

**MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Time of meeting: The regular meeting of the Administrative Rules Review Committee (ARRC) was held on Tuesday and Wednesday, December 13 and 14, 1994, in Room 22, State Capitol, Des Moines, Iowa.
- Members present: Representative Janet Metcalf, Co-chair; Senators H. Kay Hedge, John P. Kibbie, William Palmer and Sheldon Rittmer; Representatives Horace Daggett, Roger Halvorson, Minnette Doderer and David Schrader. Senator Berl Priebe was excused for both days and Representative David Schrader was excused for Wednesday.
- Also present: Joseph A. Royce, Legal Counsel; Phyllis Barry, Administrative Code Editor; Kimberly McKnight, Administrative Assistant; Caucus staff and other interested persons.
- Convened: Representative Metcalf convened the meeting at 10 a.m. Mary Ann Walker, Daniel Hart, Mike Murphy, Lucinda Wonderlich, Amy Canfield, Kathy Ellithorpe, Denise Middleswart, Doris Taylor, P.C. Keen, Maya Krogman, Ellen Hansen, Charlene Hansen and Jane Jorgenson were present for the following:

DHS

- HUMAN SERVICES DEPARTMENT[441]
- Support enforcement services — administrative seek employment orders, debtor offset, 7.1. 98.71 to 98.76, 98.81. Filed ARC 5199A 11/9/94
- Public records and fair information practices — centralized employee registry database, 9.12(2)"c." Notice ARC 5252A 11/23/94
- Mental health and developmental disabilities commission — waiver, ch 23 preamble, 23.1, 23.3(2)"a"(6), 23.4(1)"a," 23.4(3), Notice ARC 5253A 11/23/94
- X-PERT system — determination of eligibility for FIP, food stamps, Medicaid, 40.1, 40.2, 40.2(4), 40.3, 40.4(1), 40.4(2), 40.4(4), 40.6, 40.7(1), 40.7(4)"e," 40.7(5)"a," 40.10, 40.21, 40.22, 40.22(4), 40.23, 40.24(1), 40.24(2), 40.24(4), 40.26, 40.27(1), 40.27(4)"e," 40.27(5)"a," 40.29, 41.2(7), 41.8(1)"b"(4), 41.22(7), 41.27(7)"af," 41.28(1)"b"(4), 50.1, 50.2(3), 50.4(3), 50.4(4), 65.1, 65.2, 65.19(8), 65.20(1), 65.44, 65.101, 65.102, 65.119(8), 65.120(1), 65.143, 75.1(20)"b," 75.14(4), 75.25, 76.1, 76.1(3), 76.1(5), 76.2(1), 76.5(2)"c," 76.7, 76.13, 83.2(1)"e," 83.2(1)"e"(1), 83.3(1), 83.11, 83.23(1), 83.31, 83.43(1), 83.50, 83.62(1), 83.71, 86.1, 86.2, 86.2(4), 86.2(5), 86.3(2), 86.3(3), 86.3(5), 86.6(4), 86.7, 86.17, 86.19, Notice ARC 5242A 11/23/94
- Food stamp policy — terminated income of FIP participant, welfare reform, 41.7(7)"ae," 41.27(7)"ah," 65.29(10), 65.44, 65.129(9), 65.129(13), 65.143, Notice ARC 5251A 11/23/94
- State supplementary assistance residential care facility reimbursement rates, 52.1(3), Notice ARC 5200A, also Filed Emergency ARC 5201A 11/9/94
- Food stamp program, 65.1, 65.28(11)"b," 65.29(7), 65.29(8), 65.30(2), 65.30(4), 65.30(5), 65.33, 65.43, 65.101, 65.128(11)"b," 65.129(10), 65.129(11), 65.130(2), 65.130(6), 65.130(7), 65.133, 65.142, Filed ARC 5202A, See text IAB 8-31-94 11/9/94
- Food stamp policy — scheduling of interviews, verification, repayment agreements, 65.2(1), 65.2(2), 65.21(4), 65.102(1), 65.102(2), 65.121(4), Notice ARC 5241A 11/23/94
- Food stamp eligibility — exclusion of HUD and FmHA utility reimbursements from income, 65.8(6), 65.29(9), 65.108(6), 65.129(12), Filed Emergency ARC 5203A 11/9/94
- Medicaid eligibility for pregnant women, 75.14(6), Notice ARC 5219A 11/9/94
- FIP-related Medicaid eligibility, 75.19(1)"e," Filed ARC 5204A 11/9/94
- Medically needy certification periods, medical expenses used to meet spenddown, estate recovery of medical expenses, 76.5(1)"a"(1), 76.12(1), 76.12(7), 86.1, 86.5(2)"a," 86.14(1), Filed ARC 5205A 11/9/94

DHS (Cont.)

III and handicapped waiver, AIDS/HIV waiver, HCBS/MR waiver, terminate HCBS/MR/OBRA waiver, 77.30, 77.30(1), 77.30(2), 77.30(5)"f," 77.34(1)"a" to "c," 77.34(2), 77.34(3), 77.34(5), 77.37, 77.37(21), 77.37(21)"b"(15), 77.37(21)"d"(1), 77.37(22), 77.37(22)"f"(2), 77.37(23)"a," 77.37(25)"d," 77.37(26)"d," 77.37(29), 77.37(31)"a"(2), 77.37(32), 78.34, 78.34(1), 78.34(1)"b," 78.34(5)"c," 78.38(3), 78.38(3)"b," 78.38(5)"c," 78.41, 78.41(1)"a"(1) and (2), 78.41(1)"c," "n" and "o," 78.41(2)"i" and "j," 78.41(3)"b," 78.41(4)"a," 78.41(5), 78.41(6), 78.41(6)"a," 78.41(7)"f" and "l," 79.1(2), 79.1(15), ch 83 division I title, 83.1, 83.2, 83.2(1)"d," "e" and "g," 83.2(2)"b," 83.3(2), 83.3(3)"a" and "c," 83.4 to 83.7, 83.8(2)"b" and "d," 83.10, 83.43(2), 83.47, ch 83 division IV title, 83.61, 83.61(1)"c"(1) and "g"(2), 83.61(2)"b," 83.62(2), 83.62(3)"a," "d," and "f," 83.64 to 83.67, 83.67(3), 83.68(1)"e," 83.68(3)"c," 83.70. Notice ARC 5221A 11/9/94

Sex reassignment surgery and surgical treatment of body dysmorphic disorder excluded from Medicaid coverage. 78.1(4), 78.1(4)"b"(2) and (4), 78.1(4)"d"(15), Notice ARC 5220A 11/9/94

Cash bonus program. rescind ch 92, Filed ARC 5211A 11/9/94

Family development and self-sufficiency program. 165.1, 165.2, 165.2(1), 165.2(1)"d," "f," "h" and "i," 165.2(2)"c," 165.2(3), 165.2(3)"a," "c," "d," "f," and "h," 165.3(1), 165.3(2), 165.3(4), 165.4(1), 165.4(2), 165.4(4), 165.4(4)"c" and "d," 165.4(5), 165.5(1), 165.8(1)"e," 165.8(2), 165.10(4), Notice ARC 5222A 11/9/94

7.1 et al.

Walker stated that the Department received four letters regarding individual situations which were not relevant to 7.1 and new rules in Chapter 98.

9.12(2)"c"

Daggett asked if other states had centralized recording similar to Iowa. Taylor replied some states had a centralized employee registry and most states were moving toward that system. In response to Kibbie, Taylor indicated that nothing would be done differently except the Department would share the information with other agencies.

Ch 23

Daggett inquired if amendments to Chapter 23 would place additional burden on counties. Walker responded that the Commission had always granted a waiver for five counties—only the conditions under which a waiver would be granted were changed to comply with legislative intent. These counties were contacted and none could foresee problems.

40.1 et al.

With respect to the X-PERT system in amendments to 40.1 et al., Walker explained that the method of application would change but not policy on eligibility. Applicants would be required to respond to a set of questions unique for each individual. The applicant must sign a statement that answers were true.

Kibbie had heard complaint about client to worker ratio. Ellen Hansen, project manager for the X-PERT system development did not anticipate any change in the number of workers but would monitor the process. Hansen estimated that over 200 clients were being served but figures on clients per worker were not available today.

Schrader and Krogman discussed benefits being jeopardized if a recipient failed to attend an interview. Krogman indicated the policy had not changed—cancellation would be a last resort situation after every attempt had been made to work with the client to obtain necessary information.

Rittmer wondered if workload and errors would be ultimately reduced. Walker replied that larger counties have heavy turnover and the rules should enable a worker to be of more help more quickly than previously.

41.7(7)"ae" et al.

In review of 41.7 et al., Daggett inquired whether honoraria and incentive payments were separate. Krogman stated that clients would be surveyed and reimbursed a minimal amount. This was a way of paying clients without deducting it from their assistance grant. Jorgenson was not sure which counties were involved but this was being done by contracted evaluators and Department staff would assist only in the selection process. This project would continue for five years.

- DHS (Cont.) Kibbie requested an example of an evaluator—would it be a private service? Jorgenson thought there was a contract with two groups—one being through the University of Iowa.
- Rittmer recalled this was another federal mandate. He suspected that more staff time would be needed but there probably would not be more money.
- 52.1(3) No questions on 52.1(3).
- 65.1 et al. Walker stated that no comments were received on Chapter 65. No Committee action.
- 65.2(1) et al. No questions on 65.2(1) et al.
- 65.8(6) et al. In review of ARC 5203A, Walker stated that federal funds would be used. No Committee action.
- 75.14(6) No questions on 75.14(6).
- 75.19(1)"e" Walker stated that no comments were received on new paragraph 75.19(1)"e."
- 76.5(1)"a" et al. No Committee action.
- 77.30 et al. No questions on 77.30 et al.
- 78.1(4) et al. Metcalf asked if a court challenge were anticipated on proposed revisions in 78.1 which would exclude sex reassignment surgery from Medicaid benefits. Hart responded in the affirmative and added some states do cover this surgery and another state had been challenged for excluding the surgery but it was upheld. Doderer opined that it would be worse to spend more defending the exclusion than to pay for the surgery. Other medical services would not be affected. No Committee action.
- Ch 92 Walker stated that no comments were received on the rescission of Chapter 92. No Committee action.
- 165.1 et al. No questions on 165.1 et al.
- REAL ESTATE** K. Marie Thayer, Roger Hansen and Susan Griffel, Professional Licensing, and Marie Callas and Mary Paulsen from the Iowa Association of Realtors were present for the following:
- REAL ESTATE COMMISSION[193e]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Prelicense education and continuing education, 3.2(3), 3.3(2), Notice ARC 5269A 11/23/94
Requirements for mandatory errors and omissions insurance, 6.1(5), 6.1(6), 6.2(4), 6.2(6), 6.2(7),
Notice ARC 5273A 11/23/94
- 3.2(3) and 3.3(2) No questions on 3.2(3) and 3.3(2).
- 6.1(5) et al. No Committee action.

**ATTORNEY
GENERAL**

Marti Anderson, Virginia Beane and Robin Humphrey were present from the Department for the following:

ATTORNEY GENERAL[61]
Victim services grant program. 9.50 to 9.79, Notice ARC 5270A 11/23/94

Ch 9

Anderson explained revised rules 90.50 to 90.65. Metcalf questioned use of "timely manner" for review of requests for reconsideration by the Board—9.59(1). She preferred inclusion of a specific number of days. Metcalf also asked the Department to include a statement in 9.55 to exclude capital expense. Anderson replied that some federal funds could be used for capital expense. She clarified that state and federal funds were insufficient for the Department to grant money for capital expenses—only personnel costs were covered. However, the Department allowed some of the shelters to purchase security systems when extra funds were available.

Anderson stated that \$1.4 million in state money, \$789,000 VOCA money and \$190,000 for family violence prevention from federal funds were available this year.

Daggett asked about the victim compensation fund and Anderson replied that this was a separate program where the Department pays the out-of-pocket expenses of crime victims. The program in these rules funds the agencies that help people through the court system and provides counseling.

Anderson advised Rittmer that 29 agencies received domestic violence funds and 25 agencies receive rape crisis funds.

ECONOMIC DEV. Thom Guzman and Leo Hough were present from the Department for the following:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
Iowa main street program. ch 39. rescind ch 42. Notice ARC 5229A 11/9/94

Ch 39 and 42

Guzman stated that these rules would reflect that only the length of time the grant was given—not grant amounts. A higher degree of match from the beginning would be required. Guzman said there was an appropriation of \$375,000 and 28 communities were active currently but the Department had worked with 36 communities. Communities under 10,000 expressed the most interest. Guzman informed Rittmer that there were 12 active selected towns under 5,000 and approximately 4 of them have full-time managers and the rest have part-time.

CORRECTIONS

Fred Scaletta from the Department, Robin Humphrey, Attorney General's Office, Steve Exley, Citizens' Aide/Ombudsman, and Phil Mears, Attorney for Inmates, were present for the following:

CORRECTIONS DEPARTMENT[201]
Restitution, 20.11, Filed ARC 5230A 11/9/94

20.11

Scaletta offered background on rule 20.11. As recommended by the ARRC, the Department had conducted a price survey on prison canteen items and prices outside of the prisons. He compared a Snickers bar, a can of pop, a pack of cigarettes and a pair of tennis shoes and found that with the exception of the tennis shoes, prices were actually lower in the institutions. The tennis shoes must be purchased from catalogs which would explain the higher price.

CORRECTIONS
(Cont.)

Palmer raised the issue of restitution from gifts from family members. He felt that many family members could not contribute to restitution but wanted to provide for the inmate. Scaletta stated that family members were limited in what they could bring to the prison and restitution was taken from gifts of money. Humphrey added that the rule was intended to compensate the victims. He stressed that inmates were provided with all essentials and anything extra was a luxury and should be used for restitution.

Palmer opined that this policy would not lend itself to rehabilitation. Humphrey reiterated that the purpose of this rule was not intended for rehabilitation but was compensation to victims. Scaletta considered repayment of "debt to society" as rehabilitating. Up until this point, restitution was limited to allowances paid for work performed. Essentially, taxpayers were paying the debts of the inmates for the criminal activity to the victims, court costs, and attorney fees. Humphrey concluded that inmates still received 80 percent of money gifts.

Mears viewed this as a 20 percent tax on money sent to inmates and he discussed federal court injunctions and litigation on the question of authority for the Department to enforce the rule. He contended there was no authority to deduct 20 percent from gifts and he urged delay of the rule. Mears added that victims were a "popular topic" but a substantial portion of restitution goes to the state in the form of payment for court costs and attorney fees rather than for compensating victims.

Exley distributed a memo from the Ombudsman wherein he pointed out Code sections that refer to authority of the Department to deduct from inmate allowances for restitution. However, the Ombudsman contended there was no authority for other deductions and families were being made unfairly responsible for the inmate. Exley suggested delay of the rule until the decision of the court.

Philosophically, Rittmer had no problem with the restitution rule, but was concerned with the legal aspect.

Humphrey explained that legislation adopted in July 1992 stated that restitution was a judgment and a lien against all assets of the inmate and this issue had not been addressed. It was under this section that the Department felt it had authority to implement this rule.

Royce advised that the issue to be decided today was disposition of the rule—should it go into effect or be postponed for 70 days or into session. If the rule were allowed to go into effect, the money would be collected until a court issued an injunction to prevent it. If the rule was struck down, the Department would have to reimburse the inmates.

Schrader asked about current collection and Scaletta clarified that in June 1994 all collection of money from outside sources was suspended. Doderer requested clarification of "allowance" and Scaletta described it as payment to inmates for the work they were assigned to do. She was supportive of the Department's position. Scaletta stated that a judgment and lien against property would include all property up to and including 100 percent of all money gifts.

In response to Kibbie, Scaletta replied that a law passed this past year stated that the victim had priority over court costs. The amount the victim was to receive was already decided by the court and this amount would be paid before the court system reimbursement. Kibbie reasoned that this refuted the claim that the courts would be paid first. Mears stated that what he referred to was the fact that many inmates do not have a victim they are responsible for paying off. These inmates'

CORRECTIONS
(Cont.)

restitution plans refer to court costs and attorney fees because either there was no victim or the victim was compensated by insurance.

Scaletta felt confident the courts would rule in the Department's favor. He wanted the rule to become effective based on the agreement not to implement 20.11(7) until the court ruled. There was discussion of possible 70-day delay of the entire rule or a segment thereof. Hedge stated that he had no opposition to the rule as published.

Halvorson reasoned that the Department's voluntary deferral of implementation until the court acts removed the burden of the Committee to ask for a delay. He interpreted the Code as specifying all income to be subject to restitution.

Mears discussed the 1992 legislation which was effective for people sentenced after July 1, 1992, and that provision about restitution being a judgment applied only to 10 to 15 percent of inmates. Humphrey took exception to that statement since a restitution plan could be modified at any time by the director. Doderer argued that only money received before 1992 would be exempt.

Schrader countered that the order would follow the offender and money would not be taken from someone without a restitution plan. Mears stated it was his understanding that the legislature could not, by statute, create preexisting judgments—only a court could create a judgment. He added that the Department had never stated that this would be retroactive before July 1, 1992, and he could foresee serious constitutional problems.

Rittmer and Palmer favored allowing time for the court ruling before taking action. Palmer added that there was no confusion over intent of the rule, but there were policy questions on the part of the legislature.

Motion to Delay
Failed

Palmer moved to delay rule 201—20.11(904, 910) for 70 days. Exley clarified that the Department was currently deducting the 20 percent from gifts and it was being held in escrow until the court case was decided. Scaletta stressed that the basic needs of inmates were met and families should not send money when it creates hardship. Inmates receive an allowance and earn from \$20 to \$40 per month.

Metcalf would resist the motion because the Department had no plans to implement the rule until the court case was settled. Motion failed.

Recess

Metcalf recessed the Committee at 12:05 p.m. for lunch and reconvened it at 1:30 p.m.

RACING

Jack Ketterer represented the Commission for the following:

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Riverboat operations — video machines, 25.11(2)"b," Filed ARC 5214A 11/9/94

25.11(2)"b"

In review of 25.11(2), Ketterer stated that the Code defined "gambling games" as those authorized by the Commission except that for racetrack enclosures they shall not include video games. Daggett asked if the leaders of the House and the Senate had met with Ketterer on this issue and Ketterer replied that he had not met with them yet but the Commission authorized a letter to them. Kibbie requested more information about payouts in the form of a paper credit slip and Ketterer replied that this was excluded. Video machines were also excluded from

- RACING (Cont.) racetrack enclosures and the rule was an attempt to define that term. No Committee action.
- EDUCATION** Don Helvick and Ann Marie Brick represented the Department for the following:
 EDUCATION DEPARTMENT[281]
 Open enrollment — appeal procedures, 6.3(1), 6.11(1), 6.11(3), 6.11(7), Filed ARC 5248A 11/23/94
- 6.3(1) et al. Daggett expressed his approval of these rules and complimented the Department for their effort. No Committee action.
- UTILITIES** Vicki Place, Diane Munns, Cindy Dilley and Don Stursma from the Division were present for the following:
 UTILITIES DIVISION[199]
 COMMERCE DEPARTMENT[181]"umbrella"
 Ex parte communications, 7.14, Notice ARC 4705A Terminated ARC 5260A 11/23/94
 Electric safety, service, and metering standards, 15.10(1)"a" to "c," "e," and "f," 20.5(2)"b" to "g," 20.6(3),
 25.2(1), 25.2(2)"a," 25.2(2)"b"(2) and (4), 25.2(3)"b," 25.2(5), 25.3(5) footnote, Filed ARC 5216A 11/9/94
- 7.14 Place stated that proposed rule making in 7.14 was terminated to allow time for the Division to review many comments on areas which had not been considered. No Committee action.
- 15.10(1)"a" et al. Kibbie asked for clarification of 25.2(3)"b" and Stursma replied that this was an existing rule and only the date of the standard was updated. Stursma cited several deaths this year as a result of portable augers running into power lines near grain bins. The 1990 National Electrical Safety Code had new and much greater clearance requirements for these lines near grain bins. Utilities had questioned compliance with these rules when they had no control of grain bin placement. The Division felt they could address this issue with an advertising campaign directed at farmers and farm lenders regarding clearance requirements and providing authority to refuse service if a bin were located under the power lines. Department officials indicated that additional rule making would be necessary when a national standard changed. Stursma stated that there have been no conflicts from the point of the National Electric Code standard but there were differences on interpretation. The Lineman's and Cableman's Handbook was a suggested reference, not a requirement. No formal action taken by the ARRC.
- SECRETARY OF STATE** Sandy Steinbach represented the agency for the following:
 SECRETARY OF STATE[721]
 Voter registration in state agencies, ch 23, Filed ARC 5272A 11/23/94
- Ch 23 Steinbach referred to a handout that would be followed for voter registration at state agencies.
 Daggett questioned 23.10 and Steinbach replied that eligibility for registration would be the responsibility of the county auditor's office. She stressed that violation of voter registration laws was a crime. Daggett suspected increase in the workload for the auditor. Steinbach referred to the form which clearly stated the qualifications for registering to vote.
 Hedge wondered about registration by homeless persons and Steinbach recalled a recent form where the address was listed as the University Avenue bridge, lower level. This individual was assigned a precinct based on this information.

Committee Business Minutes Doderer moved to approve the November minutes as submitted and the motion carried.

Committee Business Holiday Party The holiday party was rescheduled for January 3 at the Latin King Restaurant and there was Committee consensus to have no gift exchange.

LAW ENFORCEMENT

Gene Shepard, Director, represented the Academy for the following:

LAW ENFORCEMENT ACADEMY[501]
Stanard & Associates' National Police Officer Selection Test. 2.2(1)"c," 2.2(4)"d," 2.2(6), 2.2(7)"e," 2.2(8)"d." Notice ARC 5239A, also Filed Emergency ARC 5240A 11/23/94

2.2(1)"c" et al.

In review of amendments to Chapter 2, Shepard stated that any officer in a regular law enforcement position would be required to take the tests. Reserve positions would be the exception. The minimum 70 percent score was recommended by the company that validates the examination. Shepard had asked the Iowa State Sheriffs and Deputies Association for a committee of their members to assist the Academy in selecting a test and one of their concerns was the 70 percent cut-off. However, the committee was assured that the examination was superior to previous versions regarding minority community concerns and would not result in a disproportionate impact.

Shepard explained the two versions of the examination. An individual who took one test would not be eligible to take the same examination within the six-month period. They would be allowed to take another version after six months. Scores can be transferred to other areas.

Shepard noted there was a waiting list for training. Only 40 applicants were allowed per class and there were 66 requests for basic classes starting January 16. Specialty classes were offered also.

There was discussion of training costs which would be \$1,533 on January 1. By statute the Academy could charge communities up to half of the costs of certifying courses. Few, if any, applicants were paying their own way since most had been hired by the agencies. Iowa did not allow payment for prehire training.

With respect to officers who leave prior to two years of duty, the Academy had suggested that cities work with their attorneys in arranging for an employment contract. No Committee action.

VOTER REGISTRATION

Doug Lovitt represented the Commission for the following:

VOTER REGISTRATION COMMISSION[821]
Operation of commission, definitions, registered voter lists, NCOA records, procedures for DOT employees, chs 1 to 3, 4.3(1)"a"(4) and (6), chs 6 to 11, Filed ARC 5264A 11/23/94

Chs 1 to 3 et al.

Lovitt stated that these rules were a product of the Voter Registration Commission and the statutory members include representatives from both parties. A number of comments, primarily from the DOT, were received on the Noticed rules. The director of the Secretary of State's Office made a suggestion which the Commission believed could save agencies a substantial amount of money by using an alternate registration form which would not have the glue strip used on standard forms.

VOTER REG. (Cont.) Officials had been concerned about possible increase in workload. They have estimated an average of ten seconds per applicant which would not require additional staff, initially. According to Lovitt, the Commission suspected that approximately 80 to 85 percent of people would decline to register. The name, address, birth date and sex was already entered on the computer.

INSURANCE

Susan Voss was present for the following:

INSURANCE DIVISION[191]
 COMMERCE DEPARTMENT[181]"umbrella"
 Insurance producer license renewals, appointments, continuing education, 10.2, 10.15(2), 10.18, 10.22(3), 11.2, 11.3(5), 11.6(1), 11.6(8), Filed ARC 5231A 11/9/94
 Securities — examinations, 50.8(2)"a"(1), Filed Without Notice ARC 5218A 11/9/94
 Health insurance purchasing cooperatives, ch 73, Filed ARC 5259A 11/23/94

10.2 et al.;
 50.8(2)"a"(1)

No questions on 10.2 et al. or 50.8(2)"a"(1).

Ch 73

Voss stated that several comments were received from interested parties on Chapter 73 and most wanted clarification of the language.

Doderer questioned 73.2(2) and Voss explained that Iowa had no false group law but certain areas in the insurance code preclude forming a group strictly for insurance purposes, thus, HIPC. Halvorson interjected that there had been attempts to form a group under the guise of something that was not a true group basis. HIPC was forming for the express purpose of providing insurance and should not fall under this prohibition. Currently, the Independent Alliance of 2,000 members was the only licensed HPIC in Iowa. Voss clarified that a HIPC was subject to licensing of insurance agents.

NO REPS.

No agency representative was requested to appear for the following and there were no questions:

COMMERCE DEPARTMENT[181]
 Organization and operation, uniform rules, corrections to addresses, telephone numbers and Iowa Code references.
 1.2, 1.4, 1.4(2), 1.4(5), 1.4(9), 1.5, 1.6, 2.1 to 2.4, 3.1 to 3.7, Filed Emergency ARC 5265A 11/23/94

DENTAL EXAMINERS BOARD[650]
 PUBLIC HEALTH DEPARTMENT[641]"umbrella"
 Renewal — late fee, 14.4, Notice ARC 5257A 11/23/94
 Dental assistants engaging in dental radiography — late fee, 22.9(3), Notice ARC 5258A 11/23/94

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193c]
 Professional Licensing and Regulation Division[193]
 COMMERCE DEPARTMENT[181]"umbrella"
 Engineer intern, land surveyor intern, practice of engineering or land surveying by firms, 1.4, 1.9(2), 4.7 to 4.29,
Filed ARC 5271A 11/23/94

LABOR SERVICES DIVISION[347]
 EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"
 General industry — fall protection in the construction industry, exposure to asbestos, 10.20,
Filed Emergency After Notice ARC 5227A 11/9/94
 General industry — hazardous waste operations, emergency response, 10.20,
Filed Emergency After Notice ARC 5245A 11/23/93
 General industry — logging operations, 10.20, Notice ARC 5215A 11/9/94
 Construction — fall protection and exposure to asbestos, 26.1, Filed Emergency After Notice ARC 5228A .. 11/9/94
 Construction — hazardous waste, emergency response, 26.1, Filed Emergency After Notice ARC 5246A .. 11/23/94
 Agriculture — logging operations, 28.1, Notice ARC 5223A 11/9/94
 Minimum wage, 215.1(3), 215.2(1), 215.2(3), 215.3(10)"c"(1), 215.3(11)"a" to "e," 215.3(13), 215.4(2),
 215.4(15), 216.27(1), 216.27(2), 216.30(1), 216.30(3), 216.30(4), 217.3(4), 217.37, 218.6, 218.102(2),
 218.501(1)"a," 219.2(2)"a," 219.104(2), Filed ARC 5247A, See text IAB 6-22-94 11/23/94

No Reprs. (Cont.) LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193d]
 Professional Licensing and Regulation Division[193]
 COMMERCE DEPARTMENT[181]"umbrella"
 Examinations and registration — fee schedule, 2.10, Filed ARC 5217A 11/9/94

SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
 Sheep transactions assessed — slaughter sheep, 4.2, Filed ARC 5236A 11/9/94

Recess Metcalf recessed the Committee at 2:30 p.m.

Reconvened Metcalf reconvened the meeting at 9 a.m. on Wednesday, December 14, 1994. All members and staff were present with the exception of Senator Priebe and Representative Schrader who had been excused.

DNR Randy Clark, Al Farris, Eileen Bartlett and Gregory Jones represented the Commission for the following:

NATURAL RESOURCE COMMISSION[571]
 NATURAL RESOURCES DEPARTMENT[561]"umbrella"
 Agricultural lease program, ch 21, Filed ARC 5226A, See text IAB 8-31-94 11/9/94
 Boat motor regulations — George Wyth Lake in Black Hawk County, 45.4(2), Filed ARC 5266A 11/23/94
 Springbrook recreation area, 61.2, 61.6(6), Filed Emergency ARC 5243A 11/23/94
 Turtles, 86.1(2), Notice ARC 5268A 11/23/94
 Deer management unit at Springbrook recreation area, 105.3(4), 105.4(4), Filed Emergency ARC 5244A .. 11/23/94

Ch 21 Jones reviewed Chapter 21 and indicated the primary changes were to remove some items such as lease conditions and making the rule more flexible to provide more options in handling different situations.

45.4(2) Clark stated that no comments were received and no changes were made from the noticed version of 45.4(2). Doderer expressed concern that the hearing was held in Des Moines but the lake was located near Cedar Falls.

Metcalf pointed out that there was continued progress on hooking up to the ICN for hearings. Clark responded that if a request were made during the comment period, the Department could move the hearing. No formal action.

61.2, 105.3(4) et al. Farris presented amendments to 61.2 and 105.3 et al. which established Springbrook State Park as a recreation area. Late this summer the Commission received a request to consider a deer hunting season in the area. A public hearing, which was publicized in the local media, was held in Guthrie Center to consider a deer hunting season in Springbrook. In order to allow hunting, the designation of a state park had to be changed to a recreation area. Approximately 60 people, including one state representative and two senate candidates, attended the hearing and the majority was in support of a deer season in Springbrook. The Commission was asked to approve rules where 50 permits would be issued for each of two seasons. The seasons had been held and out of 100 permits issued, 84 deer were taken from Springbrook.

Halvorson asked about the ramifications of designating a state park as a recreation area. Farris pointed out that the law prohibits the discharge of firearms in state parks. He cited Lake Darling in 1990 and 1991 as the first such redesignation and the only impact on the area was two years of deer hunting—the management and budgets were the same. Halvorson was concerned that these state parks would lose identity since recreation areas do not appear on some maps or on the list of official state parks. Farris elaborated on three kinds of properties in the '70s which the Conservation Commission managed—state parks, wildlife areas and forest areas. It became popular to have multiuse recreation areas that were

DNR (Cont.)

managed for greater uses than in a park, forest or wildlife area. Farris was unaware of any loss in changing a state park to a recreation area. Farris continued that landowners in the redesignated areas were pleased with the results of the hunting and he anticipated more of this type of hunting in the future. Hedge suspected hunting at Lake Darling had merely disbursed the deer. Farris stated that in the two years hunting was allowed at Lake Darling, approximately 200 were taken.

Farris assured Kibbie that upkeep of the areas would not change.

Farris provided history on Volga which had never been designated as a state park.

Metcalf asked why temporary rules were not adopted to address the issue and Farris thought the point was well taken. He would refer the question to the Commission.

86.1(2)

No questions on 86.1(2).

EPC

Anne Preziosi, David Phelps, Dave Warnson and Paul Nelson were present from the Department for the following:

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Air pollution, voluntary operating permit program, 22.200 to 22.208. Filed ARC 5225A 11/9/94
Underground storage tank laboratory certification, 42.1(3), 42.26, 42.27. Notice ARC 5224A 11/9/94

22.200 to 22.208

There was brief review of amendments to Chapter 22. No action.

42.1(3) et al.

Warnson stated that no written comments had been received, three public hearings had been held and copies of revised 42.1 et al. were sent to approximately 35 laboratories which perform analyses for petroleum constituents associated with underground tanks. He noted that the rules incorporate a manual for certification which was not published but was made available for public viewing. Daggett asked if there was a difference in fees for testing a sample. Nelson replied that prices had been going down and Warnson added that it varied by lab. In response to Daggett, Nelson discussed fees which were set by each laboratory. Daggett wondered if operators were aware of the option to "shop for prices" and Nelson replied that the Commission advised operators to do this. Warnson added that a publication was available which listed available laboratories. According to Nelson, the adoption of the rules should eliminate most inconsistencies in laboratory procedures.

In response to Kibbie, Nelson indicated that the \$1,200 fee for the lab was a new provision. It was the same fee as charged for water supply testing and currently the only certification done was for water supply. Nelson spoke of the Commission's agreement and negotiated fee with UHL to do the on-site visit and the review of analytical data.

Kibbie wondered if these fees would be a deterrent to entering this business. he had heard complaints of lack of labs in the rural areas. Nelson responded that a draft of the rules was compiled with UHL and then comments were solicited from out-of-state laboratories and other various in-state labs who had no problem with these rules. Kibbie expressed the hope that the legislature would review all environmental issues and the fact that new rules generate fees.

Motion to Refer

Kibbie moved to refer amendments to Chapter 42 to the Speaker and President of the Senate for review by the appropriate committee. Motion carried.

**WALLACE
TECHNOLOGY**

Daniel Dittmore and Richard Malm represented the Foundation for the following:

WALLACE TECHNOLOGY TRANSFER FOUNDATION[851]
Policies and procedures. criteria for consideration of project applications and award of financial assistance in industrial technology assistance program, chs 1 to 6. 10. Notice ARC 5263A. also
Filed Emergency ARC 5267A 11/23/94

Chs 1 to 6 and 10

In review of the rules, Malm informed Halvorson that the program was not limited to IPERT, Dittmore added that Chapter 10 was the seed capital operation within the Foundation and it was not specific to IPERT or any other institutional program but addressed how they interface with any college or university. A substantial change in Chapter 10 allowed the Foundation to pursue the seed capital function in a different form than originally. Legislation in 1994 returned the Foundation to the simple seed capital operation and allowed a much bigger opportunity in helping to seed consortiums of business. An example was additional funding to Kirkwood Community college to support continued development of the Swine Confinement Technician Training Program. The Foundation was also working with a cluster of companies in Des Moines in the process of developing systems and applications for interactive television and combining them with assets of the ICN. One project involved the University of Iowa and the Center for Computer Simulation. The Center was working with other companies which commercialize advanced engineering software, aligning them with Iowa companies that otherwise would not have access to this type of technology. In conclusion, Dittmore explained that these rules allowed the Foundation to extend service beyond individual business deals. Halvorson was hopeful the foundation would include other areas such as value-added products, e.g., soy oil and other soy products. The Foundation budget was \$350,000.

**INSPECTIONS
AND APPEALS**

Rebecca Walsh, Robert Paxton and Jeff Voskans were present for the following:

INSPECTIONS AND APPEALS DEPARTMENT[481]
Real estate broker trust account audits, rescind ch 21. Filed Emergency ARC 5212A 11/9/94
Nutrition sites for the elderly. labeling of food. reduced oxygen packaging of food, 30.3(4), 30.14, 31.11.
Filed ARC 5255A 11/23/94
Overpayment recovery unit — title XIX divestiture claim, 71.1, Notice ARC 5213A 11/9/94

Ch 21

According to Walsh, the authority for Chapter 21 had been transferred to the Real Estate Commission and the emergency rescission would eliminate confusion. No Committee action.

30.3(4) et al.

No questions on 30.3(4), 30.14 and 31.11.

71.1

No Committee action.

**GENERAL
SERVICES**

David Ancell was present for the following:

GENERAL SERVICES DEPARTMENT[401]
Uniform standards for printing purchases, 5.8. Filed ARC 5233A 11/9/94
Policies governing purchasing, 7.1 to 7.3, 7.3(1) to 7.3(5), 7.4, 7.4(1), 7.4(2), 7.5(2), 7.5(6), 7.6 to 7.9, 7.14, 7.15"2" and "3," 7.16(1)"3," 7.16(2), 7.17(1), 7.17(2), 7.18, 7.20, 8.2(2), 8.3(1), 8.3(2), 8.4(1)"a," "b," and "e," 8.4(3)"b" and "c," 8.5, 8.5(1) to 8.5(4), 9.1, 9.1(1) to 9.1(3), 9.1(5), 9.1(6), 9.1(6)"d" and "h," 9.2(1), 9.2(2)"b" and "g," 9.3, 9.3(1), 9.3(4), 9.3(5), 9.3(7), 9.3(10), 9.3(11), 9.3(14), 9.3(16), 9.3(17), 9.3(19), 9.3(20), 9.4(3) to 9.4(5), 9.5, 9.6(3), 9.7, 9.7(3), 9.7(5), 9.8, Filed ARC 5234A ... 11/9/94
Inventory guidelines for state of Iowa personal and real property, ch 10, Filed ARC 5235A 11/9/94

GENERAL SERVICES (Cont.)
5.8

Daggett questioned Ancell with respect to a complaint he had received about the award of printing contracts to out-of-state firms. Ancell agreed to refer the matter to Kristi Little, Superintendent of Printing, for response.

7.1 et al.

No questions on 7.1 et al.

Ch 10

No Committee action.

PUBLIC HEALTH

Carolyn Adams, Marge Bledsoe, Director of Office of Rural Health and Primary Care, Mark Schoeberl and Sharon Dozier from the Department and Daryl Engelen, Mark Joyce, Joe Ferezy, Dave Merrifield and Jerry Fitzgerald from the Iowa Chiropractic Society were present for the following:

PUBLIC HEALTH DEPARTMENT[641]
Center for rural health and primary care, ch 110, Notice ARC 5262A 11/23/94

Ch 110

Metcalf was interested in hearing why chiropractors were not included with the other medical professionals. Bledsoe stated that the Department had considered many issues in developing the rules. They used federal guidelines in anticipation of receiving grants in 1995. The Public Service Act definition was used which listed certain providers and also included a reference to other primary care providers who could be included if sufficient money were available and there was demand for those providers in the grant period. Bledsoe continued that Public Health Service Act sections 338A and 338B included four criteria which would make it possible to add providers. Metcalf stated that it appeared to her that if money were available, other groups other than the listed ones would be included. Bledsoe discussed the Iowa legislation which did not include chiropractors as a group but left the option if money were available.

Daggett noted the Code chapter 135 listed chiropractors as primary providers. Bledsoe was not sure of the exact citation but said the Department used the sections relative to licensed physicians and osteopathic physicians. It was not their intent to exclude any group but funding was a factor. Only one loan was anticipated this year.

Kibbie referred to 110.21(1) on eligibility and asked if there were any reason a chiropractor could not be included. Bledsoe reiterated that the Department did not have a problem with including chiropractors but was struggling to implement federal guidelines to be eligible for federal funds. If the federal government included the chiropractors, the state would also include them.

It was noted that podiatrists were on the list but were not included for this year. Palmer wondered why this was not addressed in the rules by stating that other providers would be included when funding was available. Adams wanted to avoid rule making every time there was a change in the list. Metcalf opined that the rules were confusing.

Fitzgerald stated that the rural health care bill addressed several groups, one of which included physicians in Code chapter 135 which chapter also included chiropractors. In the collaborative care group, chiropractors, nurses and others were excluded. He saw the issue as not whether chiropractors should receive the grant, but whether they were being excluded by definition in two areas—primary care and collaborative care group. He declared that chiropractors were included in the legislation and were eligible. He also emphasized that chiropractors may be the only physicians in some rural areas.

**PUBLIC HEALTH
(Cont.)**

Ferezy thought the problem focused on the definition of "primary care" which seemed to exclude chiropractors. Ferezy continued that goals of chiropractic colleges across the country were to provide chiropractors as primary care form of entry positions. Most colleges were accredited by the federal Department of Health, Education and Welfare which recognized the education provided to chiropractors as primary care. The state board of examiners tested chiropractors in areas outside the musculo-skeletal as primary care doctors. The state and national associations have statements adopted by the American Chiropractic Association that chiropractors were primary care portals of entry. The American Medical Association had adopted a definition of primary care which included "medical care provided by the clinician of first contact for the patient" and "it was the nature of the contact that determined the care designation rather than the qualifications of the practitioner." Ferezy pointed out that chiropractors were the only physicians in 49 communities in Iowa. Kibbie urged that this issue be addressed before the final rules were adopted.

**PROFESSIONAL
LICENSURE**

Carolyn Adams was present for the following:

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Occupational therapy — application procedures for limited permit and permanent licensure, 201.5(5), 201.6(5), 201.6(6), Notice ARC 5232A 11/9/94

201.5(5) et al.

Adams stated that no comments have been received on 201.5 et al. No Committee action.

PHARMACY

Terry Witkowski was present from the Board for the following:

PHARMACY EXAMINERS BOARD[657]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Practice of pharmacy, display of license. 8.14(2), 8.16. 8.29(2)"a"(5), Notice ARC 5207A 11/9/94
Controlled substances — registration of advanced registered nurse practitioners, 10.2, Notice ARC 5208A .. 11/9/94
Public information and inspection of records, 14.3(1), 14.6, 14.13(2)"k" and "m," 14.14(1), 14.14(2), 14.14(4) to 14.14(7), 14.14(9), 14.14(10), 14.14(12) to 14.14(15), 14.15(1) to 14.15(5), 14.16, Notice ARC 5209A 11/9/94
Wholesale drug licenses — reverse distributors, 17.1, Filed ARC 5206A 11/9/94
Reverse distributors — exemptions from requirements not applicable to their operation, 17.8(3), 17.10(4), 17.12(5), Notice ARC 5210A 11/9/94

8.14(2) et al., 10.2 and 14.3(1) et al.

No questions on 8.14(2) et al., 10.2 or 14.3(1) et al.

17.1

In review of 17.1 which defined "reverse distribution," Daggett asked if out-of-state or wholesale distributors would be affected and Witkowski cited an example when this would occur. Currently there were two reverse distributors who were licensed outside of the state and there were two inside the state. No Committee action.

17.8(3) et al.

No questions on 17.8(3) et al.

NURSING BOARD

Leo Hart and Lorelei Brewick, Iowa Association of Nurse Anesthetists, Keith Luchtel, Iowa Medical Society, Julie Waggoner, Iowa Association of Nurse Practitioners, and Lorinda Inman and Nancy Knutstrom, Iowa Board of Nursing, were present for the following:

NURSING BOARD[655]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Advanced Registered Nurse Practitioners, 7.1, 7.2, Filed ARC 5286A 12/7/94

NURSING (Cont.)
7.1 and 7.2

Inman thanked the ARRC for reviewing final rules 7.1 and 7.2 at their December meeting rather than in January. As a result of comments made on the Noticed version, some changes had been made.

Daggett asked if these rules would, in any way have an impact on community colleges and Knutstrom assured him they would not. They apply to advanced registered nurse practitioners who have received education above the preparation given at a community college.

It was Metcalf's understanding that the Board was in agreement with the other interested groups on a majority of the issues.

Luchtel stated that the Iowa Medical Society appreciated some of the changes but expressed concern about consultation with respect to the use of a controlled substance involving a diagnosis. He favored a residency type of phase-in for nurse practitioners.

Brewick expressed appreciation for the Board's cooperation with the various interested groups. She reminded the Committee of several amendments to Senate File 2053 which would have required physician supervision or collaboration with physicians and those were all voted down. Berwick believed the adopted rules complied with the intent to have physician supervision.

Although the rule making was controversial, Kibbie viewed it as a good example of cooperative effort. No Committee action.

MEDICAL
BOARD

Ann Martino represented the Board for the following:

MEDICAL EXAMINERS BOARD[653]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Discipline — updating amendments, 12.50(12), 12.50(26), 12.50(31), 12.50(33), 12.50(36)"d."
Filed ARC 5256A 11/23/94

12.50(12) et al.

No questions on 12.50(12) et al.

DOT

Norris Davis, Dick Hendrickson, Ruth Skluzacek, Barb Meeks. Ian MacGillivray and Dwight Stevens from the Department were present for the following:

TRANSPORTATION DEPARTMENT[761]
Signing manual, 130.1. Filed ARC 5249A 11/23/94
Carriers — rate changes, 523.8(1), 523.8(3), 523.8(6), 523.8(10), 523.8(12), 525.14(1), 525.14(3), 525.14(6),
525.14(9), 525.14(11), 528.11(1), 528.11(3), 528.11(8), 528.11(10), Filed ARC 5250A 11/23/94
Licensing — examination, sanctions, 604.13(1), 604.13(2)"a." 604.13(4)"b"(1) and (2), 607.3. 615.23,
615.32, 615.38(1), Notice ARC 5254A 11/23/94

604.13(1) et al.

With respect to revisions in 604.13 et al., Davis stated that the DOT had contact with the Department of Education, school and juvenile authorities when developing the rules and they were not aware of opposition. Metcalf, on behalf of Schrader, asked why the language in 604.13(2)"a" and 604.13(4)"b"(1) and (2) had been changed. Hendrickson stated that it was changed to conform with the other portions of the vision rule which allowed individuals to meet the vision standards either with one eye, both eyes or the better one. Previously, it was one eye only.

DOT (Cont.) Hedge referred to 615.32(1) relative to revocation of licenses where persons under the age of 18 were not attending school. Davis indicated the Department received comments regarding the compulsory attendance. However, the Department lacked expertise in this area and had to rely on others for guidance. The Department's attorney interpreted the statute to require DOT to revoke the license. Davis added that the alcohol portion had generated more conversation than the truancy issue.

In response to Kibbie, Davis said the Department had been notified of approximately 30 truancy cases and had received approximately 50 of the juvenile alcohol cases. The Department had met with the Clerk of Court and law enforcement agencies in an attempt to better understand the adjudication process for alcohol and drug violations. The Department was receiving adjudications without knowing whether they were first or subsequent offenses.

523.8(1) et al. Skluzacek explained 523.8(1) et al. No Committee action.

130.1 Stevens presented amendments to 130.1 intended to update the manual on traffic control devices. The changes were explained at the County Engineers Conference where 40 to 50 people were in attendance. There was no opposition to the changes. No questions on 130.1.

AGRICULTURE

Ron Rowland and Donna Gwinn, Head of the Grain Warehouse Bureau, were present from the Department for the following:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 State licensed warehouses and warehouse operators — emergency storage space. 90.31.
Filed Emergency ARC 5237A 11/23/94

90.31 Rowland stated that Gwinn had worked with two industry groups to develop new rule 90.31 which was utilized by six entities—mainly in northwest Iowa. It was noted that the rule was implemented only for the purpose of handling excess grain and would terminate March 1.

Metcalf advised that the rule should be rescinded by a formal rule making. Gwinn informed Hedge that January 31 was the deadline for permanent storage of grain which had been outside. However, the Department extended the time to March 1 when all letters of credit would expire. There was general discussion as to the extent of damage related to outside storage.

Committee Business Termite Inspection General Referral Royce reminded the Committee that at the November meeting a general referral was voted on termite inspection rules—21—45.76 to 45.80 (ARC 5181A IAB 10/26/94). Since the agency planned to terminate the rule making, Royce asked for permission to rescind the referral.

Rittmer moved to rescind the general referral of proposed 21—45.76 to 45.80 and the motion carried.

**PETROLEUM
 UST BOARD**

Pat Rounds and Bob Galbraith were present for the following:

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
 Remedial or insurance claims, 11.1(3)"n." 11.5(9), Filed Emergency ARC 5238A 11/23/94

UST (Cont.)
11.1(3)"n" and 11.5(9)

Halvorson asked how long it would take to review the applications and Rounds indicated that staff specifically assigned to working with the forms would determine eligibility in a few days. He was unsure as to the number who would qualify but doubted there would be many. Rounds spoke of problems with larger companies "hiding assets" so the Board added the small business reference to prevent this. Halvorson wondered how shifting of assets was prevented. Rounds replied that the claim was reviewed from the date it was originally made.

Halvorson asked about cost estimates and Rounds cited approximately \$200,000 to \$300,000 for cleanup for high-risk sites. In response to Daggett, Rounds stated that the Board had made no determinations about recommending a legislative package. He agreed to provide information on the impact of an additional one cent. Estimates ranged from a \$100- to \$200-million shortfall which was double the size of the program.

Galbraith stated that the three main factors that determine a shortfall was how many sites need to be addressed, how much money was available and how much must be done at each site. Rounds added that the Board was working on two distinct programs—the regulatory side mandated by the federal government and implemented by the state and the funding side. The Board was created to fund and assist the Department of Natural Resources in meeting the standards and complying with outside requirements. Rounds emphasized that Iowa was a leader in controlling costs. He noted there were four times as many sites in the state as EPA had estimated.

Ultimately, the DNR regulator would be the authority for decision on a site. Rounds pointed out a deficiency in that there was no system for determining whether a contaminant must be cleaned up—unlike in EPA or DNR rules. He stressed that common sense must be used. Daggett opined that legislation should be drafted to address this issue.

There was discussion of deadlines for upgrades and insurance coverage. Rounds would not know until January 1, 1995, if sites were upgraded so the operator would be allowed another 60 days before insurance was canceled. Counties and cities can use the mechanism of bonding authority or a governmental guarantee so they would not be affected. Operators who could not complete upgrades until the ground thaws could temporarily close their tanks, pump out the product to avoid leakage and the insurance would be canceled. Eligibility for remedial benefits would be maintained. Once the tank was upgraded, the operator could be insured. Rounds added that there were 2,300 insured sites through this program and prior to the October renewal date, 1,700 were upgraded leaving a balance of 600. Of those, approximately 300 would be upgraded before the deadline.

Palmer asked if the 70-day delay (ARC 5076A, 11.7(1)"g") affected these rules and Royce advised it would not. In response to Palmer, Rounds said he did not have exact numbers but claims were evenly split between small business and non-small business and approximately half of those were governmental entities. Approximately 5,000 state sites need cleanup and 3,400 were in the Board's program. Rounds added that the first recipients would be small businesses where \$110 million would be needed.

Hedge asked if the determination of net worth included the liability of cleaning up a \$100,000 spill. Rounds replied in the affirmative and noted that operators receive assessment costs and upgrades paid but at the point of corrective action, eligibility would be determined for 100 percent funding. After the assessment, the operator would get a projected cost for cleanup and if the projected cost were

UST (Cont.)

\$100,000 it would be deducted against the net worth. If, after cleanup through the fund, the property was sold for 120 percent of the precorrective value, the Board could recover some of the profit.

In answer to Rittmer, Galbraith stated that the statute also allowed the fund to put a lien on the property for the amount of fund money that had been spent on the site. Rittmer felt there was potential for inequities. Rounds stated that the language for this provision was taken from the Code and he agreed it could lead to inequities. No Committee action.

REVENUE

Carl Castelda, Coadministrator of the Compliance Division and Deputy Director, was present for the following:

REVENUE AND FINANCE DEPARTMENT[701]

Taxable and exempt sales, vehicles subject to registration, 18.5(2), 34.12. Notice ARC 5261A 11/23/94

18.5(2) and 34.12

Rittmer asked for more information about sales tax and reimbursement from the government. Castelda referred to the examples listed and stated that if the government were not a party to the transaction, sales tax was charged. In 18.5(2), Example C, a special credit card was billed directly to the government and was exempt from tax.

Rittmer asked if the amount was reimbursed with or without the sales tax. Castelda was unsure but in C there would be reimbursement for both. Rittmer was concerned about inequity. Castelda replied that sales tax was a transaction tax and if the government was not a party to the transaction, sales tax should be applied. No Committee action.

Adjournment

The meeting was adjourned at 12:05 p.m.

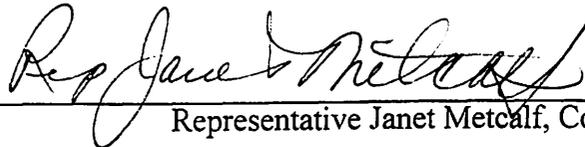
Meeting Dates

The next meeting was scheduled for Tuesday and Wednesday, January 3 and 4.

Respectfully submitted,


Phyllis Barry, Secretary
Assisted by Kimberly McKnight

APPROVED:


Representative Janet Metcalf, Co-chair