MINUTES OF THE SPECIAL MEETING OF THE ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of meeting — The special meeting of the Administrative Rules Review Committee (ARRC) was held on Wednesday and Thursday, September 13 and 14, 1995, in Room 22, State Capitol, Des Moines, Iowa.

Members present: — Representative Janet Metcalf and Senator Berl E. Priebe, Co-chairs; Senators H. Kay Hedge, John P. Kibbie, William Palmer and Sheldon Rittmer; Representatives Minnette Doderer, Roger Halvorson, and Keith Weigel. Representative Horace Daggett was excused due to illness.

Also present: — Joseph A. Royce, Legal Counsel; Phyllis Barry, Administrative Code Editor; Kimberly McKnight, Administrative Assistant; Caucus staff and other interested persons.

Convened: — Co-chair Metcalf convened the meeting at 10 a.m.

HUMAN SERVICES — Mary Ann Walker and Don Kassar were present from the Department and Joanne Lane, Child Day Care Advisory Council, and Ralph Rosenberg, Coalition Family and Children's Services, were present for the following:

HUMAN SERVICES DEPARTMENT[441]

Supplemental expense payment, ch 35, Notice **ARC 5797A** 8/16/95

Medicaid provider policy, 52.1(3), 79.1(2), 79.1(9)"d," 81.6(16)"e," 177.4(3), 177.4(7), 177.4(8)"b," Filed **ARC 5824A** 8/30/95

Estate recovery program, 76.12(7)"a," 76.12(7)"b"(2) and (3), 76.12(7)"f" and "g," Filed **ARC 5825A** 8/30/95

Medicaid payment for clozapine, 78.1(2)"a"(3), 78.28(1)"g," Notice **ARC 5822A** 8/30/95

Medicaid waiver services, 83.10, 83.70, Filed **ARC 5826A** 8/30/95

Child care centers, 109.1(4), 109.1(6) to 109.1(10), 109.1(12), 109.1(13), 109.2(1), 109.2(2), 109.2(5), 109.2(7), 109.2(7)"d," 109.3(1) to 109.3(3), 109.3(5) to 109.3(14), 109.4, 109.4(1), 109.4(1)"d," 109.4(2), 109.4(2)"b" and "h," 109.4(3), 109.4(4), 109.4(4)"a," "b," "d," "e," and "f," 109.4(5), 109.4(7), 109.4(8), 109.4(8)"c" and "d," 109.5(2), 109.5(4), 109.5(4)"e," "h," and "i," 109.5(6), 109.5(8) to 109.5(10), 109.6(1) to 109.6(3), 109.6(3)"b," "c," and "f," 109.6(4)"a," "c," "f," "h," and "i," 109.6(5)"a," "c," and "e" to "g," 109.6(6)"a" and "b," 109.6(7), 109.7(1), 109.7(2)"b," "e," and "f," 109.7(3) to 109.7(5), 109.8(1), 109.9(1)"a" and "b," 109.9(4)"d," 109.9(5)"d," 109.9(6)"b," 109.11, 109.11(5)"b," 109.13, Filed **ARC 5827A** 8/30/95

Income guidelines for child day care, fee schedule, eligibility of migrant farm workers, 130.3(1)"d"(2), 130.4(3), 170.1, 170.2(1), Filed **ARC 5828A** 8/30/95

Social service providers, rates, 150.3(5)"p"(2), 150.3(5)"p"(3), Filed **ARC 5829A** 8/30/95

State payment program, ch 153 division IV preamble, 153.51, 153.52(3), 153.52(5), Notice **ARC 5823A** 8/30/95

Foster care and foster parent training, subsidized adoptions, foster care services, 156.6(1), 201.5(9), 202.17(1)"a," "b," and "d," Filed **ARC 5830A** 8/30/95

Rehabilitative treatment services, 185.101, 185.103(1)"b," 185.105(1)"d" and "f," 185.106(3)"c" and "d," 185.122, Notice **ARC 5821A** 8/30/95

Effective utilization percentage for rehabilitative treatment and supportive services group care service per diems, 185.106(2)"a," Filed **ARC 5831A** 8/30/95

Rehabilitative treatment services, 185.5(4), 185.5(6)"c," 185.5(7)"b," 185.5(8), 185.10(1)"b"(6), 185.10(8)"b" and "e," 185.11(2)"a"(9), 185.11(2)"e" and "h," 185.12(2)"h" and "i," 185.22(1)"d," 185.22(2)"d," 185.22(3)"d," 185.42(3), 185.62(1)"d," 185.62(2)"d," 185.62(3)"d," 185.82, Filed **ARC 5613A, 70-day Delay** 6/7/95

Ch 35 — In review of Chapter 35, Rittmer was concerned that counties would need a written policy on the level of IQ at 70. Metcalf pointed out that without a written policy, in order to receive funds, counties could contend that they had always used 70. Walker stated the Department had received no comments on these rules.

DHS (Cont.) Royce noted formal action was required by the Board of Supervisors.

52.1(3) et al. With respect to 52.1(3) et al., Walker noted the Department had anticipated the maximum per diem rate for nursing facilities to increase from $60.87 to $62.77 rather than $61.63. No Committee action.

76.12(7)"a" et al. In response to Doderer, Walker stated amendment to 76.12 would affect older people who were in their homes at the time of death. There was discussion of the time frames for transferring assets before death.

Halvorson mentioned a mechanism used by HUD on this issue and suggested that the state review it.

78.1(2)"a"(3) et al. Rittmer inquired of Walker as to the amount of clozapine used and Walker was unsure. She added that patients must be tested monthly.

83.10 and 83.70 No questions on 83.10 and 83.70.

109.1(4) et al. Walker stated that comments had been received from Children Services of Central Iowa and Child Care Resource Referral of Central Iowa regarding amendments to rules on child care centers. Children Services was concerned about the training requirement in areas where employees were in school and the turnover was high. The Department responded that the training did not require formal classes—books or tapes could be utilized. Training would not be required for short-term employees. Training must be provided during the first year. Child Care Resource questioned workability of the rules.

Doderer referred to 109.2(1)"d" and asked which religion objected to physicals. Kassar was unsure but believed the rule was adopted as a result of an incident. Doderer preferred inclusion of the specific religion in the rules.

Doderer and Kassar discussed procedures followed to investigate complaints about a child care center. Kassar assured Doderer the state would not photograph and interview children even if there had been a report of abuse.

130.3(1)"d"(2) et al. No Committee action.

150.3(5)"p"(2) et al. No questions on 150.3(5)"p"(2) et al.

153.51 et al. No questions on 153.51 et al.

156.6(1) et al. Kibbie asked what the number of people was and Walker was unsure but believed the state was well below the cap.

185.101 et al.; 185.106 No questions on 185.101 et al. or 185.106(2)"a."

185.5(4) et al. Metcalf explained that these rules pertaining to rehabilitative treatment services were under 70-day delay which would expire October 10, 1995. Walker noted these rules did not allow payment for these services if they were provided while the counselor was driving a motor vehicle. A federal audit was made during this delay and the auditors were not opposed to this service when it was a legitimate use of therapy. Walker indicated the Council would consider an emergency rule to delete the prohibition at the meeting on September 21. The Department also plans to Notice another rule to address the concerns of provider, field and Health Care Financing Administration (HCFA).

DHS (Cont.)

Halvorson and Walker discussed reimbursement costs and tight budgets of nonprofit organizations providing services. Halvorson pointed out that these were nonprofit agencies who were doing work for the state and being reimbursed for expenses and this was a period of time when expenses were incurred.

Kibbie reasoned the rules should be flexible. He noted that the client ratio increased every year and this was the only time in some cases where time was spent with clients on an individual basis. Kibbie opined abuse of the system would be infrequent.

There was consensus that the delay would be allowed to expire. No formal action.

INSPECTIONS
100.1 et al.;
100.6(1)"a" et al.

Rebecca Walsh and Don Mendenhall represented the Department for the following and there were no questions:

INSPECTIONS AND APPEALS DEPARTMENT[481]
Bingo equipment and supplies, 100.1 to 100.3, 100.80 to 100.82, Notice **ARC 5780A** 8/16/95
Amusement concessions—cost to play, value of prizes,100.6(1)"a," 101.2, 101.3,
Filed Emergency **ARC 5781A** 8/16/95

LIVESTOCK

Angie DeGooyer represented the Council for the following:

LIVESTOCK HEALTH ADVISORY COUNCIL[521]
Recommendation for fiscal year 1995-1996, ch 1, Filed **ARC 5817A** 8/30/95

Ch 1

DeGooyer stated that at Priebe's suggestion, the Council would include Johne's disease in the $10,000 plus contingency fund. Part of this would be an on-site research project with a facility in Iowa where this existed. No formal action.

COLLEGE STUDENT AID

Laurie Wolf represented the Commission for the following and there were no recommendations:

COLLEGE STUDENT AID COMMISSION[283]
EDUCATION DEPARTMENT[281]"umbrella"
Work-study program, 18.13, Notice **ARC 5792A** 8/16/95
Programs repealed by the legislature, rescind chs 19 to 21, 25 and 29, Notice **ARC 5793A** 8/16/95

ENGINEERING

K. Marie Thayer and Patricia Peters represented the Board and summarized the following amendments:

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193c]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Professional development, 3.1, 3.2, 3.4, 3.8, 3.13, Notice **ARC 5798A** 8/16/95

3.1 et al.

No questions on 3.1 et al.

ETHICS

Kay Williams and Lynette Donner presented the following:

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
Reporting requirements, civil penalties, 4.2(3) to 4.2(5), 4.2(8), 4.2(9), 6.1,
Filed **ARC 5813A** 8/16/95
Legitimate expenditures of campaign funds, 4.6, Filed **ARC 5815A** 8/16/95
Types of administrative costs which can be provided to a political committee by a corporate sponsor,
4.31(3), Filed **ARC 5814A** 8/16/95

ETHICS (Cont.)
4.2(3) et al.

Halvorson wondered about contributions mailed in December but not received until January, too late for deposit prior to Session. According to Williams, this was common but under the statute, the contribution would have to be returned with an explanation to the donor that the contribution could be accepted at the end of Session. If the contribution was received before the Session started but not deposited until after it started, the date on the report should be the date of receipt and the contribution could be accepted. Williams suggested saving the envelope the contribution was received in so that the date could be verified in case of a challenge.

4.6

With respect to 4.6, Halvorson believed it still allowed the individual to determine when a campaign begins and Williams replied in the affirmative. Williams noted the statute provided in the case of a dispute, the Board shall determine when a candidate became a candidate and another section of the Code stated that a campaign begins when affirmative action was taken which was open to interpretation.

In response to Doderer, Williams advised that anything which would enhance a candidacy could be included in campaign expenses. There was a distinction between an officeholder and constituency service. Donner added the statute permitted meals for campaign-related purposes.

Weigel asked if verification by the candidate was necessary for some expenses such as subscriptions to local papers. Williams explained that verification was not necessary. The new forms would have a box to be checked when the payment was shown and the individual could check whether it was campaign-related, constituency or officeholder which would make this process simpler.

Rittmer opined there was a fine line as to the definition of campaigning. Williams stated the campaign could not pay for the dinner unless the individual was campaigning. As an officeholder there was the expectation that an individual be present for certain events.

4.31(3)

Weigel wondered if travel to interview with a PAC would be included. Williams explained that the most common travel was to solicit members and another was visiting with candidates. Weigel felt this expense was more easily identifiable and incorporated into the corporate costs if desired. Donner stated it was part of the costs of the administration that could be covered as compared to providing travel to a candidate or specifically covering the meals or events held on behalf of a candidate. Weigel asked if there was anything other than the outright contribution that wouldn't be considered administrative costs. Williams cited as an exception a nonprofit sponsor who was communicating only to their members—a statute exempts from reporting.

ECONOMIC DEVELOPMENT

Roselyn McKee Wazny, Melanie Johnson and Kathy Berry represented the Department for the following:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
Community development block grant nonentitlement program, 23.4(3)"m," 23.5(1), 23.6(3), 23.6(4), 23.6(6), 23.6(7), 23.6(10)"b," 23.8(1)"d," 23.11(1)"b" to "h," 23.11(5), 23.17, Notice **ARC 5787A** 8/16/95
HOME investment partnership program, ch 25, Notice **ARC 5788A** 8/16/95
Housing assessment and action planning program, ch 45, Filed Emergency **ARC 5789A** 8/16/95

23.4(3)"m" et al.

In review of 23.4 et al., Wazny noted that Item 5 [23.8(1)"d"] would not be adopted—another filing in September would address the wage scale.

DED (Cont.)

Metcalf asked why the administrative cost percentage had been changed not to exceed 20 percent as opposed to 10 percent. Wazny replied that it had been at 20 percent as an overall cap and clients could arrange the dollar amounts within the 20 percent for either direct or indirect administrative costs allowing the Department discretion for review of how administrative dollars were spent.

Metcalf was informed there was no deadline for applications for housing funds. For the community program the deadline was in December of each year. Priebe opined that 20 percent was excessive. No Committee action.

Ch 25

Priebe called attention to numerous CFR references in Chapter 25 and requested that a date certain be added. Wazny indicated the dates would change frequently but she agreed to comply.

Halvorson was concerned about the 175 percent grant and spending excessively on houses that were not in good condition. Berry explained that in rural areas because of the low appraised values the Department would find homes worth $15,000 and remodel them for $10,000 to $20,000. The project managers were very careful not to invest in homes beyond repair. There were certain criteria to be followed.

Ch 45

Berry provided justification for filing Chapter 45 under Emergency provisions. Funding became available July 1 and needed to be expended by the end of the fiscal year. The Department had experience with housing assessments on a pilot basis for two years and was aware that the assessment process could be six to nine months. The Department favored community participation as opposed to a consultant.

Berry continued that the Department mailed out 2,000 notifications to cities, county development groups, chambers of commerce and others interested in the project. She noted that 50 responses had already been received and there was great interest.

Holiday Rest Stops

In a topic not formally before the Committee, Metcalf brought up the subject of Iowa products being offered at holiday rest stops. The Department of Economic Development had been asked to develop rules on this issue and Metcalf requested that this be done as soon as possible.

Johnson pointed out the legislation did not give the Department rule-making authority. It stated they were to adopt a program to promote the rest stops and DED was working with DOT on how to structure it. It was Priebe's understanding that DED had the authority to write rules.

Royce recalled that DOT did not want to participate in the program and that was why legislation was passed. Johnson said the DED interpreted the statute to require DOT to adopt the rules and DED to develop a program but she would pursue the matter. Royce felt there were two different programs in the legislation—one dealt with the agricultural promotion program which he believed was given to Economic Development and the other dealt with the basic concept of the holiday rest stop program which was where the Lions Club gave out coffee and doughnuts on the interstate which was under DOT.

ELDER AFFAIRS Donna Gabriel, Ron Beane, Jim Corbett and Kathy Wallace were present from the Department for the following:

ELDER AFFAIRS DEPARTMENT[321]
Performance and fiscal reporting procedures, composition and advocacy duties of state advisory council, 1.7, 3.5, 5.1(2)"e" and "f," 5.2(1), 5.2(2), 5.2(2)"a" and "c," 5.3(3)"e," 5.6(2), 5.13, 5.16(1), 5.16(3), 7.3(7)"b," 7.3(9)"b"(2) to (14), ch 13, 24.2, Notice **ARC 5795A** 8/16/95

1.7 et al. Beane indicated definitions of "contract" and "vendor" should be included in rule 1.7. No Committee action.

Committee Business Metcalf commented on the Annual Report of the ARRC which had been prepared by Royce.

Internet Diane Bolender, Director, Legislative Service Bureau, provided the ARRC an update on computerization of the Iowa Administrative Code. The Administrative Code Division was continually updating the computer files of all agency rules. The Iowa Code had been offered for sale on a CD/ROM and it was also possible to order rules of five major agencies and their division. Four more agencies were added for the Spring CD/ROM and it was anticipated that four more would be added for the Fall of 1995.

A database was needed to manage these files and an RFI was issued in 1994 to obtain information on types of products and services available and some responses had been received. An RFP to seek a vendor was issued in August 1995. The deadline for responses was September 8, 1995, and bids were being evaluated.

Barry emphasized the need for electronic versions of rules of individual agencies.

John Pollak, Legislative Service Bureau, commented on the high-quality system currently in place and the importance for an electronic version to maintain this same high quality. Barry pointed out that the IAC updates and the Bulletin would still be published every two weeks.

Metcalf asked if there were plans to utilize Internet, e.g., to reference where rules were available, such as libraries. Bolender responded that the Bureau was addressing this issue with January 1996 as a target date.

Kibbie thought that including public hearings on Internet would be helpful.

Recess The Committee was recessed at 11:45 a.m. for lunch.

Reconvened Metcalf reconvened the meeting at 1:30 p.m.

PERSONNEL Clint Davis was present from the Department for the following and there were no questions:
8.11 and 14.14;
21.5(1)"a"(37) to (41)

PERSONNEL DEPARTMENT[581]
Seasonal employment, disaster service volunteer leave, 8.11, 14.14, Filed Emergency **ARC 5778A** 8/16/95
IPERS, 21.5(1)"a"(37) to (41), Filed Emergency After Notice **ARC 5820A** 8/30/95

SAFETY Michael Coveyou, Steve Bogle, Sam Knowles and Tim McDonald were present from the Department for the following:

PUBLIC SAFETY DEPARTMENT[661]
Iowa on-line warrants and articles system, criminal intelligence information, ch 8, divisions I and II,
Filed **ARC 5796A** 8/16/95

Ch 8 Priebe referred to Iowa Code section 692.9 regarding surveillance data and raised question about storage. Bogle explained that surveillance data was defined as information collected on people not involved in crimes. Surveillance on criminals could be stored.

Coveyou pointed out the definition of surveillance data in these rules mirrored the Code of Iowa. He added that surveillance data could not be maintained on a protest group where no criminal activity was involved. Bogle told Kibbie that intelligence data could be collected when there was reasonable grounds to believe someone was involved in illegal activity.

Criminal History Fees In a topic not formally before the Committee, Coveyou spoke about the fee for accessing criminal history records. The Code allowed the Department to charge up to $20 per criminal history record. Currently, when the fee was raised, the Department notified the people who were regular requesters and posted notice of the new fee. At the time the decision was made not to redo the rules each time the fee changed. Coveyou stated the fee was currently $6 and would be increased to $13. In response to Metcalf, McDonald stated he believed this rate would be in effect for three to four years. Metcalf opined that the fee should be included in a rule.

REGENTS Richard Tiegs represented the Board for the following:

REGENTS BOARD[681]
Application fees, 1.1, 1.2, Notice **ARC 5790A** 8/16/95
Regents merit system, 3.3(2), 3.3(5), 3.14, 3.39(7)"f," 3.39(12), 3.39(13), 3.39(18), 3.50, 3.52(4), 3.53, 3.53(2), 3.55"2" and "6" to "8," 3.67(3), 3.70, 3.89, 3.90(2), 3.102(1), 3.102(2), 3.104(3), 3.104(4)"c" and "e," 3.127, 3.145, Filed **ARC 5791A, see text IAB 6/7/95, page 1825** 8/16/95

1.1 and 1.2 Metcalf requested that application fees be included in the rules. Tiegs stated the Board had approved a $20 fee for American citizens and a $30 fee for international students. He noted that many schools were charging $60 for application fees.

3.3(2) et al. Kibbie was aware of concerns with revisions in Chapter 3 and he had received request from the Executive Director, Wayne Richey, that if there was opposition by the ARRC, to delay only the objectionable portion and not the entire rule.

Motion to Delay Kibbie moved a 70-day delay on the definition of "probationary period" in 681—3.14(19A); subrules 3.39(12); and 3.102(1). Motion carried.

PETROLEUM Bob Galbraith represented the Board for the following:

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
Renewal premiums, 10.3(5), Notice **ARC 5839A**, also Filed Emergency **ARC 5838A** 8/30/95
Remedial or insurance claims, innocent landowners fund, 11.1(3)"d," "e" and "l,"
Notice **ARC 5840A** 8/30/95
Guaranteed loan program, 12.2(1), 12.2(2), 12.10(3), 12.10(5), Notice **ARC 5841A** 8/30/95

UST Board (Cont.)
10.3(5)

Priebe raised question in 10.3(5) that merely mailing the premium notice was conclusive proof that a billing was received. Galbraith indicated the administrator's office would be willing to clarify the subrule.

11.1(3)"d" et al.

Halvorson asked if revision in 11.1(3) tracked the language of the bill and Galbraith explained the legislation allowed the Board to define categories of claimants who would be eligible for the innocent landowner fund. Conditions were that the claim be related to petroleum contaminated property. Other categories of claimants would be submitted to the next General Assembly. This first group was owners and operators that reported their releases very early between 1985 and 1989 and in the statute currently, the remedial account provisions had statutory claim cutoff deadlines of January 31, 1990, for a group and September of 1990 for another group. 1990 was the first year that legislation was in effect and many owner/operators missed the claim deadline and by this rule, the Board stated if the individual acted in good faith and complied with all of the other provisions of the DNR and fund regulations, they would allow innocent landowner funds.

Halvorson asked if these rules would implement an innocent landowner category only for those prior claims. Galbraith said the innocent landowner would have had their claims denied. A group of them would have appealed and lost and another group would not have appealed.

Galbraith believed the rules followed the legislative direction with no intent of exceeding it. He concluded the statutory language was all encompassing and could include categories of properties never before eligible for any benefits under Code section 455G.9.

12.2(1) et al.

Halvorson and Galbraith discussed loan guarantees to the financial institution which was making the loan.

Kibbie asked if school districts, counties and cities qualified and Galbraith replied that the program was no longer limited to small businesses—any claimant could qualify.

EPC

Mike Murphy, Garth Frable, Brian Tormey, Paul Nelson, David Wornson and Jeff Fiagle were present from the Commission and Don Grell and Ernie Kersten were present from Dodger Enterprises for the following:

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Background values to be used for dispersion modeling — impact of emissions from air contaminant sources, 22.9, Notice **ARC 5746A** Amended **ARC 5803A** 8/16/95
Private well sampling, rehabilitation and closure — grants to counties, ch 47, Notice **ARC 5806A** 8/16/95
Interim application of animal manure from existing animal-feeding operations by use of spray irrigation equipment, 65.2(9), Filed Emergency **ARC 5779A** 8/16/95
Solid waste management and disposal, 101.5(2), 101.5(8), Notice **ARC 5804A** 8/16/95
Waste tire facilities, 117.1 to 117.4, Filed **ARC 5808A** 8/16/95
Technical standards and corrective action requirements for owners and operators of underground storage tanks, 135.2, 135.3(2)"a"(3), 135.3(5)"b," "d" and "e," 135.6(4), 135.8(3)"e," 135.8(4)"b"(12), 135.8(8), 135.9(1)"a" and "b," 135.9(2)"a," "b" and "d," 135.9(3)"a" to "e," 135.9(7), 135.10(1), 135.10(2)"a," "p" and "q," 135.10(3), 135.10(4), Notice **ARC 5807A** 8/16/95
Household batteries, ch 145, Filed **ARC 5805A** 8/16/95

22.9; Ch 47

No questions on 22.9 or Chapter 47.

EPC (Cont.) 65.2(9) Murphy stated 65.2(9) would not allow new facilities to spray irrigate. He added that comprehensive feedlot rules would be proposed in the near future in conjunction with the committee that had been working with the Department to implement House File 519.

Weigel and Murphy discussed use of "existing operations." Murphy explained the time frame for final rules to implement House File 519.

Doderer asked if these rules would have avoided the recent problem of excessive spraying. Murphy replied that it would not. The Commission's rules have always stated that runoff could not be allowed to pollute a stream.

Murphy clarified for Weigel that the rules applied to existing facilities. He also believed the rules would inhibit someone from changing from one system to another because of pending new rules. Murphy stated that an Emergency amendment could close this potential loophole. He agreed that existing facilities would not be precluded from purchasing new spray irrigation equipment.

Weigel was concerned that someone with an existing lagoon who had not used the spray method would still be eligible to spray. He wanted the rule to state that this process had to have been used prior to May 31 also. Murphy understood Weigel's concern and wondered if adding "and which previously used spray irrigation equipment" would resolve the question. Kibbie suspected there would be cases where someone had constructed a lagoon prior to May 31 and purchased irrigation equipment in advance of the construction but had not used it.

Priebe gave a brief overview of the Agriculture Committee's actions on this issue. He noted that operations above the 200,000 pound limit would not have to file a manure management plan and would not have to get a permit. The committee had approved a rule to be sent to the Commission which stated that 60 days before manure was spread, a manure management plan would have to be filed.

Metcalf asked if the Committee felt it was necessary to file Emergency on the issue Weigel raised. Kibbie took the position that a manure management plan should be approved within the 60-day period as well.

There was lengthy discussion about manure management in general.

Weigel wondered if farmers under the 5,000 limit would be allowed to spray. Murphy stated the language was very general and applied to spray irrigation of manure, to open feedlots and to small facilities as well.

Weigel asked if an operator currently had a permit and was currently building more facilities where permits were not needed, would the operator be allowed to spray manure out of the new facilities also. Murphy did not believe this would be the case.

Metcalf requested that the new rules covering these concerns and adding specific language regarding spray equipment prior to May 31, 1995, be filed Emergency to be effective immediately.

Murphy reminded that the law states there shall be no disposal of manure by spray irrigation except as provided in rules adopted by the Department. Priebe stated that the new rules would be in effect before spray equipment would be used again.

EPC (Cont.)
101.5(2), 101.5(8)

No questions on 101.5(2) or 101.5(8).

117.1 to 117.4

Metcalf called for review of Chapter 117 and she recognized Ernie Kersten. Kersten explained that Dodger Enterprises with 30 employees was involved in waste tire processing using tires from a four-state area and 8 to 9 contract drivers. Kersten labeled the rules as discriminatory against his company and felt they would be forced out of business. He described his operation of grinding tires for road base, erosion control, drainage and leachate medium.

Kersten objected to the 85 cent per tire surety bond requirement—they pay 45 cents for each tire purchased.

Kersten cited instance of his frustration with DNR officials, e.g., false accusation that Dodger was draining wetlands and a cease and desist order issued resulting in disqualification from the loan program. Kersten filed suit against the Department and they withdrew the order.

Murphy stated that these rules were mandated by the legislature and he stated that the idea the rules were directed at Dodger was ludicrous. The fee of 85 cents per tire and the $850 annual fee were in the statute. Doderer wondered if the Department recommended these numbers to the legislature and Murphy and Tormey were unsure.

Metcalf stated that Royce had suggested a 70-day delay of the rules for further study and possible involvement of the Ombudsman's office.

Motion to Delay

Doderer moved a 70-day delay. Rittmer agreed with the delay. Priebe was doubtful a delay would solve the problem but would vote in the affirmative. Metcalf would not support the delay because there was insufficient time to investigate the issue. Priebe favored legislative review next Session.

Halvorson stated this process had been ongoing for a length of time and he wondered if Kersten had attended the January meeting when the rules were under Notice. Grell emphatically stated that he had never been notified by DNR but learned about the meeting through the landfill commissioner and the news media.

There was discussion of stack restrictions.

Kibbie noted that 40 comments were received at the public hearing May 25. Murphy assured they were reviewed and changes were made when appropriate.

Kibbie wondered if a compromise could be reached in 70 days.

With respect to inside storage of tires, Murphy stated the Code required the facility to meet local fire code. In the absence of a fire code, certain criteria of the national fire code must be met.

Defer

After further discussion there was consensus to defer Chapter 117 until the next day. Metcalf announced this issue would come before the Committee September 14, 1995, at 11:30 a.m.

135.2 et al.

In response to Doderer, Wornson stated there were minor changes to the underground storage tank rules affecting old and new tanks. He explained that these rules did not address marketability or the cleanup process. New rules to implement House File 508 were in process.

EPC (Cont.) Ch 145 — In response to Doderer, Fiagle stated that manufacturers had been working with the participants in the stream of commerce so that anyone that sells batteries would help in the collection process.

NATURAL RESOURCES — Dennis Alt, Brent Parker, Lavoy Haage, Steve Dermand, Richard Bishop, Marion Conover, Mike Carrier, Mike Murphy and Gregory Jones represented the Commission and Jane Magers-Fionof, Marty Hock, Alice Jones and Jan Burns, Save the Trees, Helene Mahler, Sierra Club, Paul Engler and Sam Pullen, Students for Environmental Action, Fred LaCroix, Energy and Self Reliance Center, Jane Clark, Des Moines Audubon Society, Thomas Mathews and Representative Jack Holveck were present for the following:

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Public-owned lakes eligibility process, 31.1 to 31.4, Notice **ARC 5845A** 8/30/95
Lights on vessels, 37.6, Filed **ARC 5846A** 8/30/95
Boating speed and distance zoning, 40.28, 40.31, 40.32, 40.38 to 40.43, Filed Emergency After Notice **ARC 5847A** 8/30/95
Wildlife refuges, 52.1(2)"a," Filed **ARC 5848A** 8/30/95
Trees, removal 54.4, Filed **ARC 5844A** 8/30/95
State parks and recreation areas, 61.2, 61.3(1)"a," "b" and "j," 61.4(4), Notice **ARC 5842A** 8/30/95
Sport fishing — black bass, 81.2(2)"4," Notice **ARC 5843A** 8/30/95
Migratory game birds, 92.3(3), Filed **ARC 5853A** 8/30/95
Lake Darling Recreation Area deer management unit, 105.4(1), Filed **ARC 5851A** 8/30/95
F.W. Kent Deer Management Unit, 105.4(5), Filed **ARC 5852A** 8/30/95
Eligibility for free landowner/tenant deer licenses, 106.12, Filed **ARC 5850A** 8/30/95
Trapping limitations — mechanical snares, 110.2(4), Filed **ARC 5849A** 8/30/95

31.1 to 31.4; 37.6 — No questions on 31.1 to 31.4 or 37.6.

40.28 et al. — Dermand explained the reason for Emergency amendments to Chapter 40.

Rittmer had received complaints about frequent checks of boats by Commission enforcement personnel on the Mississippi River. Dermand stated that multiple checks in one day were uncommon. He pointed out that routine boat checks were made to ensure life jackets and other emergency equipment was available and in good condition. The Commission may have multiple officers in an area and that was why they could be stopped more than once. Dermand speculated that a boat which was legal at one point during the day might no longer be legal at a later time.

52.1(2); 61.2 — No questions on 52.1(2)"a" or 61.2 et al.

81.2(2); 92.3(3) — No questions on 81.2(2)"4" or 92.3(3).

105.4(1) — No questions on 105.4(1).

Priebe in Chair.

105.4(5) — Doderer expressed her opposition to the selection of a consultant regarding deer hunting in F.W. Kent Park. Bishop defended the Commission's choice contending the consultant was the foremost expert in the country on hunting deer in urban areas. Doderer believed the individual ran "roughshod" over everyone at the hearing who disagreed with him. Bishop pointed out that the Commission was cooperating with the Johnson County Conservation Board but they had no jurisdiction in cities. Priebe agreed with Doderer that the public was treated very rudely by this individual at the hearing.

NRC (Cont.) Bishop stated this rule was for 1995 only and if another hunt would be allowed next year, the Commission would work with those people and decide on a course of action.

Metcalf in Chair.

106.12 Halvorson asked if the prohibition on nonresident landowners had always been in place. He had heard from a man who had land on the Iowa/Minnesota border but the residence was in Minnesota. This man wanted an Iowa landowner permit and could not get one even though most of the land was in Iowa. Bishop replied that this was set by the legislature and the Commission could not change it. He explained the Commission was trying to clarify for the county recorders who qualified and who did not for landowner/tenant licenses.

110.2(4) No questions on 110.2(4).

54.4 Carrier summarized final rule 54.4. Guidelines had been in place since 1984 regarding the commercial harvest of trees and the removal of trees from recreation areas, state parks, state forest lands and other areas under the Commission's management. This guide was revised in 1989 and 1994 at which time it was formally adopted by the Natural Resource Commission. In follow-up to that the Commission was incorporating the Forest Ecosystem Management Guide into this rule which also contained provisions regarding collecting nuts, berries, wild asparagus, mushrooms and other materials from parks and recreation areas.

Significant revision in 1994 identified all of the major issues intended to be considered with respect to forest management practices including the harvest of trees, identified specific goals and objectives regarding forest management practices, identified specific goals and objectives regarding forest management practices, identified guiding principles that the Commission intended to follow and established clarification over the management philosophies and principle uses of the various categories of areas that were managed by the Department such as a state forest versus a state park. This guide was much more thorough than the previous one.

Comment on the guide was solicited including public meetings. However, the Commission decided not to take the position of those present today who called for prohibition of harvest or removal of trees from state parks, in particular, and in some cases, all public lands. Carrier emphasized that practices and policies on removal of trees had not changed since 1984.

Metcalf called attention to a letter addressed to the Committee from Dr. James Raich, Iowa State University, wherein he described DNR's guidelines as "remarkable smokescreen." Doderer stated she had received several complaints on this rule. Weigel did not understand what was recently revised and Carrier stated that the net effect was that the policies of the Commission had not changed significantly as the result of the revision of the guide. The revision of the guide had more fully defined and explained the philosophical and scientific basis behind the Commission's forest management practices. It did not alter the amount of activity in the different areas managed by the commission.

Weigel wondered if the system of using some trees for Commission use and selling some trees to the highest bidder was specified in the guide. Carrier replied that this was part of the action and were longstanding rules in Natural Resources Department, Chapter 8, and adopted by reference in Natural Resource Commission, Chapter 8. These rules were adopted by reference in the guide.

NRC (Cont.)

Carrier spoke at length concerning their professional service contracts and specific requirements for the commercial sale and harvest of trees. Trees in excess of $5,000 in value were to be sold by a sealed bid. For timber valued under $5,000, the contract could be negotiated. The director had the authority to negotiate a contract under emergency situations.

Weigel asked about a sale in Pikes Peak where proper procedure may not have been followed. Carrier replied that all sales were handled by the Forestry Division and the staff person failed to get the notice in a statewide publication in time for it to appear before the bids were received and opened. This was an oversight and had been corrected. This was not the standard practice.

Weigel wondered why the state was in the timber business and Carrier offered a detailed explanation.

In response to Halvorson, Carrier said proceeds from sale of trees was placed in a conservation fund which became part of the Department's budget for the operation of state forests or park and recreation areas. Each budget request projected a certain amount of income from each of the divisions and categorized them by nursery tree sales or timber harvests. There was no specific identity or return to the specific area. He did not advocate this because in some cases those areas may not need the funds. Tree harvesting does not require follow-up tree planting. The areas were harvested in a way to leave mature seed trees, create a seed source and natural regeneration of trees. Many harvests were done to encourage natural regeneration of shade or hardwood species that needed daylight in order to regenerate.

Rittmer inquired how much money was obtained from the sale of trees and Carrier replied the average for the Forestry Division was $100,000 from tree sales and from parks it was $30,000 per year.

Doderer wondered if any public hearings were held before harvest. Carrier replied that public meetings or hearings were not held because this had been undertaken for a number of years without controversy and with little public attention. The Commission regarded these harvests as appropriate and typical management practices of biologists, foresters and resource managers.

Metcalf stated that if there was no Committee action today, this rule would go into effect and it would take seven votes from the Committee to delay them. Other Committee options included referring them to the General Assembly for further study, delaying to the end of the next General Assembly or voting an objection which would shift the burden of proof to the Department.

Hock believed the trees were for the people not commercialization. She believed the ARRC was the last resort. With the exception of Massachusetts, other states do not cut and sell their trees from state parks—reducing a tree to a commercial commodity.

Engler was disappointed with the Commission's position when several botanists and other professionals disagreed with this policy.

NRC (Cont.)

Hensley stated that cutting down trees did not enhance the parks' environment or ecological evolution. A 1987 public attitude survey indicated that for the most part at least 90 percent of Iowans felt that protecting park and recreation areas was very important. She believed the tree cutting policies for income purposes were in opposition to the policies of the Polk County Conservation Board and the Des Moines Park Board as well as the National Park Service.

Mathews read from a prepared statement and spoke of the distinction between state forests which were established specifically for timber production and sale and state preserves, parks, wildlife areas and recreation areas which were not. In the case of the preserves, the Code provided protection as natural areas. Iowa was one of only six states that had no federally protected wilderness land. Mathews urged the Committee to object to rule 54.4.

Pullen had attended an environmental youth summit in Colorado this summer where many students expressed their concern about harvesting of trees in preserves and wilderness areas.

Horton, botanist and ecologist, said the Commission had ignored pleas from the public and urged the ARRC to stop the rule. She requested a listing of public lands in the state and information on biota that occur on those lands but the Department could not provide this information. In conclusion, Horton cautioned against irrevocable altering of the ecosystem and asked the Committee to delay the rule.

Burns also suggested delay of the rule.

LaCroix saw a lack of successful management of Iowa's parks and preserves. He concluded commercial cutting should be banned entirely in parks and preserves.

Clark read from a prepared statement and offered for the record pictures of large numbers of cut trees in Walnut woods. Clark asked for delay of the rule.

Magers-Fionof strongly urged the Committee to take a prudent path to saving Iowa's trees. She believed it was urgent that Iowa show reverent regard for nature entrusted to its care. She told of a person that had planned to will some land to the state but decided to establish a private foundation instead to protect the trees.

Carrier advised Holveck the Commission was writing an ecosystem management plan on every state park. He continued that the Commission had been harvesting trees from state parks for at least 20 years. The basis for this harvest was done on a case-by-case evaluation of the area by state foresters in terms of salvage of declining or dead trees that had high value or to create other desired conditions in the forest community. The Commission would continue to harvest where appropriate and the Commission had identified seven state parks and recreation areas that had a need for an evaluation as to whether certain trees needed removal in the coming year. In most cases the trees were either dead or seriously declining black walnut trees. For at least 20 years, these trees in state parks were maintained on an inventory system and, in some cases, harvested or salvaged before they die.

NRC (Cont.)

Holveck questioned the purpose for the guide when the Commission seemed to disregard it. Carrier viewed the guide as including the entire ecosystem of the park not just the forest community. Carrier reiterated there were professional biologists, foresters and land managers who had a good understanding of the goals and objectives of these areas. In many cases the plans simply documented and formalized the practices and goals of the Commission over the years. Holveck urged delay until the guide was more specific.

Rittmer was open to allowing the legislature to look into the situation.

Motion to Refer and Session Delay

Rittmer moved to refer rule 571—54.4 to the General Assembly. There was brief discussion and Rittmer corrected his motion to delay rule 571—54.4 until adjournment of the 1996 General Assembly.

Doderer explained that this would give everyone an opportunity to organize and talk to legislators and then the legislature would have to review the rule.

Kibbie reasoned the proper committee could also review statutory authority to change the direction of the Commission. The subcommittee that dealt with the budget should review the amount of money relied upon for income. He maintained this department should be funded out of the general fund not from the sale of trees. Kibbie explained to the audience that a session delay was not a big victory but it would prevent the rule from being implemented.

Bishop argued that wildlife could not be managed in forested areas without a harvest of trees. He pointed out some damage that had been done by wind in the Coon Creek area and he believed it would be beneficial for regeneration to remove some of those trees. Bishop continued that wildlife species such as deer, turkeys and squirrels depend on mass producing plants such as oaks and they do not regenerate well in shade conditions.

Carrier commented that undue emphasis had been placed on economic and commercial aspects of forest management practices. This was a by-product but the principal focus was management of a natural resource for a variety of purposes and benefits. Carrier concluded the management practices of the Department would be severely hampered by a session delay.

Hedge wondered what would be accomplished by a session delay—would it be the formation of the guide or actions.

Carrier stressed that the Commission was not trying to intensively manage every acre of forest land in the public areas.

Weigel recalled the 32 acres of trees that were cut being referred to as incidental. He disagreed with that assumption and was unsure of results of a session delay.

Doderer understood that 3,900 trees would be cut in 1995 and wondered where this would take place. Carrier stated the Commission managed 340,000 acres of public wildlife areas, 8,000 acres of preserves, 60,000 acres of state parks and about 60,000 acres of state forest lands but he was unsure of specifics.

Rittmer interjected that it was never his intent for his motion to stop the process for the current year.

NRC (Cont.)
Substitute Motion

Kibbie moved a substitute motion to refer rule 571—54.4 to the Speaker of the House and the President of the Senate for review by the appropriate committee. Priebe agreed with this motion.

Doderer contended the guide lacked specifics for the public.

Royce advised the ARRC concerning the proposed delay and cited a 1977 Supreme Court case stating absent a specific statutory mandate, an agency may make its policy either by rule or on a case-by-case basis. However, the fact that the legislative committee had chosen to act to postpone that rule may affect whether the department could continue the policy. He concluded there was no clear cut law on what the impact of the ARRC vote would be.

Palmer believed this rule was more restrictive than in the past because it did establish some criteria but was doubtful a delay would make a difference. He expressed support for Rittmer's motion.

Carrier noted that the Code provided the authority to sell the timber.

Kibbie favored the substitute motion and believed the legislature should review the Code sections that the Commission operated under in this regard.

Motion Withdrawn

Rittmer withdrew his motion.

Motion Carried

The motion for a referral of this rule to the President of the Senate and the Speaker of the House carried.

Recess

Metcalf recessed the meeting at 5 p.m. until 9 a.m. Thursday, September 14, 1995.

9-14-95

Reconvened

Metcalf reconvened the meeting at 9 a.m. Senator Kibbie was excused from the meeting.

MEDICAL EXAMINERS

Ann Martino was present from the Board for the following:

MEDICAL EXAMINERS BOARD[653]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Impaired physician review committee, 12.16, Notice ARC 5837A 8/30/95

12.16

In response to Metcalf, Martino stated the amendment to the statute covered everyone but this rule applied only to physicians licensed by the Board of Medical Examiners. She expected other licensing boards to come forward with a similar version of the rule. The requirements for admission into the program were conservative. This was a new program and the Board wanted to make sure that those admitted into the program were committed to recovery.

DENTAL EXAMINERS

Constance Price represented the Board for the following:

DENTAL EXAMINERS BOARD[650]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Supervision of dental hygienist, 10.2(1), 10.3, 10.3(1), 10.3(2), 10.4, Filed **ARC 5801A** 8/16/95
Examination for licensure, 11.1, 11.2(2)"d," Filed **ARC 5802A** 8/16/95
Dental auxiliary — placement of restorative materials, 20.2(2)"h," Notice **ARC 5799A** 8/16/95
Orthodontics and dentofacial orthopedics, 28.6, 28.6(1), Notice **ARC 5800A** 8/16/95

10.2(1) et al. Price stated the Iowa Dental Hygiene Association supported the revised rules and the Board did consider written and oral comments in reference to the public hearing and amended the language.

11.1 et al. No questions on 11.1 et al.

20.2(2)"h" Doderer wondered if it was necessary to put this in rule form. Price replied that this rule stated what dental assistants may not do and by deleting "acts related to the placement" allowed acts relating to the placement.

28.6 and 28.6(1) No questions on 28.6 and 28.6(1).

PHARMACY Terry Witkowski and Lindy Pearson represented the Board for the following:

PHARMACY EXAMINERS BOARD[657]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Hospital pharmacy, 7.3 to 7.11, 7.13(4), Notice **ARC 5644A** Terminated **ARC 5786A** 8/16/95
Hospital pharmacy licenses, ch 7, Notice **ARC 5785A** 8/16/95
Practice of pharmacy, 8.5, 8.5(10), 8.8, 8.9(5)"c"(1), 8.14(2), 8.23, 8.24, 8.29, 8.30, Notice **ARC 5784A** 8/16/95
Disposal of controlled substances, 10.10(7), Notice **ARC 5783A** 8/16/95
Pharmacy compounding practices, ch 20, Notice **ARC 5782A** 8/16/95

Ch 7 No questions on Chapter 7.

8.5 et al. Doderer referred to 8.5(10) and wondered if it was unethical under this rule for a pharmacy to advertise some sort of enticement to switch from one pharmacy to another and Witkowski stated it would be. She explained that one of the reasons the Board was proposing this rule was to encourage patients to stay with one pharmacy and pharmacist because it was almost impossible for a pharmacist to do good patient counseling and provide pharmaceutical care if patients were moving from one pharmacy to another constantly. This would encourage pharmacies to lower prices because they would not have the coupon leaders.

Doderer wondered if it was unethical for a pharmacy to charge lower prices than other pharmacies and Witkowski stated it was not. There was a provision in the unethical conduct rules that did have strong restriction on what could and could not be advertised. Doderer opposed this rule because even doctors could advertise. Witkowski countered that this rule did not address advertising. Doderer believed it was unethical for pharmacists to enter into agreements where they can't reduce prices by some rebate or coupon but the manufacturer could. Witkowski replied that manufacturers provided samples to physicians offices and some physicians do not want to handle samples. In lieu of doing this, they were providing vouchers to patients and the patients could take those to their pharmacy and by that they could get free or reduced priced medication directly from the manufacturer but through their pharmacy. The Board felt it would not be in the best interest of the patient to deny them access to this.

PHARMACY (Cont.) 10.10(7) Witkowski noted that last year the Board staff disposed of controlled substances nearly 900 times during the course of the year. Metcalf wondered under what circumstances this medication needed disposal and Witkowski replied it would be outdated medications or returned from a nursing home for example. The Board will notify pharmacies of this change.

Medical Waste In a topic not formally before the Committee, Rittmer inquired about the status of a medical waste incinerator in Eldon. Royce replied that rule was placed under Notice earlier this year and had not been adopted in final form. Under Iowa statute, once the rules went into effect the current ban on construction of waste incinerators would be lifted. A large incinerator was scheduled for southern Iowa and those residents were trying to prevent its construction.

Ch 20 No questions on Chapter 20.

PUBLIC HEALTH Carolyn Adams, Public Health, Marno Cook, Human Services, Stacy Freeburg, Quality Insurance Manager with University Hygienic Laboratory, Mike Moskal, M.D., Broadlawns Medical Center, Pat Morrissy, Child Protection Advocate, and Rizwan Shah, M.D., F.A.A.P., Council on Chemically Exposed Infants/Children, were present for the following:

PUBLIC HEALTH DEPARTMENT[641]
Minimum standards for reliable results of medically relevant tests to determine the presence of an illegal drug, ch 89, Notice ARC 5833A 8/30/95

Ch 89 Adams gave a brief overview of Chapter 89 which was intended to establish reliability standards for tests measuring presence of illegal drugs in infants and children as well as adults. She referred to a handout entitled "Comparison—Cut-off Levels for Drug Testing."

Metcalf called to the Committee's attention a handout which included a letter from Judge Stephen Clarke, Chair, Juvenile Court Committee. Clarke was extremely concerned that the rules excluded use of hair follicles to test for presence of drugs.

In response to Rittmer, Adams stated that hair was not included based upon research, articles and contacts that the Department had made. It was her understanding that hair analysis had discrimination potential. Adams referred to another handout which included a letter from the FDA indicating there was no clear FDA drug use assay test for hair analysis.

Shah had reviewed the studies done by researchers on hair analysis and they did not recommend this test. The hair analysis test research was done on 18 children and the hair analysis on adults had been used in prosecutory courts. In Iowa the purpose of drug testing was not used for prosecution purposes but was a public health issue. The main guideline for any test that a laboratory did was to test on the basis of the metabolism of the drug—95 percent of cocaine in a system was eliminated by urine and, therefore, that became the standard test. Only 5 percent would be eliminated in saliva, sweat and hair and that makes the hair testing not standard.

Rittmer wondered if there were ways of minimizing the urine test and Shah replied there were ways of minimizing any body test including the hair. Chemicals in the hair could be changed by hair color and shampoos. In the test the hair samples were washed by three different chemicals before testing. This was a very tedious process and cost twice as much as urine testing. She did not believe now was the time to include this test.

PUBLIC HEALTH (Cont.)

Shah continued that people believed hair testing was nonintrusive but some children do not have hair on the scalp that could be used. In response to Doderer, Shah stated that the research on the basis of which the company had developed the hair test was conducted on 18 children.

Hedge asked if a person did want to do a hair test, where would this be done. Shah informed Hedge that a commercial laboratory would provide the test service. Several laboratories in the state had developed standards for testing. Hedge wondered if the fact that there were no laboratories testing hair in the state was the reason that test was excluded. Shah did not believe this was the reason.

Metcalf wondered about the district where they were currently using the test in juvenile court. Shah responded there was a community in Iowa where this test had been used on a larger scale. In Shah's professional background the tests that were standardized had always been those based upon the metabolite of a given substance.

Freeburg stated the other issue was that there was no form of test the lab could do to prove they could do a blind sample. Currently, there was no company that distributed it.

Shah had received information from the United States Drug Testing Laboratory in Chicago which was a private firm. Doderer believed that hair samples were used in many different tests.

Priebe wondered if this had been allowed in any judicial cases and Shah replied that one judicial system in Iowa had used it in child abuse cases. The drug testing there was utilized to tell whether a child was exposed to a drug, mostly illegal, in the child's environment. This was the issue on which they were developing the standard for the laboratory to identify the children who were exposed to substance abuse.

With respect to hair testing, Moskal stated there was no adequate standardization as there was for urine. He offered technical information and cited as a major drawback the fact that a lab could not take a controlled hair which was needed for standardization.

Moskal told Hedge exposure to cocaine would show up in the urine from two to four days following exposure. In hair, the window was as much as two to three months. It was very difficult for an investigator from DHS to determine when the exposure occurred two to three months ago versus looking at the last two to four days in terms of determining where the child was exposed, who was with the child when the exposure occurred and a number of other factors in court.

Morrissy, a DHS employee representing himself, had worked for the Department of Human Services for approximately 20 years. Sixteen years of the time was spent in child abuse and neglect investigations. He opposed the rules as written and referred to a handout he had made addressing some of the issues. He explained that ambient smoke could be breathed in and, therefore, there would be traces of the drug in the child. Hair testing had been used in the multicultural community of Waterloo in about 120 cases and the tests did not show any type of racial or gender bias—men, women, blacks, whites and Hispanics. The most gender biased test was the meconium test because the only way the child could be exposed was by the mother. According to the way the rules were written, the amount of meconium needed would exclude the group of newborns needing

PUBLIC HEALTH (Cont.)

testing. There was concern about the urinalysis and the amounts required for that test. He was concerned about the use of urinalysis on small children not only because of the window period being so short but because many times it would require a long period of time in a room waiting for the child to urinate and possibly resulting in catheterization. A snip of some hair off the crown of the head would be preferable in his opinion.

Halvorson observed that many people wanted hair testing included. Adams reiterated the Department's intent to avoid discrimination.

Royce wondered to what use the test information was made. He asked if it was introduced into evidence in either a civil or criminal court action or just used to find out where the problem was. Cook replied that it was typically introduced as evidence to substantiate abuse, placement of the parents' name on the child abuse registry and to pursue action in juvenile court to seek a child in need of assistance petition or removal of the child.

Shah spoke of the differences in hair composition depending upon age. Priebe felt strongly that any tool available should be used. Shah reiterated that at this time, the scientific community lacked sufficient data to include hair as a standardized test across the board.

Morrissy clarified that if there was some sort of racial bias it did not mean racial discrimination. Bias was a scientific term and discrimination was a social term that had a negative connotation.

Metcalf requested that any information such as handouts be distributed prior to the meeting.

REVENUE

Carl Castelda, Co-administrator for the Compliance Division, represented the Department for the following:

REVENUE AND FINANCE DEPARTMENT[701]

Taxable and exempt sales, local option sales and service tax, 17.9(1), 17.9(2), 17.9(3)"a,"17.9(5) to 17.9(7), 17.27, 18.25(3), 18.29(7)"d," 18.33, 18.44(1), 18.44(4), 18.48(6) to 18.48(8), 18.49, 26.44, 107.2, 107.9"6," 107.14, Notice **ARC 5854A** 8/30/95

Nonprofit private museums, 17.24, Notice **ARC 5855A** 8/30/95

Individual, corporation, and franchise tax, 48.3"5," 52.1(4), 58.5(2), 59.28(2)"i," Notice **ARC 5856A** 8/30/95

Property tax, 71.1(4), 71.1(5), 71.5, 71.12(5), 71.20(1)"b," "c," "e" to "g," 74.1"4," 74.8(2)"a" to "d," 75.3, 77.1(12), 79.2(2), 79.2(9), 80.5(1), 80.5(3)"a," 80.5(4), Notice **ARC 5836A** 8/30/95

17.9(1) et al.

Castelda gave a brief overview of the rules. Halvorson was concerned about the language in 18.44(4) implementing House File 149 which involved auxiliary attachments to farm machinery and equipment. He believed the full intent of the legislature was not carried out in these rules. The full intent was to exempt not only those attachments to the farm machinery but also the product of silage bags, for example. Castelda replied that it did include silage bags. Halvorson wondered if this included twine and Castelda responded that twine was not included because there was a specific statutory exemption that addressed twine. In his opinion attachments were more in line with equipment but Castelda was willing to prepare legislation to include twine for next session. He stated that in use of "attachments" he did not see the word "supply" being involved.

REVENUE (Cont.) Priebe argued that the silage bag was not attached to the machine and he wondered if the twine was exempt if it was used for baling and selling commercially. Castelda replied the twine was exempt under the container exemption.

Weigel agreed with Halvorson and had no doubt that legislative intent was to include twine.

Rittmer asked what the purpose was of the local option tax in 107.14 and Castelda explained this was special legislation deemed to cover one specific situation in the city of Shenandoah, Iowa, which was located in both Page County and Fremont County. In one side of the county there were no residents just businesses so under the current statute they could not vote on a local option tax. Legislation was passed to allow the community to have an election combined as a single unit and there was a specific formula distribution for the money to be divided equally between city and county. This bypassed the usual population property tax-based formula seen in other districts.

Halvorson asked about taxes on county fairs and Castelda replied it depended on how the county fair was structured. There was a general sales tax exemption for sales by cities, counties and political subdivisions and there were certain circumstances where the fair was owned and operated by the city or county. There were other situations where the fair was operated by an independent nonprofit organization and in that situation the exemption did not apply. Most fairs were operated by cities and counties.

Weigel asked if the printers and aircraft portion of these rules were $25,000 aggregate per year or just for the time period. Castelda replied it was just for the specific time period. In response to Weigel, Castelda was unsure if there had been any claims for refund but would find out and inform Weigel.

17.24 Castelda stated that the Department had had difficulty defining a nonprofit museum but after two years of research had agreed to the one in 17.24.

Metcalf wondered if there was a public hearing on this. Castelda informed Metcalf that no one requested a hearing on the rule but the Department of Cultural Affairs provided language. The Department had not made an attempt to inform every museum in the state. He thought Cultural Affairs had sent a newsletter on the issue and the Department planned to notify anyone who had requested information in the past. Metcalf opined that public knowledge of the rule was important.

48.3"5" et al. Castelda gave a brief overview of the rule and there were no questions.

71.1(4) et al. In response to Halvorson, Castelda stated that 37 bills passed the General Assembly that affected taxes this year.

Hedge asked about the rescission of 71.12(5) and wondered what was done. Castelda stated that Iowa had not had a personal property tax for a number of years.

LABOR SERVICES

Walter Johnson represented the Division for the following:

LABOR SERVICES DIVISION[347]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"
General industry — exposure to asbestos, 10.20, Notice **ARC 5812A** 8/16/95
Construction — exposure to asbestos, 26.1, Notice **ARC 5811A** 8/16/95

10.20 and 26.1

No questions on 10.20 or 26.1.

SOIL CONSERVATION

Ken Tow was present from the Division for the following:

SOIL CONSERVATION DIVISION[27]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"
Financial incentive program for soil erosion control, 10.41, 10.41(1), 10.41(2), 10.41(7),
Filed Emergency After Notice **ARC 5794A** 8/16/95

10.41 et al.

Tow defended the Emergency after Notice filing of Chapter 10 amendments. The Division needed to receive the funds before fall and the Governor's Office would not accept the rules for filing until after the Governor had signed the appropriations bill.

AGRICULTURE

Ron Rowland, Director of the Regulatory Division, and John Hinshaw, Head of the Horse and Dog Bureau, were present from the Department for the following:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
Contested cases, 2.2(3) to 2.2(8), Notice **ARC 5809A** 8/16/95
Iowa-whelped greyhounds, 62.40, 62.41, Filed **ARC 5810A** 8/16/95

2.2(3) to 2.2(8)

No questions on 2.2(3) to 2.2(8).

Milk Tanks

Priebe asked about ARC 5816A which scheduled a hearing on rule 68.12 regarding cooling and agitating milk in bulk tanks. Rowland replied that approximately ten people attended the hearing and favored relaxing the rule further than the Department had proposed. Priebe had heard concerns that the proposed rule could force a hardship on the Amish. Rowland stated that no final resolution had been made. Rowland believed that it was a good hearing.

Hedge stated that the problem centered on the automatic cooling tank. The Amish started theirs by hand instead of automatically. Another problem was the recording of temperature which required electricity. Rowland replied that the rules would not require the automatic on/off control if they had a time and temperature chart. The Amish community did not want the time and temperature chart either. Rowland explained that these rules were patterned after rules in Pennsylvania specifically designed for Amish. The Amish's point was that other states, including Illinois, do not require this.

It seemed logical to Hedge that payment be based according to the bacteria count. Rowland pointed out the milk might be rejected if too warm.

62.40 and 62.41

Rowland stated that revisions in Chapter 62 were promulgated at the urging of the Iowa Greyhound Association and other Iowa greyhound breeders who requested that the Department tighten the rules to make it more likely that the money generated did stay in Iowa with the Iowa breeders. Breeders throughout the state were in favor of the rules.

TREASURER Karl Koch and Steven Miller represented the Agency for the following:

TREASURER OF STATE[781]
Treasury Direct program, 15.1(8), Notice **ARC 5819A** 8/30/95

15.1(8) No questions on 15.1(8).

Linked Deposits In a topic not formally before the Committee, Metcalf requested more information on the status of rules on linked deposits. Koch replied he would take the request back to the Agency.

UTILITIES Vicki Place and Gary Stump were present from the Division for the following:

UTILITIES DIVISION[199]
COMMERCE DEPARTMENT[181]"umbrella"
Affiliate transactions, ch 31 title, 31.1, 31.6 to 31.8, Filed **ARC 5832A** 8/30/95

Ch 31 et al. No questions on Chapter 31 et al.

DOT Will Zitterich represented the Department for the following:

TRANSPORTATION DEPARTMENT[761]
Holiday rest stops, 105.2, 105.4(3), 105.4(4), 105.5(1)"a" and "b," 105.5(2)"a," 105.5(3), 105.5(4), Notice **ARC 5818A** 8/30/95

105.2 et al. Priebe wondered about the change to the metric system and Zitterich replied that all documents for purchasing were being changed to allow consistency. FHWA had started the process and the Department was currently letting projects in metrics. Zitterich indicated that other states should be working with the Federal Highway Administration.

Priebe wondered what this would have to do with the beef promotions, for example. Zitterich replied that the law that required a program be developed for promotion of agricultural products in rest areas was the other half of the legislation. That was given to the Department of Economic Development to develop a program in conjunction with the DOT and the Department for the Blind. Currently, DED had drafted those rules and submitted them to DOT and the Department for the Blind for comment. Metcalf contended that DED had not drafted rules. Zitterich stated that they had drafted five options on how to start the process. Metcalf stated it was hoped the DOT would expedite this process.

Zitterich recalled the discussion focused on where in the rest areas this promotion should occur. The law centered this around being led by the DED with the welcome centers and Zitterich favored that approach. Priebe did not believe the intent was to limit promotions to the welcome centers. Metcalf wondered why this would be different from service groups serving doughnuts and coffee. Zitterich indicated that permanent displays were also being considered.

Metcalf in Chair.

LIBRARIES Sharman Smith represented the Division for the following and there were no questions:

LIBRARIES AND INFORMATION SERVICES DIVISION[286]
EDUCATION DEPARTMENT[281]"umbrella"
Disposal of library materials, 1.7, Notice **ARC 5394A** Terminated, Notice **ARC 5834A**, also Filed Emergency **ARC 5835A** 8/30/95

CORRECTIONS Fred Scaletta from the Department and Paul Stanfield, Iowa Catholic Conference, were present for the following:

CORRECTIONS DEPARTMENT[201]
Inmate telephone commissions, 20.20, Notice **ARC 5773A**,
also Filed Emergency **ARC 5774A** 8/2/95

20.20 Scaletta referred to a handout which explained rebate money from AT&T. Currently, there was an inmate telephone contract with AT&T and they had installed equipment in the institutions to handle the telephone traffic of inmate calls. The agreement called for use of space for the company to put their equipment in and gave a rebate of commission on the calls made. The system called for only collect calls and the Department received a rebate of 26 percent. That money was sent to each institution on a monthly basis and at the end of the company's fiscal year they gave the Department an additional 15 percent of the commissions paid throughout the year. The figure of $572,000 quoted last month did not include the additional bonus. During an audit it was decided that there was no legal authority to receive this money and, consequently, there was no legal authority to spend it. Legislation passed this year corrected the problem.

Metcalf inquired when the committee to approve expenditures was formed and Scaletta cited new rule 20.20, 8/2/95 Iowa Administrative Bulletin.

Discussion continued relative to the audit and the hold on spending which accounted for a large carryover of funds. Scaletta stated that some of the items purchased included ophthalmology equipment, a 50 by 100 foot recreation area, educational items, concrete for a basketball court, a treadmill, other recreation equipment, and an air conditioner. A dietary service request for work on the dining room from Oakdale was rejected. The budget for the women's institution included vocational training, contract religious services beyond the budgeted chaplain, law books which replace and update law books, contract for library services which actually paid for part of the salary because there was no FTE for the librarian, education materials, family programs which paid for the activities planned for families such as Easter egg hunts and Christmas activities, religious materials requested by the chaplain, medical education materials, furniture and fixtures and repairs, recreation equipment and supplies.

Doderer wondered why there was no DMACC contract and Scaletta did not know. Doderer thought that chaplains visited the facility at the expense of their churches and it was Scaletta's understanding that most denominations do not charge. The Catholic diocese did bill for expenses of $2,809. Doderer took the position that money should be spent on educational materials as much as possible.

There was discussion of rates charged for calls with Scaletta commenting a standard charge was made for these calls.

Weigel asked if it was possible to tell which inmate made certain calls and Scaletta responded in the affirmative. There was further discussion of costs and Scaletta said prisons were not charged any more than a person using a pay telephone on the street. The rebate was earned because of the volume of calls.

Halvorson would prefer the state to get the commission rather than the telephone company.

CORRECTIONS (Cont.)

Doderer believed the costs should be as cheap as possible. She also voiced disagreement with the makeup of the Department's committee because there were no public members.

Scaletta called attention to potential abuse of telephone privileges if there was not strict control.

Stanfield understood that these rules had been referred to the General Assembly. He believed it would be appropriate to include comments from inmate councils on the expenditure of this money and to maintain a file of requests for expenditure of money and a list of expenditures. He noted there was an organization in Iowa called CURE which was comprised of inmate relatives which could be involved also.

NRC

Waste Tires

Ernie Kersten, Dodger Enterprises, Mike Murphy, Alan Stokes and Don Paulin from the Natural Resources Commission were present for a continuation of the review of ARC 5808A which had been deferred yesterday.

Metcalf called on Royce who stated that Iowa Code sections 455D.11, .11A and .11B had been in effect for approximately two years. This mandated that a waste tire program be created and delegated authority to the Environmental Protection Division to implement the program. The Department had the authority to adopt rules specifying various requirements for waste tire facilities but specifically dealing with financial security. The statute also required that a bond be provided in the equivalent of 85 cents per tire and required an annual licensing fee of $850. The rest of the rules were subject to change but the Department had the authority to write them.

Kersten requested that some minor revisions be made. He found that if a bond were available it would come under a landfill postclosure insurance policy that was issued by only one company in the United States. The fee for the bonding requirement would be 3 percent of the bonding amount. Coupled with the 3 percent fee would come a requirement that the operator of the facility start an escrow account called a "sinking fund" in anticipation of a closure. That would cost $12,000 to $13,000 for the tires currently on hand which came to roughly four weeks worth of tire intake to the company.

Kersten requested that the definition of "waste tire" be modified to include the words "or a processed tire" at the end of the last sentence. Metcalf explained that nothing could be added to an adopted rule but the Department could bring these rules back with that change.

Kersten recommended that, with respect to regulations on indoor and outdoor storage, the enforcement of the fire code be left to the local authorities and that the Commission not be vested with fire marshal power. Metcalf asked if the city had a fire code and if Kersten had spoken with them about this. Kersten understood there were no problems with the local fire code.

Priebe believed there was a conflict with the height of a tire pile and the surface area. If these tires were in a cement building, he could see no problem with the 10-foot limit. He believed the fire marshal should be in control and meet with the local people.

Waste Tires (Cont.) Stokes stated there was a separate section for underground storage of tires. He added that the 10-foot height applied only to outside storage and the maximum storage inside did not place a dimensional limit—only a total amount of 50,000 cubic yards of tires. Grell could fill the building.

Halvorson stated these rules did not apply because there was a local fire code. Kersten was concerned that the DNR would interpret local fire codes and issue citations based on alleged violations.

Stokes clarified that the definition of "waste tire" was directly out of the Code of Iowa. Regarding the language about limitations of storage, he pointed out this language was taken directly from the National Fire Protection Association Code. The language stated outright that if there was a local fire code, it applied. As to the enforcement, the Department would look to the local fire marshal to enforce their codes except in difficulty enforcing the code in terms of noncompliance when the Department could take enforcement action. The Department would not act as a matter of routine.

Metcalf cautioned the Department to look with favor on a company that was experimenting with the processing of waste tires.

Priebe believed the Department was very specific in stating that a permit was required for experimentation. Stokes stated the Department tried to facilitate innovation and had simply requested written notice of this experimentation so they could gain data on beneficial reuses so regulatory rules could be written. The Department had approved many projects.

Motion Withdrawn Metcalf stated that there was a motion on the floor to delay the rule. Doderer withdrew her motion and there was no objection.

Motion to Refer Weigel made a motion to refer ARC 5808A to the Speaker of the House and the President of the Senate and the motion carried.

Committee Business ARRC Actions Compiled Barry requested ARRC permission to include a page in the IAB that would be a compilation of actions taken by the committee. There was unanimous consent.

Meeting Dates The following meeting dates were agreed to: October 10 and 11, November 13 and 14 and December 12 and 13 with the Christmas party on December 12 at Noah's Ark.

Adjourned The meeting was adjourned at 12:10 p.m.

Respectfully submitted,

Phyllis Barry /km

Phyllis Barry, Secretary
Assisted by Kimberly McKnight

APPROVED:

Janet Metcalf

Representative Janet Metcalf, Co-chair