case of ethics violations. The Board tends to gloss over a violation of the ethics provision. He declared, "I see a difference--if it is illegal, let's press charges." If the matter were unethical, the rule was probably ineffective, in his opinion. Holden did not see other nurses as being disinterested parties but thought the court would be disinterested. Illes reminded Holden that two consumers sit on the Board. He was further concerned about licensed boards disciplining their own people. Illes thought professional members would be tougher. She advised the Committee that 10 hearings were set for February. There was general discussion of the matter, with agreement that it was a very difficult area.

In 1.2(3), line 1, Holden preferred "may" be changed to "shall". Oakley questioned Illes re 1.2(3)c(5) as to whether she saw a need to define "appropriate action" more fully. Illes responded that they didn't want to be too restrictive but were hopeful more definitive wording would result from the public hearings.

Illes reported the Board would have no objection to broadening the language. Holden wondered how many licenses had been revoked last year and Illes said the majority of hearings evolved into informal settlements. There are 22 on probation at this time with 2 to 5 revocations (out of 25,000). Holden doubted implementation of the rule would cause significant changes.

Recess The Committee recessed at 5:00 p.m. to be reconvened Wednesday, January 9, 1980 at 9:30 a.m.

Reconvened Chariman Schroeder reconvened the meeting at 9:45 a.m. with 4 members present. Members excused, Priebe and Patchett. Also present: Royce.

Civil Rights Deferred Royce requested delay of discussion of civil rights rules to await Oakley's arrival.

REVENUE Revenue was represented by Carl Castelda, Edward McCall, Donald Cooper, Brian Bruner and Ed Henderson. The following rules were before the Committee:

REVENUE DEPARTMENT[730]				
Forms, 8.1(1)"b" ARC 0786	F			12/26/79
Individual income tax, 38.1(1), 38.2(1), 38.5, 38.9, 39.1(1-3, 5, 7), 39.2(2), 39.4(1, 5, 8), 39.5(7), 40.4, 40.5(2), 40.9, 40.12, 40.15(1), 40.19, 41.4, 42.2(1, 2), 42.5, 43.3(3-5) ARC 0787	F			12/26/79
Corporation income and franchise taxes, 51.2(1, 2), 51.4, 51.6, 52.1(1-3, 5), 52.2(3), 52.4(3), 53.7, 53.8, 53.10, 53.10(1)"a", 51.2(2)"b", "c", "d", 54.4(2), 54.7(5), 54.8, 54.9, 55.3(4, 5), 55.4(1), 57.2(1, 2), 57.3, 57.5, 58.2(2), 58.6, 59.7-59.9, 59.9(3)"a", "c", 60.3(4,5) ARC 0788	F			12/26/79
Hotel and motel tax, 103.15, 104.8, 105.3 ARC 0789	F			12/26/79
Forms, 8.1(7) ARC 0747	N	N		12/26/79
Forms, 8.1(7) ARC 0783	N	N		12/26/79
Tax liens, filing, 9.5 ARC 0784	N	N		12/26/79
Sales and use tax, 12.1, 12.9, 12.10, 13.7, 16.27(5), 16.31, 16.39, 17.3, 17.9(5, 6), 17.14, 17.41(1), 18.7, 18.24, 18.32, 18.36(1), 18.37(1), 18.38-18.41, 20.10, 26.9, 26.18, 26.25, 26.34, 26.35, 26.42(2, 8), 26.44, 29.3, 30.11, 34.5(9) ARC 0748	N			12/12/79
Motor fuel tax, credit, 64.7(6)"a", 65.8 ARC 0785	N	N		12/26/79
Chain store tax, chs 97-101, rescinded, filed emergency ARC 0749				12/12/79

Bruner explained proposed changes in certain forms set out in 8.1(7). He distributed an additional one dealing with new construction, reconstruction and machinery and equipment which would be used by assessors. Bruner advised the Committee that the revised forms set out in 8.1(7) had been disseminated to those who will be using them.

Schroeder cautioned against distributing forms before they are formally adopted but also recognized the unique situation.

Subrule 8.1(4) amendment was acceptable as filed. The form deals with application for automatic extension of time to file Iowa corporation as well as franchise tax returns.

Amendments to individual income tax rules--38.1(9) et al--were intended to implement changes in statutes by the 68th GA. Also references to court cases which support the position of the Revenue Department have been included.

Holden voiced opposition to 38.2(1) with respect to periods of audit in that the statute of limitation was different for the Department than the taxpayer.
Cooper explained that if a refund is claimed within six months after final IRS audit, the Department would all allow the claim. If claim for refund was not made within six months but the taxpayer had a legitimate deduction, the Department would allow them to "offset" but would not make a refund. Cooper added, "This six-year statute is for failure to include income--not to claim a refund."

REVENUE Cont'd

Holden recalled a personal case where he was not asking for a refund but merely trying to prevent the charge for extra tax. He declared that if there is ever a time when Revenue is exceeding the statute of limitations, the taxpayer should have that same right, even though it may be favorable to the taxpayer. Schroeder concurred.
Cooper pointed out that the refund and assessment statutes were not identical. He reiterated that the six-year statute deals only with assessment. He thought the matter of refunds was covered under the statute and reminded the Committee that the amendments today did not cover that area.

Responding to Tieden, Cooper said that under the law, Revenue could collect as a result of a reaudit but would not refund. There was general discussion of the process with some members taking the position that some statutory revision was in order.

Holden consulted Royce with respect to 38.5--disclosure of confidential tax information to other states--as to whether the amendment was a correct interpretation of §422.72 as amended by 68GA, ch 94. Royce answered in the negative. He said, "Other states must submit proof that they have statutory confidentiality protection equal to or greater than those provided in Iowa." Schroeder opined that "maintaining at least as much confidentiality information as Iowa" could be added to the rule. It was noted that the same problem existed in 51.6 and 57.5 as well. At the recommendation of Schroeder, Cooper agreed to reference the Code section in the rules in question.

Holden indicated that he had requested legislation to correct an oversight regarding civil service annuities for surviving spouse. He said the legislature never intended that the exempt income would change upon the death of the individual who built up the benefits. Rule 40.4(422).

Holden called for explanation of 40.9. Cooper stated that the rule was in compliance with a change in federal definition. The Federal Tax Reform Act of 1978 changed the Work Incentive Credit similar to Jobs Tax Credit. Iowa law has no specific provision for WIN credit adjustment and the rule is intended to clarify this. The Department has sought corrective legislation. Discussion of whether a date certain was needed for Internal Revenue Code references. Barry called attention to 422.4(17) of the Code which would cover this.
No action taken.

Re 40.19, Holden contended the amendment would prevent a taxpayer from taking advantage of a loss when a refund was due. Cooper replied that the rule allows loss to the extent addi-

REVENUE Cont'd

tional tax due would be offset to zero. The statute bars a refund and loss cannot be carried back more than three years, according to Cooper.

Holden was critical of 43.3(5) but Cooper contended the law was being followed.
Holden praised the Department for inclusion of court decisions (references) throughout the rules.
Responding to Royce, Cooper indicated the Department does adopt rules specified principles of law or policy developed in their case precedent law that have general applicability.

Cooper explained that 55.3(4) implements an Act passed in 1978 which changed the statute of limitations for refunds--5 years for tax years ending before 1-1-79 and 3 years after that date. The subrule will be rescinded when the 5-year period has passed.

103, 104, 105 amend.

Amendments pertaining to hotel and motel taxes were acceptable as published.

97-101

No recommendations were offered for chain store tax repeals.

Castelda reported that question had been raised by the Iowa Taxpayers Association with respect to definition of "catalyst" in 17.14(1)--Item 11 of ARC 0748. He indicated that a Termination of Notice of Intended Action would be submitted for the subrule. When the question has been resolved a revised version will be proposed.

Clark called attention to the need for "out" after "running" in 12.9(422), line 4. She asked that "affect" be changed to "effect" in line 9 and she noted that "galvanization" would be preferable to "galvanized" in 26.34.

Holden was concerned for utility companies who won't be eligible for a sales tax refund when 12.9 goes into effect. He referred specifically to the second EXAMPLE X.
Castelda said one protest has been filed with the Department and the tax policy division studied the matter. The Department wants to avoid violation of the equal protection statutes and will use equitable application. They don't anticipate many problems since the rule is intended to notify affected individuals of the change.

Castelda called attention to an error which will be corrected in the last paragraph of 13.7 (Item 4)--"second" will be changed to "third".

Holden raised question concerning the "noninclusion list of implements of husbandry" in 17.9(5). He contended that

REVENUE Cont'd

the same truck is often used for "delivery and applying fertilizer and "to remove animal waste."
Castelda explained the rule deals with sales tax--it has no impact on the motor fuel taxes for highway use. Under the law, if motor fuel tax is not imposed, sales tax would be. Fuel used in implements of husbandry is exempt from tax.

In a matter not officially before the Committee, Tieden cited a problem concerning collection of sales tax by small groups of elderly individuals who conduct "fund raising" functions. One group had been approached by a revenue agent who requested sales tax on their sales which amounted to $100.
Castelda said that the situation had been brought to the attention of the Department and they have a responsibility to follow up. However, they have instructed field staff with respect to these functions.

Holden asked for clarification of 18.38 concerning taxing of fuel used by urban transit systems. Castelda explained a governmental instrumentality would be exempt from sales tax and also from motor fuel tax as long as conditions set out in the motor fuel statutes were met. A private contract carrier providing a municipal service would be taxed. Castelda emphasized that both taxes would never be imposed on the same fuel. There was discussion of the private system operating under franchise which pays sales tax but is exempt from fuel tax. Holden wondered if the tax could be divided 50-50. He cited Brothers Co. as an example.
Castelda indicated there was pending legislation to address this.

Holden recommended inserting the word "Some" preceding "envelopes for advertising in 18.41.

According to Castelda, amendments to 64.7(6)"a" and 65.8 were corrective in nature.

Re 9.5--time of filing of notice of tax lien--Holden could see no reason for inclusion of the least sentence: "The date of recording should not be confused with the date the lien attaches." Committee urged review by the Department and possible deletion of the questionable language.

CIVIL RIGHTS

The Civil Rights Commission was represented by Louis Martin who presented amendment 1.15(3,4)--commission review--which was published under Notice and Filed Emergency simultaneously in 12/12/79 IAB. Also present was Steven Brown, Iowa Civil Liberties Union.

Martin advised the Committee the time the Commission has to review a recommended decision of a hearing officer after a case

CIVIL RIGHTS Cont'd

has been contested was increased from 60 to 120 days. The rule was filed emergency to comply with Chapter 17A which allows parties to request oral arguments before the Commission and since the Commission meets only once each month oral arguments have been turned down. Martin reviewed the process the Commission plans to follows.
Oakley wondered if the entire Commission was required to hear oral argument. Martin agreed to check the matter.
With respect to records connected with hearings, Martin stated they are volumnious, particularly when a hearing officer decision is reversed.
Brown voiced opposition to the extended time as being merely a "delaying" tactic. He could see no justification for the emergency filing.

Oakley thought 90 days would be preferable to 120 days. He stressed that the governor has been "very explicit in his great concern for the caseload of the CR Commission. However, if it were not for the sunset clause in the rule, the governor would probably veto it. Oakley could see no advantage for the Committee to place an objection against the rule.

Tieden observed that the "whole court system is suffering as a result of delay."
No formal action taken by the Committee.

PLANNING AND PROGRAMMING

The following persons represented OPP for review of filed emergency rules published 12/26/79 IAB: Dave Patton, Counsel, Patrick Larsen, Program Administrator, and Joel W. Peterson.
Rule 6.5--ARC 0775--dealt with complaint procedure under the Comprehensive Employment and Training Act.
Chapter 20 was entitled "Energy Crisis Assistance Program."

Clark called attention to minor grammatical errors. It was consensus of the Committee that it would not be necessary to make changes until substantive amendments were initiated.

Tieden called attention to a problem confronted by a CETA employer whose former employee--a high school student--had filed claim for unemployment compensation. Committee members concluded legislation would be needed to correct this.

Holden took the position that a public hearing would have eliminated some of the problems faced by CETA.
Committee recommended placing Chapter 20 under Notice to allow for public participation.
Larsen indicated that allocations to assist eligible people with utility bills have been received as follows:
$2.9 million was received and 6,000 households are committed.
Additional grants amount to $18 million dollars.

ENGINEERING EXAMINERS — Proposed amendment to 1.2(2)--ARC 0731--of rules of the Engineering Examiners was acceptable. Tom Hansen, Legal Counsel for the Board, was in attendance.

PHARMACY EXAMINERS — Norman C. Johnson, Executive Secretary, and Susan Lutz, Board Member, appeared for review of the following:

PHARMACY EXAMINERS[620]
Fees, 1.2, 4.1, 5.6 ARC 0777 ..... N 12/26/79
License fees, 4.4 ARC 0778 ..... N 12/26/79
Reciprocal registration, 5.1 ARC 0779 ..... N 12/26/79
Continuing education program attendance, 6.8(1) ARC 0780 ..... F 12/26/79
Continuing education, active license, 6.8(7) ARC 0781 ..... F 12/26/79

4.1, 4.4 — Re 4.1 and 4.4, Clark suggested that "require" would be more appropriate than "pay" in the last sentence.

5.1 — Holden requested that "NABP" be spelled out and a date certain included. Clark suggested deletion of "that" from the last sentence of 5.1.

Responding to Tieden, Lutz said only five states do not have reciprocity with Iowa--California, Florida, Louisiana, Oklahoma and Hawaii.

6.8(1,7) was acceptable.

SOCIAL SERVICES — The Social Services Department was represented by Judith Welp, Barbara Jackson and Dale Noel. Also present were Jill June, Ames Cooperative Day Care Center, Bill Hornback and Pat McClinton, Legal Services Corporation.
The following rules were reviewed:

SOCIAL SERVICES DEPARTMENT[770]
Burial benefits, 56.1, 56.3(1)"a", "e", 56.4 ARC 0766 ..... F 12/26/79
Medical assistance, 79.2(5) ARC 0767 ..... F 12/26/79
Interstate compact on juveniles, 143.2(1), 143.3(2-4), 143.4(5), 143.5 ARC 0768 ..... F 12.26/79
Food stamp program, 65.3, filed emergency ARC 0776 ..... F E 12/26/79
Resources, generally, 130.3(1), 130.5-130.7, 130.9, filed emergency ARC 0764 ..... F E 12/26/79
Resources, generally, 130.3(1), 130.5-130.7, 130.9 ARC 0765 ..... N 12/26/79

Amendments to 5.1, 56.3, 56.4 and 79.2 were acceptable as published.

Ch 143 — Discussion of Chapter 143 amendments necessitated by changes in the juvenile justice law. A new rule--143.5--pertains to runaways. Tieden cited lack of county facilities to care for runaways as a problem.

65.
65.3 — No recommendation was made concerning 65.3.

Ch 130 — Welp explained amendments to Chapter 130 covering eligibility for services in the Title XX Plan which were proposed under Notice and also Filed Emergency. They specify such things as when a case can be denied or terminated, which services can be reduced, notice requirements and case management.

SOCIAL SERVICES Cont'd

Welp continued that the rules were basically setting out administrative procedures.

Clark questioned use of "input" as a verb in 139.6(4). She pointed out other areas where grammatical corrections were needed. Welp agreed to make necessary revision when the rules are drafted for adoption after the Notice in 4 to 6 months.

Hornback expressed his opinion that the rules were more than "just administrative" since they would have an impact on some people. He failed to see the need for emergency filing. He concluded the problem was lack of planning by the Department. Clark was dismayed when she realized that oral presentation on the rules was scheduled for Monday, January 21, 1980, 7:30 p.m.--the time coinciding with political caucuses. Welp was amenable to setting another date.

June indicated concurrence with Hornback's statement.

Schroeder recognized inflationary problems encountered by the Department but by the same token thought they had a responsibility to implement the program efficiently to serve the greatest number. He stated there are instances when emergency rules are justified. The Committee must weigh each question.

Oakley spoke of the involvement by his office in the development of the rules and readily admitted it was a difficult area. An attempt has been made to develop a Program which if fiscally sound.

Department representatives stated that federal regulations are clear in terms of a client receiving service. If the service is included in the title and the client is eligible, the client will receive that service.

June pointed out what she considered a serious gap in the rules with respect to children who are cared for in home that is registered with the state. She could forsee a working ADC mother being eliminated from assistance if the child care was not received at a Title XX center.

Clark advised June there would be time for input concerning the rules. She recommended an economic impact statement in the process of regular rulemaking.

Oakley noted the question of additional Title XX funding would be before the legislature. He recommended that a form be developed to allow interested groups to contribute to that discussion. He considered it an impossibility to appropriate funds until there is a plan.

AR C Report

Oakley asked for a few minutes to brief the Committee concerning the status of certain rules. He advised that the Nursing Home Administrators had withdrawn their rules dealing with out-of-state requirements and reciprocity.
The Credit Union Department rules governing branch offices which were delayed by this Committee have been revised and copies will be circulated among Committee members.
Oakley reported that Secretary of Agriculture Bob Lounsberry had requested additional time to complete his summary regarding the pesticide rule.
Oakley left the meeting for another commitment.

SOCIAL SERVICES Handbooks

Holden brought to the attention of the Committee the subject of manuals dealing with nursing home procedures. He was concerned that the SS Department had bypassed rulemaking when the manuals were updated.
Welp indicated that all "providers" have been furnished a handbook. Noel said the question involved was covered by rule.

Chairman Schroeder requested Royce to reviewthe matter.

PROFESSIONAL OCCUPATIONAL REGULATION COMMISSION

The Professional and Occupational Regulation Commission was represented by Dick Woods, Assistant Director of the Office of Planning and Programming, who was present in the capacity of Management Liaison for the Commission. Jean Comstock, Commission Staff, was also present.

Woods told the Committee that the Commission was created by 68GA, HF 649 to evaluate those professions and occupations seeking to become regulated. They may also evaluate those that are regulated. Chapter 5 of their proposed rules relating to evaluation of regulated occupations and professions was published in IAB 12/26/79.

Holden asked how the list in 5.2 was obtained. It was his opinion it contained some that would not normally be considered licensed professions. For example; Accountants Advisory Commission, Beer and Liquor Control Commission, Building Code Advisory Commission and Voting Machine Examiners. On the other hand, Holden was sure the list was incomplete. Shorthand Reporters and Board of Certification of Wastewater Operators were omitted.
Comstock said the list was compiled from information in the governor's office and they merely alphabetized the names.

Schroeder questioned 5.3(1) which provided one of the standards the commission should apply in determining if existing regulation was necessary--"The federal government, or an agency thereof, requires that the profession or occupation be regulated."
Holden said this had been his amendment to the Act. He wanted to set out criteria for being licensed.
Holden recommended referring to Code Chapters 147 and 258A to complete the list in 5.2.

Excused — Tieden was excused for the remainder of the meeting but asked to be recorded as voting "aye" on the Bonfield proposal for amendment to Chapter 17A.

February Meeting — Discussion of time for the February 12 statutory meeting of this Committee. It was decided that the same schedule which was followed during legislative session last year would be used this year--starting time was set for 7:00 a.m.

Motion

17A Amend. — Schroeder called for a motion to formally adopt the Bonfield proposal for Chapter 17A amendments. (See page 1142) Holden moved to adopt the proposed amendments to Chapter 17A The motion carried with 4 ayes. Priebe and Patchett not present.

The following rules were acceptable as published:

NO REPRESENTATIVE CALLED

ARTS COUNCIL[100]
Grants, 2.1(5)"f" ARC 0750 ..... N 12/12/79

AUDITOR OF STATE[130]
Certification of accounting system, ch 11 ARC 0734 ... N 12/12/79

CAMPAIGN FINANCE DISCLOSURE COMMISSION[190]
Income tax checkoff markings, 2.1 ARC 0763 ..... F 12/26/79

LABOR, BUREAU OF[530]
Location and services, 1.3, filed emergency ARC 0738 ..... 12/12/79
IOSH divisions and duties, 2.1, 2.2, 2.4, 2.5, filed emergency ARC 0739 ..... 12/12/79
Poster reproduction, inspections, abatement time, 3.1(1), 3.2, 3.11 ARC 0769 ..... N 12/26/79
Personnel corrections, amendments to ch 3, 4.8, 4.10, filed emergency ARC 0740 ..... 12/12/79
Corrects verbiage, 4.2, 4.7, 4.8, 4.11(6), 4.12(2, 3), 4.16(1, 2), filed emergency ARC 0770 ..... 12/26/79
Reporting injuries and illnesses, 4.16(1), filed emergency ARC 0771 ..... 12/26/79

PUBLIC SAFETY DEPARTMENT[680]
Self-service motor fuel dispensing stations, 5.305(2), 5.305(3), filed emergency ARC 0798 ..... 12/26/79
Breath testing, 7.2(3)"e", filed emergency ARC 0743 ..... 12/12/79

VOTER REGISTRATION[845]
Forms, 2.3(1)"a" ARC 0762 ..... N 12/26/79

Recess — Chairman Schroeder recessed the meeting at 5:20 p.m. to be reconvened Wednesday, January 23, 1980, 7:00 a.m. for the purpose of disposing of Agriculture rule 10.6.

Barry agreed to publish notice of the recessed meeting in the Iowa Administrative Bulletin.

RECESSED MEETING 1-23-80

Time of Meeting: Chairman Schroeder reconvened the January 9 recessed meeting on January 23, 1989, 7:00 a.m. in Senate Committee Room 24.

Members Present: All members were present; Patchett arrived at 7:40 a.m.
Also present: Joseph Royce, Committee Staff;
Brice Oakley, Administrative Rules Coordinator.

AGRICULTURE
Pesticides
10.6

Chairman Schroeder called the meeting to order to review rule 10.6 of the Agriculture Department pertaining to pesticides--revocation, suspension or denial of registration. Final Committee action was delayed until today to allow the Department and opposing factions time to reach a compromise on the issue. [IAB 12/26/79]

The following Departmental personnel were in attendance: Robert Lounsberry, Secretary of Agriculture, Bette Duncan, Counsel, G. L. Stanley, State Apairist, Earl Willits, Assistant Attorney General.
Interested persons who were present included: Winton Etchen, Steven Schoenebaum, Ed Winta, Mike Miller, Gary Alberts, Ron Roth and Mark A. Taylor, Jr., representing Iowa Fertilizer and Chemical Association; Marcia Hellum, Pioneer Hybrid; E. A Brown and F. Richard Thornton, Attorneys for Pennwalt Corporation; J. E. Shue and E. B. Baskin, Dale A. Bush, representing Union Carbide; Wayman Lipsey, Executive Director, Midwest Agricultural Chemical Association; Ronald A. Farrell, Brayton Chemicals; J. R. DeWitt, I Ill Extension; Ellsworth Gustafson, President, and M. J. McCarron, Iowa Honey Producers.

Duncan reported that they met with representatives of IFCA and an agreement was reached on acceptable language, copies of which were distributed.
Duncan called attention to changes: The following was eliminated from the previous submission: "...that such action is necessary to prevent unreasonable adverse effects, taking into account the economic and social cost and benefits of the use of any pesticide". The term "need" was clarifed by adding "special local" tying into the definition of the 1975 proposed federal regulation.

Responding to question by Schroeder, Oakley said he had not been present at the joint meeting but had discussed the matter with them.

Chairman Schroeder opened the discussion to interested persons.
Priebe interjected a bit of humor and commented he had "never seen so many lawyers this early in the morning."

AGRICULTURE Cont'd

Schoenebaum said that IFCA was in agreement with the compromise. Although their Board of Directors had not studied the revision, Schoenebaum did not anticipate a problem. It was his understanding the current rule would be rescinded and the new language submitted under Notice. In addition, he concurred with a recommendation by Oakley to include a sunset provision of December 31, 1980.

Willits commented he had worked with the Department concerning 24C permit registration and thought clarification was needed. He considered the rule to be important in terms of enforcement in administrative law.. He urged Committee acceptance of the compromise.

Lounsberry referred to Hellum's presentation at an earlier meeting and requested that the record show his response. Chairman Schroeder assured him that all correspondence relevant to this issue would be kept on file with the Secretary. It was noted that Duncan's written response has been received by all members and would also be on file.

Oakley questioned Lounsberry as to the number of special permits and he answered that approximately 24 were scheduled for review in the last few weeks and additional requests are being received. These will be sent to EPAC [Extension Pesticide Adjudicatory Committee], Iowa State University, where guidelines will be established. A Chemical Advisory Committee appointed by Lounsberry also assists in evaluation of requests. Oakley thought serious consideration should be given to incorporating this criteria into the rule.
Oakley referred to the brief submitted by Pennwalt wherein they urged delay of the rule to await final action by the federal government. He failed to see an advantage in a delay.

Oakley expressed his views on the pros and cons of an emergency filing.

Lounsberry pointed out that renewal date is January 1. Schroeder thought there could be four renewals but Lounsberry did not think so since federal regulations had not been finally adopted.

In the matter of "sunset", Oakley advised a 12-31-80 date would be preferable. He was concerned as to references in the rule and thought dates back to 1974 should be included. In his opinion, the 1978 federal source was authority for this rule.

Priebe expressed preference for beginning with the normal rule-making procedure. Discussion of time frame and how industry would be affected.

AGRICULTURE Cont'd

Willits reasoned that it is important to approve what might be needed locally, while, at the same time, protecting another segment of agriculture.

Priebe asked Etchen how the rule compared with other states surrounding Iowa. Etchen indicated Iowa has issued fewer 24C's. Kansas and Nebraska have between 58 and 60.
Lounsberry pointed out these states have a wider variety of crops and need more chemicals. Nebraska and Kansas had 24C for similar chemicals. Missouri refused to issue 24C and Illinois issued it on a limited basis.
Priebe preferred having an October 31 expiration but was reminded that statutory change would be required.

Gustafson spoke of problems confronted by the bee industry. Penncap-M, in particular, has been carried into the hives contaminating the pollen and honey and rendering the wax unusable. They are interested in preventing pesticides from being carried into hives. Gustafson said three bee kills have been documented. He added the bee industry could accept the rule. He spoke in support of the Secretary of Agriculture having authority to terminate a permit.

Lounsberry added that the laboratory ran chemical tests on the honey from hives in Cass County where bee kills had been reported. Methoparathion had been applied to soybeans and corn fields in that county.

Priebe requested Lounsberry or Etchen to supply more information re the four surrounding states and their dealing with the pesticide issue. He suggested possible sunflower production Iowa.
Tieden doubted this would involve 24C.
Priebe raised question as to Iowa bees traveling into other states and the matter of indemnification if there are no reciprocal agreements.

Schroeder thought simultaneous filing of an emergency rule and initiating normal rulemaking would allow ample time for input.

Oakley preferred a sunset clause for December 31, thus allowing more time for the Department to evaluate the procedure before adopting the final rule.

Willits addressed the Committee as to his concern in terms of procedure if there is an emergency rule only. The Justice Department could be in a position of having to litigate an additional issue--that being whether the emergency process was properly followed.

AGRICULTURE Cont'd

Priebe was sympathetic with Willits and recommended an emergency rule for 180 days with objection being placed on it.

Schroeder asked Royce to advise the Committee of problems to anticipate if they pursue the emergency route with a sunset provision, waiting until fall to initiate new action versus starting the process over immediately.
Royce was of the opinion the Department, in order to issue 24C permits, must have a rule in effect which details guidelines. To start the evaluation process, a rule is required by January 1. He continued there were sufficient grounds for emergency filing. He supported the inclusion of a sunset provision and adoption of permanent rules based on this season's experience.

Oakley indicated he would recommend the rule to the governor as being acceptable. However, he suggested an effective date of March 27, thus avoiding utilization of §17A.5.

Motion

Tieden moved that the Committee accept the revised rule with the December 31 termination date, it being understood that in the fall the normal process will be commenced.

Discussion of the motion. Priebe urged permanent rulemaking process and opposed the 12/31/80 sunset.

Holden thought it would be important to express the purpose of an emergency filing.

Clark saw no problem with following both formats.
Tieden thought it unnecessary to have three filings.
Patchett considered Priebe's point well taken.

Substitute Motion

Priebe moved as a substitute motion that an emergency rule and the normal process of rulemaking be initiated simultaneously. Motion carried.

Chairman Schroeder recessed the meeting at 8:20.
Reconvened at 8:30.

Staff Salary

Priebe requested that the matter of Staff salary be placed on the agenda for discussion at the February meeting. So ordered.

Denver Seminar

Schroeder called for Committee approval for Royce to attend a NCSL seminar being conducted in Denver in February.
The seminar will deal with administrative law in general and formulate plans for the annual NCSL meeting in New York.

Motion

Tieden moved that Royce be authorized to attend the Denver seminar. Motion carried.
Schroeder suggested that Royce relay the position of this Committee as advocating decision making be the responsibility of legislators rather than staff. Committee concurred.

Bonfield Proposals — Discussion as to which portions of the Bonfield proposals should be included in the bill draft pertaining to administrative procedure. It was decided that the 5th item should excluded from the bill but submitted as an amendment. [This section would provide for "at least annual review by each agency of all its rules..."]

Patchett noted that the draft before them contained an effective date provision of January 1 following passage, being Section 7. He expressed a preference for a July 1 effective date or possibly upon publication.

Motion — Patchett moved that the draft before them, minus Section 7, be submitted as a Committee recommendation for a bill. Motion carried.

Royce was requested to check the status of the "bids bill".

At the request of Patchett, Schroeder announced that the Committee would review a matter concerning Job Services at the February meeting.

MINUTES — Holden moved to accept minutes of the December meeting as submitted. Carried viva voce.

ADJOURNMENT — Chair adjourned the meeting at 9:00 a.m. Next regular meeting will be held February 12, 1980. [Time was changed after publication of the agendum from 7:00 a.m. to 1:00 p.m.]

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Assistance of
Vivian Haag

APPROVED
2/12/80 Laverne Schroeder P.B.
Chairman.