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, January 3 and 4, 1996, in Room 116, 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 10 a.m.

HUMAN SERVICES — Mary Ann Walker, Marno Cook, Denise Middleswart, Darlene Clark, Gary Gesaman, Debbi Johnson, were present from the Department. Lorinda Inman and Lois Churchill, Board of Nursing, Patricia Hemphill, Attorney General's Office, and Peg DeArmond and Michelle Herman, Quakerdale were also present for the following:

HUMAN SERVICES DEPARTMENT[441]

Limited benefit plan, 7.5(8), 41.24(2)"a," 41.24(8), 41.24(11), 41.27(11), 41.28(1), 93.109(1)"b" to "f," 93.133(1)"f," 93.138(2), 93.138(3), 93.138(3)"a"(3), 93.138(3)"d," 93.138(4), 93.138(4)"a" and "b," 93.140(2), Filed Emergency **ARC 6071A** 12/6/95

Refugee programs, 60.1(1)"g" and "h," 60.8, 60.8(1)"b," "c," and "f" to "h," 60.8(2), 60.9(1)"g" to "i," 61.1, 61.3, 61.5(2), 61.5(3), 61.5(9), 61.5(13), 61.8(4), 61.12, 61.15, 61.15(6)"a," Notice **ARC 6098A** 12/20/95

Emergency services for undocumented or illegal aliens—organ transplants, refugee program, 60.6, 60.7, 60.8(1)"d" and "e," 60.9(1), 60.9(3) to 60.9(5), 61.1, 61.4, 61.5(4), 61.5(5), 61.5(11), 61.5(12), 61.6, 61.7, 61.8(1)"i," 61.8(2)"g," 75.1(1)"c," 75.1(21), 75.1(22), 75.1(32), 75.11(1), 75.11(4), Filed **ARC 6070A** 12/6/95

Income deductions for food stamp households, 65.8, 65.8(8), 65.22(1)"g," 65.108, 65.108(8), 65.122(1)"g," Filed **ARC 6074A** 12/6/95

Food stamp standard deduction, 65.8(9), 65.108(9), Notice **ARC 6072A**, also Filed Emergency **ARC 6073A** 12/6/95

HCBS ill and handicapped, elderly, MR, AIDS/HIV waivers, Medicaid elderly waiver program, payment to hospitals and nursing facilities, 77.30, 77.30(3), 77.30(4), 77.30(6), 77.33, 77.33(4), 77.33(8)"f" to "h," 77.33(12), 77.34, 77.34(6), 78.3, 78.3(12), 78.3(12)"a" and "c" to "e," 78.3(13), 78.3(14), 78.34, 78.34(4), 78.34(5)"c" and "d," 78.34(6), 78.37, 78.37(1), 78.37(8), 78.38, 78.38(1), 78.38(2), 78.38(4), 78.38(6), 79.1(2), 79.1(9)"a" and "e," 79.14(1)"e" to "g," 81.1, 81.3(3), 81.4(1), 81.6, 81.6(11)"i" and "o," 81.6(13), 81.11(1), 81.13(1)"j" and "k," 81.16(2)"b"(2)"5" to "7," 81.16(2)"e"(2), 81.32(7), ch 83 preamble, 83.1, 83.2(1)"a" and "e," 83.2(2)"a," 83.3(1) to 83.3(4), 83.4 to 83.7, 83.10, ch 83 division II title, 83.22(1)"b," 83.22(2)"a," 83.23(1), 83.23(2), ch 83 division III title, 83.41, 83.42(1)"f," 83.42(2)"a," 83.43(1) to 83.43(3), 83.43(4)"a," "b," and "d," 83.44 to 83.47, Filed **ARC 6069A** 12/6/95

Child support recovery, 95.17, ch 99 preamble, 99.1 to 99.5, 99.41(10), 156.1, 156.2, 156.2(7), rescind 156.3 to 156.5, Notice **ARC 6099A** 12/20/95

Support enforcement services — forms, 98.5, 98.7(2), 98.7(3), Notice **ARC 6100A** 12/20/95

Support enforcement services — income withholding order, 98.42, Filed **ARC 6075A** 12/6/95

Paternity disestablishment, 99.36 to 99.39, Notice **ARC 6101A** 12/20/95

Child abuse, chapter 175, division I title and preamble, new division II — 175.21 to 175.37, Filed **ARC 6076A** 12/6/95

Dependent adult abuse, 176.1, 176.6(11), 176.10(3)"c"(3) to (5), 176.16(2), Filed **ARC 6077A** 12/6/95

Adoption services — race or ethnicity match preference prohibited, rescind 200.4(3)"b," Filed **ARC 6078A** 12/6/95

Medicaid payments: certified nurse anesthetist, 78.35, **Special Review, carried over from December** ...IAC

DHS (Cont.)

7.5(8) et al.; 60.1(1) et al. No questions on 7.5(8) et al. or 60.1(1) et al.

60.6 et al. Walker stated the Department received one comment from Legal Services which believed the employability rules differed from the federal rules in that the Department was eliminating English as the second language program under educational services in favor of immediate employment. The Department responded they believed the rules were consistent with what the regulations required. No Committee action.

65.8 et al. No questions on 65.8 et al.

65.8(9) and 65.108(9) No questions on 65.8(9) and 65.108(9).

77.30 et al. Public hearings were held on amendments noticed as ARC 5751A, ARC 5869A, and ARC 5888A. Sixty-eight persons attended and all who spoke favored eliminating the cap and letters were received from Polk and Pottawattamie counties opposing the increase in the respite payment amount. The Department retained the $12 amount, indicating it was necessary to avoid switching to other higher cost services. Metcalf asked if the objections from Polk and Pottawattamie counties were due to the numbers of the population served. Walker indicated in the affirmative. Metcalf then asked if the Department could consider something other than per capita. Walker responded the counties objected to respite care providers, previously paid $9.27, being raised to $12. Gesaman stated it was not a matter of raising the amount the Department would pay, but raising the maximum amount they would pay. Every provider of respite care services would not receive the $12 per hour. The Department felt the increase would attract some providers otherwise unwilling to do business with the state. The Department was unable to provide respite service to some areas of the state because the service could not be provided at the $9.27 rate.

Daggett asked how counties were selected and Walker replied they petition the Long-term Care Coordinating Unit. Gesaman stated the Long-term Care coordinating Unit was appointed by the Governor and included the heads of several state agencies, in addition to some consumer representatives. The county interested in participating had to agree to meet certain standards in terms of provisional services and then make application. Daggett asked if there was a limit on the number of participating counties. Walker interjected they were limited by funding. Gesaman added that county applications were accepted as funding became available. He believed Elder Affairs had requested an appropriation which would allow a statewide waiver to occur within the next year or so.

Priebe recalled the appropriation was limited. Gesaman replied there was a limit in terms of what each individual served under the waiver could access. Increasing the amount a particular service cost would not necessarily add cost to the waiver. Priebe questioned the increase when there were counties willing to participate at the lower figure and the state had limited dollars. Gesaman responded the issue was obtaining providers who were willing to provide respite services. This was one of the most important services under that waiver. Gesaman noted this was a statewide program but providers in certain areas of the state could not afford to provide respite service at $9.27 per hour. Priebe felt that instead of serving the maximum number of people, the state would serve a lesser amount of people because of the increase. Gesaman stated this was not the case. It made the service available to persons when it might not otherwise have been available. Those persons were still eligible for the waiver and could use a more expensive service because the less expensive service was not available to them.

DHS (Cont.)

Metcalf inquired what Polk County's objection was. Gesaman replied it was raising the allowable rate for any provider and having that rate controlled by the state.

95.17 et al.

Daggett asked what procedure the supreme court used to set the child support guidelines. Middleswart stated these guidelines were set by the supreme court every four years. The most recent order was in April 1995, to be reviewed in 1999. The 1995 changes were minimal and included income levels from $0 to $500 per year, which had not previously been addressed, and also included incomes from $3,000 to $6,000. She noted that percentages remained the same.

98.5 et al.

No questions on 98.5 et al.

98.42

No questions on 98.42.

99.36 to 99.39

In discussing Chapter 99, Middleswart stated that once the order disestablishing paternity was filed and entered with the court, the Department would stop the ongoing debt and would then satisfy any unpaid child support. There would be no reimbursement of money paid prior to that time. Priebe understood that once it was established an individual was not the blood father, then the state assumed responsibility for the rest of the child support. Middleswart responded there were a number of criteria required under the law before the court would enter into a court order disestablishing paternity. Once paternity was satisfied, overcome or disestablished, the child support unit or the parent could pursue child support from the biological father.

175.21 to 175.37

Walker stated that 41 persons attended the hearings regarding the amendments to Chapter 175 implementing the child abuse assessment pilot projects. Concerns were expressed over the change from the 24-hour initial contact to allowing 72 hours to initiate the assessment. Several county attorneys were concerned they would no longer receive reports.

DeArmond stated her primary concerns were with the legislative process regarding facility staff. She questioned and had received no definitive answer whether agency staff would automatically be considered guilty of a level four abuse regardless of the nature and intent of the incident and whether employers would be required to terminate employees who had any level of abuse against them. DeArmond stated that as a provider of services to children and families, extra care was taken to screen potential employees as well as provide extensive training to staff. However, children in the facilities had problems and volatile incidents did occur more frequently than in a home environment. She noted that although the previous rules did not treat facilities any differently, 175.25(4)"d" would.

In response to Metcalf, DeArmond replied she worked in a multi-service human service agency which provided residential services, family-centered independent living, and family foster care services.

Priebe asked if DeArmond had been contacted by Ralph Rosenberg and was told she had appeared on behalf of Rosenberg.

Motion for Delay

Priebe made a motion for a 70-day delay and referral to the appropriate committees.

Walker and Cook stated Senate File 208 required the Department to initiate the assessment projects no later than January 15 and the Department had initiated them as of December 1 in 19 counties. They were required to report to the legislature and the Governor by February 29 recommending additional legislative proposals regarding this specific pilot project.

DHS (Cont.)

Metcalf suggested a letter to the committee altering the time frame.

Priebe believed the Department could still present the report and, if the committee believed the Department was correct, the delay could be lifted by the ARRC at the special January meeting.

Cook said an abusive incident which occurred at a facility and that would be a level four assessment was listed as an indicator and was not an automatic placement on the child abuse registry. The Department believed the intent of the law was to allow flexibility on a case-by-case basis. Cook stated the Department had commenced early implementation hoping to have data on numbers of facility investigations that were a level four. The intent was to collect data quickly and obtain better information for the Governor and legislature.

In response to Walker, Cook stated the Attorney General indicated the Department could implement without the rule being in effect, based on the language in Senate File 208.

In response to Daggett's request concerning the ramifications of this action, Royce stated the Department could still issue a report based on the pilot project while the permanent rules were temporarily delayed. He did not foresee difficulty if the statutory deadline was not met. Walker expressed concern that a delay would impact appeal rights for the clients. Priebe, concerned that someone would be terminated immediately, asked if the Department could resolve that during a delay.

DeArmond was concerned there was nothing available in writing and, under the rules, employment must be terminated if that person was involved in a case of child abuse.

Dierenfeld said the pilot projects were in operation and would continue to operate whether these rules were in effect or not. If anybody had any problems with how this program was being implemented, there would be no formal way to object and there would be no written rules upon which to rely. As long as the Department continued doing this and could file the report with the legislature, the decision to delay was within the purview of the ARRC.

In response to Rittmer, Dierenfeld stated it might be better to delay those portions of the rules where there were objections.

Priebe suggested proceeding with the delay, having Rosenberg review the rules and, if there were no objections, lift the delay immediately. Daggett expressed agreement with this proposal.

Cook stated the matter might be resolved by deleting 175.25(4)"d."

Amended Motion

Priebe made an amended motion for a 70-day delay on 175.25(4)"d." The motion carried.

176.1 et al.

Metcalf noted subrule 176.16(2) substantially increased the amounts the state paid for medical or mental health examinations for the subjects of dependent adult abuse and wondered if those increases were justified. Walker responded there had been no increases in the past 10 years and these amounts were the maximum payments.

DHS (Cont.) 200.4(3)"b"

ARC 6078A brought the Department in compliance with the Multiethnic Placement Act of 1994. Walker stated that of 29 persons in attendance at the public hearings, 8 testified in favor of the change, 2 against and several people stressed the need for training. No Committee action.

Special Review

Kibbie pointed out an agreement had been reached between the Nursing Board and the Department. Walker stated the Department agreed to amend the rules to allow an 18-month period from the time the nurse anesthetist graduated until the examination was taken. Metcalf asked if these rules would be filed Emergency and Walker replied they would. She added only three people who were not CRNAs were affected by this and dispensation would be granted to them.

COLLEGE STUDENT

Laurie Wolf represented the Commission for the following:

AIDCOLLEGE STUDENT AID COMMISSION[283]
EDUCATION DEPARTMENT[281]"umbrella"
Iowa tuition grant program — award notification, 12.1(6), Filed **ARC 6108A** 12/20/95
Iowa grant program — award notification, 27.1(9), Filed **ARC 6109A** 12/20/95

12.1(6)

Metcalf asked what the time frame was under subrule 12.1(6) for notification to students by an institution placed on probation. Wolf replied the commission worked most often with North Central Accreditation Agency which had a five-year accreditation program. Annual reviews were conducted and reports had to be submitted every six months. A school in a candidacy status was usually notified 18 months prior to the 5-year deadline. A suspension could be instituted by a U.S. Department of Education review, by the North Central Accrediting Agency based on complaints received from former or current students or by information the school itself had divulged to the state of Iowa or to the accrediting agency stating it was not a viable institution. Suspensions normally engendered a 60-day notice.

Metcalf was concerned about a freshman attending a school and subsequently learning it would not be accredited. Wolf responded three schools currently had been informed by North Central Accrediting Agency they would no longer be eligible for candidacy if they did not attain accreditation standards by August 1, 1996. Those schools met with the commission in July and were required to notify students that funding for the following year might not be available until accreditation had been received. Students received the notification in August. The schools were advised that applicants and the guidance counselors had to be notified when students were recruited.

Priebe recommended the Commission refrain from using the word "must" when writing rules and opt instead for "may" or "shall."

27.1(9)

Priebe asked if any comments from private schools had been received pertaining to subrule 27.1(9) concerning award notification by an institution on probation. Wolf stated the commission presented the information to financial aid counselors and college presidents at the September annual meeting, as well as having mailed information to them, and had received no negative comments.

ECONOMIC DEVELOPMENT

JoAnn Callison, Kathy Beery, Michael Swesey, Ken Boyd and Lane Palmer were present from 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), Notice **ARC 6091A** 12/6/95
CDBG—threshold wage criteria, 23.8(1)"d" and "e," 23.9(5)"a"(8) and (9),
Notice **ARC 5860A** Terminated **ARC 6092A** 12/6/95
Emergency shelter grants program, 24.2, 24.4"3," 24.4"5," 24.5"3," 24.6, 24.7, 24.9, 24.12(1),
Filed **ARC 6090A, see text IAB 10/11/95, page 520** 12/6/95
Rural innovation grants, ch 49, Filed Emergency After Notice **ARC 6094A** 12/6/95
CEBA, 53.2, 53.5(2), 53.6(1), 53.6(2)"e," 53.7(2), 53.13(1), 53.13(4), 53.13(5),
Filed **ARC 6093A** 12/6/95

7.3 et al.

Daggett asked if any comments had been received at the hearing regarding Chapter 7, "Iowa Jobs Training Program." Callison replied there were none and noted there had been no substantive changes to the program.

24.2 et al.

Palmer stated the Department restricted administrative expenses under chapter 24, "Emergency Shelter Grants Program," to 5 percent although the federal government allowed 10 percent. It was the Department's experience this could be held to 5 percent or below. This program operated with state funds obtained through the Iowa Finance Authority and through a county program and required only a single application.

Ch 49

Beery stated there were no comments or objections received pertaining to rural innovation grants and because of this the Department decided to file these emergency to commence implementation, believing it was important for the community to have immediate access to the resources.

Weigel asked if this earlier date created an advantage or disadvantage as far as knowing about the availability of the program. Beery replied it did not. The Department sent a mailing throughout the state and conducted rural development and housing awareness programs in various areas of the state. Weigel asked if the available funds were committed if this date was used. Beery replied no since applications had been sent approximately two weeks ago.

Priebe inquired if there would be enough money available. Beery replied that only $50,000 was appropriated and not all the grants would be at the $6000 level. She noted approximately ten to fifteen grants would be let this year.

23.8(1) et al.; 53.2 et al.

In discussing the Notice of Termination, ARC 6092A, and of ARC 6093A, Boyd stated the wage thresholds had been parallel and since the wage threshold in CEBA had not been changed neither would that of CDBG. Priebe believed more projects could be completed without the additional increase. Boyd stated the original rules had proposed an increase up to 100 percent as a way to preserve the CEBA funds so they could no more projects. No project would be carried out unless the business paid 100 percent of the average. This proved unpopular with the public and was not adopted. He said to meet the current threshold, they would have to be at 85 percent of a county average.

Weigel asked if the requirement remained that at least one-half of the people receive this wage. Boyd responded the total average had to meet 85 percent of the county average, which was a starting wage less benefits, and then at least one-half had to meet this. The Department counted only those over that 85 percent or equal to it to actually leverage the funds.

DED (Cont.)

Kibbie referred to 261—paragraph 53.6(1)"j" and stated he understood there was no money in the PROMISE JOBS. Boyd was uncertain. Metcalf asked if these jobs must be made available to PROMISE JOBS participants, and Boyd stated that was correct. Kibbie asked if PROMISE JOBS would no longer exist with the advent of the Workforce Development Council. When Boyd responded he was unsure. Doderer asked him to find out and report back to the Committee.

EDUCATION

Don Helvick represented the Department for the following:

EDUCATION DEPARTMENT[281]

Open enrollment application, 17.8(5), Filed **ARC 6097A** 12/20/95

17.8(5)

Helvick stated that no public comment had been received concerning subrule 17.8(5), renewal of an open enrollment agreement. This met with strong support at the superintendent's meeting.

Doderer asked if the parent/guardian must cancel if the student did not enroll. Helvick replied written notice had to be given to both districts—the one to which the student was moving and the one in which current enrollment occurred. This terminated upon graduation or if the family moved to another area.

Hedge believed there should be some requirement of cancellation and notification to the receiving district. Helvick replied this was a requirement. Problems arose when people moved and did not inform anyone.

In a topic not formally before the Committee, Daggett asked if the Department would submit recommendations on open enrollment this year. Helvick replied yes, that three to four technical recommendations dealt with the amount of paperwork and the amount of time spent on it by the schools.

Committee Business

Royce referred to a handout by Arthur Bonfield and the taskforce on administrative law reform, which proposed a rewrite of the Administrative Procedures Act, to be introduced in the legislature this session. Royce explained the Administrative Procedures Act was comprised of basically two different segments—the rule-making process and contested cases. Under the current proposal, the rule-making process would remain essentially unchanged, but additional authority would be granted to the Committee. A 70-day delay or a session delay changed to a delay power lasting from one day to one year, the length of time to be determined by the ARRC. The Committee could also demand an agency put a rule under notice, although it could not force adoption of a rule. This method would ensure public comment and criticism of the rule. As part of the adoption process, agencies would have to prepare a document explaining the reasons for adopting the rule and would have to summarize the arguments against the rule. Metcalf asked if this would be published in the IAB. Royce replied it could, but the size of the Bulletin would increase. Priebe felt this would add to the printing costs of the IAB and perhaps should just be made available to the ARRC. He stated the majority of states required the agency explanation and they indicated it was beneficial. He noted that when the ARRC referred a rule to the General Assembly and it did not act, the objection to the rule did not take effect.

Doderer asked if the Committee had a record of the frequency of something sent to committee with no action taken. Royce responded rarely did the ARRC do something that required the legislature to act. The ARRC generally referred things to the legislature and seldom was there action.

Rittmer asked if this meant that the ARRC would automatically have an objection if the legislature did not do anything.

Committee Business (Cont.) Kibbie felt if the delay power was within the purview of the ARRC, greater attention would have to be paid by all, including the legislature.

Royce stated this procedure had been constitutionally upheld in Wisconsin.

ETHICS Kay Williams and Lynette Donner represented the Board for the following:

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
Administrative resolution of compliance issues — letters of reprimand and admonishment, 1.4(3), 1.4(5), Filed **ARC 6126A** 12/20/95
Availability of campaign finance information in offices of county election commissioners — costs, 3.2, Filed **ARC 6125A** 12/20/95
Personal financial disclosure, 11.1(1), 11.1(3), 11.1(6), 11.1(7), 11.2, Notice **ARC 6127A** 12/20/95

1.4(3) and 1.4(5) Donner stated subrules 1.4(3) and 1.4(5) expanded the Board's ability to use letters of admonishment. No Committee action.

Priebe in Chair.

3.2 No questions on 3.2.

11.1(1) et al. Donner stated annual revision of the personal financial disclosure chapter would occur because agencies frequently revised their tables of organizations. This also addressed when a person left a position midyear and was required to file a personal financial disclosure statement within 30 days.

Kibbie asked why Indian Hills Community College was the only listing under AREA XV - IHCC in 351—11.2(68B). Donner replied the community college was the only one that had changed from a dean system to a department head system. Kibbie then asked when the Board should be notified of a change. Donner replied the Board worked through the Community College Association on a regular basis.

In response to Doderer, Donner stated the purpose of the table was to identify those persons required to file personal financial disclosure statements. Those statement asked for job titles and, if there was significant outside income, to generically declare the source.

Kibbie asked why financial disclosure was required of these people and if the Board would make a recommendation to delete the requirement. Williams replied such a requirement involved a major policy/advocacy position which should be avoided. She would respond to any inquiries and put it under review, but she was not involved in any of those meetings and did not know why some of those decision were made.

Metcalf in Chair.

Motion to Refer Kibbie made a motion to refer ARC 6127A to the Speaker of the House and the President of the Senate.

In response to Doderer, Williams stated the Board felt that if this particular statute had any force, it should contain information of value to the public.

Hedge asked if a motion for referral on a Noticed rule set a new precedent. Royce responded that it did not.

Motion Carried The motion to refer ARC 6127A to the Speaker of the House and the President of the Senate carried.

ETHICS (Cont.) In a topic not formally before the Committee, Daggett stated he had received three checks as campaign contributions but had returned them since he was not running for office. He wondered if those firms had sent reports concerning this to the Board. Williams recommended Daggett send the Board a copy of the letter stating the contributions were returned.

HISTORICAL DIVISION Kerry McGrath was present from the Division for the following:

HISTORICAL DIVISION[223]
CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"
Grant review criteria, certification process, 35.5(6), 36.4(4), Filed **ARC 6084A** 12/6/95

35.5(6) and 36.4(4) McGrath stated that subrule 36.4(4) had been rescinded because the Division found that, in administering the grant program review, subrule 35.5(6) was essentially the same.

Minutes Priebe moved to approve the minutes of the December meeting as submitted and the motion carried.

Recess The Committee was recessed at 11:45 a.m. and reconvened at 1:30 p.m.

EPC Mike Murphy, Pete Hamlin, Dennis Alt, Joseph Obr, Lavoy Haage, Paul Nelson, Catharine Fitzsimmons and Dave Wornson represented the Commission and Randy Hartmann represented Great River Regional Waste Authority for the following:

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Air pollution, 22.1(2)"i," Amended Notice **ARC 6062A**, also Filed Emergency **ARC 6063A** 12/6/95
Assessment of fees for water supply operation, 40.2, 40.5, 43.2(3)"b," 43.3(3)"b"(2),
Notice **ARC 5878A** Terminated **ARC 6118A** 12/20/95
Private well sampling, rehabilitation, and closure — grants to counties, ch 47, Filed **ARC 6120A** 12/20/95
Water quality — Section 404 permit authorizing construction of single family homes, 61.2(2)"h,"
Notice **ARC 6119A** 12/20/95
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), 135.9(1)"a" to "c," 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),
Filed **ARC 6121A** 12/20/95
Financial assurance for solid waste programs, 111.6, special review ..... IAC

22.1(2)"i" Priebe asked if the Commission would allow Ipsco to lower its ambient air quality standards. Hamlin responded the ambient air standard in Muscatine was the same standard as that throughout the state and Ipsco would have to meet that standard. Ipsco did not ask to have the standard lowered but asked to have its permit limits increased and with this increase would still be under the national ambient air standards for those particulates.

Doderer asked why Ipsco had requested a change. Hamlin understood it was because of a desire for increased production and the concomitant need for an increase in emissions. Doderer noted that increased production would require more water from wells and Ipsco used water from the river.

Hamlin responded yes when asked by Priebe if Ipsco had to obtain a permit for wells from the Commission. Priebe wondered why this was done when the law stated water would be obtained from the river. It was Hamlin's understanding water withdrawal permits were extensively reviewed by the Commission staff.

40.2 et al. No questions on 40.2 et al.

EPC (Cont.) Ch 47

Murphy stated the Commission received five written comments concerning well closure.

Metcalf requested the Commission denote specific changes in future filings since the changes to Chapter 47 were difficult to determine.

Priebe referred to 567—subparagraph 47.16(2)"b"(3) and asked if the $600 cost-sharing grant was an increase. Alt replied the $600 applied to rehabilitation only and well sealing was still limited to $200. Alt noted that well sealing, as used in the proposed rule, dealt with the rehabilitation or reconstruction of the well and well abandonment involved the actual abandonment of the well.

Priebe asked how the Commission determined the $600 figure. Alt replied an ad hoc committee of the Commission originally proposed $200, but felt it would be inadequate and set the amount at $600. No comments had been received concerning that amount.

In response to Daggett, Alt replied the program of state reimbursement had been in effect six years. Daggett asked when wells were required to be shown on real estate transfer and Alt stated this was in the 1987 Groundwater Protection Act. Daggett asked if a request for reimbursement was made by the county and Alt replied this was correct, noting the Commission received approximately 97 this year.

Kibbie asked how many applications were received for rehabilitation of wells. Alt responded the Commission gave a combined grant for the three programs that could be used for testing, abandonment, rehabilitation or for any combination thereof. The amount awarded this year per each county applying was $29,000.

Kibbie asked if a permit to dig a new well could be obtained other than through the county Board of Health. Alt replied that if the county had not received delegation, application was made directly to the Commission which maintained concurrent authority in case a county could not act. Kibbie asked about a well permit if an organization built a large hog facility and the county did not have an agreement with the Commission. Alt stated the Commission would then deal with that permit, but did not know of any that had been issued. Counties generally with no delegation were those location on the northeastern to southern border.

Kibbie asked about permits concerning original wells on old building sites where there were no buildings. Alt said the state required a water use permit if more than 25,000 gallons was used, but a construction permit was not required. Counties could adopt more stringent requirements and ordinances and could develop requirements for rehabilitation, but the Commission did not have this authority on the state level. Kibbie asked if there was a penalty when no construction permit was obtained. Alt responded legal action could be taken by the county attorney, by the Commission, and the well driller could be subject to loss of license.

Priebe asked what provisions existed for digging emergency wells. Alt noted approval had to be obtained from the Board of Supervisors.

Halvorson asked where the real estate disclosure concerning wells was filed. Murphy responded it was filed with the county recorder, who noted it on the records but did not retain a copy. Halvorson was told that although the disclosure was good, nothing was done with the information. The Commission maintained copies of the records indicating the presence of wells or underground tanks.

61.2(2)"h"

No questions on 61.2(2)"h."

EPC (Cont.)
135.2 et al. No questions on 135.2 et al.

Special Review

Metcalf asked Royce to summarize the letter received from the Minnesota Pollution Control Agency. Royce stated Iowa had a provision in the law that required financial security by the various sanitary landfills but had postponed those requirements for approximately one year. Minnesota imposed this requirement and trash that was normally deposited in Minnesota landfills was now being shipped to Iowa, specifically private landfills in northern Iowa. Minnesota suggested Iowa institute the financial security requirements immediately.

Murphy stated the federal EPA extended the effective date of when facilities had to have financial assurance for two years and Iowa's extension was consistent with federal laws.

In response to Metcalf, Murphy replied the stricter rules would become effective April 9, 1997.

Rittmer had received complaints from landfill operators who were losing business to Illinois.

Hartmann's organization asked for the same flexibility in Iowa as the U.S. EPA adjustments to financial assurances requirements. Those at the local level could then determine when the timing was correct to actually set dollars aside into a restrictive fund to care for that facility.

Priebe stated 2000 tons per day were being trucked into Winnebago County from Minnesota. Because federal law stated it was a commodity, Iowa could not refuse another state's waste; a wheel tax had been declared unconstitutional; and questions remained concerning tipping fees. He intended to introduce a bill to address this issue.

NATURAL RESOURCES

Steve Dermand, Terry Little and Don Paulin represented the Commission and William Sachse represented himself as a game breeder for the following:

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Game breeder regulations, ch 13, Notice **ARC 6068A** 12/6/95
Use of crossbows with pistol grips by handicapped individuals for deer and turkey hunting, 15.5(5), Filed **ARC 6064A** 12/6/95
Boating — Three Mile Lake in Union County, 40.44, Filed **ARC 6065A** 12/6/95
Sumit Lake in Creston—no-wake speed, 45.4(3)"h," Notice **ARC 6067A** 12/6/95
Wild turkey spring hunting, 98.1(1), 98.2(5), 98.3(1) to 98.3(3), 98.5, 98.10(2), 98.12, 98.14, 98.16, Filed **ARC 6066A** 12/6/95

Ch 13

Dermand stated 571—Chapter 13 dealt with hunters and decoys and the wild waterfowl they were hunting and game breeder locations. This established buffer zones.

Sachse stated he was a game breeder who resided between Madrid and Polk City and belonged to a number of waterfowl organizations. He believed rules established by the federal government were effectively in place and these rules were unnecessary.

Metcalf asked if Sachse was aware of the public hearing held December 27 and evinced concern over the selection of that date. Priebe stated he would like to request another hearing with notification to the breeders. Dermand stated the Commission received written comments and some telephone calls.

NRC (Cont.)

Priebe then referred to subrule 13.2(4) and asked how the buffer zone of 100 yards had been determined. Dermand stated the 100-yard limitation would not allow hunters to hunt from roads near game breeders where wild waterfowl passed overhead.

Priebe believed deer should not be included in subrule 13.2(10) if this strictly involved waterfowl. Dermand replied the game breeder chapter would probably be expanded to include things other than waterfowl.

Kibbie asked how many game breeders were in the state and if they could be notified of another hearing. Paulin stated another hearing would be held, game breeders invited, and hunting organizations notified. He also suggested holding a meeting with the game breeders prior to the hearing.

Palmer expressed concern that two regulatory authorities were doing essentially the same thing.

15.5(5); 40.44

No questions on 15.5(5) and 40.44.

45.4(3)"h"

No questions on 45.4(3)"h."

98.1(1) et al.

Metcalf asked if, in rule 571—98.5(481A), the toll-free number was new. Little replied it was and any hunter taking a wild turkey during spring turkey season was required to call that number.

Priebe in Chair.

GENERAL SERVICES

David Ancell was present from the Department and Liz Isaacson and Betty Soener, House, and Lori Bristol, Senate, were present for the following:

GENERAL SERVICES DEPARTMENT[401]

Organization and operation of the department, 1.2(1), 1.2(3), Notice **ARC 6087A** 12/6/95
Capitol complex parking, ch 4, Notice **ARC 6088A** 12/6/95
Appeal process, ch 6, Notice **ARC 6089A** 12/6/95

1.2(1) and 1.2(3)

No questions on 1.2(1) and 1.2(3).

Ch 4

Ancell stated the Department received several comments at a public hearing and in writing, most of which involved procedural issues and maintenance issues of the parking system under 401—Chapter 4. The Department intended to further define the explanation of fines.

Royce noted the capitol complex parking lots were under General Services authority. It was felt that legislative parking should be under the auspices of the Legislative Council since parking assignment and regulation were within the purview of the House and Senate. Royce asked if legislative lots under the jurisdiction of the House and Senate could be added to the definition of capitol complex. Ancell agreed to do this.

Ancell agreed to amend rule 401—4.6(18) once it was pointed out the legislature issued cards to put on the dashboard rather than decals.

Royce noted that once a lot was full, parking was allowed in the overflow lot but under rule 401—4.7(18), capitol security must be notified. Royce did not understand why capitol security should be notified when there was no possibility of parking anywhere else. Ancell did not believe capitol security notification was needed.

GENERAL SERVICES (Cont.)

Royce believed the waiver as specified in 401—4.9(18) should be done in consultation with the Secretary of the Senate and House.

Royce wondered what would happen if the gates were not functioning properly and noted that under these rules there would be serious fines if the gate was tampered with. Ancell replied this was an enforcement issue and, if a problem was identified, the Department would make certain access to the lot was available. Tort liability was incurred by people who tailgated and damaged their cars or rendered the gate inoperable. The Department was working on improvements in accessing the lots.

Priebe expressed concern about emergency vehicles not being able to enter the lots. ancell stated this was an enforcement issue and he could not imagine the capital security citing an individual in an emergency siutation. Priebe pointed out there was no exception provided in the rule. He asked how many cars had been damaged by the gates. Ancell was uncertain but would provide the information.

Royce noted that when cars were towed, individuals could not get the car back until they showed proof the fine had been paid. He wondered if the towing occurred after 4:30 whether the individual would be unable to get the car back until regular office hours. Ancell responded this had never occurred. Usually the towing occurred earlier in the day, but the Department Customer Service would be notified if a car was towed and could make arrangements to be open for the individual.

Metcalf in Chair.

Ch 6

No questions on Chapter 6.

LABOR

Byron Orton, Walter Johnson and Mary Bryant were present from the Division. Also present were Bev Kaiser and Ellen Gordon, Emergency Management Division, Steve, Meyer, Iowa Fire Chiefs Association, Robert Hamilton, Sioux City Fire Department, Roger Duello, Iowa Firemens Association, Dennis Duggan, Waterloo Fire Rescue, and Matt Woody, Des Moines Fire Department. The following agenda items were discussed:

LABOR SERVICES DIVISION[347]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"
General industry — occupational exposure to lead, 10.20, Notice **ARC 6117A** 12/20/95
General industry — logging operations, 10.20, Filed Emergency After Notice **ARC 6114A** 12/20/95
Construction — occupational exposure to asbestos, 26.1, Notice **ARC 6116A** 12/20/95
Construction — fall protection, 26.1, Filed Emergency After Notice **ARC 6115A** 12/20/95
IOSHA rules, **special review** ..... IAC

10.20

No questions on 10.20.

26.1

Priebe stated the town of Ledyard had an abandoned school which contained asbestos. They would like to raze it but could not afford to because of the asbestos removal. One person had indicated a willingness to bulldoze it but the town had been unable to obtain any clearance to bury it until the asbestos was removed. The town was fearful of liabilities. Priebe asked what could be done. Johnson responded that type of disposal came under the DNR and EPA regulations. EPA dealt with the environmental aspects and the division was involved in the protection of the worker while they were removing asbestos. The requirement to remove the asbestos before they could do something with the building came under EPA and DNR.

26.1

No questions on 26.1.

LABOR (Cont.)
Special Review

Weigel had been requested by Representative Warnstadt to present this issue to the ARRC. He believed most people were cognizant of the Terra explosion and that Sioux City emergency people assisted the small community. He noted that fines had been levied and waived. Weigel was concerned about the responsibility and liability in these types of emergencies. If the rules in place were still leaving this to question, then perhaps the Division could give the ARRC some direction for possible legislation.

Orton stated the December 13, 1994, explosion at Terra International claimed the lives of four workers and resulted in injuries to 18 others. Approximately one month after the explosion, IOSHA received a formal complaint from an employee of the Sioux City Fire Department alleging violatins of OSHA health and safety standards. The Division investigated the formal complaint and issued citations and proposed penalties to the Sioux city Fire Department. The city of Sioux City disputed IOSHA actions and filed a contested case. A settlement agreement, resulting in the largest penalty in the history of IOSHA, was subsequently reached and signed in early October. In December 1995, IOSHA and the city of Sioux City entered into a settlement agreement in which certain citations and penalties were vacated.

The Division would not issue citations to any employer for any rescue activity by its employees except when an employer had specifically designated an employee with responsibility to perform or assist in a rescue operation or when an employee has duties directly related to workplace processes or operations where the possibility of life-threatening accidents is foreseeable. The Division also avoided the imposition of OSHA penalties for public safety and military personnel responding to emergencies. The public employer may be cited for alleged violations and if the violation was not corrected within the time specified in the citations, daily penalties for failure to correct could be imposed.

Orton stated that IOSHA fully supported the concept of mutual aid agreements between governmental organizations including fire departments.

Weigel expressed concern over whether a fire department would respond if it had to assume overall charge of the situation and be responsible for liability. He also questioned whether members of smaller departments were properly trained. Orton stated he shared those concerns and assured that it was not the policy of the commissioner to interfere in responses to these types of emergencies.

Firefighters Hamilton, Johnson, Duello, Woody, Meyer, and Duggan expressed their concern that the response of IOSHA to the Terra accident could potentially jeopardize the sharing of resources or mutual aid agreements among fire departments. It was a common-held belief that IOSHA determined which fire department would have jurisdiction at an incident. It was felt that in some instances, members of smaller fire departemtns had been unable to receive adequate training, including hazardous material situations, due to a lack of funding. "Smaller departments could not survive without the larger departments which had the training and equipment." It was pointed out that a hazardous material team, which responded to a situation in a different jurisdiction, would have the greatest expertise. The team, however, would not know the resources available within the community, the population possibly at risk from a chemical release and needing to be evacuated, familiarity with other facilities that might be impacted, reliable transportation, routes to move evacuees out of the area and places to relocate. Sioux City Fire Chief Hamilton said a hazardous material incident or an emergency condition was generally protracted, and added his department was on site at the Terra explosion for 11 days. Concomitant with the jurisdiction issue was the question of liability.

LABOR (Cont.) Palmer believed protocol should be established within the agreement, and Rittmer stated it appeared that these groups could work together or, if necessary, with the legislative committee to reach an accord. Orton replied the Division believed these concerns should be addressed and he had no doubt a solution acceptable to all concerned could be worked out. Orton intended to contact the various organizations represented, put together policy statements regarding the various questions raised at this meeting, and meet with those groups to determine if there were remaining concerns. If they were successful and reached an agreeable solution, he could report the results to the Senate and House Business and Labor Committees.

Metcalf stated the ARRC should also be notified when an agreement had been made.

Recess Metcalf recessed the meeting at 3:45 p.m. until 9 a.m. Thursday, January 4, 1996.

1-4-96

Reconvened Metcalf reconvened the meeting at 9 a.m. Representative Doderer was excused from the meeting.

INSPECTIONS Nancy Ruzicka, Mary Oliver and Rebecca Walsh represented the Department and there were no questions on the following:

INSPECTIONS AND APPEALS DEPARTMENT[481]

Licensing actions for nonpayment of child support, 5.11(4), ch 8, Filed Emergency **ARC 6106A** . 12/20/95
Hospitals — Iowa Code reference correction, 51.8(1)"a," Notice **ARC 6105A** 12/20/95
Surgical services in hospitals, 51.26, Notice **ARC 6104A** 12/20/95
Hospitals — pediatric services, 51.30(1)"b," 51.34, Filed **ARC 6103A**..... 12/20/95
Respite care services provided in health care facilities, 59.60, 62.26, 63.50, 64.63, 65.30, Filed **ARC 6107A**..... 12/20/95

INSURANCE Susan Voss and Rosanne Mead were present from the Division and Mark Joyce, Larry Carl and Ronald Evans, Iowa Chiropractic Society, Normal Pawlewski, Iowa Osteopathic Medical Association, and Debra Wozniak, State Farm Insurance, were also present for the following:

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181]"umbrella"

Appointment renewal procedures and producer license suspension procedures for child support recovery, 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(8), 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, Notice **ARC 6061A** 12/6/95
Individual health benefit plan guidelines, ch 75, Notice **ARC 6060A**..... 12/6/95

10.1(2) et al. In response to Metcalf, Mead stated the Division recieved one written comment requesting a change of wording in one rule to clarify intent.

Ch 75 Voss stated 191—Chapter 75 explained the packages for the basic and standard individual health benefit plans which, under S.F. 84, needed to be similar in coverage to the small group basic and standard plans. S.F. 84 contqained a self-funded clause and the reinsurance board met to determine rules to allow self-funded plans to pay an assessment into the pool so that those employees could participate and receive the guaranteed issued basic or standard. A public hearing was held and letters from two insurance companies asking for clarifications on the rules were received. Voss received a telephone call from Larry Carl with the Iowa Chiropractic Society asking about chiropractic services coverage. She stated this was allowed under the standard plan but not under the basic plan.

INSURANCE (Cont.) Kibbie asked about those people in the poor risk category and whether they had previously been enrolled in a group plan. Voss replied that a person who had been in the Iowa comprehensive health association, a high-risk pool, for at least one year did not have to undergo a waiting period for a preexisting condition. That person automatically received a guaranteed basic or standard health care plan and could go to any carrier in the state. A person who had been in a small group plan, was no longer employed and needed to purchase an individual health benefit plan, could receive the guaranteed basic or standard plan. A person who faced increased rates in the individual market, could switch to the basic or standard plan at a lower cost. Kibbie inquired if anyone involved with the 20 percent and 30 percent exceptions could also be in the out-of-pocket category. Voss stated the composite effect of 20 percent, 30 percent and 30 percent was the maximum rating band limitation which could be used by carriers in determining permium ratings for individual policies and basic and standard plans. She said it was the intent of the reinsurance board to price basic and standard guaranteed issue at 30 to 40 percent below the average cost of an individual health care policy.

In response to Kibbie, Voss stated that age could be used as a rating factor.

Halvorson stated the individual market was shrinking because most people were members of group plans. The state needed both protection for rate increases and to allow companies some discretionary rating ability or these policies would not be written. Voss stated the Division was required to file a study with the legislature on the elimination of age as a rating factor in the individual market. Few states have eliminated this in the individual market. Those states that did found a decrease in people being insured because, while the cost decreased for older persons in the market, it greatly increased for the younger people who dropped out. Voss stated the Division received numerous calls from the self-insured market, now consisting of approximately 50 percent of employers in the state, which did not pay into the pool and had been excluded. Those people were seeing substantial increases.

Halvorson asked if the Division had reviewed the National Association of Insurance Commissioner's model individual health care reform bill. Voss responded it would be introduced at future meetings and added that many states had exhibited interest in Iowa's plan and believed that it should be used.

Metcalf asked if the reinsurance language in the rules would hinder the final adoption of this program. Voss replied it would not because the Division was looking at the assessment from all carriers. The assessment did not take place until the end of the first year when all losses were pooled and each assessment was determined.

Priebe asked if retiring state employees could remain in the group plan or would have to seek other insurance. Voss was uncertain whether the state had a conversion policy. She added that if an employee with a catastrophic illness tried to get into another plan but did not meet underwriting standards, that person would be guaranteed the basic or standard plan with no riders. If a 12-month preexisting condition period had been met on previous coverage, the same coverage previously received would automatically apply. Halvorson stated IPERS had tried to deal with this issue for many years.

Kibbie asked the number of individual policy owners in the state and Voss replied she did not know. The Division was planning a survey within the next year on where the uninsured population was located. This information plus statistics from carriers would enable the Division to ascertain numbers for small groups, large groups and individuals. Kibbie believed most of the individual policy holders were independent business owners and farmers who had never been in a group

INSURANCE (Cont.) plan at any time. When Voss replied the law would have to be changed to allow this, Kibbie requested a review and the information reported back to the ARRC.

Evans, a member of the Iowa Health Reform Council, referred to subrule 75.10(3) which specifically excluded the treatment of human ailments by the adjustment of the neuromuscular skeletal system under the basic plan. This language appeared in only one place of the Iowa Code and explicitly identified chiropractic. He cited the 1993 Council statistics which identified 218,000 Iowans in the underinsured and uninsured group. Evans said the council wanted chiropractic to be an affordable yet cost-effective and efficient delivery of health care.

Weigel asked if this coverage differed between the individual and group plan. Voss replied that although similar, it was not covered under the basic plan.

In response to Kibbie, Voss stated the Division did not base the plan solely on the 1993 Iowa Health Care Reform Council recommendation.

Priebe thought subrule 75.10(3) was an attempt by the Division at circumvention. Voss stated the Division was looking at ways to keep the price extremely low and this applied only to the basic plan.

Voss noted the Division needed these adopted promptly because carrier rates become effective April 1.

Rittmer asked about the projected difference in cost between the basic and standard plan. Voss responded that she did not have this figure but would get it for the Committee.

Metcalf asked if Evans was aware of the public hearing. Evans replied that he found out about the public hearings at the last minute.

Pawlewski noted that the public hearing was held during the week between Christmas and New Year's and that was the reason his organization had been absent. His organization believed that excluding the use of a particular treatment modality which osteopathic physicians could use in addition to or instead of the other medical treatments that were available was an unfair intrusion on the patient/physician relationship. He asked that the Division either eliminate this exclusion or examine it further.

Priebe noted the new Insurance Commissioner was appointed to carry out the law, not make the law.

Halvorson had a problem with practitioners determining the mode of care based on what the insurance policy would cover.

Weigel was concerned that insurance companies were mandating who patients had to see in order to have a particular procedure done. It would appear that from the start, carriers were eliminating who the patient could see. He believed that people were being directed to the higher priced services and were eliminating the more cost-effective types of services through insurance plans.

Hedge asked if subrule 75.10(3) also excluded the payment of physical therapists. Voss replied treatment was covered under the standard plan but not under the basic plan.

Metcalf stated the ARRC had been concerned in the past with access to public hearings and believed the week between Christmas and New Year's was not the best time for a public hearing. Voss replied that time was a factor but she understood the point.

INSURANCE (Cont.) Kibbie suggested the Division hold another public hearing and Voss replied this was possible. Kibbie stated that if the rules were then controversial, they would probably be referred to the legislature.

Royce stated notification regarding another public hearing would not have to be published in the bulletin, but the Division should directly notify interested parties, as well as the news media.

TREASURER Lynn Bedford represented the Department for the following:

TREASURER OF STATE[781]
Linked investments for tomorrow (LIFT), ch 4, Filed **ARC 6095A** 12/6/95

Ch 4 Bedford stated that subrule 4.4(9) was changed to reflect any "borrower or business" could not extend the maximum period of eligibility beyond nine years while participating in the LIFT program.

Metcalf noted many financially-abled Iowans used this program to obtain a reduced interest rate and nothing in the Code prevented this. Metcalf received a letter indicating the Treasurer was concerned about the growth of the targeted small business program that now absorbed 75 percent of the amount. The state lost nearly $6 million in revenue to the general fund because of this program. Although much of this program had merit, it was not meeting the intent of the legislature. Both the letter from the Treasurer and Bedford indicated the Department of Inspections and Appeals was not willing to cooperate. She added borrowers must first be certified as targeted small businesses by the Department of Inspections and Appeals, and once certified, the Treasurer was unable to deny the loan.

Bedford listed examples of program abuse and said the Agency felt this should be stopped at Inspections and Appeals or that process eliminated from the program. The Agency wanted the money directed to the qualified participant, not to the personal investor. Kibbie stated these incidents should be corrected but the success stories should also be reviewed. Bedford agreed.

Halvorson asked whether a linked deposit loan was made to the individual and if these loans were packaged and brought to the Treasurer for final review. Bedford replied the borrower needed to qualify for the loan through an Iowa financial institution. Then based on that lender's approval, the Agency would make the funds available. The final decision belonged to the Treasurer, but if the lender did not agree to make the loan, it would not get to the Agency. Halvorson asked if the Treasurer ever said no when the lender recommended yes. Bedfor responded this had occurred.

DOT Dennis Ehlert represented the Department for the following:

TRANSPORTATION DEPARTMENT[761]
Vehicle registration and certificate of title, salvage, handicapped identification devices, motor vehicle leasing licenses, motor vehicle equipment, emergency vehicle permits, 400.45, 405.8(4) to 405.8(7), 405.9(1)"f," 405.10, 411.10, 430.2(1), 430.2(2)"c" to "g," 430.3, 450.5(1), 451.1, 451.2(2), Filed **ARC 6102A** 12/20/95

400.45 et al. No questions on 400.45 et al.

REAL ESTATE

Roger Hansen and Pam Griebel were present from the Commission for the following:

REAL ESTATE COMMISSION[193E]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Relationship between licensed real estate salesperson or broker and parties to a transaction, disclosures, 1.1, 1.36, 1.40 to 1.51, Filed **ARC 6110A** 12/20/95

1.1 et al.

Metcalf requested clarification of rule 193E—1.1(543B) definition of "confidential information." Hansen replied that ability to lease was the same as the person's ability to buy, therefor the Commission tried to make these consistent with property management as well as purchasing. Griebel added the rule as originally noticed clarified that confidential information did not include material adverse facts which had to be disclosed.

RACING AND GAMING

Jack Ketterer represented the Commission for the following:

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Noncompliance with court-ordered child support, 3.11(3), 4.30, Notice **ARC 6081A** 12/6/95
Practice and procedure and occupational and vendor licensing, 4.29(6), 13.9, Filed **ARC 6082A** 12/6/95
Greyhound vaccination certificates, vendor licensing, 7.5(9)"a," 13.6, 13.10, 13.11, Filed **ARC 6083A** 12/6/95
Excursion boats and racetrack enclosure gaming license applications and criteria, 20.10(8), 20.12(1)"u," 21.10(18), 21.10(19), Notice **ARC 6080A** 12/6/95

3.11(3) and 4.30

No questions on 3.11(3) and 4.30.

4.29(6) and 13.9

No questions on 4.29(6) and 13.9.

7.5(9)"a,"13.6, 13.10, 13.11

In response to Priebe, Ketterer stated amendments to 491—Chapter 7 and Chapter 13 involved NGA certificates and vaccinations the greyhounds had to have prior to the start of the meet. The disclosure criteria for vaccination was changed from 30 days to a 7-day period before the opening of each racing season. Priebe sought clarification on rule 491—13.6(99D, 99F). Ketterer stated this was cleanup langauage to avoid ambiguity as to whether or not a gaming representative could revoke a license. The Commission was the only entity that could revoke a license.

20.10(8) et al.

In response to Daggett, Ketterer replied representatives from Osceola attended each of the commission meetings at which amendments to Chapters 20 and 21 were discussed. He added that he had also met with Representative Arnold. Daggett referred to subrule 21.10(18) paragraphs "a" to "d" and stated he believed this would adversely affect an application from Osceola because of the limited route. He noted these rules had been instituted since the denial of the request from Osceola. Ketterer replied that some of the concerns and issues that had arisen during the discussion of that application prompted the commission to review them, put on the agenda for discussion, assign to a committee, and bring back for discussion. Ketterer noted that each of these items contained the words "the commission will consider," and he did not believe these would impact any specific license. These rules were an attempt to give each Commissioner a great deal of flexibility in determining an application for a boat on inland water.

Weigel noted the ire of the people in the Osceola area following the denial and asked Ketterer to affirm his earlier statement that the Osceola representatives were in accord with these rules. Ketterer confirmed they were.

RACING (Cont.) Kibbie asked who attended the public hearing and what comments were received. Ketterer replied the Commission had not received any comments at the public hearing held the week between Christmas and New Year's.

Metcalf stated she would like a notice published in the Bulletin later in the year that no public hearings should be held the week between Christmas and New Year's.

Ketterer assured the Committee that the Commission had four meetings in August, September, October and November and these were put in Notice form at the November meeting and people representing Osceola were in attendance at each of those meetings.

Halvorson felt the rules were flexible and pointed out crusing on an inland body of water could be restricted due to space limitation.

Weigel asked about the environmental concerns and was told they were covered by the Coast Guard. When the coast Guard approved a boat and gave a certificate of inspection, the Commission then relied on it for various safety and environmental aspects. Upon hearing the Cost Guard did not have jurisdiction over most of the inland waters of the state, Weigel asked about involvement of the Corps of Engineers. He asked if the operators on the river had to meet the same standard and was told to the extent they were applicable. The Coast Guard would issue a certificate of inspection for a large commercial excursion boat to be on the river and the Corps of Engineers might also become involved with respect to the site.

In an issue not formally before the committee, Priebe stated the law declared the Council Bluffs facility had to contribute to a charity and, until the debt was paid off, the operator could only receive $250,000. He believed this debt had been paid and the operator's salary was $17 million last year. Priebe noted that $10 million was given to the University of Alabama. He wondered if the legislature should review keeping this money in the state or a contiguous state. Ketterer responded that Iowa West Racing Association, which had the license, had a management agreement with Aim, the operator's company. Under the agreement, Aim provided and guaranteed all the financing for the $25 million additional debt and they forgave a good portion of the initial debt on the existing greyhound facility. The agreement was the proceeds would be split 50/50 until the debt was paid off. It was Ketterer's understanding that both debts were paid off in mid-August. At that point it reverted to Iowa West receiving 60 percent and Aim receiving 40 percent for managing the facility. He understood that Aim was now going to grant to Iowa West its portion of the facility.

Halvorson said the state could not control what the owners did with their money. Halvorson then asked if boat fund distribution went beyond the county in which they were located. Ketterer thought that Iowa West had taken on a more regional base and had distributed money to several western Iowa counties and to Nebraska because a great deal of their patrons came from Nebraska. The Commission would like to see a broader distribution to help other counties. Halvorson asked if a facility could show no profit by paying off the debt faster and thus limit the amount of money going to other nonprofit groups and wondered if the state should be involved in the management.

Halvorson noted that Prairie Meadows was not distributing back to the community but was instead paying off the indebtedness faster. Ketterer responded this was a good point which had also been raised by the Commission. The purpose of the statute was to retire this debt, and debt had been retired at two of the facilities which had been granted licenses. He estimated that Prairie Meadows was within nine months of retiring its debt and, at that time, the

RACING (Cont.) Commission would be very interested in the cash flow that was being freed up, how much was going to benefit the racing industry and preserve the pari-mutuel industry, and how much was going to charities without being specific as to the grantees.

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

REVENUE AND FINANCE DEPARTMENT[701]

Rate of interest on interest-bearing taxes for calendar year 1996, 10.2(15), Filed **ARC 6124A** 12/20/95
Exemption certificate for beer and wine resale, 15.3(6), Notice **ARC 6085A** 12/6/95
Corporate income, franchise, individual income and withholding tax, 38.2(3), 40.47 to 40.49, 41.5(8), 42.2(2), 42.2(6), 46.1(2), 46.1(2)"a," "b," and "d" to "g," 46.3(2)"a," 46.3(4), 46.6, 51.2(4), 52.7, 57.2(4), Notice **ARC 6086A** 12/6/95
Corporations and financial institutions, 53.1, 53.20, 54.3, 56.5(2)"a"(3) and (4), 56.5(3), 56.5(4), 59.1, 59.20, 61.5(2)"a"(3) and (4), 61.5(3), 61.5(4), Filed **ARC 6122A** 12/20/95
Professional/trade dues deduction, insurance deductions, chs 204, 206, Filed **ARC 6123A** 12/20/95

10.2(15) No questions on 10.2(15).

15.3(6) Castelda stated the Department worked with beer wholesalers regarding exemption certificates in subrule 15.3(6). An exemption certificate was required under the statute when anything was sold for resale for sales tax purposes. There was a provision in the rules for a blanket exemption so an exemption would not have to be obtained for each sale. The wholesalers asked to be excused from the exemption certificate requirement since by statute they could only sell to people who resell. The Department promulgated a special rule that no longer required the beer wholesalers to obtain an exemption certificate so long as they were selling to someone with a Class A or F liquor license.

Metcalf asked if the Department communicated with the people affected when they were doing this rule. Castelda replied the Association came to the Department. The wine people were not involved but, upon further study, the Department found the same situation and included wine wholesalers.

Daggett noted that the date for final comments was in the week between Christmas and New Year's and wondered if there were any comments. Castelda responded the Department received a letter from Fran Fleck, the executive director of the Iowa Beer Wholesalers Association thanking the Department for working with them in promulgating the rule.

38.2(3) et al. Rittmer referred to rule 701—40.49(422) and wondered if this would have any effect on the amount of withholding from tips in the food and beverage industry. He had been told more tips would be withheld and asked if this was a result of these rules or was a federal requirement. Castelda replied it was the latter. The federal government found that tip income was basically cash and underreported so the requirement was put in the 1986 Federal Tax Reform Act.

Weigel referred to rule 701—40.47(422) and asked if withdrawals from a nonqualified annuity were eligible for this also. Castelda believed the statute used the term "annuity" and thought the Department would interpret this to be both qualified and nonqualified.

53.1 et al. Metcalf asked if there had been significant changes in revenue. Castelda replied the Department had reviewed estimated payments and found that franchise tax revenues were down approximately 31 percent. Any revenue that was associated with the statutory change would probably not show up until April or May of 1996 when the actual tax returns came in. Metcalf wondered if there was a penalty for underpayment of estimated taxes. Castelda responded that as long as the tax

REVENUE (Cont.) return was filed in a timely manner there was no penalty if 90 percent of the tax was paid by the due date of the return.

Rittmer wondered if someone who had income lower than the previous year could reduce the amount of withholding. Castelda replied that if an individual recognized they would have a net operating loss for the year because of some extraordinary event, they could immediately adjust their estimated payments.

Chs 204 and 206 Priebe asked if the Iowa state fair board was an independent division. Castelda replied it was but believed the Department handled the payroll system. The Department handled most of the state payroll with the exception of the Department of Transportation and the Board of Regents. In response to Priebe, Castelda replied the state contributed for the payroll preparation but did not believe it was a great deal of money.

Priebe in Chair.

PUBLIC HEALTH Carolyn Adams and Mike Guely 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, Filed Emergency After Notice **ARC 6057A** 12/6/95
Advisory bodies of the department, 191.1, 191.5(3), Notice **ARC 6056A** 12/6/95

Ch 89 No questions on Chapter 89.

191.1 and 191.5(3) Guely stated he staffed a state preventive health advisory committee which had 27 members and there had been a problem meeting the two-thirds requirement. He noted that in the Code, the Board of Health had a quorum requirement of a majority which was the same as the other major boards such as Dentistry, Pharmacy and Nursing. Guely stated he had contacted Royce on this issue, who in turn had consulted with Professor Bonfield. Bonfield agreed with the interpretation if the board was strictly advisory. The Department added a sentence to rule 641—191.1(135) for clarification to the definition of "advisory body."

Guely stated that in fiscal year 1995 the Department used the ICN 110 times involving 15,464 minutes, 4,913 persons were involved and 778 sites were involved.

Metcalf asked Royce if there were other places in the rules where advisory committees had two-thirds language. Royce replied it was probable and Metcalf stated the ARRC should watch for this and see if changes could be made when it was presented to the Committee.

Metcalf in Chair.

PROFESSIONAL LICENSURE

Carolyn Adams and Marge Bledsoe were present from the Division and John Gazaway and Virgil Deering were present from the Iowa Optimetric Association for the following:

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Child support noncompliance, ch 15, Notice **ARC 6055A** 12/6/95
Hearing aid dealers—licensing, 120.8(2) to 120.8(4), 120.9(3), Notice **ARC 6079A** 12/6/95
Optometry — prescriptions, 180.9, Filed **ARC 6112A** 12/20/95
Optometry — continuing education, 180.12(1)"d," 180.12(3)"c," "d," and "i," 180.13(5), Filed **ARC 6113A** 12/20/95
Physical therapists and physical therapist assistants, 200.2(4), 200.3(1)"b," 200.4(3), 200.4(4)"c," 200.20(8)"c"(2) to (8), 202.2(4), 202.3(1)"b" to "f," 202.4(4)"c," Notice **ARC 6111A** 12/20/95
Physician assistants—supervision, 325.7(3)"a," 325.7(4)"a," Filed Emergency After Notice **ARC 6059A** 12/6/95
Athletic trainers, chs 350, 355 to 358, Filed **ARC 6058A** 12/6/95

Ch 15 — No questions on Chapter 15.

120.8(2) et al. — Bledsoe noted the difference between reinstatement and lapsed license of a hearing aid dealer. Amendments to Chapter 120 would allow someone who had a license and left the state to be reinstated in various ways—retake the examination, obtain 50 hours of continuing education in the three years prior to application or, if licensed in a state equal to Iowa in rules and regulations, by reciprocity. Metcalf felt these rules should be filed Emergency and Bledsoe agreed.

180.9 — Gazaway stated he was in full support of the amendments to Chapter 180 dealing with contact lens prescriptions and opthalmic spectacle lens prescriptions.

Kibbie asked if there was a problem with the expiration date. Bledsoe stated the inclusion of a specific date of expiration, not to exceed 18 months, was to prevent someone from continuously refilling an old prescription and never returning for an eye examination.

Metcalf expressed concern the burden of proof was on the patient and not on the provider. Bledsoe replied that professionals argued vehemently that an eye examination was needed every two years because of the deterioration of retina and possible eye disease.

180.12(1)"d" et al. — No questions on 180.12(1)"d" et al.

200.2(4) et al. — Rittmer asked if the amendments limiting the number of times an applicant could take the physical therapist and physical therapist assistant examination addressed a problem in which individuals took the test too many times. Bledsoe responded a number of people continued to take the examinatin and failed, and in one case, an individual had taken the examination five times. She felt the ability of these individuals would be questionable.

325.7 — Responding to Priebe, Adams stated that all parties involved were in accord with the amendments pertaining to physician assistants in rule 645—325.7(148C).

Chs 350, 355 to 358 — No questions on Chapters 350, 355 to 358.

NO REPS. No agency representative was requested to appear for the following:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
Contested cases — filing of appeal, 2.2(3) to 2.2(8), Filed **ARC 6128A** 12/20/95

PUBLIC SAFETY DEPARTMENT[661]
Fire marshal—noncompliance with court-ordered child support, 5.865, 5.866, 25.14,
Notice **ARC 6096A** 12/6/95

Special Meeting — Metcalf noted a special meeting would be required to cover the rules published in the January 3, 1996, Bulletin as these rules would go into effect before the regularly scheduled meeting in February. It was the consensus this meeting would be held January 22, 1996. This meeting was subsequently canceled and the rescheduled for Monday, February 5, 1996, at 8 a.m.

Public Hearings — Halvorson stated that there were several cases in which public hearings were scheduled for the week between Christmas and New Year's. He wondered if the Committee should take formal action on this. Royce felt it would be a good idea to publish a notice in the Bulletin later in the year advising Agencies not to schedule hearings during that week. Halvorson also would like to encourage Agencies to use the ICN. Metcalf stated the ARRC could request a report by each agency on how many times they used the ICN. Royce stated this could also be put in the Bulletin.

Referrals — Priebe asked if any formal action was needed in order to draft a bill regarding a change in how referrals to the Speaker of the House and the President of the Senate were handled. He felt Royce should draft this bill and the ARRC look at it during the next Committee meeting.

Adjourned — The meeting was adjourned at 12 p.m.

Respectfully submitted,

Cathy Kelly

Cathy Kelly, Acting Secretary
Assisted by Kimberly McKnight

APPROVED:

Rep Janet Metcalf

Representative Janet Metcalf, Co-chair