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 Monday, November 13, 1995, in Room 22, State Capitol, Des Moines, Iowa.

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

Also present: — Joseph A. Royce, Legal Counsel; Phyllis Barry, Administrative Code Editor; 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, Elizabeth Scott, Barb Bosch, Wayne Johnson and Harold Templeman were present from the Department. Lorelei Brewick from the Iowa Association of Nurse Anesthetists was also present for the following:

HUMAN SERVICES DEPARTMENT[441]

Family investment program's 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), 93.140(2), Notice **ARC 5935A**, also Filed Without Notice **ARC 5936A** 10/11/95

Supplemental expense payment, ch 35, Filed **ARC 5937A** 10/11/95

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), Notice **ARC 5938A**, also Filed Emergency **ARC 5939A** 10/11/95

Income deductions for food stamp households, 65.8, 65.8(8), 65.22(1)"g," 65.108, 65.108(8), 65.122(1)"g," Notice **ARC 5940A**, also Filed Emergency **ARC 5941A** 10/11/95

Health insurance premium payment program(HIPP), 75.21(1), 75.21(3)"a" and "d," 75.21(5)"j," 75.21(11), Notice **ARC 5946A** 10/25/95

Day treatment or partial hospitalization services to persons 20 years of age and under, 78.16(7)"b"(4), 78.16(7)"d"(4), 78.28(8), 78.32, Notice **ARC 5948A** 10/25/95

Managed health care providers, ch 88 preamble, 88.81 to 88.93, Filed **ARC 5942A** 10/11/95

Family and group day care homes, 110.1, 110.2, 110.4, 110.5, 110.5(1) to 110.5(3), 110.5(5), 110.5(5)"b" and "c," 110.5(6) to 110.5(8), 110.5(13), 110.6, 110.7(4), 110.7(5), 110.9(2)"c," 110.10, Notice **ARC 5962A** 10/25/95

Forms —foster care of children who have AIDS, test HIV positive, or who are at risk of HIV infection, 113.10(1)"d," 202.6(1), 202.10(4), Notice **ARC 5947A** 10/25/95

Shelter care payment, 156.11(3), 156.11(3)"a" and "c," Filed **ARC 5943A** 10/11/95

Medicaid payments: certified nurse anesthetist, 78.35, **Special Review** ..... IAC

7.5(8) et al. — Walker informed the Committee the Department had not yet received federal waiver approval to implement changes to the Limited Benefit Plan. The rescission of 441—7.5(8), 41.24, 41.27, 41.28, 93.109, 93.133, 93.138 and 93.140 previously adopted and intended to become effective December 1, 1995, would occur at the November 15, 1995, Council on Human Services meeting. The legislation mandated these rules could not be effective until the beginning of the second month after the Department adopted the legislation. No Committee action.

Ch 35 — Walker stated that in IAB 11/8/95 under ARC 5987A there would be two revisions to rule 35.2 which was adopted emergency. Walker added that Rittmer had been concerned the rule stated evidence must be submitted that the County Board of Supervisors had adopted a policy prior to 12/1/93 restricting payments. The Department added the language "adopted a policy or that a policy had been

DHS (Cont.) implemented" at Rittmer's request. The Department required a certification from the Board of Supervisors that it had not paid for service after implementation of the policy. At ISAC's request the Department changed the language from "certification" to requiring "a written statement from the Board of Supervisors."

Daggett wondered if these services were under Medicaid and the agreement with them and Walker replied they were not. Walker added that the county paid for these mental retardation services. If counties had greatly increased expenses because of the revised definition, they could receive payment under this process.

Hedge asked if there was a strict process that the counties had to go through in order to qualify. Templeman replied that counties would have to show that they did, in fact, have such a policy in place. Hedge asked and was informed that no comments from counties were received.

60.6 et al. No Committee action.

65.8 et al. No questions on 65.8 et al.

75.21(1) et al. No questions on 75.21(1) et al.

78.16(7)"b"(4) et al. No questions on 78.16(7)"b"(4) et al.

Chapter 88 Walker explained that questions were received at the public hearing about operation of this program. No Committee action.

110.1 et al. Metcalf inquired why the word "guardian" was stricken in 110.5(8)"a" and Bosch replied that the Department had changed the definition of "parent" to "guardian."

113.10(1)"d" et al. Hedge understood that caretakers of children with AIDS, who tested HIV positive, or were at risk of HIV were notified of their condition and wondered if this notification also extended to the schools. Walker was unsure but believed it was just to the provider. Walker added this rule, minus the forms, was before the Committee previously. Doderer requested that someone investigate this issue and Priebe asked Steve Conway to pursue the matter.

156.11(3) et al. No questions on 156.11(3) et al.

Special Review Kibbie had requested special review of 78.35 following calls relative to Medicaid payments to certified nurse anesthetists. Royce explained that the rule promulgated by the Department limited payment to NAs certified by the licensing authority. He noted that under the Nursing Board rules, certification occurred only after passing an examination and obtaining practical experience hours. Nurse anesthetists could practice for a period of time before licensure but could not be reimbursed for services to a Medicaid patient.

Kibbie explained that nurse anesthetists in Spencer provide services to four hospitals in the area and have no way of knowing which patients would be under Medicaid. These nurses would be reimbursed by a third-party payer or private payer but not for a Medicaid patient.

Walker stated she had talked to Medicaid about this topic and explained that the Department reimbursed for a certified registered nurse anesthetist in two ways—if they had passed the examination or through a supervising physician. Walker understood from the Board of Nursing that until nurse anesthetists passed the examination, they had no independent authority or drug enforcement authority and had to be overseen by a physician.

DHS (Cont.)

Weigel asked if the state would reimburse if the Nursing Board standards were being followed. Walker responded the state would not reimburse the nurse anesthetist directly but rather through the supervising physician.

Kibbie asked about the requirements for a supervising physician and Walker was unsure. Royce stated that supervision did not necessarily mean the person was onsite but was available to provide information, guidance and other required services.

Kibbie expressed frustration that an agreement was only necessary for Medicaid patients. He recalled an instance when a nurse had to wait several months to take the examination.

Palmer believed minimum requirements were disregarded when nurse anesthetist were allowed to practice prior to certification.

In response to Halvorson, Walker understood that the Board of Nursing was not under federal limitations. This policy had been in force since 1988.

December Agenda

It was agreed that rule 78.35 should be placed on the December ARRC agenda for continued review.

AGRICULTURE

Ronald Rowland and John J. Schiltz, DVM, were present from the Department and Tom Colvin represented the Iowa Federation of Humane Societies for the following:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
Animal welfare, 67.3(3)"c" and "f," 67.10, Notice **ARC 5927A** 10/11/95

67.3 and 67.10

Rowland gave a brief overview of the amendments relating to commercial breeders' written agreements with state-licensed veterinarians and license revocation action.

Priebe stated he agreed with what the Department was attempting to do but doubted they had authority to require a commercial breeder to enter into a written agreement with a veterinarian. He believed the 36-month suspension was too strict. Rowland believed the Code was general in allowing the Department to adopt rules to enforce the chapter but was limited in that the Department could not exceed federal guidelines. The federal government requires a federally licensed commercial breeder to have an agreement with a veterinarian to provide veterinary services. Rowland was uncertain if they were required to inspect every twelve months. He explained the premise behind license revocation was to ensure proper care of animals in the facility. Priebe believed the burden was being shifted to the breeder from the Department.

Schiltz informed Weigel there were approximately 350 commercial breeders in the state. Rowland added there were federal and state licensed breeders and five inspectors. The inspectors were responsible for approximately 1200 animal welfare facilities in the state, in addition to the commercial breeders' facilities, all of which were inspected at least yearly.

Hedge asked for a clarification of the description of commercial facility, inquired if a pack of coonhounds of one sex would qualify. Rowland responded that if someone had four or more breedable dogs and was engaged in commerce with them, attempting to sell, trade or lease them, a license under this statute would be required.

AGRICULTURE (Cont.) — Royce interpreted the rules as providing specific details to the general statutory scheme, believed this was within the Department's authority and suggested a request for an Attorney General's opinion.

Attorney General's Opinion — Priebe thought a 36-month license revocation was setting a precedent which could be far-reaching.

Priebe moved to request an informal Attorney General's opinion and the motion carried.

CIVIL RIGHTS — Ronald Pothast represented the Commission for the following and there were no questions:

CIVIL RIGHTS COMMISSION[161]
Issuance of decisions and other administrative action, 2.1(6), 3.13, 3.16(3)"e," "f," and "g,"
Notice **ARC 5967A** 10/25/95

COLLEGE STUDENT AID — Laurie Wolf represented the Commission for the following:

COLLEGE STUDENT AID COMMISSION[283]
EDUCATION DEPARTMENT[281]"umbrella"
Tuition grant program, award notification, 12.1(6), Notice **ARC 5949A** 10/25/95
Work-study program — employment restrictions, 18.13, Filed **ARC 5952A** 10/25/95
Rescission of repealed programs, rescind chs 19 to 21, 25 and 29, Filed **ARC 5951A** 10/25/95
Iowa grant program — award notification, 27.1(9), Notice **ARC 5950A** 10/25/95

12.1(6) — Wolf gave a brief overview of the amendment and there were no questions.

18.13 — Wolf stated the Commission had received a comment of support for amendment to 18.13. No Committee action.

Chapter 19 et al. — In response to Metcalf, Wolf stated there were no moneys in reserve.

27.1(9) — No questions on 27.1(9).

EDUCATIONAL EXAMINERS — Orrin Nearhoof was present from the Board for the following:

EDUCATIONAL EXAMINERS BOARD[282]
EDUCATION DEPARTMENT[281]"umbrella"
Hearings, special education endorsement, 11.2(3), 11.8(3)"a" and "e," 11.9 to 11.16, 15.2(12), 15.3(12) 15.3(13), Notice **ARC 5957A** 10/25/95

11.2(3) et al. — Nearhoof gave a brief overview of the rules. In referring to 11.2(3) he stated there was a statutory option to hold telephone proceedings but the Board did not specify this option in its rules. These rules would allow parties to address motions prior to a hearing via telephone proceedings rather than waiting until the Board was assembled. Metcalf asked if this denied the public the opportunity to know what occurred and Nearhoof replied that it did not because the meetings were open.

Priebe referred to 11.12(2)"a" and wondered if a hardship would result in the case of a proposed decision followed immediately by a meeting. Kibbie stated agendas had to be mailed to parties prior to the meeting and any additions generally would carry over to the next month's meeting. Nearhoof replied the Board did not want an opinion rendered by an administrative law judge followed by a Board meeting within a brief span of one to two days. He noted that even though the public notice could be amended within 24 hours, it would be difficult to inform the parties and provide timely notice.

EDUCATIONAL EXAMINERS (Cont.)

Daggett referred to 15.3(12) and asked if school occupational therapists were required to have a teaching certificate. Nearhoof replied they did not have a teacher's certificate but had a Statement of Professional Recognition which authorized them to work in the school setting. Daggett asked if the changes were agreed to and Nearhoof replied the Board had solicited the changes and met with representatives of the organization.

ECONOMIC DEVELOPMENT

Kathleen Beery, Roselyn McKee Wazny and Melanie Johnson were present from the Department for the following:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Emergency shelter grants program, 24.2, 24.4"3," 24.4"5," 24.5"3," 24.6, 24.7, 24.9, 24.12(1), Notice **ARC 5925A** 10/11/95

Rural innovation grants, ch 49, Notice **ARC 5926A** 10/11/95

24.2 et al.

Daggett wondered about comments from the public and Wazny replied none were received—changes patterned federal regulations and were noncontroversial.

Metcalf asked if the federal government had stated a ceiling would not be allowed. Wazny replied the Department, due to uncertainty of funding levels this year, removed the ceilings. Wazny advised Metcalf the Department did not expect to know the amount of funding until January or February.

Priebe asked if any money came from title guaranty and Wazny replied it did not but had been from $1.2 million in federal funds.

Priebe in Chair.

Chapter 49

Beery gave a brief overview of the rules pertaining to Rural Innovation Grants. Daggett asked if the COG could request a project grant and Beery replied it must come from the community. The community could subsequently work with the COG as the service provider. All funds flowed through the city or county. An applicant could be awarded up to $6,000 to conduct a project with a minimum of 25 percent cash and in-kind match required.

Rittmer wondered how worthwhile the feasibility studies were. Beery replied the Department found them to be very beneficial providing active working steps within the group. A public hearing was held and no comments were received.

Johnson added the Department planned to take the rules to the Board this month for final approval. Department officials indicated the rules would be adopted as emergency and applications would be expected in late November or early December and the Department would publicize this to allow communities adequate time to complete their projects this fiscal year. Beery indicated $50,000 had been allocated.

Committee Business Minutes

Barry referred to the October minutes and asked that page 87 be corrected to show that only subrule 141.3(2) of nursing home administrator rules was delayed. There was unanimous consent to approve the minutes as corrected.

Committee Actions

Barry referred to a handout detailing formal Committee actions since May 1995 and requested input from ARRC members for the December meeting.

Christmas Party

Metcalf reminded the Committee that the Christmas party was scheduled for December 12 at Noah's Ark with a $5 gift exchange for those wishing to participate. Former Committee members would be invited.

ETHICS Kay Williams and Lynette Donner were present from the Board for the following:

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Letters of reprimand and admonishment, 1.4(3), 1.4(5), Notice **ARC 5977A** 10/25/95
Availability of campaign finance information in offices of county election commissioners — costs, 3.2, Notice **ARC 5976A** 10/25/95
Out-of-state contributions, 4.13, Filed **ARC 5978A** 10/25/95

1.4(3) and 1.4(5) Donner explained these rules make minor compliance issue reprimands and admonishments a less formal matter. Williams added a letter of reprimand was final agency action and once the Board issued a reprimand on a matter, someone else could not come forward to enter a complaint in a contested case proceeding. She described the changes as "more user friendly." A court could still review the case. Metcalf asked about an opponent who felt that a letter of reprimand was too lenient and wondered if this precluded asking for further review. Williams replied the Board could still be asked to reconsider the letter of reprimand and, if it was a major infraction, the Board could institute more stringent measures.

Rittmer asked how many cases resulted in fines. Williams cited late reports and accounting problems.

3.2 Donner explained that the amendment to rule 351—3.2(56) was promulgated at the request of at least one county auditor who brought to the Board's attention that the rules had imposed a limit on the amount that could be charged for copying costs for reports kept by law in the auditor's offices. The Board agreed they had no jurisdiction and could not mandate the cap on the county auditors' copying charges.

4.13 Priebe referred to 4.13(2) and asked why the words "shall provide the recipient committee with" were stricken and changed to "may send." Donner stated this allowed out-of-state committees the option of filing a verified statement.

Hedge asked if these rules were applicable to federal candidates and Williams replied they were not.

Volunteer Treasurers In a topic not formally before the Committee, Williams stated the Board was working on addressing the concerns of volunteer treasurers, and she would provide a copy of "Reinventing Disclosure Reporting." This would not diminish the law but eased the reporting burden. A few items would require legislative change. The Board was also working on an easier to understand universal form and electronic filing software.

Williams stated the preliminary plan had the approval of the minority leader and speaker of the House and others who received this information approved of it. Williams requested feedback from the ARRC on this issue.

In response to Rittmer, Williams stated the ultimate responsibility still belonged to the candidate, who was required to sign the report.

Doderer wondered if electronic transfer would require the treasurer to have a computer. Williams explained that a computer would be needed to compile records on a disk and that a survey had been completed on how many treasurers had computers. No committee action.

INSPECTIONS Rebecca Walsh and Sherry Hopkins represented the Department for the following and there were no questions:

INSPECTIONS AND APPEALS DEPARTMENT[481]
Bingo equipment and supplies, 100.1 to 100.3, 100.80 to 100.82, Filed **ARC 5913A** 10/11/95

LIBRARIES Sharman Smith represented the Division for the following:

LIBRARIES AND INFORMATION SERVICES DIVISION[286]
EDUCATION DEPARTMENT[281]"umbrella"
Disposal of library materials, 1.7, Notice **ARC 5834A** Terminated **ARC 5944A** 10/25/95

1.7 Smith explained the rule making initiated by the Division's Notice of Intended Action, ARC 5834A, had been filed simultaneously. No Committee action.

REGENTS Richard Tiegs, Marcia Brunson and Ted Williams, Board personnel, Linda Hanson, Iowa Department of Personnel, and Ted Anderson, AFSCME, were present for the following:

REGENTS BOARD[681]
Application fees for admission to regent institutions, 1.1, 1.2, Filed **ARC 5922A** 10/11/95
Disaster service volunteer leave, Olympic leave, 3.151, Filed Emergency **ARC 5921A** 10/11/95
Regents merit system, 3.3(2), 3.3(5), 3.14, 3.39(7)"f," 3.39(12), 3.39(13), 3.39(18), 3.50, 3.52(4), 3.53, 3.53(2), 3.55"2" and "6" to "8," 3.67(3), 3.70, 3.89, 3.90(2), 3.102(1), 3.102(2), 3.104(3), 3.104(4)"c" and "e," 3.127, 3.145, Filed **ARC 5791A, see text IAB 6/7/95, page 1825, 70-Day Delay on 3.14, 3.39(12) and 3.102(1)** 8/16/95

1.1 and 1.2 Kibbie was concerned with the admissions application fees and believed this imposed a hardship on those least able to pay. Tiegs was unsure why the increase was adopted but recalled many of the peer institutions were collecting $60 application fees. Kibbie opposed doubling the fees without valid justification and he inquired how the money would be used. Tiegs replied that much of it was used in the promotional materials in an effort to entice more students.

Kibbie requested that the Fiscal Bureau investigate the issue of increased fees.

3.151 Williams gave a brief overview of the disaster service volunteer leave rule and there were no questions.

3.3(2) et al. Williams explained that a few weeks ago the Board attempted some administrative changes to the Merit System manual, primarily to update and clarify some actions and activities that had occurred over the years, such as replacing the word "handicapped" with the word "disability." AFSCME perceived the motive of the Board's changes as a means of implementing merit rules and circumventing negotiations. If a conflict occurred between the Board's merit rules and the contract, the contract prevailed. Following the Committee suggestion that this issue be negotiated, the Board went to Personnel for assistance.

Hanson referred to a letter sent to ARRC members in which Personnel had been requested to review the three proposed rule changes and determine whether bargaining was needed. Personnel concluded bargaining was not mandated and that the reassignments, as set forth in subrules 3.102(1) and 3.102(2), were simply an attempt at clarification and did not negate the labor agreement. IDOP rules could not supersede a bargaining agreement. Hanson discussed additional correspondence with AFSCME and believed that IDOP should meet with AFSCME and the Regents Board to discuss the relationship and how to move forward.

REGENTS (Cont.) Discussion ensued pertaining to negotiation protocol.

Hanson requested guidance from the Committee whether it was a requirement that the implementation of these rules be negotiated given the fact there would be no impact on the bargaining agreement.

Motion to Lift Delay A motion was made by Priebe to lift the 70-day delay on 3.14, 3.39(12 and 3.102(1), as of November 14, 1995, and the motion carried.

UST BOARD Pat Rounds represented the Board for the following:

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
Certificate of noncompliance from child support recovery unit — revocation of permit, 6.6, 6.7(3), Notice **ARC 5945A** 10/25/95

6.6 and 6.7(3) Rules 591—6.6(424) and 591—6.7(424) were implemented to comport with legislation which revoked professional or occupational licenses for an individual in noncompliance with child support payments.

Rounds knew of no instances where licenses would be revoked. Kibbie wondered if people were notified at the time of licensing that this could be a possible action. Rounds responded that they had not been notified in the past.

LAW ENFORCEMENT Gene Shepard, Sergeant Dana Peterson, ILEA Council Chair, Andrew Anderson, Attorney General's Office, represented the Academy and Randy Giannetto, Senate, and Beverly Nelson, House, were also present for the following:

LAW ENFORCEMENT ACADEMY[501]
Vision requirements, 2.1(9), **Special Review** ..... IAC

Special Review Shepard reviewed the rules on minimum standards for Iowa law enforcement officers that sets the standard for eyesight at 20/100 corrected to 20/20. Shepard suggested to the Committee that this rule, which had been in place for many years, was of significant consequence to Iowa law enforcement. He explained that the chief of police for the city of Marshalltown had vision that was not within this standard and therefore requested a review of the rule. He added that by requesting compliance with the rule, the Academy did not deprive the city of a chief of police and indeed the individual could retain his position as the chief of police. A supreme court case previously addressed this issue. Giannetto referred to the chief's curriculum vitae and noted his many qualifications. He was concerned that this individual had spent his entire life in this field but yet could not be certified. Because the Marshalltown police chief was not a certified law officer, Giannetto was uncertain whether arrest powers were within the chief's purview. Giannetto agreed there should be some requirements but believed there should also be some changes made to the current statute. He stated that once someone met the vision requirements at the Academy, that person could become legally blind the next day and still be qualified since there was no requirement these standards be continuously met.

Nelson stated she agreed with Giannetto and had pursued amending the rules. She believed this issue was significant to the city of Marshalltown and felt the individual involved was very well qualified.

Doderer asked if there was any other discipline where eyesight examinations were required and Giannetto was unsure. Doderer asked why this individual had to be a police officer. Giannetto replied it was not necessary and that the person could serve as chief without being a certified police officer.

LAW ENFORCEMENT (Cont.)

Doderer asked how many chiefs did not currently meet this requirement but had done so initially. Shepard was unsure but added it was a fair assumption there were some who did not meet the requirements. He agreed there should be an in-service standard but the statute only gave authority to promulgate recruitment entry-level standards. Doderer foresaw a problem with retirement benefits at less than full pension.

Hedge asked if Giannetto proposed lowering eyesight standards or lowering those standards according to age. He evinced concern that if the standards were based on age, it would be a no-win situation. Giannetto was unclear as to what the Committee's authority was and thought ARRC was the next step. Giannetto stated that the requirements for the yearly army physical were less stringent each year than at entrance.

Halvorson reasoned any change would have to come from the Academy or legislature. He expressed concern that lowered standards would result in liability exposure.

Kibbie understood that personnel moved within areas of law enforcement while retaining their years of service. He favored legislation to address the issue of certified individuals who were unable to perform job duties. Kibbie pointed out the ARRC did have the option to object or refer this matter to the legislature.

Rittmer understood that if the individual was certified and then lost the job as a police chief he could become a patrolman. Rittmer asked and was told by Shepard the average of those entering the Academy was approximately 26 or 27 but ages ranged up to 55.

Priebe asked if someone certified 20 years ago would still be certified and Shepard replied that once certified, the individual remained certified.

Motion to Refer

Priebe moved to refer the vision requirements to the Speaker of the House and the President of the Senate.

Doderer wondered if any other actions could be taken and Metcalf replied the ARRC could object to the rule which would shift the burden of proof to the Academy. Doderer wondered if there were aural hearing requirements, and Shepard replied there were and the individual did meet those requirements. Doderer stated the problem was the assumption that because someone met the standards upon hiring, those standards continued to be met.

Halvorson opposed the Priebe motion contending legislation could have an impact on smaller communities.

Dierenfeld stated a referral could allow the risk of having the legislature impose standards on individuals holding a position for 10, 20 or 30 years.

Motion Failed

The motion failed on a 4 to 5 vote.

Recess

The Committee was recessed at 12:15 p.m. and reconvened at 1:15 p.m.

LABOR SERVICES Cynthia Tofflemire represented the Division for the following:

LABOR SERVICES DIVISION[347]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"
General industry — logging operations, 10.20, Notice **ARC 5928A** 10/11/95
General industry — exposure to asbestos, 10.20, Filed Emergency After Notice **ARC 5930A** 10/11/95
Construction — fall protection, 26.1, Notice **ARC 5931A** 10/11/95
Construction — exposure to asbestos, 26.1, Filed Emergency After Notice **ARC 5929A** 10/11/95

10.20 No questions on 10.20.

26.1 No questions on 26.1.

26.1 Daggett inquired whether rule 347—26.1(88), by conferring a benefit on employees, would mean an increase in expenses to the employer. Tofflemire explained that this rule benefited employers by permitting them extra time for compliance.

NURSING BOARD Lorinda Inman was present from the Board for the following:

NURSING BOARD[655]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Penalty fees for late and delinquent licensure renewals, 3.1, Notice **ARC 5959A** 10/25/95
Licensure — RN/LPN, 3.3(1)"b," 3.4(5), Filed **ARC 5958A** 10/25/95
Suspension, revocation, nonissuance, and nonrenewal of a license for failure to pay child support, 4.3"5," 4.21, Notice **ARC 5960A** 10/25/95

3.1 Inman stated Chapter 3 was amended to encourage timely license renewal. Approximately 10 percent did not renew by the expiration date or within the grace period of the fifteenth day of the month following the expiration date. Metcalf wondered if this increased bookkeeping on the Board's part and Inman replied that it changed the continuing education requirements and did require more effort by the Board staff.

Halvorson wondered how many delinquent licenses would be affected by this change. Inman replied that while the Board renewed over 1,000 licenses per month, 50 licenses per month were not renewed. Halvorson believed this would increase income to the Board by approximately $2,500 per month. Inman responded this was not the intent of the Board but was a side effect of the change.

Daggett asked if there were any comments at the hearing and Inman replied no hearing was held or requested and no comment was received. She added that employers applauded the Board's action.

Metcalf asked how the Board would inform people who would be affected by this change, and Inman responded notice would be published in a newsletter. Metcalf wondered if there was a way to specifically notify those who were late. Inman replied the applications stated a penalty fee had to be paid if renewal occurred after a certain date. In response to Metcalf, Inman stated that people currently renewing would not do so again for three years and that their materials were received 60 days in advance of the license renewal due date.

3.3(1) and 3.4(5) No questions on 3.3(1)"b" and 3.4(5).

4.3"5" and 4.21 No questions on 4.3"5" and 4.21.

NURSING (Cont.)
Nurse anesthetists

In an issue previously discussed under Human Services, Metcalf requested information from the Board about certified nurse anesthetists. Inman explained "these nurses were RNs and could practice at the level to which they had the education to practice. They do not require direct physician supervision but do require some sort of a working relationship with the physician because they have no prescribing privileges." Those who were certified and sought registration would be registered by the Board. A nurse anesthetist could not obtain certification prior to completing a required number of hours of practice.

Kibbie explained that a graduate did not have the required number of hours of practice and had been requested to provide services to a Medicaid patient. Because of lack of certification, the individual would not be paid. Inman was aware of this issue and stated that the person was able to practice. Because of unfamiliarity with the rules, she was uncertain if the problem with payment was at the state or federal level.

Halvorson stated the issue was the inability of nurse anesthetists to direct bill. Royce stated the issue with Human Services was that nurse anesthetists could not direct bill because they had to be supervised directly by a physician. Apparently, this was not legally true—a working relationship was required but there was no supervisory requirement. Halvorson asked if there was a federal supervisory requirement. Royce responded there was misinformation on what constituted supervision.

Palmer requested clarification concerning registration. Inman explained there were two types of registration, one as a nurse and one as an advanced registered nurse practitioner. The board had no authority to license beyond the registered nurse. Nurse anesthetists had to be registered nurses first and they could not get to this level without that education and skill. When individuals were registered as advanced registered nurse practitioners, they would then be allowed to get to the independent prescribing authority among other things. Inman stated, "The other part of registration that you have talked about here was that once they had completed their program then they need to do a professional registration which was to take a professional examination by a certifying body that also registered them as a certified registered nurse anesthetist." Palmer asked if any nurse could work toward this status and Inman replied that if the nurse had completed a program, that status could be achieved. If nurses had not received registration from the Board of Nursing beyond the basic RN, then they needed to have some type of working relationship with a physician. "They all have a working relationship whether they have been registered or not." Metcalf stated this issue would again be addressed once more facts had been obtained.

PHARMACY

Therese Witkowski represented the Board for the following:

PHARMACY EXAMINERS BOARD[657]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Reexamination applications and fees, 2.4, Notice **ARC 5642A** Terminated **ARC 5963A** 10/25/95
Returned check fee, 3.6, Filed **ARC 5964A** 10/25/95
Practice of pharmacy, 8.1, 8.5, 8.5(10), 8.9(3)"c," 8.9(5)"c"(1), 8.12, 8.13(3)"b," 8.14(2), 8.23, 8.24, 8.29, 8.30, 8.31, Filed **ARC 5965A** 10/25/95
Pharmacy compounding practices, ch 20, Filed **ARC 5966A, see text IAB 8/16/95, page 257** 10/25/95

2.4

No questions on 2.4 et al.

PHARMACY (Cont.) 3.6 Witkowski stated the returned check fee and late payment penalties were an attempt to discourage the practice of submitting checks six months in advance along with an application, then subsequently closing the account. Although this involved only approximately one-half of one percent, a great deal of time was involved to process the return, send a certified letter informing of the need to submit payment in another manner and track this to make certain the payment came in, and to take any necessary action.

8.1 et al. Witkowski gave a brief overview of Chapter 8. Doderer referred to 8.5(10) and stated she had seen incentives to switch pharmacies. According to Witkowski these rules would prohibit that practice after January 1, 1996.

Ch 20 Kibbie remembered controversy over mail-order businesses and how patients on medication had been counseled and Witkowski stated a joint effort was agreeable to both sides. The Board allowed pharmacists to use professional judgment in counseling, either in writing or verbally.

PROFESSIONAL LICENSURE Carolyn Adams, Marge Bledsoe, Harriett Miller, Gary Ireland, Warren Rippey and Mary Jones represented the Division and Carla Pope, Iowa Health Care Association, Bill Case and Greg Kolburger, P.A. Society, Becky Roorda, Iowa Medical Society, and Ed Friedmann, Iowa Association of Rural Health Clinics, were present for the following:

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Cosmetology arts and sciences — licensure examination fee, 62.1(1), Notice **ARC 5973A** 10/25/95
Mortuary science — penalty fees for failure to renew license within 30 days of its expiration and failure to obtain required continuing education within the compliance period, 101.98(4), 101.98(5), Notice **ARC 5974A** 10/25/95
Mortuary science continuing education, 101.103(1), Filed **ARC 5972A** 10/25/95
Massage therapists, 130.6(1), Filed Emergency After Notice **ARC 5914A** 10/11/95
Physician assistants, 325.7(3)"a," 325.7(4)"a," Notice **ARC 5934A** 10/11/95
Nursing home administrators, chs 140 to 143, 146 to 149, Filed **ARC 5879A,**
see text IAB 3/15/95, page 1383, Session Delay on educational requirements 9/13/95

62.1(1) Metcalf asked whether the national rules dictated the examination fee increase from $55 to $70 or if the cost of the examination dictated this. Adams replied that the fee charged by the National Testing Service was $10 for the examination, which was an increase. Bledsoe added there previously had been no fee because cosmetology had not used a national examination before. Metcalf was concerned that this fee would create a hardship for those entering the workforce. According to Bledsoe, current fees did not generate enough money.

Kibbie asked if there was any surplus at the end of fiscal year 1995 generated by license fees, renewal fees, or anything else. Adams was unsure but would provide the information.

Department officials explained the fees generated from the 18 Boards were placed in a pool. Admittedly, some Boards generated more money than others. Doderer suspected that disciplines who were paid the least contributed the most money to the funds. Bledsoe pointed out that funds of the Medical, Nursing, Dental and Pharmacy Boards were separate from Department funds. Bledsoe stated it was the Board's position they could not administer a national test without raising the fee. The credibility of the national test was far superior. Adams added that 39 states participated in the national testing service and the employability reciprocity was greatly improved. The national examination would provide more credibility and allow more mobility for cosmetologists to move from state to state without retaking the examination.

PROFESSIONAL LICENSURE (Cont.) 101.98

There was discussion about the penalty fees pertaining to a funeral director's license. Bledsoe stated this year's budget was exactly 85 percent of fees collected the last two years. The fee increase was triggered only in noncompliance situations. No Committee action.

101.103(1)

No questions on 101.103(1).

130.6(1)

Subrule 130.6(1) permits massage therapists, who hold permanent licenses, to renew on a biennial basis. Priebe asked if this would be prorated. Bledsoe replied the massage therapists would renew on the month of the anniversary of their application.

325.7

Rule 645—325.7(148C) changed the supervision of physician assistants regarding patient charts and activities, staffing requirements for remote medical clinic, and on-site supervision at remote clinics. Adams pointed out this was a response to a delay imposed by the ARRC which directed compromise by Board of Physician Assistant Examiners and the Board of Medical Examiners.

Friedmann voiced support of the rules which had been successfully implemented in surrounding states.

Ch 140 et al.

With respect to ARC 5879A, Metcalf reminded that there was a Session Delay on the educational requirements in Chapter 141 for nursing home administrators.

Rippey, Board of Examiners for Nursing Home Administrators, explained that 60 to 70 percent of students enrolled in community colleges had BA degrees and the Board took into account the fact that a number of licensed administrators did not have BAs. The latter would be "grandfathered in." The state had approximately 440 licensed facilities with administrators. The Board found that most administrators were compensated based on the size of the facility, the complexity of the services and the experience of the administrators. They did not expect an inflation of administrators' salaries because of a degree. During the open comment period approximately ten responded—three administrators and the Iowa Health Care Association opposed the BA requirement.

Pope, representing the Iowa Health Care Association, contended a four-year degree was not a sole prerequisite since qualifications sought in an administrator changed yearly, such as marketing skills, customer service capabilities, desire to work with managed care organizations and the ability to develop strong community ties. Administrators rely on a host of licensed health professionals—nurses, physicians, physical therapists and dietitians. The association requested ARRC support in postponing the implementation of the BA requirement.

In response to Kibbie, Royce explained this issue had been delayed to the 1996 session. However, the agency subject to this delay could request the Committee to consider imposing a 70-day delay instead to allow time for further negotiation. The agency had requested this.

Friedmann stated the Board encouraged anyone with a BA degree to take the nursing home administration curriculum.

Doderer asked if there was any evidence that those who had the BA degree were better administrators. Friedmann replied he had no studies or evidence to prove this point, but statistics did substantiate that those with BA degrees performed better on the examinations.

In response to Rittmer, Pope said that based on a four-year old national study, salaries ranged between $20,000 and $30,000 for a small facility and were based on the number of years of administration and the income level of that facility.

PROFESSIONAL LICENSURE (Cont.) In response to Weigel, Royce explained that a Session Delay could be withdrawn. Metcalf preferred to allow the Session Delay to remain in effect until resolution of the controversy on this issue. In response to Hedge, Metcalf explained that although the rule did not take effect until 1999, the four-year degree program would have to be commenced now.

Session Delay In conclusion, the Committee consensus was to retain the Session Delay.

PUBLIC HEALTH Carolyn Adams, Gary Ireland and Mary Jones represented the Department for the following:

PUBLIC HEALTH DEPARTMENT[641]

Radiation, 38.9(1)"b," 41.1(12)"c"(2)"1," 41.2(19)"b," 42.1(1), 45.2(6)"b"(1), 46.3(3), Notice **ARC 5919A** 10/11/95

Birth certificates, 95.5(2), 95.5(3), 95.8, 96.6(4), 96.6(5), Filed **ARC 5916A** 10/11/95

Basic emergency medical care, rescind ch 131, Filed **ARC 5917A** 10/11/95

Advanced emergency medical care, ch 132 title, 132.1, 132.2(2), 132.2(2)"a," 132.2(3), 132.2(4), 132.2(6), 132.3(1), 132.4(1), 132.4(2), 132.4(3) Table 1, 132.4(4), 132.4(5), 132.4(9), 132.5(1), 132.5(2), 132.5(2)"d," 132.5(4)"c," 132.5(5), 132.5(11), 132.6(1), 132.7(1), 132.7(3)"b," 132.7(4)"a," 132.7(5)"a" and "d," 132.7(6), 132.8(1) to 132.8(4), 132.8(7)"b," 132.8(10), 132.8(11), 132.9(4), 132.10, 132.10(1), 132.10(3) to 132.10(5), 132.10(13), 132.11, 132.11(1), 132.12, 132.12(1), 132.13(1) to 132.13(3), 132.13(5), 132.13(6), 132.13(14), 132.14(2)"f," 132.15(1), 132.15(2), Filed **ARC 5915A**, **see text IAB 8/2/95, page 148** 10/11/95

White flashing light authorization, 133.1, 133.3(1), 133.3(5), 133.4(3), 133.5(2), 133.5(10), Filed **ARC 5918A** 10/11/95

38.9(1)"b" et al. No questions on 38.9(1)"b" et al.

95.5(2) et al. Rule 641—95.5 removed the different process used for out-of-wedlock birth certificates. Doderer asked if out-of-wedlock birth records were still sealed and Adams believed that the records previous to 1995 would be closed. In response to Rittmer, Adams stated that in terms of the records, unless it was a research agreement which had a confidentiality clause, a person would have to have a relationship to the person identified on the birth certificate.

Chapter 131 Daggett asked if rescinding Chapter 131, dealing with basic emergency medical care, would have an impact in rural Iowa and Ireland did not foresee problems.

Chapter 132 et al. Priebe asked why in 641—Chapter 132, the Emergency Medical Care Provider was changed from Iowa Board of Medical Examiners to the Department. Ireland replied that in 1993 the responsibility was moved from BME to Public Health and it was cleanup language from that time. Priebe asked what the difference was between a first responder and nontransport. A first responder was an individual, who had certification based on a 40-hour course. A first response team would be a service that did not routinely transport patients but was usually first on the scene and stabilized the patient until the transporting service arrived. There were provisions which allowed a nontransporting service to transport on an occasional basis.

133.1 et al. No questions on 133.1 et al.

Drug Testing In a topic not formally before the Committee, Adams stated the State Board of Health had Adopted and Filed Emergency After Notice the rules dealing with minimum standards for reliable results of medically relevant tests to determine presence of an illegal drug. They would be reviewed at the January meeting of the ARRC.

TREASURER Stefanie Devin and Lynn Bedford represented the Department for the following:

TREASURER OF STATE[781]

Linked investments for tomorrow (LIFT), ch 4, Notice **ARC 5924A** 10/11/95
Required public funds custodial agreement provisions, 15.1(8), Filed **ARC 5953A**..... 10/25/95

Chapter 4

Devin stated the amendments to 781—Chapter 4 improved administration and compliance with the "Linked Investments for Tomorrow" program. Metcalf referred to 4.3(1) and wondered if a lender's home office would cause problems for out-of-state companies that had a subsidiary in Iowa now that interstate banking was effective. Bedford replied the Department was addressing this issue, but did not foresee a problem. An out-of-state bank could be the owner of a branch bank that had state deposited funds. In a case involving pledging of public funds in the Council Bluffs-Omaha area, the Department still called the Council Bluffs office, documents were signed by Omaha, but technically a public unit could only go into the Council Bluffs office to make deposits even though the money would go to Omaha. Metcalf asked if this meant that any deposit of state funds into a local bank could indeed be only a branch of a bank and not specifically owned by Iowans. Bedford replied it had to be located in Iowa.

Devin stated that it was suggested to the Department that subrule 4.4(9) pertaining to the nine-year maximum period of borrower eligibility be changed. Bedford explained that nine years was expiring under the horticulture program that was created in 1986. The Department had various individuals state a spouse or relative or someone would now apply for a loan on the same business for another nine years which the Department wanted to avoid. Devin added that instead of saying "for any borrower" it would state "for any borrower or business." Metcalf asked Royce if there were rules on degrees of consanguinity and Royce affirmed this. Bedford stated that receivers of loans in targeted small businesses and in rural small businesses could not be related within the third degree of consanguinity. She addressed the hypothesis of a husband who had received a nine-year loan for a business in which his wife was involved. At the completion of the husband's nine-year loan, the wife would make application for a nine-year loan. Bedford did not know in that instance whether consanguinity would be a factor. Metcalf opined the intent was to limit this opportunity to start-up businesses. Devin agreed with Metcalf and felt a possible solution would be to change the wording to limit participation to the business only.

Priebe raised the question that under that premise if a business was sold, would the new owner be allowed to apply for the nine-year loan. The answer was not known.

15.1(8)

Devin stated there were no comments received and the rule was noncontroversial. No Committee action.

Priebe in Chair.

DOT Dennis Ehlert and Will Zitterich, Department personnel and Bob Boyken, Iowa Auto Rebuilders, were present 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), Notice **ARC 5956A**..... 10/25/95
Selective Review, Right-of-way in drainage ditches .....IAC

DOT (Cont.)
400.45 et al.

Ehlert spoke briefly about vehicle salvage and registration and certificate of title. Boyken referred to 405.10(1)"e" and explained when there was a salvaged car there would be no cumulative damage because that was the worst designation a car could receive. His organization believed that once a car had been labeled salvage and perhaps was subsequently stolen, there was no need for the theft designation to appear on the title. Ehlert pointed out 405.10(1)"a" noted prior salvage designation superseded other designations. If the vehicle was then rebuilt, the rebuilt indication would be on the title. If no rebuilt or prior salvage was shown but the vehicle came in from another state indicating it had been in a flood and that was the only problem with the vehicle, the state would include "flood" on that title. The Department believed if there was a cumulative dollar damage disclosure required, the customer should be advised. Even though it may have come in as a flood vehicle the Department would include the cumulative damage amount on the title rather than flood, fire or vandalism on the registration. The Department would have both on the title. The vehicle registration was the document most dealers or purchasers would see. The Department felt and was supported by the Attorney General's office that if there was damage to a vehicle in excess of $3,000, this should be shown on the registration.

Boyken stated that if prior salvage was the only designation, he did not see a problem with these rules.

Selective Review

Priebe stated he had requested review relative to right of way in drainage ditches. He explained that in some areas farmers ran tubes in ditches, through culverts into fields and pumped out manure, which was then knifed into the field. This eliminated the smell and any chance of spills. Priebe thought this was a good method. Zitterich explained that the Department considered anything higher than four inches to be a potential hazard because it could catch an undercarriage of a vehicle.

Weigel had been told about a farmer who had a pipe that ran over a mile through ditches and culverts on state-owned property. He wondered if this was the issue. Priebe stated it was and he wanted to ensure its legality.

Halvorson was concerned with pipe breakage and neighbor objections and could envision all types of problems occurring.

Zitterich asked how temporary this was and Priebe responded generally one to two days. Zitterich stated that if these tubes were flexible, the potential hazard would be reduced, and he was not overly concerned about leaks. He suggested that individuals speak with the resident maintenance engineers and the Department would visit with their engineers. Zitterich knew of no specific Department policy to preclude use of the tubes.

REVENUE AND FINANCE

Carl Castelda, Co-administrator for the Compliance Division, and Ed Henderson 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), Notice **ARC 5984A** 10/25/95
Sales and use tax — exemptions, 17.9(1), 17.9(2), 17.9(3)"a," 17.9(5) to 17.9(7), 17.27, 18.25(3), 18.29(7)"d," 18.33, 18.44(1), 18.44(4), 18.48(6) to 18.48(8), 18.49, 26.44, 107.2, 107.9"6," 107.14, Filed **ARC 5979A, see text IAB 8/30/95, page 313** 10/25/95
Nonprofit private museum, 17.24, Filed **ARC 5980A** 10/25/95
Individual, corporation, and franchise tax, 48.3"5," 52.1(4), 58.5(2), 59.28(2)"i," Filed **ARC 5981A, see text IAB 8/30/95, page 317** 10/25/95
Corporations and financial institutions, 53.1, 53.20, 54.3, 56.5(2)"a"(3), 56.5(2)"a"(4), 56.5(3), 56.5(4), 59.1, 59.20, 61.5(2)"a"(3) and (4), 61.5(3), 61.5(4), Notice **ARC 5983A** 10/25/95

REVENUE (Cont.) Property tax, 71.1(4), 71.1(5), 71.5, 71.12(5), 71.20(1)"b," "c," "e," "f," and "g," 74.1"4," 74.8(2)"a" to "d," 75.3, 77.1(12), 79.2(2), 79.2(9), 80.5(1), 80.5(3)"a," 80.5(4),
Filed **ARC 5982A, see text IAB 8/30/95, page 319** 10/25/95
Professional/trade dues deduction, insurance deductions, chs 204 and 206, Notice **ARC 5985A**.... 10/25/95

10.2(15) Castelda noted there was an error in the preamble of 701—subrule 10.2(15) which stated the rate for "Title XVI shall be 9 percent" and which should read "11 percent." The change would be made when the rule was filed.

17.9(1) et al. Castelda stated that when these rules were under notice there was Committee discussion relating to the sales tax exemption associated with attachments to farm machinery which improved the performance, safety, operation or efficiency. The issue of whether twine or plastic wrap for large bales of hay should be included was discussed. This issue was reviewed with the Attorney General's office which concluded twine or plastic wrap should not be exempted because the statute was not broad enough. Castelda stated he would be willing to work with Royce on a legislative change for next year. The Department also reviewed its position as related to silage bags and believed they were within the guidelines of the rule. Castelda recommended that a container exemption similar to the container exemption for manufacturers and retailers, be adopted or modified to include agricultural production for twine and plastic wrap.

Weigel asked about the change in the definition of "publisher" and wondered what it previously had been. Castelda responded there was no previous definition because the exemption was newly extended to publishers. The Department, suing a different definition than that of the industry, felt anyone who sold at retail was deemed to be a publisher. The industry disagreed and felt there should be other requirements met, among which was the right to produce, market and distribute. Weigel stated the bill did not define publishing and wondered if the Department was going beyond its authority since the legislature voted not to define publisher in the legislation. Castelda replied the Department felt an obligation to identify the people who were entitled to the exemption and those who were not. Castelda had not researched statutory history with respect to the definition of publisher. This issue had been before the General Assembly for three years and numerous changes had been made to the bill during that period of time.

Royce believed the Department was doing what was necessary and had the authority to write its own definition to provide guidance for taxpayers since the law was silent.

Halvorson viewed the problem with twine as determining at the time of purchase whether it should be taxable since it was not known then whether it would be used or sold. Castelda commented that staff had not attended any subcommittee hearings on this bill and was not involved in the process. There was a packaging exemption that applied to retailers and manufacturers in the Code. The distinction was drawn that when someone sold silage to another individual, that person would then be a retailer but if the product was not sold, that person was not a retailer and the container exemption did not apply. This was why he recommended the container exemption be extended to agricultural production. Numerous sales tax exemptions were based on the use of the product after it was sold.

Motion to Refer Priebe moved for a General Referral to the President of the Senate and the Speaker of the House on the issues surrounding tax on twine and the definition of publisher.

Rittmer asked if he bailed and sold hay whether a sales tax would be applicable. Castelda replied generally the answer would be no if it was used for feeding livestock or bedding, but if, as an example, it was sold as a decorative hay bale there would be sales tax.

REVENUE (Cont.) Halvorson informed Castelda there would be a meeting of the tax study committee and he asked that Castelda develop language for this meeting that would reflect legislative intent to include twine and container exemptions. Castelda was amenable.

Motion Carried The motion to refer the tax on twine and the definition of publisher to the Speaker of the House and President of the Senate carried.

Because the industry was shifting from twine to plastic wrap, Castelda stated the Department would use the term "packaging materials" because that was what was in the container exemption. Kibbie stated plastic wrap would also need to be included.

17.24 No questions on 17.24.

48.3"5" et al. No questions on 48.3"5" et al.

53.1 et al. Castelda stated the Department sent copies of the rules to the Iowa Banker's Association and the other individuals involved in this legislation and had not received any comments. No Committee action.

71.1(4) et al. Castelda pointed out an error in Items 7 and 8 in the preambles of ARC 5836A and ARC 5982A where the definition should read ". . . three or more . . ." instead of "mobile home park to include any land where four or more mobile homes are located...."

Chs 204 and 206 Hedge asked if 701—Chapter 204 permitting professional/trade dues deductions was a new concept or had previously been done. Castelda replied this had been done for other types of deductions and there were existing rules. In response to Hedge, Castelda stated these rules were limited to the state payroll system. He added the Department of Transportation and Regents Board were excluded because they had their own payroll systems.

Hedge referred to 204.9 and wondered about the remittance fees. Castelda replied that in the first rule draft there were provisions to pass certain expenses to the companies. When this was researched for legal review, he could not find the statutory authority for the expenses so the state would bear the expense.

Hedge wondered why rule 701—206.15(79) had been rescinded. Castelda replied the Department could not find the statutory authority for this. He explained that if a mistake occurred in the designation, the old rule provided that the insurance company could not say it was the state's fault and hold the state responsible. This rule would hold the state harmless. Castelda stated the Department reviewed all rules and tried not to promulgate any rules that were contrary to statutory intent. Hedge stated he would like to refer this to the General Assembly. Metcalf pointed out this was under notice and to refer would be more appropriate for a filed rule.

REAL ESTATE APPRAISER K. Marie Thayer, Bill Schroeder, executive secretary for the Board, and Terry Culver, Board member, were present for the following rules and there were no questions:

REAL ESTATE APPRAISER EXAMINING BOARD[193F]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Examinations, appraisal log, continuing education, prehearing conferences, stipulations, 1.1, 2.1, 2.8, 2.10, 2.12, 2.14, 3.2 to 3.4, 3.6, 4.2(6), 4.3(1), 4.4, 5.2, 6.1, 6.3(8), 7.1(5), 7.2(2), 8.9, Notice **ARC 5955A** 10/25/95

REAL ESTATE COMMISSION

K. Marie Thayer, 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, Notice **ARC 5975A** 10/25/95

1.1 et al.

Hansen and Palmer discussed ethical practices for an agent regarding the selling price of the house and disclosure to the buyer or seller. Hansen stated that most of these rules would be available to licensees and the public. He added the Commission received many calls from licensees regarding who they represented even though agency disclosure had been in effect since 1990. These rules will be of help to licensees as well as the public. Hansen stated the Commission was attempting to put the rules on the Internet for consumer access.

Halvorson asked to what extent the obligation was on the agent/broker to disclose something such as asbestos in the house. Hansen replied that if it was an adverse material fact that affected the desirability or price of the property, then it should be disclosed. There were some other things that were federally regulated that could not be disclosed. Halvorson cited an example of a house that had slate siding and had been sold at least three times over the last five years. The lumberyard raised the question concerning the type of siding, and when analyzed, it was found to be asbestos impregnated. Hansen stated this was an instance where questions were raised whether the seller, the buyer or the agent should have known. If the agent knew and it was something that the buyer should have known or could easily have found out, the law specifically lets the burden fall upon that buyer. Disclosure seemed to be the way to avoid the pitfalls. Halvorson stated that one of the problems of disclosure was the person who says you should have known. He wondered if this would intentionally trap someone who could be getting into trouble simply by not raising any potential issues. Hansen did not believe this was the case as attorneys in the industry had been selective in the definition of adverse material fact. These rules mirrored the legislative intent and did not go beyond the authority.

EPC

Don Paulin, Deputy Director, and Darrell McAllister represented the Commission for the following:

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Federal effluent and pretreatment standards, 60.2, 62.4, 62.5, Filed Without Notice **ARC 5932A** 10/11/95
Manure management plans for confinement feeding operations, 65.1, 65.2(10), Filed Emergency **ARC 5933A** 10/11/95

60.2 et al.

No questions on 60.2 et al.

65.1 and 65.2(10)

Weigel asked and was told by Paulin that amendments to Chapter 65 were limited to manure management. Fees were not paid nor were permits and signed agreements with neighbors required.

Weigel noted the Department may inspect the confinement feeding operation at any time during normal working hours and the confinement feeding operation shall pay the actual costs of the inspection. Paulin indicated the records would merely be filed with the Commission, the rules neither required nor authorized DNR's approval or disapproval of a plan. Weigel wondered if an inspection had to be initiated by a complaint since the Commission would not conduct random testing. Paulin responded that under current practice and primarily because of staffing,

EPC (Cont.)

DNR operated on a complaint-initiated basis. The Department lacked the staff to make annual inspections.

Weigel inquired if these rules addressed those people who were commercially hauling and spreading the manure. Paulin replied they did not have to file a manure management plan and the onus was strictly on the owner/operator. McAllister did not believe this would apply to commercial operations. Weigel asked who would conduct the nitrogen tests for the commercial haulers and Paulin responded the responsibility was still with the owner not with the hauler. Weigel asked what kind of enforcement the Department had with these rules. Paulin replied the rules, as proposed by ACO (Animal Agriculture), were changed during the meeting to give the same legal pursuit available as existed with current operations and not according to H.F. 519, which moved the legal authorization of the Department to the civil courts. The availability of legal remedies was still at issue. Weigel asked when the final rules were anticipated. Paulin replied that hearings were being held the first two weeks of December and it would go to the Environmental Protection Commission at its meeting January 21 or 22.

Rittmer asked if these records were confidential and Paulin replied that the manure management plan on both this and the plan set forth in H.F. 519 were not, but the records kept on-site to be made available for Department inspection were. Manure management plans were filed with the state.

Kibbie asked when this plan became applicable and Paulin replied upon placement of the first animal in the building. Paulin stated the manure management plan had to be filed 60 days before the manure was spread from these enclosed facilities. Kibbie understood some of these buildings came in just under the law of 5,000 head and did not put in a lagoon. Paulin stated this had been an existing rule for years and there were laws encouraging the facility to hold the manure in concrete as opposed to earthen pits and did not require construction permits. Kibbie wondered under what authority the Department issued these rules and where in H.F. 519 express authority was given to require manure management plans for this size of a particular building. Paulin stated the express authority was not there.

Doderer understood that the manure management plan itself would be public and Paulin replied it would be. Any complaint would be investigated by the DNR and the results of that investigation would be public. Doderer asked if only on the basis of a complaint would they be inspected. Paulin explained the Department did not currently have the staff to regularly investigate even the approximately 700 to 750 other that were required to hold a state permit. The Department had requested an additional seven persons (FTEs) for the coming year so the Department would not be limited to complaint investigations at the 750 sites. Sites affected under this emergency rule had been estimated as 500 to 5,000.

In response to Doderer, Paulin stated odor was not regulated by the Department.

Priebe stated approximately 40 operators had begun installation of slats over pit building construction thinking they would be exempt, thus prompting the 60-day filing. He pointed out some felt the plans needed to be filed in the county as well as with the state, but this would need to be done through legislation. Iowa State University was devising a manure management plan upon which the committee had to rely. Priebe believed this was a temporary solution and that these rules would get the state by until the session started.

Rittmer asked if nitrogen credits were taken from lagoons in calculating how much nitrogen was needed and how much credit was allowed. McAllister stated the technicalities in the chart came from Iowa State University and they were reviewed and accepted.

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

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Continuing education, 3.1, 3.2, 3.4, 3.8, 3.13, Filed **ARC 5954A** 10/25/95

HISTORICAL DIVISION[223]
CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"
Grant review criteria, certification process, 35.5(6), 36.4(4), Notice **ARC 5920A** 10/11/95

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Greyhound racing, occupational and vendor licensing, 7.5(9)"a," 13.6, 13.10, 13.11,
Notice **ARC 5923A** 10/11/95

VOTER REGISTRATION COMMISSION[821]
Commission meeting dates, 1.1, 1.3(1), 1.3(3), 1.3(4), 1.3(6),
Notice **ARC 5968A**, also Filed Emergency **ARC 5969A** 10/25/95
Provision of nonmailable voter registration application forms by state registrar of voters, 2.10,
Notice **ARC 5970A**, also Filed Emergency **ARC 5971A** 10/25/95

Meeting Dates — There was discussion of a possible three-day meeting in December.

Christmas Party — Metcalf reminded that the Christmas party was on Tuesday, December 12, 1995.

January Meeting — The January meeting was scheduled for January 3 and 4, 1996.

Adjourned — The meeting was adjourned at 4:15 p.m.

December meeting — The next meeting was scheduled for December 12 and 13.

Respectfully submitted,

Cathy Kelly

Cathy Kelly, Acting Secretary
Assisted by Kimberly McKnight

APPROVED:

Rep. Janet Metcalf

Representative Janet Metcalf, Co-chair