

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Monday and Tuesday, September 20 and 21, 1976, 9:00 a.m.

Place of Meeting: Senate Committee Room 24, State Capitol, Des Moines, Iowa

Members Present: Senator Berl E. Priebe, Chairman; Representative W. R. Monroe, Jr., Vice Chairman; Representatives Donald V. Doyle and Laverne Schroeder; Senators Minnette Doderer and E. Kevin Kelly.
Also present: David Charles, Research Assistant

HEALTH

Chs. 56-59, 61

The following persons were present for review of the rules of the Health Department: Rick Middleton, Director, and Dana Petrowsky, Assistant Director, Health Facilities Licensure Division, Department of Health; W. W. Sindlinger, attorney, appearing on behalf of Western Homes, Cedar Falls; Don Iles, Administrator of Western Homes, Cedar Falls; B. L. Donaldson, Administrator, Methodist Manor, Storm Lake; Larry L. Breeding, Executive Vice-President of the Health Facilities Association of Iowa; Francis Lackner, Executive Secretary of the Iowa Association of Homes for the Aged; Buck Brock, Vice-President of the Health Facilities Association of Iowa, Helen Henderson, Iowa Association for Retarded Citizens, and John M. Lewis, Iowa Utility Association.

Middleton explained briefly the filed rules published in IAC Supplement 8/23/76 relating to Health Care Facilities, Chapter 56 - Fining and Citations. In reply to a question by Doderer regarding the response received from the public hearings, Middleton indicated there had been a good response to the public hearings which were held in Council Bluffs, Mason City, Des Moines and Iowa City with eighty to two hundred persons in attendance. Doderer asked how many people who had the ability to change the rules were there. Middleton replied that from the Department there were Dana Petrowsky, the Assistant Director, himself, some of their staff members and members of the Health Facilities Advisory Committee. There will be amendments offered to satisfy some of the concerns voiced at the public meetings. Three areas of concern were residential facilities staffing, isolation rooms and four beds to a room in residential care facilities.

Middleton noted there were no comments given at the public meetings on Chapter 56 and no additional amendments are proposed.

HEALTH
(cont'd)

9:20 a.m.

Kelly arrived.

Schroeder raised a question in regard to 56.9 - how do you determine liability of previous owner? Middleton said Department could not hold former licensee liable.

Sindlinger objected that Chapter 56 is by and large copied from the Code and it seemed to him that it was poor rulemaking to use precise chapters of the Code for rules, e.g., 56.3(3). It would lead to confusion in the administration of these rules.

Monroe questioned Middleton as to whether separate hearings had been held on rules as provided by the Sixty-Sixth General Assembly, Senate File 525. Separate hearings were not held.

Priebe questioned the Department officials as to whether an economic impact statement had been prepared. Middleton indicated that some work had been done along that line.

Motion
Ch. 56

Monroe moved to defer further consideration of Chapter 56 to some unspecified time at this meeting, either today or tomorrow, in order to do additional research. Doderer seconded. Motion carried viva voce.

Doderer stated that she wants to bring up at some time before the committee the matter of rules on public hearings in general in order that the commission that can make the change is present and so that they respond to the public in some fashion.

Ch 57

Discussion of Chapter 57 in re residential care facilities. Middleton noted these were formerly in the law either under custodial homes, board and room homes or adult foster care homes with three or more people. The Department was proposing to amend 57.2(3) by adding the qualification of forty-five days when approval of the variance would be either granted or denied.

Middleton stated the first part of the rules was basically the same as in the past. However, procedures for variances were more detailed.

Charles questioned under 57.6(7)c, dealing with requiring a letter of written authorization from the licensee to release all information, as to whether they have confidential material in their files that is not part of the open records. Middleton responded

HEALTH
(cont'd)

CA 57

you may have a survey in the file that was done twenty days ago and it is not public information until forty-five days after the survey. Also, complaint investigation information may be in the file.

Schroeder asked what problems are created in 57.9(2)a, b and c restricting administrators to not more than two residential care facilities which are no more than fifty miles apart and requiring the equivalent of three full eight-hour days per week in each facility; also, restricting the administrator to a total of no more than 150 beds if he has more than one facility. Schroeder did not agree with these limitations and questioned whether these three categories ought to be included in the rules.

Middleton responded that in the past there has been a direct correlation between the level of care received and the number and location of facilities.

Priebe expressed opposition to limitations as being contrary to private enterprise and suggested the Department is exceeding its authority by the limitation of two facilities.

Brock commented that their association feels very strongly that these rules are necessary and are designed to make sure that professional administration is in the home on a regular basis.

Schroeder said he could see a problem with 57.11(2) with respect to the requirement for writing job descriptions in facilities with more than fifteen beds. Middleton answered that this is less than required before as they were required to be written in all facilities. Schroeder asked if they do anything that is not written in the job descriptions. Middleton replied that basically these job descriptions are used in the hiring process so that they know what they have been hired to do.

In 57.11(2), Doderer noted that the job description is required to include "age" range. Middleton said this was an error and should read "pay" range, and the Department would correct this.

Monroe suggested that at another time the Health Department insert the word "intoxicating" before the word "drugs" in 57.12(1)b.

Monroe called attention to 57.10(2)b, requiring department heads to annually attend a minimum of ten contact hours of educational programs, as these programs do not exist in all areas at this time and he questioned whether the Department has the authority to require out-of-the-institution educational attendance.

HEALTH
(cont'd)

Objection
57.10(2)b

Monroe moved to object to 57.10(2)b on the basis that it is beyond the Department's authority and can be overcome by rewriting the rule as follows: "Be responsible for the arrangement for all department heads to annually attend a minimum of ten contact hours of educational programs approved or provided by the department."

Middleton will rescind and rewrite 57.10(2)b as stated above.

Committee discussed the definition of "recognized retarded" individuals used in 57.12(1)e. Charles noted that the rule does force the nursing home to violate the Civil Rights Act because it requires the homes to refuse to hire a retarded individual prior to getting the Department's permission.

The Department agreed to rescind and rewrite 57.12(1)e. Also, this language will be rewritten wherever it appears in other provisions.

Schroeder questioned if the staffing ratio in 57.12(2) is acceptable to the industry. Middleton responded that Mr. Lackner's group appeared at the meetings and spoke against the Department's having a staffing requirement for residential care facilities. The Department feels that the standards they have proposed are minimum numbers necessary and that the problem is created by the types of people residing in the facilities. Middleton said that in many licensed residential care facilities, there are people who are not receiving residential care services and they are not health care residents--they are retired persons. However, they don't feel that it is the position of the Department to say what kind of people a facility must bring in their home and because of that they don't feel the Department should write their rules to conform to what an administrator decides to do. Middleton said they do have the agreement with the Advisory Committee that if, in fact, you are a licensed health care facility and you have licensed health care residents in your facility that these ratios are applicable.

Breeding commented that his association feels the staffing ratios are necessary and minimum and supports them.

Donaldson addressed the committee and presented a written statement concerning the proposed changes affecting residential care facilities.

HEALTH
(cont'd)

Lackner indicated agreement with the licensing provisions for distinct parts (57.8) with one great exception, that being the requiring of moving people who are in a stable condition who need temporary help to a nursing section and then back to the residential section upon recovery. He suggests better to bring care to the person rather than continually moving the person to receive the care.

Middleton commented there is more of a problem if you spread residents out over the facility and try and cover them with staff just for those people.

Discussion continued on 57.12(2) and committee agreed that it is workable as presented, and that problems arising in the future can be dealt with at that time.

Donaldson expressed concern with regard to 57.13(1)i(3) as to releasing information on individuals to private charitable agencies, and suggested this could be cleared up by deleting private charitable agencies in this instance. Monroe pointed out that the first sentence in 57.13(1)i(3) is faulty and Middleton agreed to clarify this by adding the words "for that resident" at the end of the first sentence.

Schroeder questioned 57.26(1) -- "Throw or scatter rugs shall not be permitted" and suggested there are other hazards equally dangerous, such as a pool of water in the entryway. The Department will make an attempt to address itself to this rule and bring back an alternative, if possible.

Committee discussed requirements under 57.30(4) in re bedroom floor space, four residents per room, window area and the requirement that the windows shall be openable. Priebe expressed opposition to allowing no more than four residents per room and requested Middleton to research the rule and inform the committee where the Department received its authority in 1972 limiting new construction to four residents per room.

Monroe objected to 57.24(1)(d) in re membership of the care review committee on the basis of the selection of its members being "from church groups, recognized service clubs, public office holders, retired professionals" in that the Department has no authority to restrict the membership on care review committees to membership with such qualifications, and it can be corrected by deleting those specifications. Middleton agreed to the deletion of this language and to using it only as a guideline.

HEALTH
(cont'd)

Objection
57.24(4)

Monroe moved to object to the provision in 57.24(4) which requires the care review committee to notify the Department before proceeding with a complaint on the basis that the Department has exceeded its authority in creating this requirement. Motion carried with four ayes. (Kelly and Doderer were out of the room and not voting.)

Objection can be cured by removing the prior notification provision.

Charles brought to the committee's attention a complaint received by Senator Charles Miller in re 57.16(1)h requiring a mortician's name on a resident's record. Middleton responded that this is an existing rule and committee agreed it is in order.

Charles noted that 57.30(3)e, which defines multi-purpose rooms, requires at least thirty square feet per bed and is not consistent with 58.35(3)e which uses a sliding scale for floor requirements. Middleton had no answer, but will check it out with their engineers.

It was suggested by Charles there may be a conflict between 57.16(3)c in re the confidentiality of a resident's records and 57.23(3)a which allows the activity co-ordinator to have access to all records excluding financial records. Middleton will request Cheryl Ramey, Assistant Attorney General, to determine if a conflict exists.

Monroe called attention to 57.28(5) which requires "All linen and personal clothing shall be free of wrinkles." He felt "reasonably" free of wrinkles would be more suitable.

Monroe pointed out that 57.30(6) prohibits portable units or space heaters from being used or stored in the facility, yet there are provisions on how you use them if you need them in an emergency. He suggested that they be required to be in "secure" storage in order to be available if needed. Middleton agreed to review this prohibition.

Motion
Ch. 57

Monroe moved to defer further consideration of Chapter 57 until a later time in this meeting as he was still unsure of the relationship between the two hearings. Motion carried unanimously.

RECESS

Chairman Priebe recessed the meeting at 12:05 p.m. to be reconvened at 1:15 p.m.

RECONVENED

Meeting was reconvened by the Chairman at 1:30 p.m.
Kelly out of the room.

HEALTH
(cont'd)

Committee briefly discussed the requirement in 58.3(1)d for a floor plan of each floor to be drawn on 8 1/2 x 11 inch paper. Middleton said they must be of a size to fit in their file. This is an existing rule and has caused no big problem in the past.

Monroe commented that he had several questions on Chapter 58 similar to those discussed with regard to Chapter 57 and rather than discuss them again he assumed the Department will correct them wherever they appear in Chapter 58, also. Middleton agreed to do so.

The Department agreed to Priebe's suggestion that the words "suitably framed and" be stricken from 58.4(1) which then shall require "The license shall be displayed in a conspicuous place in the facility which is viewed by the public."

Objection
58.11(1)i

Doderer moved that the Committee object to 58.11(1)i on the basis that the Department has exceeded its authority in placing age limits on the nursing service personnel. It is the Committee's position that the present rule violates Section 601A.6(1)a of the Code.

The objection can be cured by rewriting the provision to provide job qualifications other than age and, perhaps, a minimum performance level.

Motion carried with four ayes. (Kelly and Schroeder were out of the room and not voting.)

Objection
58.11(2)a

Doderer moved that the Committee object to the provision in 58.11(2)a on the basis that the Department has no authority to define the employees' workweek. This objection can be cured by striking the first sentence in 58.11(2)a or by using the workweek as the basis for computing the number of personnel working at a given time. In any case, there should be sufficient flexibility to accommodate an emergency.

Motion carried with four ayes. (Kelly and Schroeder were out of the room and not voting.)

1:50 p.m.

Kelly arrived.

2:00 p.m.

Monroe in chair.

In re 58.22(2)b, Charles noted that it was his recollection that a law was passed by the last session of the legislature requiring there be an Iowa licensing board for audiologists. Middleton will look into this to see if it is feasible to require that audiologists be licensed by the Iowa board as opposed to the American Speech and Hearing Association.

HEALTH
(cont'd)

Middleton explained briefly the proposed amendments that resulted from meetings held concerning the rules. Monroe took the position that these amendments should be published under Notice of Intended Action making them available to all concerned.

2:10 p.m.

Priebe returned to chair.

In re 58.24(3)b, Charles noted that in the last sentence there is reference to a "recent" edition of the Simplified Diet Manual and suggested it would be well to tie this to a date certain. Middleton agreed.

Objection
58.27(4)

Monroe moved to object to 58.27(4) on the same basis as the Committee objected to 57.24(4) earlier in this meeting. Motion carried unanimously.

Objection
Ch. 58

Monroe moved that the same objections voiced in the discussion of Chapters 56 and 57 be applied also to Chapter 58. Motion carried unanimously.

Objection
Ch. 59

Doderer moved to defer Chapter 59 temporarily and the same objections that were voiced in the previous chapters also apply to Chapter 59. Motion carried unanimously.

Lewis, appeared before the Committee with a prepared statement concerning emergency electric service, wherein he suggested that 61.17(6) might be reworded in order to better reflect the situation in generation and distribution today. In particular, it was his suggestion that 61.17(6)f(2) be reworded as follows:

"(2) Emergency heating of resident rooms will not be required if the facility is supplied by at least two utility service feeders, each supplied by separate sources from an integrated transmission distribution system capable of supplying required service and the health care facility feeders are so routed, connected and protected that a fault any place between the utility energy source and the facility will not cause an interruption of more than one of the service feeders."

Lewis also pointed out to the Committee the absence in the proposed rules of any items which would call for storage capacity (where stored fuel is required for emergency generator operation) sufficient for not less than 24 hours continuous operation of those emergency generators.

HEALTH
(cont'd)

Motion
61.17(6) f(2)

After some discussion of the above and the impact of mandating emergency electric service for all homes with more than 19 beds (changed from 50 beds), it was moved by Monroe that the Committee delay 61.17(6) f(2) for seventy days for further study. Motion carried.

Charles pointed out that 59.44(4) k which allows the receipt and sending of personal mail unopened unless medically contraindicated appears to be inconsistent with 59.21(3) b that says outgoing mail shall not be censored in any case unless the legal representative has authorization on file.

Doderer objected to the use of the words "legal representative" in 59.21(3) b and recommended "legal guardian" be substituted. Doderer moved to strike 59.21(3) b in its entirety. No action taken.

Chairman Priebe noted he had received letters from Exceptional Persons, Inc., Waterloo, and Oak View, Inc., copies of which were distributed to committee members.

Sen. Glenn
inquiry

Chairman Priebe informed the Committee he had received an inquiry from Senator Gene Glenn pertaining to information he had received "that the Iowa Law Enforcement Academy Council does not certify law enforcement officers who successfully complete a mandated recruit training program, unless the individual was a law enforcement officer at the time of taking the courses. Specifically, the Council rules require taking an advanced six-week course at Indian Hills Community College or a three-week advanced course in Des Moines subsequent to becoming appointed or hired as a law enforcement officer, even though the individual may have taken the same precise course previously to being so hired."

The Chairman requested the Secretary to respond to Senator Glenn that the Committee will determine whether this is a practice rather than a rule before it proceeds further.

ENVIRONMENTAL
QUALITY

David Bach, Hearing Officer, represented the Environmental Quality Department for review of the following rules:

Air Quality

Emission standards, open burning, 1.2, 4.1 to 4.4, Ch 7
Amended Notice, controlling pollution, 3.1(4)

8/9/76
8/23/76

Chemical Technology

Control of weeds, pests, Chs 37 and 38

8/9/76

ENVIRONMENTAL
QUALITY
(cont'd)

Chemical
Technology

Bach noted that the definitions in Chapter 38 are taken from the federal Insecticide, Fungicide, Rodenticide Act which the Department of Agriculture regulates. The definition of "weed" is their own in 37.1(3). Schroeder inquired whether the Department feels it is necessary to have such a broad definition of "weed." Bach responded the first part of the definition is taken from the federal act and "including noxious weeds as declared under authority of chapter 317 of the Code" was added because of the specific interest on the part of the Chemical Technology Commission that it be in coordination with the Department of Agriculture.

The Committee temporarily deferred further consideration of this rule to determine if the Department of Agriculture has defined the word "weed."

David Banowitz, an interested citizen, voiced his objection to 38.2(1), which defines insects, as being too broad a definition inasmuch as many insects are beneficial to the environment and should not be classified as "pests."

Bach responded that the purpose of the definition is to allow you to approve a particular formulation without having to have gone beforehand and declared that a particular insect was a pest in a certain case.

Monroe pointed out that in his opinion the Department had gone beyond its authority in declaring that "Any insect, rodent, nematode, fungus, weed" is a pest without establishing that they are "injurious" as required under 455B.102(1) of the Code.

Inasmuch as this is a notice rule and the public hearing is scheduled for tomorrow, the Committee decided to object formally only if the proposed rule is not brought into conformity with the Code of Iowa following the hearing.

3:15 p.m.

Doderer excused.

Air Quality

Discussion of 4.4(6) concerning ferrous foundries.

Objection
4.4(6)

*Not discussed
at 10/12
meeting.*

Kelly moved to object to 4.4(6) as being arbitrary and capricious and, also, (1) it singles out one particular industry without any justification and (2) it is twice as strict as any comparable federal standard. The objection could be cured by raising the discharge rate to .10 grains per dry cubic foot of exhaust gas. Motion carried.

Bach stated that the rules relating to open burning [1.2(59), 4.2(4) and 9.3(3)c(2)] would propose a ban on open burning in Des Moines, Cedar Rapids and Council Bluffs as those cities are grossly over the ambient air quality standards.

Air Quality
(Cont'd)

Bach pointed out that amendments to 4.1(2) adopt by reference various recent amendments to federal new source performance standards, and the amendment to 4.2(3) lifts, for the most part, the present prohibition on open burning of pesticide bags. The amendments to 4.3(2)b are intended to establish a definite limitation on particulates from power plants. Chapter 7 has been rewritten and it establishes state requirements for continuous emissions monitoring for certain new and existing sources. The amendment to 7.1(3) adopts by reference a "Compliance Sampling Manual" (developed by the Department) and the federal compliance sampling procedures for sources subject to NSPS.

The Committee made no recommendations concerning the above-mentioned rules.

Water
Quality

Ubbo Agena of the Water Quality Commission was present together with David Bach for review of the proposed rule changes. Also, present were Bill Kovacs, attorney, and Harold Anderson, Iowa Farm Bureau.

3:40 p.m.

Doderer returned.

In re 23.2, which was delayed previously, Bach explained that it changes the time for submission of requests for certification of pollution control property by eliminating the cutoff date beyond which an application would not be considered for a particular calendar year.

The matter of feedlots, Chapter 20, was before the Committee for its review as requested by Chairman Priebe who was not present for the August meeting when the rules were presented and delayed.

Question was raised by Priebe as to whether these rules are more or less restrictive than the federal. Bach responded the standard for control is basically the same as the federal but they have imposed it on some sources that are not subject to regulation under the federal rules; also, the permit requirements differ.

Priebe commented that he felt the Department had consistently, with the exception of the sulfur dioxide emission rules, "made it tougher on the number one industry in Iowa." Bach responded they have tried to come up with reasonable regulations to achieve the ambient standards and stream quality standards and to use the federal regulations as a guide, taking them where they must and where they have room to operate they do what they think is more appropriate to pollution control in Iowa.

Discussion concerning Schroeder's recommendations to the Commission concerning the feedlot rules, one suggestion being to change the feedlot capacity for beef cattle from 100 to 300. The Commission directed its staff to report to the next Commission meeting September 30.

Water
Quality
(Cont'd)

Kovacs addressed the Committee on behalf of the cattlemen's and pork producers' associations and expressed concern for the fact that the proposed DEQ regulations treat open feedlots differently from confinement facilities and are more restrictive than the federal regulations.

Anderson was specifically concerned about the use of guidelines for land disposal of animal wastes as they will become a part of the regulations, if adopted.

Bach defended the Department's position on adoption of the guidelines.

Chapter 20
to GA for
study

Doderer moved that the Committee refer Chapter 20 to the speaker of the House and the president of the Senate for referral to the appropriate standing committees of the general assembly for further review in accordance with 17A.8(7) of the Code. Motion carried with four ayes. (Kelly and Monroe out of the room and not voting.)

Priebe requested an economic impact statement. There was brief discussion as to whether the amendment to Senate File 1288 (economic impact provisions) would be applicable to these rules.

Objection
20.3(1)c
20.3(2)a
20.3(3)
20.3(4)
20.3(5)a

Schroeder moved the Committee object to 20.3(1)c, 20.3(2)a, 20.3(3), 20.3(4) and 20.3(5)a on the basis that the Department has acted arbitrarily and unreasonably in establishing these standards which are more stringent than the comparable federal standards without sufficient justification.

There was brief discussion of 20.3(6) concerning voluntary operation-permit applications.

On the Schroeder motion to object, the vote was four ayes. Motion carried. Monroe voting no. Doderer out of room and not voting.

Objection
Guidelines

Schroeder moved that the Committee object to the guideline relating to waste disposal near watercourses on the basis that the Department has acted arbitrarily in failing to offer sufficient definition for the listed watercourses. It is the Committee's position that the term "sinkhole" does not have a commonly understood meaning that would allow a person to determine its boundaries. In addition, the Committee feels that this section should offer some guidance to the application of wastes on areas adjacent to streams that are dry for part of each year.

Bach commented that formal objection could result in the EPA denying the Department delegation of authority over new feedlots.

Motion

Schroeder moved that the vote on the above motion be delayed until the October meeting. Discussion followed.

Substitute
Motion

Schroeder moved a substitute motion that the filing and publication of the seven objections be delayed until further review by the Committee at the October 12th meeting. Substitute motion carried.

5:10 p.m. Priebe and Doderer excused.

Monroe in chair.

CONSERVATION Conservation subrules relating to private docks off from public property (33.1(7), 33.1(8)) published under notice 9/8/76 were acceptable to the committee.

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

Appeals and hearings, Ch 7	8/23/76
Penitentiary, visiting, 17.2	8/23/76
Penitentiary, visiting, 17.2, Emergency	8/23/76
Community-based corrections, 25.1, 25.2	8/23/76
Parole and probation, 26.4, 26.11	8/23/76
Mental health treatment, 29.1	8/23/76
State hospital schools, 30.1	8/23/76
Aid to dependent children, amendments, Ch 40	8/23/76
Granting assistance, Ch 41	8/23/76
Aid to dependent children, age requirement, 41.15, Emergency	8/23/76
Alternate payees, Ch 43	8/23/76
Aid to dependent children foster care, Ch 44	8/23/76
State supplementary assistance, 52.1	8/23/76
State supplementary assistance, 52.1, Emergency	8/23/76
Work and training programs, 55.2	8/23/76
Foster family homes, amendments, Ch 106	8/23/76
Family-life homes, Ch 111	8/23/76
Resources, general provisions, 130.5	8/23/76
Social security Act implemented, 131.2	8/23/76
Payments for foster care, 137.6, Emergency	8/23/76
Payments for foster care, amendments, Ch 137	8/23/76
Family planning services, 140.1, 140.4	8/23/76
Aid to dependent children, income exempt, 41.2(1), Filed without notice	8/23/76
Drug utilization and control, 107.6	8/23/76
Child care centers, Ch 109	8/23/76
Family day care homes, Ch 110	8/9/76
Iowa Veterans Home, Ch 134	8/9/76

Representing the Department were: Harold Templeman, Income Maintenance, Bernita Jacobson, Adult Service Specialist, George Cossen, Hearing Officer, Harold Poore, Day Care Specialist, Judy Welp, Procedures Administrator, and Gene Fitzsimmons.

Schroeder raised question as to what would be "prompt response" in 7.7(1) and suggested that possibly it should show a specific number of days. Welp pointed to 7.15(6) relating to time limit.

Doyle recommended that 7.13(5) be amended by inserting at the end the words "or deputy county attorney."

In re 7.14 medical examination, Monroe took the position that the provision was too broad with respect to selection of a physician.

Amendments to 17.2 were acceptable as filed.

Monroe pointed out a typographical error in Item I. Subrule 25.1(1) should be 25.1(2).

SOCIAL
SERVICES
(cont'd)

Amendments to Chapters 26, 29, 30 and 40 were acceptable as submitted. It was noted that Chapter 41 had been rewritten. Monroe pointed out an oversight in line 3 of 40.5 where "county" should have been changed to "local office."

With respect to the schedule of living costs in 41.8(2), Monroe took the position they were unrealistic and should be updated.

With respect to vendor payments in 43.3(e), Monroe thought the provisions were unclear.

Chapters 44 and 106 and rules 52.1 and 55.2 were acceptable to the committee.

Charles recommended clarification in 111.3(1) by inserting the word "eligible" before the word "adults."

No further recommendations were made by the Committee in re 130.5, 131.2, 137.6, Ch. 137, 140.1, 140.4, 41.2(1), 107.6, Ch. 109, Ch. 110 and Ch. 134.

RECESS

Meeting was recessed at 6:05 p.m. to be reconvened at 8:15 a.m. Tuesday, September 21, 1976, Room 24.

RECESSED MEETING--CONTINUED

RECONVENED Meeting was reconvened by Vice Chairman Monroe, Tuesday, September 21, 1976, 8:30 a.m. in Committee Room 24. Chairman Priebe was absent due to an illness in his family. Kelly not present at roll call.

PLANNING & PROGRAMMING Dolores Abels was present for review of the following proposed rule changes:

Developmental disabilities program, 10.2	8/9/76
Governor's highway safety program, 12.2, 12.3	9/8/76

The Committee made no recommendations.
Mrs. Abels also requested the Committee to authorize the Code Editor to correct 12.2(2) by substituting the word "pupil" for the word "public" in line 1. Committee so ordered.

AGRICULTURE Betty Duncan, Attorney, Agriculture Department, was present to answer questions concerning the following:

Livestock movement, S-branding of exposed cattle, 18.4(10), Emergency	9/8/76
Weight standards, federal regulations, 55.33, 55.43	9/8/76
Referendum, 2.3(12), Filed without notice	8/9/76
Meat and poultry, handbook adopted, 43.14, Filed without notice	9/8/76

The Committee made no recommendations.

CAMPAIGN FINANCE DISCLOSURE Richard Connally, Director, appeared before the Committee to explain the following:

Report contributions, utility franchise election, Ch 4	8/23/76
Reporting requirements, 4.10 rescinded, Emergency	8/9/76
Party report forms, 2.12	8/9/76

8:50 a.m. Kelly arrived.

The Committee discussed the above-mentioned items and Connally reported the Commission will be doing some additional work on the section dealing with utility franchises in Senate File 1346 to try and determine the exact intent and purposes of that section. Monroe requested that at the time the rule dealing with utility franchises is filed that copies of it be furnished to the Committee members for their information.

Committee made no further recommendations.

PUBLIC INSTRUCTION Filed rules of Public Instruction relating to Standards for teacher education programs, Chapter 19, published in IAC Supplement 9/8/76, were acceptable to the Committee.

9:10 a.m. Schroeder in chair.

COMPTROLLER No recommendations were made concerning proposed amendments to Chapter 4, Deferred compensation program, published in IAC Supplement 8/9/76.

9:15 a.m. The meeting was temporarily recessed.

9:55 a.m. Vice chairman Monroe reconvened the meeting.

REGENTS BOARD Donald Volm, Merit Co-ordinator, Board of Regents, and Dwight Wulf, were present to explain the following proposed amendments.

Salary plan, increase, 3.39, Emergency
 Parking violations, 4.29, Filed without notice
 (Filed to overcome objection, see 6/28/76 Supp.)

8/9/76

8/9/76

No objections were voiced.

REVENUE Emergency filed rule, 7.8 Protest, invasion of privacy, published in IAC Supplement 8/9/76, was acceptable to the Committee as filed.

ARCHITECTURAL Lois Kalleen, Executive Secretary, Architectural Examiners, briefly explained Chapters 1 and 2. The Committee recommended that dates be inserted where publications were referred to in 2.2 and 2.3. Kalleen agreed to comply with the recommendation.

EXAMINERS
 Notice 9/8/76

REAL ESTATE John Adams, Assistant Attorney General, represented the Real Estate Commission and explained Chapter 3, Rules and Regulations, Real Estate Education, which is necessary to implement a new section in the Code.

The Committee reviewed 3.3(1) and suggested that the Commission consider changing the qualification from "the absence of any conviction for violations of chapter 687" to a restricted list of felonies.

Schroeder suggested that in 3.8(1) it seemed to him "c" and "a" should be transposed.

Commission will review 3.8(2)b to eliminate the necessity of an instructor's paying for more than one license when he is teaching the same course in a branch of the same school.

INDUSTRIAL Alan Gardner, Deputy Industrial Commissioner, was present for review of filed rule 2.3, published in the IAC Supplement dated 8/23/76, which rule was acceptable to the Committee.

COMMISSIONER

INSURANCE Jamie Wade and Craig Goettsch, both attorneys with the Insurance Department, were present for review of Chapter 50 and indicated grammatical changes had been made in 50.9(1) for clarification as suggested by Senator Kelly.

Schroeder suggested that 50.42 should refer to a date certain, although this rule was not officially before the Committee at this time.

EDUCATIONAL Chrystal Peavy represented the Department for review of rules appearing in Chapters 1, 3 to 10 and filed rule 9.3, 8/9/76 IAC Supplement.

RADIO & TV

EDUCATIONAL
RADIO & TV
(cont'd)

Doderer recommended that the Department make their rules with respect to overtime consistent with Merit Department rules when they are revised at a later date.

CRIME
COMMISSION

It was noted that the Crime Commission had cured the Committee's objection with respect to 2.2(3), and there was no further discussion.

NURSING
BOARD

Filed rules of the Nursing Board which were published in the 8/9/76 IAC Supplement were acceptable to the Committee.

Minutes

Schroeder moved to dispense with reading of the minutes of the July 13 and August 10 meetings and they stand approved. Motion carried.

COMMERCE

Michael May and Daniel Fay represented the Commerce Commission for review of a rule published under notice regarding electric power generating facilities and a filed rule regarding electric supply and communication lines, chapter 11, published in IAC Supplement 8/23/76.

Monroe noted the absence in the guidelines of any mention of "waste disposal" and was told it was not an intentional omission.

In response to question by Kelly and Monroe, department officials indicated rules will be drafted and published under notice in the IAC to allow additional input by persons concerned.

ENVIRONMENTAL
QUALITY
(cont'd)

No recommendations were made regarding 50.4(1), filed without notice 8/23/76, concerning location of principal offices.

HEALTH
(cont'd)

As Charles analyzed the rules, it was his opinion there are three things they do: (1) Chapter 56 sets forth classifications and violations, (2) class of violations was added behind each rule (e.g., I, II, or III), and (3) substantive changes were made in the remaining chapters. In his opinion, Senate File 525 clearly provides that any substantive changes be made in separate proceedings, and 17A speaks to rule-making proceedings being the adoption and filing of rules. He concluded that the Department had failed to follow the statute.

Charles stated the Health Department could cure any objection that was filed, but it would be at a substantial cost. He thinks the statute contemplated the adoption of Chapter 56 initially with the substantive changes to be adopted later. Section 23 of Senate File 525 directs the Department specifically to adopt rules and classify each rule in accordance with said section. He thought that's probably what they should have done -- make Chapter 56, go through and insert behind each rule I, II, or III, and then they should have in separate proceedings under separate notice initiated a change in 57.5 to include ~~in~~ a staffing ratio. This is what he assumed the statute contemplated. He suggested a possible solution would be to refile the rules under emergency provisions of Chapter 17A.

HEALTH
(Cont'd)

There was considerable discussion as to procedure for the Committee to follow in objecting to the rules.

Motion
chs. 56-59,
61

Schroeder moved the Committee delay for seventy days [until December 6, 1976] the Health Care Facilities rules for further study. Motion carried.

Motion
Committee
Rules

Doyle moved to amend the Committee Rules of Procedure [published in IAC General Information] by adding a new rule as follows:

"14. The committee may at any time review objections filed under 17A.4(4)a or deferred effective dates filed under 17A.5. At that time the committee may modify, rescind or reconsider its earlier action. The appropriate agency will be notified of any changes made by the committee and those changes will be published in the Iowa Administrative Code in addition to being filed with the Secretary of State."

Vote on motion temporarily deferred.

TRANSPORTATION Schroeder moved to request the Department of Transportation
Motion to appear before the Committee at their November 9th meeting
820-07,D for the purpose of selectively reviewing rules of the
Department, being 820-07,D, ch. 10. Motion carried with
5 ayes.

RECESS

Vice-chairman Monroe recessed the meeting at 11:55 a.m. to be reconvened at 1:15 p.m.

RECONVENED

Meeting was reconvened by the Vice-chairman at 1:15 p.m.

MERIT
EMPLOYMENT

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

Overtime, rescinds 4.6, Emergency	9/8/76
Retaking examinations, 5.8(2)f	9/8/76
Intermittent appointment, 8.5	8/9/76
Appeal from discrimination, 12.6	8/9/76
Vacation and leave, 14.2f	8/9/76
Sick leave, 14.3(1)	8/9/76
Judicial review, 15.4	8/9/76
Retaking examinations, 5.8(2)f, Filed without notice	8/9/76
Vacation leave, 14.2	8/9/76

The proposed and filed rules set out above were acceptable to the Committee with the exception of 4.6. being rescinded.

Doderer asked if the Commission would clarify the statement of public hearing in 4.1(2) and differentiate between informational meetings and public hearings. Keating will discuss with Commission.

Ray Conley, attorney, American Federation of State, County and Municipal Employees, stated that the rescission of 4.6 is not necessary and without supportive law, the reason being their reading of 19A.9(2). Also, he feels Iowa should conform to minimum federal standards, that is a 40-hour week base with overtime.

MERIT
EMPLOYMENT
(cont'd)

Doderer requested the Merit Commission to promulgate a rule defining a normal workweek and which employees it covers as the definition of a normal workweek was rescinded in 4.6.

Motion
4.6

Schroeder moved that this Committee forward a recommendation to the appropriate standing committees, Appropriations and State Government, that they address themselves to the issue in 4.6 and, if need be, hold a public hearing with respect to the subject matter.

Subs.
Motion 4.6
Rule to GA

Kelly moved a substitute motion that this subject matter of rescission of 4.6 be referred to the presiding officer for referral to the appropriate standing committees. Motion carried.

It was Doderer's personal opinion that it was the intent of the Appropriations Committee on which she served that the money they were appropriating for state departments should follow the rules of the Fair Labor Standards Act (i.e. time and a half additional compensation over 40 hours in a seven day period).

PAROLE BOARD

Jack Bedell, board member, and Donald Olson, Executive Secretary of the Board of Parole, appeared for review of Chapters 1 to 9, published in IAC Supplement 8/9/76.

Bedell indicated the rules have been modified extensively to reflect suggestions made at the public hearing.

Doyle recommended that 7.7(5) be expanded upon -- kind of evidence used in the revocation of parole.

BLIND,
COMM. FOR

Kenneth Jernigan, Director, Mrs. Bonnell, Board Member, Mrs. Anderson, Deputy Director, and Mr. Taylor, Assistant Director, were present for review of Chapters 1 and 2, published under notice 8/9/76.

Schroeder recommended with respect to 1.4, it might be beneficial to the public to set a specific day for the first meeting of the year and the balance of the meetings to be subject to the call of the Commission.

Jernigan commented he sees no problem in doing this.

3:00 p.m.

Doyle in chair.

After some discussion concerning Chapter 4, Vending Facilities, the Commission agreed to clarify 4.1(5) in regard to the care and cost of equipment; by adding the following sentence: "In any case, the cost to the operator would be the market value of stock and fair market value of goods and equipment in the business at the time."

Jernigan was agreeable to the suggestion by Doyle that 4.1(3)c include the designation of the Washington, D.C. office of the Secretary of HEW to distinguish it from a regional office.

BLIND
COMM. FOR
(cont'd)

Doderer recommended that 4.1(2) be amended to further delineate reasons for removal of a vendor.

3:15 p.m.

Monroe returned to chair.

TRANSPORTA-
TION DEPT.

The following Department of Transportation rules were before the Committee:

Procurement of architectural and engineering services, [01,B]2.8(2), Emergency	8/9/76
Motocyclists' safety equipment, [07,E] Ch 6, Emergency	8/23/76
Catwalks and handrails, amendments, [10,E] Ch 9, Emergency	8/9/76
Aeronautics registrations, Chs 1, 2	8/23/76

Dorothy Habenschuss, Management Review, represented the Department regarding the first three items listed above, which were acceptable to the Committee.

Aeronautics William Armstrong, Program Administrator, Aeronautics Division, pointed out Chapters 1 and 2 set out above have been rewritten containing committee recommendations. No further suggestions were made.

Trans. Reg. Board Sherri Alston, Board Member, introduced to the Committee Richard Howe, Board Member, Gary Ankeny, Assistant Counsel, and Robert Stiener, General Counsel.

As requested by the agency, there was brief review of the rules of the Transportation Regulation Board, published under notice in IAC Supplement 6/14/76.

Committee made no recommendations.

Motion Committee Rules Kelly restated Doyle's previous motion to amend the Committee Rules of Procedure by adding a new rule which was deferred earlier in the day. Motion carried unanimously.

Monroe noted that several agencies as defined by 17.A(2) have not filed organizing rules.

Motion Schroeder moved that the Chairman prepare a letter reminding all agencies who have not submitted rules under Chapter 17A of the Code to comply with the law. Motion carried unanimously.

Senator W. R. Hansen appeared and made a brief statement concerning the health care facilities rules.

Committee Staffing Discussion of interviews concerning the hiring of staff for this committee. Committee decided they would review resumes for the position of Administrative Coordinator at the afternoon session of the October 12 meeting. Time would be allotted to permit possible interviews with applicants.

Vice Chairman Monroe adjourned the meeting at 5:30 p.m.
Next regular meeting to be held Tuesday, October 12, 1976.

Respectfully submitted,

Phyllis Barry, Secretary
Assistant of Governor Bennett

Approved _____ 1976