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 Monday, March 11, 1996, 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 Horace Daggett, Minnette Doderer, Roger Halvorson, and Keith Weigel.

Also present: — Joseph A. Royce, Legal Counsel; Kimberly McKnight and Cathy Kelly, Administrative Assistants; Caucus staff and other interested persons.

Convened: — Co-chair Metcalf convened the meeting at 7:30 a.m.

HUMAN SERVICES — Mary Ann Walker, Harold Templeman and Gary Gesaman represented the Department and Deb Westvold, ISAC, Rik Shannon, The Arc of Iowa, Julie Dettmann, Governor's DD Council, and Linda Hinton, IARRF, were present for the following:

HUMAN SERVICES DEPARTMENT[441]

Nursing facility care — annual update of average statewide costs and charges, 75.15(2)"b," 75.24(3)"b"(1) to (6), Notice **ARC 6239A** 2/14/96

Medicaid waiver services, 78.41(1), 78.41(1)"a" to "c," "l," and "m," 78.41(4)"a," 79.1(2), 79.1(15)"b" and "e," 83.2(2)"b," 83.60, 83.61(1)"e," 83.61(2) to 83.61(4), 83.62(1), 83.62(2), 83.65, 83.67, 83.67(8), 83.67(9), 83.69, 83.70, Notice **ARC 6255A** 2/14/65

Wrap-around funding program, ch 179 Preamble, 179.1, 179.2(1), 179.2(2), 179.4(1)"c," 179.7, 179.11, 179.12(2)"b" and "d," 179.13(1)"a," 179.13(1)"a"(1), 179.13(2)"d," Notice **ARC 6257A** 2/28/96

Disability services management, ch 25 division II preamble, 25.11 to 25.28, Filed **ARC 6194A, carryover from February agenda** 1/31/96

75.15(2)"b" et al. — No questions on 75.15(2)"b" et al.

78.41(1) et al. — Gesaman stated amendments to Chapters 78, 79, and 83 gave each county more authority and more responsibility regarding access to the HCBS MR waiver program and use of the waiver program in serving persons with mental retardation. Counties would have to specifically approve any plans where the cost was above financial guidelines for targeted case managers to use in developing plans for individuals. The Department refined some of the services and service costs and brought the unit of service down to the smallest increment that would work for an individual. It then converted some services to hourly units of service. In anticipation of comments, the Department met with representatives of groups affected by the rules and worked out compromise language on several of the issues.

Priebe asked how the Department determined the number of slots for the waivers. Gesaman replied the Department asked each county how each wavier would be used and how many persons would be served. Priebe evinced concern that counties with populations of approximately 8,000 to 10,000 had 3 times as many waiver slots as some counties with 20,000. Gesaman responded this involved the extent to which each county wanted to use the home- and community-based waiver program. Responding to Priebe, Gesaman replied the primary advantage of this program was that the state was able to draw down federal financial participation enabling the county to receive approximately $3 for every $1 invested in the program. Gesaman added some counties do the complete

DHS (Cont.)

financing. Both Walker and Gesaman noted the difficulties in operating a state program and complying with federal guidelines.

Gesaman responded to Priebe that funding from the federal government was not currently limited, but the Department anticipated this could occur in the future.

Daggett asked if there was a standard to determine the payment limit based on living situations. Gesaman stated this was primarily related to whether persons were living in their own homes or in alternative living situations. The cost was increased and more supportive services were required when a person lived in a group residential setting than when that person lived with parents. Special care costs were built into the scale.

In response to Daggett, Gesaman replied a single assessment would be done and, based on this assessment, the person's needs would be evaluated and a cost range for services would be established for the individual. Walker added some pilot testing of this had been done.

Ch 179

No questions on Chapter 179.

Ch 25

Royce explained this was a controversial rule pertaining to disability services management which had been carried over from February and was scheduled to go into effect April 1, 1996. This would be the last meeting of the Committee prior to the rules taking effect.

Templeman stated Senate File 69 originally set the base year at fiscal year 1994, but under Senate File 2030 the county could chose either fiscal year 1994 or fiscal year 1996. Counties were required to select a base year 14 days after the bill was signed and seven elected to use fiscal year 1994—three counties because it was more money in fiscal year 1996 and four counties because it was less money. Senate File 69 contained growth language, which was item vetoed by the governor, but was restored in Senate File 2030 and signed by the governor.

Metcalf asked if any of these rules were in conflict with the content of Senate File 2030 and Templeman answered there were none.

Templeman stated at least one-third of the counties had hired a central coordinator and several smaller counties shared a coordinator. Any person hired prior to April 1 did not have to meet the qualifications set forth in Senate file 69. the planning responsibility ultimately remained with the county board of supervisors.

Kibbie asked if the coordinator's salary was from mental health funds or from a county's general fund budget and was told it came from the county's mental health fund.

UTILITIES

Vicki Place, Ed Schlack and Phyllis Finn were present from the Division for the following:

UTILITIES DIVISION[199]
COMMERCE DEPARTMENT[181]"umbrella"
Quality of service — telephone. 22.6(2)"a" to "i." Filed **ARC 6273A** 2/28/96

22.6(2)"a" to "i"

Schlack stated amendments to Chapter 22 established priority that a telephone utility should follow in restoring service after an outage. Priority should be given to residential customers with someone in the household who had an existing medical emergency. These rules required telephone utilities to have adequate personnel and equipment to receive reports about trouble and clear service problems. A further requirement was that telephone utilities must acknowledge calls to the business office or service problems to be answered 85 percent of the time within 20 seconds and all calls within 40 seconds.

UTILITIES (Cont.) Metcalf asked the nature of comments received from the telephone utilities. Schlack noted the Iowa Telephone Association and GTE stated that priority should be given to customers who gave written verification of a medical problem. GTE stated that acknowledging customer calls was not a significant factor in the customer's estimation of quality of service and thus opposed the amendment to 22.6(2)"c."

Kibbie believed the state should require those companies that are regulated to provide more maintenance and billing service within the state of Iowa. He noted GTE had moved approximately 500 jobs from the state.

Hedge wondered how much liability the utilities were asked to assume by the state and cited the example of a severe ice storm bringing down lines. Schlack replied the statute required utilities to have reasonably adequate service and facilities and did not believe this would serve as a basis for a lawsuit, since it involved the utilities' efforts to restore service rather than failing to provide service.

Weigel asked if the term "acknowledge" within the time period could be done by recording rather than human response. Schlack indicated this would be changed to say "to answer customer calls" and would be done by a person.

Priebe in Chair.

REVENUE Carl Castelda, Administrator of the Compliance Division, and Harry Griger, Attorney General's Office, were present for the following:

REVENUE AND FINANCE DEPARTMENT[701]

Corporation and franchise tax, 7.8(3), 52.1(4), 56.6(4), 56.6(5), 59.28(2)"o," 61.6(4), 61.6(5),
Notice **ARC 6244A** 2/14/96

Taxable and exempt sales — agricultural production, 17.3(1)"d," 18.10(2), 18.48, 18.57,
Filed **ARC 6268A, see text IAB 1/3/96, page 1134** 2/28/96

Corporation income tax, 52.1, 52.1(1)"d," 52.1(4) to 52.1(8), 54.1(4), 54.2(3), 54.2(4), 54.4, 54.6(5),
Filed **ARC 6269A** 2/28/96

7.8(3) et al. Weigel asked if the amendments to Chapters 7, 52, 56, 59, and 61 dealt with conversion from a C corporation to an S corporation. Castelda responded this was correct and had nothing to do with the bill before the general assembly. These rules pertained to a regular corporation which selected S chapter status and had a built-in gain that had to be reported for federal purposes. For federal purposes, such a conversion would create changes in bases of stock and built-in gains that had to be reported. Subrule 52.1(4) clarified the computation of Iowa tax on built-in gains, capital gains, or passive investment income for an S corporation.

Metcalf in Chair.

17.3(1)"d" et al. No Committee action.

52.1 et al. Castelda stated the Department complied with the Iowa Taxpayers Association request for a nonsubstantive change to further clarify Example 4 in 52.1(4). This was the only change to the Noticed rule. Comment was received on the Noticed rule which questioned the Department's ability to establish by law taxation of intangibles based on an economic nexus instead of a physical nexus. The Department felt it had to give corporations, who filed state tax returns before the effective date of the rules and would be impacted by the rules, an additional four-month period to file without being liable for interest and penalty. An emergency rule waiving the penalty and interest will be filed.

REVENUE (Cont.) In response to Weigel, Castelda replied the bill coming from the House Ways and Means Committee involving foreign corporation nexus could impact these rules. Weigel asked if "contractors" were included in these rules. Castelda answered that independent contractors doing warranty work was an issue that had been negotiated and agreed not to be addressed in the legislation. the Department could take particular factual situations and issue binding declaratory rulings.

In a topic not formally before the Committee, Daggett asked about the assessed value on car washes and whether the equipment was a portion of the building. Castelda stated it was the position of the Department that a car wash was a commercial entity and did not qualify for the machinery and equipment exemption that had been extended to manufacturing corporations.

In an additional topic not formally before the Committee, Rittmer asked if the Department was involved with county treasurers who refused to renew licenses because of the licensee's failure to pay child support and other debts. Castelda responded that Revenue and Finance was the central collection agency for the state of Iowa and some coordination was being done. The Department matched tapes and sent debt information to the county treasurers. Castelda noted the drivers license pilot project occurred in four counties and the state-wide vehicle registration program had not yet begun.

CORRECTIONS Fred Scaletta represented the Department for the following:

CORRECTIONS DEPARTMENT[201]

Correctional treatment unit — visiting, 25.1, Notice **ARC 6253A** 2/14/96
Iowa medical and classification center — visiting, 27.2, Notice **ARC 6251A** 2/14/96
Correctional release center — visiting, 28.2, Notice **ARC 6252A** 2/14/96

25.1 Amendments to Chapter 25 addressed visiting problems at correctional treatment facilities. Scaletta stated the Department sought to increase hours and reduce the length of visits to accommodate more visitors to relieve crowding in the visiting room during the high visiting times.

Daggett raised questions about the size of the visiting rooms in the new facilities at Fort Dodge and Clarinda. Scaletta thought the issue was being studied.

Halvorson asked if any change to the Mitchellville visiting room situation had occurred. Scaletta said the warden submitted five different plans to solve the problem. These were discussed with the Legislative Fiscal Bureau and the Department was asked to put it on hold, ostensibly because money allocated last year was not enough.

Scaletta agreed with Halvorson that security in the visiting room was an issue.

27.2 Rule 201—27.2(904) established standards for members of the public to visit inmates. Scaletta pointed out there were differences in how facilities attempted to reduce congestion. Much had to do with the physical structure of the facility, staffing pattern, and available staff.

Priebe referred to 27.2(1)"l" and asked if money left by visitors for inmates was used for restitution. Scaletta replied it was. He added the Department won a case before the 8th Circuit Court of Appeals on this issue. Although the decision was less restrictive than the Iowa Supreme Court decision, the Department would follow the supreme court decision. The Department implemented a three-year process of collection of outside source moneys and anticipated appeals and rehearings.

CORRECTIONS (Cont.) 28.2

Priebe requested clarification of subrule 28.2(7). Scaletta indicated attorney visits were accommodated differently because of confidentiality and privacy. Other than during normal visiting hours, an attorney must give advance notice of a visit. Priebe asked if additional staff was required during nonbusiness hours and was told that was not necessarily the case unless the visit occurred in a higher security facility.

COLLEGE AID

Laurie Wolf and Tim Fitzgibbon represented the Commission for the following:

COLLEGE STUDENT AID COMMISSION[283]
EDUCATION DEPARTMENT[281]"umbrella"
Federal family education loan programs, 10.1(1), 10.1(2), 10.2(1)"b"(4) and (7), 10.2(2), Notice **ARC 6226A** 2/14/96
Osteopathic forgivable loan program, 30.1(8)"c," Notice **ARC 6227A** 2/14/96

10.1(1) et al.

Weigel referred to subparagraph 10.2(1)"b"(4) and asked if the commission removed the cap to make unlimited loans to nonresidents. Wolf replied that was correct. During the last three years, the federal government eliminated from the roll a number of high default institutions from around the country that were seeking states in which to have loans guaranteed. The Commission mainly guaranteed to Iowa schools or students who were from Iowa and attended accredited schools across the nation.

30.1(8)"c"

Wolf stated paragraph 30.1(8)"c" granted osteopathic students finishing their residences temporary relief of their repayment obligations through the use of forbearance. This would be used only in times of exceptional circumstance and the student would be required to pay interest and fulfill the remaining loan obligation.

COMMUNITY ACTION

John Burnquist and Sue Downey were present from the Division for the following:

COMMUNITY ACTION AGENCIES DIVISION[427]
HUMAN RIGHTS DEPARTMENT[421]"umbrella"
Low-income home energy assistance program, 10.2(3), 10.4, 10.7(1) to 10.7(3), 10.13(5)"b," Notice **ARC 6228A** 2/14/96

10.2(3) et al.

Downey stated the amendments to Chapter 10 concerning the low-income home energy assistance program were made in conjunction with contractors throughout the state and the Commission on Community Action Agencies. Downey noted Priebe was correct in opining the state would not receive as much money from the federal government as originally thought.

Daggett thought the matrix should be standard for the whole state and be a part of the rule. Downey responded it was not included because it was the first year of use and probable adjustments would be needed. The Division established a point system with each point valued at $10. The payment could range from approximately $40 to a maximum of $320.

Kibbie asked why the maximum payment had changed in 10.13(5)"b." Downey responded this proposed change was made at the request of the Weatherization Program which, due to decreased financing, was unable to effectively repair or replace furnaces or heating systems of eligible homeowners.

Kibbie asked the criteria for red-tagging. Downey was uncertain but stated the Division left the technical portion of furnace replacement or repair to the Weatherization Program. The Division must make assurance to the federal government that all activities would conform to DOE rules.

COMMUNITY ACTION (Cont.)

Halvorson wondered if there was some method of ensuring that the efficiency of the furnace was increased. He asked if there was an effort to monitor this and if the state was paying more of the 80 percent efficient furnaces. Downey replied the Weatherization Program was looking at 90 percent efficient furnaces. When questioned by Halvorson, Downey agreed to provide more information on the technical aspects of red-tagging.

Hedge commented a furnace repair person stated that any money saved on energy usage by a high-efficiency furnace would be used on repair bills.

Weigel asked if money available for fuel assistance was used in furnace replacement. Downey replied that funding came from a block grant to the state and the federal mandate required regular payments and a crisis program to alleviate life-threatening situations. By federal law at least 5 percent of the block grant must be allocated for crisis situations. Weigel stated the money would be used for fewer people by increasing the allotment to $1000. Downey agreed and added the furnace repair/replacement applied only to homeowners and not to renters.

ECONOMIC DEVELOPMENT

JoAnn Callison represented the Department for the following:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Iowa jobs training program, 7.3, 7.5(6), 7.11(2), 7.19(1), 7.25(2), Filed **ARC 6233A** 2/14/96

7.3 et al.

Daggett asked if the new workforce legislation would impact the amendments to Chapter 7, "Iowa Jobs Training Program." Callison replied it would since the Workforce Development Fund started funding Iowa Code chapter 260F and there were suggested changes. Business programs remained under the auspices of the Department of Economic Development. Daggett referred to Chapter 260E and was told the Community College Department was authorized to sell bonds but the Department was in charge of preparing an annual report and doing rules for the program. No changes in the control of this program were anticipated.

INSURANCE

Dennis Britson, Rosanne Mead, Susan Voss and Jerry Wickersham were present from the Division and Larry Carl, Iowa Chiropractic Society, and Ron Kreassis and Jeff Marolf, Association of Iowa Cemeteries, were also present for the following:

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Licensing and continuing education for insurance producers, 10.1(2) to 10.1(4), 10.4(3), 10.5(1)"f," 10.5(8), 10.6(1), 10.6(2)"b,"10.6(3), 10.8, 10.10(1)"a," 10.11(2), 10.12, 10.13, 10.14(3), 10.16, 10.19(3), 10.20(1), 10.20(9), 10.23, 11.1(3)"a," "b," and "e," 11.2, 11.3(1) to 11.3(4), 11.3(10), 11.4(5), 11.5(1)"b" and "c," 11.5(2)"k," 11.5(3), 11.5(4)"a"(9) to (12), 11.5(4)"b"(8), (10) and (11), 11.6(3), 11.7(1)"i" to "l," 11.8, Filed **ARC 6256A** 2/28/96

Cemeteries, ch 18, Notice **ARC 6270A** 2/28/96

Prearranged funeral contracts, ch 19, Notice **ARC 6271A** 2/28/96

Medicare supplement insurance minimum standards, 37.2, 37.3, 37.6(1)"e"(4), 37.7(1)"e"(5), 37.7(1)"g"(1), 37.9(13)"a," 37.10, 37.12(1)"c," 37.12(2)"c" and "d," 37.15(1)"f," 37.15(3) charts, 37.15(4), 37.16(1), 37.16(5), Appendix A, Appendix C, Filed **ARC 6267A, see text IAB 1/3/96, page 1084** 2/28/96

Iowa individual health benefit plans, ch 75, Filed **ARC 6260A, see text IAB 12/6/95, page 910** 2/28/96

10.1(2) et al.

No questions on 10.1(2) et al.

INSURANCE
(Cont.) Ch 18

Britson stated the Division responded to a number of questions and inquiries concerning perpetual care cemeteries. He noted the $20 permit fee for perpetual care cemeteries would be eliminated pursuant to House File 2366. Because of concerns about the administrative process, the Division opted for a four-year permit rather than a one-year permit to facilitate the filing process. The Division conducted a comprehensive review of the rules for prearranged funeral contracts, the first since 1987.

Britson stated the Division met with the Iowa Funeral Directors Association and the Association of Iowa Cemeteries and it was not anticipated there would be significant comments on these rules. He assured the Committee that should anything become controversial, the Division would set it aside to be dealt with at a later time and would adopt the remainder of the rules. The only comment received to date was whether capital gains should be treated as principal or as interest and income. Income, but not principal, could be used for the care and maintenance of the cemeteries.

Halvorson raised concerns over the requirements set forth in subrule 18.1(4). Britson stated that subrules 18.1(3) and 18.1(4) were for clarification and information purposes. In response to Kibbie, Britson said the state distributed information stating that cemetery organizations were not subject to these requirements.

Halvorson pointed out many cemeteries did not fit either the political subdivision or religious organization categories. Britson responded the Division was attempting to clarify that an existing cemetery could continue to operate. Britson noted the $25,000 requirement was at the time of formation.

Rittmer asked if there was anything in the rules that was not specifically in passed legislation. Britson replied the only change in terms of fees would be under perpetual care annual report. This was a $3 per deed fee set out in 18.6(523I,566A).

Halvorson asked if this was a new fee that was not currently collected. Britson replied this was correct, it was a per sale type of fee. Halvorson asked if the $3 fee replaced the $20 annual fee. Britson replied the $20 annual fee would be eliminated by new legislation and the $3 fee would be an audit fee for each deed issued during the period of the report.

Ch 19

Britson stated two comments pertaining to Chapter 19 had been received. One concerned the "interest or income" definition in which the industry was allowed to take a portion of the income from the trust fund. The Division was concerned whether evaluations used to establish the value of certain assets were at a level of security that an increase in value would be certain.

The other comment referred to the storage of bronze memorials as set forth in rule 191—19.71(523E). Britson stated approximately 10 companies outside of Iowa stored markers for people who had sold them to consumers. A reporting process will be instituted with respect to these types of facilities. The Division conducted audits of these facilities to make certain the markers were there. One company expressed concern about the amount of information required in the annual report. Britson indicated the intent was to incorporate most of this information by reference and the length of it was largely because the Division wanted to have access to this information, especially when audits were done.

INSURANCE (Cont.) The Division placed a $100 filing fee on the report to cover the expense of the audit and it was suggested this be done instead as a reimbursement of expenses. The company expressed concern that other states might decide to adopt a fee even though they were not performing audits. In response to Metcalf, Britson replied this company was in Arkansas and on-site audits were conducted.

Daggett requested clarification on the reference to taking a portion of the earnings. Britson responded that under Chapters 523A and 523E there was a consumer price index adjustment which was referred to in subrule 19.60(1). Enough had to be left to cover inflation increase and any remaining income subsequently could be taken out up to one-half of the income that accrued each year.

Britson replied to Daggett that Chapter 18 involved cemeteries and Chapter 19 involved prearranged funerals. The Division actively dealt with perpetual care cemeteries.

Daggett asked if an audit could be conducted when a funeral was prepaid, a funeral home was located in one state, and the burial occurred in another. Britson replied if the initial contract was with an Iowa facility it would be subject to the Division's regulation. The insurance funding or bonding would need to be in Iowa and any out-of-state activity on this contract would be a third-party contract or cash advance item. Britson noted it was not uncommon for the seller to obtain some cash that ended up being paid to someone else. Any outside contract with another state was technically not within the scope of the Division's authority. Daggett asked whether the state would have any responsibility if the Iowa funeral home included in the secondary part of the contract experienced difficulty. Britson stated in that instance it was probable the Division had no authority. He added that in this instance of a cash advance item, normally the out-of-state company would not pay the amount until the time of the funeral, thus the greater concern would be the out-of-state entity.

In response to Rittmer, Britson stated the primary funding under the prearranged funeral contracts was a per contract fee which had been $10 since 1987. the division also had a special $2 assessment which went into the regulatory fund used for expenses of receivership, audit costs and similar expenses.

Britson replied to Rittmer the Division held discussion about preventing commingling of funds. Under the provisions of rule 191—19.40(523A,523E), companies that do not have insurance coverage against the loss of consumer payments must either maintain an escrow account until the trustable amount had been deposited in a trust account; warehouse merchandise; file a surety bond in lieu of the trust fund; or deposit simultaneously the payment and trustable amount. If companies felt the cost of the escrow or the administrative requirements was burdensome, the Division added the ability to insure against losses for 30 to 45 days. The Division clarified that interest charged by the companies on the contracts could not be excluded for purposes of determining the amount of installment payments placed in trust.

Doderer expressed the opinion that prepaid funeral contracts were discriminatory and wondered if one group was charged more than another group. Britson stated there would be no way to discriminate through trust accounts since it was based on a flat 80 percent.

37.2 et al. No questions on 37.2 et al.

INSURANCE (Cont.) Ch 75

Voss stated the Division held another public hearing concerning the Medicare supplement insurance minimum standards at the Committee's request. Following discussion with various groups, the Division made no changes but decided to implement the rules because of the April 1 effective date. The division agreed with the Iowa Chiropractic Society to hold extended in-depth discussions concerning small group and individual plans.

Metcalf asked how the Division intended to notify people interested in purchasing these policies. Voss replied this would be done through public service announcements; news releases; notice in the quarterly Job Service newsletter sent to all employers, including self-insured employers; and through a workshop for all carriers.

RACING

Karyl Jones represented the Commission for the following:

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Failure to pay child support, 3.11(3), 4.30, Filed **ARC 6231A** 2/14/96
Thoroughbred racing, 10.5(1)"y," 10.5(8)"d"(2), 10.5(17)"g"(2), Notice **ARC 6230A** 2/14/96
License applications; bodies of water, 20.10(8), 20.12(1)"u," 21.10(18), 21.10(19), Filed **ARC 6229A** 2/14/96

3.11(3) and 4.30

No questions on 3.11(3) and 4.30.

10.5(1)"y" et al.

Jones referred to subrule 10.5(17), paragraph "g," subparagraph (2), and noted only winning horses would be restricted in which claiming race they could race back. Priebe stated a horse could be claimed for $7500 and if it finished second it could be run for $5000 the following day. Jones responded this was correct as long as it was not the winner. Priebe asked if this was a variance from other states and Jones replied it was becoming the norm.

20.10(8) et al.

Priebe asked if the amendments to Chapter 20 took care of the problem in Osceola. Jones replied this allowed them to consider any application that was presented.

NATURAL RESOURCES

Steve Dermand, Richard Bishop, Rick McGeough, Nancy Exline-Downing and Daryl Howell represented the Commission for the following:

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Game breeder regulations, ch 13, Notice **ARC 6068A** Terminated **ARC 6283A** 2/28/96
Game breeders, ch 13, Notice **ARC 6277A** 2/28/96
Concessions, 14.1, 14.3, Notice **ARC 6274A** 2/28/96
Snowmobile and all-terrain vehicle registration revenue cost-share program, 28.15"2," Filed Emergency **ARC 6285A** 2/28/96
Boating safety equipment, personal flotation devices, 37.13(1), Notice **ARC 6281A** 2/28/96
Boating speed and distance zoning — Shawondassee Slough, 40.26, Notice **ARC 6288A** 2/28/96
Boating speed and distance zoning — Three Mile Lake, 40.44(2)"b," Filed Without Notice **ARC 6284A** 2/28/96
Wildlife refuges, 52.1(1), Notice **ARC 6282A** 2/28/96
State parks and recreation areas, 61.2, 61.3(2), 61.3(3), 61.3(6), 61.3(7), 61.4(1)"d," 61.4(2), 61.4(3), 61.4(4)"a"(1) and (2), 61.4(4)"b" and "c," 61.5(11), 61.25, Notice **ARC 6287A** 2/28/96
Waterfowl and coot hunting seasons, 91.1 to 91.3, 91.4(2)"q," Notice **ARC 6275A** 2/28/96
Nonresident deer hunting, 94.2, 94.6, 94.8, Filed **ARC 6286A** 2/28/96
Wild turkey fall hunting, 99.5, Notice **ARC 6276A** 2/28/96
Deer population management areas, 105.3(5), 105.3(6), 105.4(2), 105.4(4) to 105.4(6), Notice **ARC 6278A** 2/28/96
Deer hunting regulations, 106.2, 106.5, 106.6, 106.8, Notice **ARC 6279A** 2/28/96
Scientific collecting and wildlife rehabilitation, ch 111, Notice **ARC 6280A** 2/28/96

NRC (Cont.) Ch 13

Dermand stated the Commission held an open meeting on the game breeder regulations at the suggestion of the Committee. The Commission targeted approximately 180 licensed game breeders and sent them notification letters of the meeting. Approximately seven or eight individuals attended and, as a result of this meeting, the Commission terminated the existing Notice and was renoticing with different language.

McGeough said the Commission would like to mediate for the landowners when "farm deer" escaped from enclosures and caused crop loss to neighbors. One issue remained because the U.S. Fish and Wildlife Service refused to accept the 200-yard requirement, but instead adjusted distances on a case-by-case basis. If exploitation of waterfowl became a problem because of this rule the Commission could make an adjustment.

McGeough stated the Commission had a number of positive comments from hunters and the game breeders concern had diminished.

In response to Hedge, McGeough stated a person would not be considered a game breeder as long as the birds had free access and could leave at will.

14.1 and 14.3

Exline-Downing stated that amendments to Chapter 14 would eliminate the requirement that a friends group or organization that wished to support a park through fundraising efforts go through the same bidding processes and applications of regular concessions if they wished to sell merchandise on state park property.

Priebe referred to 14.3(2)"b" and wondered if a distributor of newspapers was eliminated. Exline-Downing replied this was covered by the added language "or private vending machine companies." She added that contacts with parks that had newspaper vending machines indicated that only the publisher placed the machines. She agreed to add the language allowing distributors.

In response to Doderer, Exline-Downing replied the only requirement of the friends group or organization was to put the money they made back into the park. She added it could be spent in any manner and that play structures at Big Creek State Park and Lake Manawa were built by friends groups.

Priebe in Chair.

28.15"2"

No questions on 28.15"2."

37.13(1)

No questions on 37.13(1).

40.26

Doderer asked if a five-mile-per-hour restriction was to eliminate wakes. Dermand replied that a wake depended on the size, weight and configuration of the vessel. Miles-per-hour designations were used by the Commission in order to assist in prosecution. It was easier in terms of enforcement when the Commission could deal with speed and distance no wake rather than miles per hour.

Metcalf in Chair.

40.44(2)"b"

No questions on 40.44(2)"b."

52.1(1)

No questions on 52.1(1).

NRC (Cont.)
61.2 et al. Exline-Downing noted that the language on violent, abusive or offensive conduct in subrule 61.5(11) would be changed when this was Filed. It would be similar but, on the advice of the Attorney General's Office to address possible constitutional questions, a requirement for warning prior to citation would be added.

91.1 et al. No questions on 91.1 to 91.3 or 91.4(2)"q."

94.2 et al. No questions on 94.2 et al.

99.5 No questions on 99.5.

105.3(5) et al.; Priebe asked how many permits were issued to hunt deer in special designated deer management units because of degradation of trees and Bishop replied one.

Metcalf wondered if there was any controversy in the Cedar Rapids/Waterloo area on this. Bishop responded that a meeting would be held in that area soon and he felt it would be controversial. He stated he had received 15 to 20 letters from people inside the city limits indicating there were problems in the city, but the Commission could not take action because it had no jurisdiction inside the closed areas.
In response to Metcalf, Bishop stated the Commission would hold four regular meetings around the state and one additional meeting in Des Moines to discuss all the regulations. A special meeting was to be held in Cedar Rapids because of the sensitivity of this issue.

106.2 et al. Priebe stated there was a major problem with deer in Kossuth County and had requested the Commission hold another meeting in the area regarding deer population control. He was concerned this meeting would be held during spring planting when farmers were unable to attend. Bishop responded that public hearings on these rules would be held in April.

Ch 111 No questions on Chapter 111.

EPC Ann Preziosi, Ubo Agena, and Don Paulin represented the Commission and Kathy Stockdale, Kevin Posner, Liz Gilbert, Gloria Gall and Lyle Gall, family farmers, were also present for the following:

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Construction permit exemptions, 22.1(2), 22.1(2)"g" and "s," Filed **ARC 6246A** 2/14/96
Clean Air Act amendments, conformity for sulfur dioxide, 22.5(2), 22.5(3), 22.5(4)"a," "b," "g," and "i," 22.5(5), 22.5(6), 22.5(8) to 22.5(10), Filed **ARC 6248A** 2/14/96
Title V operating permit fees, 22.105(1), 22.106, Filed **ARC 6247A** 2/14/96
Temporary air toxics fee, rescind ch 30, Filed Without Notice **ARC 6249A** 2/14/96
Manure management in animal feeding operations, 49.5(5), 65.1, 65.2, 65.3(2), 65.4(1), 65.4(2)"a," 65.5(7), 65.5(9), 65.6 to 65.20, ch 65 appendix A, appendix B, tables 1 to 5, Filed **ARC 6250A** 2/14/96
Animal feeding operations, 65.18(1)"b" and "c," Notice **ARC 6245A** 2/14/96

22.1(2) et al. No questions on 22.1(2) et al.

22.5(2) et al. Priebe asked if amendments to Chapter 22 resulted from a request by Ipsco. Paulin stated it was not and Preziosi added this rule had to do with Monsanto, Grain Processing and Muscatine Power and Water from 1994. She said she would ascertain if any rules were at the request of Ipsco and inform Priebe.

22.105(1) and 22.106 No questions on 22.105(1) or 22.106.

Ch 30 No questions on Chapter 30.

EPC (Cont.)
49.5(5) et al.

Paulin stated there were five substantive changes to the rules on manure management and the rest were technical. The substantive changes occurred in item numbers 3, 5, 8, 14 and 17.

Weigel asked if changes to item number 8 applied to the middle group or if it was just for the permitted manure management plans. Paulin replied it did not and that in another proposed rule the Commission had suggested that those manure management plans of the other group be given further consideration.

Kibbie asked if the manure management plans filed with the county and the EPC would be confidential. Paulin replied they would not. Royce then asked if the supporting information was confidential and was told only those records that were kept following the filing and implementation of the manure management plans were confidential. Kibbie asked if once the plan was filed it would be public knowledge who the contract was with and where the manure was to be spread. Paulin responded in the affirmative.

Kibbie asked how the Department would respond to a situation where three manure pits were excavated and the permit process was begun to erect a fourth building to house 4,100 to 7,500 head. Agena replied this would be examined on a case-by-case basis. Paulin stated there was a clear definition of when construction began but the moving of earth was allowed.

Kibbie asked if it was considered construction when a contractor was hired to move dirt and it was piled 30 feet high on each side of a 300-foot building. Paulin responded that if excavation was being done for the manure-holding structure or earth was moved to build roads, it was not considered construction. Kibbie questioned when construction actually started and wanted the same rule to apply so everyone would know exactly when construction started and earthmoving stopped. Doderer asked if the Commission could find out why dirt was being moved. Paulin responded until a permit had been applied for the Commission would not have any reason to look at the site, but a neighbor could request the Commission to investigate a site.

Gilbert presented a petition for rule making to the committee and noted she had an unresolved 6-month complaint involving adjacent facilities before the DNR. She believed these rules had no force and neighbors had no rights and no way to stop these things from happening.

Weigel asked if there was a problem with one or more additional sites being held by a spouse or child and what the ramifications of incorporation would be.

Paulin stated that at the time of Gilbert's complaint, there were no adjacency requirements. If the sites had been owned by two different corporations, he did not believe there would have been any question but that they were legitimate.

Weigel asked if it was possible for a husband to put 4,100 hogs on one side of the road in two buildings and his wife to put in 4,100 head on the other side. Paulin replied this was not possible under the new rules as of March 20. Weigel then asked what would happen if they incorporated and was told the Commission had not made a final determination.

Stockdale lived near a five-acre 4,000-head facility in Hardin County. Application had been made to increase the number of hogs to 7,500. She expressed concern that drainage at the site was a current problem and felt it would be exacerbated by the increase. Paulin responded that House File 519 required an engineer to certify that tile lines would not be interrupted from one neighbor to another and if they were, how this would be dealt with. He understood this was a site that was not constructed under House File 519 and the drainage problem

EPC (Cont.) came under the auspices of the local drainage commissioners. He added there were other prohibitions in other sections of the law that involved the obstruction or shifting of water flow from one neighbor to the other. Stockdale encouraged expansion of the adjacency requirement to 2,500 feet.

Gall contacted the DNR regarding dump trucks of chicken manure emptied into a waterway. She noted the complaint was not timely responded to and the cleanup was delayed. Pearson concurred with Gall's observations.

Royce stated the individuals testifying wanted the Committee to join in the petition for rule making. He further indicated there was nothing to preclude the Committee from doing this but there was also no obligation to do so. Metcalf understood the petition went to DNR whether the Committee acted or not and Royce agreed.

Priebe asked if poultry manure was covered under these rules. Paulin replied that dry facilities were exempted but not an over application.

Kibbie asked how a manure management plan would be handled when land was either crop shared or cash rented. Agena replied that as part of a manure management plan available land areas had to be identified as owned, rented for crop production, or if there were disposal agreements. Permitted facilities under disposal agreement had to provide a copy of the agreement. The Commission did not require that this agreement, or if it was cash rent lease, be for any given number of years. Plans were required to be kept current.

Daggett asked if a contractor that handled the manure for the larger facilities then applied it to farmers' land would be required to file a plan. Agena replied that plans would be required of newer facilities.

Responding to Doderer's concern over the dam breaks in North Carolina, Paulin stated that Iowa would have the strictest set of regulations concerning hog production and livestock confinements of any hog-producing state when House File 519 and these rules went into effect. North Carolina allowed .34 inches of seepage in a day as opposed to Iowa's maximum 1/16 inch.

65.18(1)"b" and "c" Agena stated the Department received four comments opposed to making the change in subrule 65.18(1), paragraphs "b" and "c." No final recommendations concerning expanding facilities had been made.

Priebe questioned whether the Commission had the authority to make these rules although he agreed with what the Commission was attempting to do.

ENGINEERING Dwayne Garber represented the Board and K. Marie Thayer, Professional Licensing, David Scott, Iowa Engineering Society, Ron Marr, Petroleum Marketers of Iowa, Pat Rounds, UST Fund Board, and Bob Galbraith, Attorney General/UST Fund Board, were also present for the following:

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Practice of engineering, board consideration of petition for declaratory ruling, 1.1(3), 1.2(3),
Filed **ARC 6241A** 2/14/96

1.1(3) and 1.2(3) Subrule 1.1(3) defined the practice of engineering and Garber stated the Board had requested a delay.

ENGINEERING (Cont.)

Rounds was concerned with the new definition of the practice of engineering which specifically included all activities that were corrective action at underground storage tank sites. The UST Board had been contacted to determine if the specific practice of corrective action design reports, unique to the underground storage tank industry, should be required as part of the practice of engineering. The Board stated they would request a delay and the UST Board was supportive.

Rounds responded to Daggett that the Department of Natural Resources was in charge of protecting the groundwater in the state of Iowa and specifically dealt with underground storage tanks.

Hedge referred to subrule 1.1(3) and asked if a tile line could be laid without an engineer. Garber believed this was the case.

70-day delay Motion

Metcalf made a motion to delay Item 1 of ARC 6241A, subrule 1.1(3), for 70 days. The motion carried.

Minutes

Hedge and Priebe made a motion to approve the minutes of the February meeting as submitted and the motion carried.

ARRC Bill

Priebe raised the issue of a Rules Committee Bill which would shift the delay power from the legislature to the purview of the ARRC.

Dierenfeld had serious concerns regarding the constitutionality of this. Currently the legislature could only repeal a rule if it passed a nullification resolution by a majority vote in both houses. She cautioned the committee not to confuse a referral with a suspension of the rules. This bill would involve a session delay. With a session delay, the agency had an adopted rule that would otherwise take effect unless a delay was put on it and the agency would not be able to implement the rule during that period of time.

Royce thought a bill would be constitutional if it was stated that under the current process in which rules were delayed for the session, the delay would be presented to the body as a whole and voted up or down by the legislature. The ARRC could be responsible for filing a veto resolution and that resolution would go to the floor of both chambers. There would be an individual bill for each session delay.

Motion

Priebe made a motion to have a bill drafted and the motion carried.

April meeting

Priebe suggested the April meeting be held after session on approximately April 15 or 16. He requested that a date not be set at this time until the progress of the legislature could be measured.

NO REPS.

No agency representative was requested to appear for the following:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
Apiary, 22.3, 22.4, 22.9, Notice **ARC 6259A** 2/28/96

DENTAL EXAMINERS BOARD[650]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Examination applications, 11.1, 11.2(2)"d," Notice **ARC 6236A** 2/14/96
Examinations, deletion of references to "CORE," 12.1(7), 12.2(5), 12.3(7), 12.4(5), Notice **ARC 6237A** 2/14/96
Impaired practitioner review committee, 30.5, Notice **ARC 6238A** 2/14/96

INDUSTRIAL SERVICES DIVISION[343]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"
Expense for use of private auto for medical treatment or examination for a work-related injury, 8.1"2," Notice **ARC 6232A** 2/14/96

NO REPS. (Cont.)

INSPECTIONS AND APPEALS DEPARTMENT[481]

Hospitals — uniform anatomical gift Act. 51.8(1)"a." Filed **ARC 6240A** 2/14/96

LABOR SERVICES DIVISION[347]

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

General industry — exposure to lead, 10.20, Filed Emergency After Notice **ARC 6242A** 2/14/96

Construction — exposure to asbestos, 26.1, Filed Emergency After Notice **ARC 6243A** 2/14/96

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Barber examiners, child support noncompliance, ch 26, Filed Emergency **ARC 6264A** 2/28/96

Behavioral science examiners, child support noncompliance, ch 33,
Filed Emergency **ARC 6263A** 2/28/96

Chiropractic examiners — child support noncompliance, ch 41, Filed Emergency **ARC 6234A** 2/14/96

Cosmetology arts and sciences — child support noncompliance, ch 70,
Filed Emergency **ARC 6235A** 2/14/96

Dietetic examiners, 80.5, 80.6(6), Notice **ARC 6016A** Terminated **ARC 6261A** 2/28/96

Dietetic examiners, child support noncompliance, ch 90, Filed Emergency **ARC 6266A** 2/28/96

Mortuary science, 101.98(4), 101.98(5), Filed **ARC 6225A** 2/14/96

Board of examiners for nursing home administrators, child support noncompliance, ch 144,
Filed Emergency **ARC 6272A** 2/28/96

Optometry examiners, child support noncompliance, ch 90, Filed Emergency **ARC 6265A** 2/28/96

Physical and occupational therapy examiners, child support noncompliance, ch 205,
Filed Emergency **ARC 6262A** 2/28/96

SECRETARY OF STATE[721]

Primary election signatures — plan three supervisor candidates, 21.600, Filed **ARC 6258A** 2/28/96

Adjourned

Metcalf adjourned the meeting at 11:30 a.m.

Respectfully submitted,

Cathy Kelly

Cathy Kelly, Acting Secretary
Assisted by Kimberly McKnight

APPROVED:

Rep Janet Metcalf

Representative Janet Metcalf , Co-chair