

# THE ADMINISTRATIVE RULES REVIEW COMMITTEE

## 2007 Annual Report

### INTRODUCTION-State Administrative Agencies

Note that the rulemaking process only applies to executive branch state agencies; perforce several agencies housed within either the legislative or judicial branches of state government are not considered in this report.

The Reorganization Act of 1986, codified as Code chapter 7E, refers to departments, divisions within departments, independent agencies, and separate constitutional offices; however, there is no overarching structure to Iowa state government. By an informal count there are 107 executive branch administrative agencies: 21 umbrella departments, 31 semi-autonomous divisions within these departments, 32 licensing boards, 19 independent agencies and 4 separate constitutional offices. The Governor's office is excluded from this list because it is exempt from the rulemaking process.

All of these entities are referred to using the generic term "agency." Regardless of size, each agency that is listed has rulemaking authority and some level of autonomy; for that reason, all are treated as state agencies regardless of formal designation or location within a larger umbrella agency. Capitalized names of agencies represent departments or independent entities while lower-case named agencies represent divisions of larger agencies, boards, or other units of government.

### I. OVERVIEW OF 2007 RULEMAKING

This report covers the final rulemaking actions in calendar year 2007, published in the Iowa Administrative Bulletin from January through December 2007; this covers the period beginning with the Committee's February 2007 meeting through the January 2008 meeting. The Committee *generally* reviews rules published the month previous to the actual meeting.

In 2007, 51 agencies adopted 446 filings, virtually tying 2006, when 440 filings were promulgated by 58 agencies. The 2007 filings are detailed by agency and by month in Appendix A. As always, the Department of Human Services leads the list, with 72 filings (up from 61 filings in 2006 and 58 filings in 2005). Twenty-six of these agencies adopted only one or two filings.

Rulemaking filings generally contain more than a single rule change; these 446 filings actually represent over 2,000 individual rule additions, amendments, or repeals. Rulemaking activity for the last 10 years is set out below:

YEAR	AGENCIES	FILINGS	YEAR	AGENCIES	FILINGS
2007	51	446	2002	59	523
2006	58	440	2001	64	419
2005	54	396	2000	52	367
2004	56	420	1999	81	506
2003	54	435	1998	53	398

In 2007, 93 filings were put into effect using the "emergency" rulemaking provisions of the rulemaking process (Iowa Code §§17A.4 and 17A.5), a significant increase from the 65 emergency filings in 2006, and a 50 percent increase in the percentage of emergency filings. Virtually all of these filings were "double barreled", i.e., published as a notice of intended action at the same time. These emergency rulemaking filings account for roughly 21 percent of the total filings. The 10-year history for emergency rulemaking is as follows:

YEAR	EMERGENCY	FILINGS	YEAR	EMERGENCY	FILINGS
2007	93 (21 percent)	446	2002	64 (13 percent)	523
2006	65 (14 percent)	440	2001	57 (14 percent)	419
2005	72 (18 percent)	394	2000	75 (20 percent)	367
2004	59 (14 percent)	420	1999	55 (10 percent)	506
2003	73 (17 percent)	435	1998	61 (15 percent)	398

To calculate the volume of rulemaking, only filed documents are counted, either through the normal process or through emergency rulemaking, not the individual rule changes contained within each document. If notices were included, the volume of rulemaking would virtually double. Each filing put into effect contains one or more individual rule changes; on the average, each filing contains approximately four individual changes. The 2007 rulemaking filings are broken down by month on the top line of the following chart:

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	TOT
2007	36	33	14	26	25	30	38	80	26	62	32	44	446
2006	26	54	41	27	39	32	51	39	11	59	35	26	440
2005	23	39	15	09	23	33	80	32	24	19	54	45	396
2004	28	32	39	28	27	34	41	20	67	33	43	28	420
2003	20	41	39	23	31	25	38	44	35	48	38	53	435
2002	39	52	43	45	56	33	32	52	57	49	35	30	523
2001	34	44	23	31	43	19	36	23	34	60	21	51	419
2000	19	29	22	28	22	34	23	38	34	56	45	17	367
1999	14	51	29	26	111	45	35	29	44	33	28	61	506
1998	13	32	18	34	32	28	58	31	39	30	35	48	398
1997	12	26	46	14	34	30	48	24	27	35	31	47	374

## II. OVERVIEW OF THE COMMITTEE ACTIONS

The number of formal actions taken by the Committee has remained steady, albeit at a low level. One objection was imposed in 2007, matching the number in the past two years. No session delays have been imposed since 2004. Three 70-day delays were imposed in 2007. The Committee approved seven general referrals and one request for a regulatory analysis. The individual actions are summarized below in the next section.

## III. CALENDAR OF 2007 RULES REVIEW COMMITTEE ACTIONS

February 2007 through January 2008 ARRC Meetings

### ENVIRONMENTAL PROTECTION COMMISSION

70-Day Delay—followed by objection. Landfill regulation. ARC 5999B. A 70-day delay was imposed in September, followed by an objection in December. September & December, 2007.

### ECONOMIC DEVELOPMENT DEPARTMENT

General Referral. Renewable fuel infrastructure board. ARC 5663B. February 2007.

### HUMAN SERVICES DEPARTMENT

General Referral. Home and community based services. Special review. ARC 5650B. February 2007.

General Referral. Dependent abuse: availability of information. ARC 5653B. February 2007.

General Referral. Personal needs allowance. ARC 3528B. January 2008.

#### **INSURANCE DIVISION**

70-Day Delay. Long-term care insurance. ARC 6205B. September 2007.

#### **LABOR SERVICES DIVISION**

Regulatory Analysis. Inspection of water heaters. ARC 5619B. January and March 2007.

General Referral. Shoot fighting. ARC 6215B. August 2007.

#### **RACING AND GAMING COMMISSION**

General Referral. Summary suspension of track licenses. Selective review. September 2007.

#### **REVENUE DEPARTMENT**

General Referral. Valuation of structures on agricultural land. Special Review. September 2007.

#### **UST BOARD**

70-Day Delay. Payment of claims. ARC 6423B. January 2008.

### **IV. SUMMARY OF MAJOR ITEMS BEFORE THE COMMITTEE**

**ENVIRONMENTAL PROTECTION COMMISSION (EPC), Landfills, 07/04/07 IAB, ARC 5999B, ADOPTED.**

This issue was reviewed at the Committees' January, July, August, September, October, November, and December 2007 meetings. The EPC adopted new rules intended to control groundwater contamination from solid waste landfills. The rules implement the federal Resource Conservation and Recovery Act (RCRA) and the federal regulations under that Act. Compliance with federal regulation is required for Iowa to obtain approval from the EPA. Opponents contend there is no scientific basis for many of the requirements and that the cost of implementing the requirements is very high. The most contentious issue in this rulemaking relates to the lining of "cells" at landfill sites. Under this new provision side liners are required in new and existing cells. Cells constructed in compliance with the 1997 rules contain base liners, but side liners were not required. Under the new rules these cells could continue in operation for only three more years and any landfill cells with no liners could be closed.

This requirement was opposed by landfill operators who had fill capacity beyond the three year period. Opponents argued that the cells constructed under the 1997 rules complied with federal requirements and should continue in use until filled; at that point any new cells could be constructed to the new standards.

EPC representatives responded that the federal Environmental Protection Agency required all cells to be fully lined. Federal officials attended the August Committee meeting, however, they declined to state that full cell liners were required by the federal regulations. The officials did establish a number of points:

- The 1997 Iowa rules do not comply with federal requirements;
- The current rulemaking does comply with federal requirements; and
- Alternative techniques, based on environmental performance, may be approved by the EPC.

Speaking on behalf of the EPC, the Director of the Department of Natural Resources emphasized the additional protections to the groundwater contained in these new rules and stated

that the rules did allow flexibility, on a case-by-case basis, to approve alternative techniques that provided protections comparable to the new rules; this could include alternatives to the side lining requirements. The director emphasized that the EPC would seriously consider alternatives as long as those alternatives provided comparable protection. The director also reiterated willingness to continue meeting with stakeholders to resolve any issues with the rules.

Following months of discussion, and a 70-day delay to allow for even further consideration, Representative Wise moved an objection to one specific provision: 567 IAC subrule 113.2(8), relating to the closure of existing landfills. In part that subrule provides that cells that do not have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner must close by October 1, 2007; however, existing cells having an approved leachate collection system and a basal liner beneath the cell may continue in operation for up to three years following the October 1 date. It was noted this provision did not appear in the initial notice of intended action and for that reason stakeholders were denied a fair opportunity to impact that portion of the rulemaking. The objection applied only to that cited subrule; the objections effect is to shift the burden of proof to the department in any subsequent judicial action challenging the legality of that subrule.

**HUMAN SERVICES DEPARTMENT**, Annual Medicaid cards, 02/14/07 IAB, ARC 5716B, ADOPTED.

Under this new rule the Department issues Medicaid cards annually rather than monthly. The card is similar in appearance to a credit card. The Department anticipates a total annual savings of \$489,000. Service providers are responsible for determining patient eligibility by contacting the Department on a monthly basis and providers contend this is a huge time and paperwork burden. At the June, 2007 meeting agency representatives conducted a live demonstration, using the internet to check client eligibility. Committee members believed the system worked efficiently.

**LABOR DIVISION**, Shoot fighting, 08/01/07 IAB, ARC 6053B, ADOPTED.

Shoot fighting, which is a combination of boxing, judo, kickboxing and wrestling is regulated by the Athletic Commissioner under Iowa Code Chapter 90A. These new rules add two significant requirements to the current rules; the new rules hold the promoter of the event generally responsible for the conduct of the officials and the participants at a shoot-fighting event, and require the promoter to provide life, medical, surgical, and hospital insurance to shoot-fighters. Representatives of the national ultimate fighting organization contended these rules were an attempt to enact failed legislation through the rulemaking process, noting that in 2007 the General Assembly considered, but failed to enact, legislation to regulate the profession. The representatives did voice support for a regulatory program, but maintained that it should be established through legislation, not rules. Division representatives noted that Code §90A.4 specifically held the promoter responsible "for the conduct of all officials and participants at a professional boxing or wrestling match" and stated that by extension this applied to shoot fighting matches as well.

General discussion reviewed the regulatory background of shoot fighting, beginning in the 1990's when it was agreed that shoot fighting should be regulated as an offshoot of boxing and wrestling. It was noted that so-called amateur events, where the participants are unpaid and the events completely unregulated, are becoming more common and are often held in bars. during the

discussion, Committee members generally supported these rules, with some members expressing reservations about imposing additional levels of regulation when legislation had failed. Committee members supported the insurance requirement, with some members stating that the \$25,000 health insurance and \$ 20,000 life insurance requirements were inadequate.

The Committee decided that the rules should go into effect, but that the General Assembly should consider legislation to properly license and regulate the sport, including amateur events.

**PHARMACY BOARD**, Pharmacist discretion in filling a prescription, 2/28/07 IAB, ARC 5739B, NOTICE.

The Pharmacy Board maintains a code of ethics to regulate the professional behavior of its licensees. The board proposed new ethical standards which in part contain a proposal for "conscientious objection and refusal" allowing a pharmacist to refuse to fill any prescription based on the pharmacist's ethical or moral beliefs. This issue was part of a nationwide controversy surrounding the use of an emergency contraceptive, the so-called "Plan B" which some contend is an abortifacient; some pharmacists have a deep moral conviction against providing this drug. Board representatives noted the required a pharmacist to notify the pharmacist's employer prior to invoking a conscientious objection and to assist a patient to identify another pharmacy or other lawful source that may be able to provide the drug. Because of the controversy surrounding this proposal and the negative public reaction, the board terminated this rulemaking.

**RACING AND GAMING COMMISSION**, Pre-hearing suspension of licenses, 1/17/07 IAB, ARC 5663B, SELECTIVE REVIEW.

The Racing and Gaming Commission requires a license for all occupations at Iowa's racetracks and casinos. occupations which the Commission believes require the safeguard of licensure. Commission rules provide for the temporary suspension of a license, prior to an evidentiary hearing, when a licensee has been formally arrested or charged with a crime that would disqualify the person from holding a license if convicted. Opponents of the pre-hearing suspension policy noted that Iowa law, Code §17A.18A, allowed temporary suspension only "to prevent or avoid the *immediate danger* to the public health, safety, or welfare ."

Committee members were concerned over the mandatory suspension, regardless of the occupation or whether any threat to the public health, safety or welfare exists. Members believed that the statutory restriction needed to be recognized in the rules and requested that the commission add appropriate language to the rules. The commission declined to make any changes in the rule, contending the temporary suspensions are necessary to ensure the integrity of the regulatory program. The Committee determined that any further action should come through the legislative process and referred this rule to the General Assembly.

**REVENUE AND FINANCE DEPARTMENT**, Property tax: evaluation of commercial and agricultural property, 1/31/07 IAB, ARC 5685B, ADOPTED. Commercial property is taxed according to its value. This rulemaking was intended to ensure uniform analysis by local assessors.

The rulemaking presented two issues; the first, discussed in February 2008 was whether "value" should be the actual use of the property or its highest and best use. The rules provide that taxation will be based on actual use. Some assessors contended that property should be assessed at its highest and best use (thus yielding a higher taxable value); while opponents noted that highest and best use taxation could force a landowner to sell real property due to the tax burden. Committee

members agreed with the department that actual use was the best standard. This issue proceeded to litigation in Polk County. In April, 2008 a Polk County district court struck down the departments rule, stating that the statute contemplated the valuation of property at its highest and best use.

The second issue was discussed at the September 2007 meeting. Under the rules, to determine value for agricultural buildings and structures, an "agricultural factor" is developed, specific to the area. Simply put, under the rule the assessment of buildings should be at the same ratio of actual value as the productivity assessment is to market value of agricultural land. It was generally agreed that the rule itself was proper and that farm structures had a lower value than the farmland itself. However, by lowering the value of buildings, the valuation of the farmland itself is increased. Discussion revealed that agricultural building assessments vary significantly by county and somewhat by building type. Department representatives noted that perhaps only 35% of the counties are in substantial compliance with this rule. As a result of this discussion the Committee referred this rule to the Ways and Means committee of the House and Senate.

**REGENTS BOARD, State Universities: Admission criteria, 05/23/07 IAB, ARC 5893B, ADOPTED.**

Since the 1950's the Board of Regents maintained a policy which admitted any Iowa high school student graduating in the top half of the student's class. Beginning with the Fall, 2009 academic term admission decisions will be based on four factors: performance on standardized tests; high school grade point average; high school percentile rank in class; and number of high school courses completed in the core subject areas. These factors are used in a weighted formula to calculate a "Regent Admission Index" (RAI). Applicants with a total score of 245 gain automatic admission. Current high school sophomores have two years to complete the core curriculum. Board representatives noted this process will only apply to students coming directly from high school. There will be a different set of requirements for non-traditional applicants, including transfers from the community colleges, returning veterans, or adults changing careers. The representatives stated that the proposal has been well received and that high school curricula are capable of meeting these requirements.

**APPENDIX A—SUMMARY OF RULEMAKING IN 2007**

Agency name	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
HUMAN SERVICES DEPARTMENT[441]	06	02	05	07	03	03	12	12		11	06	05	72
PUBLIC HEALTH DEPARTMENT[641]	06			04		01		08		03		04	26
ECONOMIC DEVELOPMENT DEPARTMENT [261]	01			03		01	02	01	06	06	02	01	23
Pharmacy Examiners Board[657]		08				06		06				02	22
Educational Examiners Board[282]		06				01		02	05		04	03	21
Environmental Protection Commission[567]	03	01		01	02		02	03	02	05		01	20
Natural Resource Commission[571]		04				06	02	03			01	02	18
EDUCATION DEPARTMENT[281]			01		01	02		02		03		06	15
Labor Services Division[875]	03	01				02	02	05			01	01	15
Insurance Division[191]	02		02		01	01	01	02		04		01	14
PUBLIC SAFETY DEPARTMENT[661]	01			02	03		02	01			04		13
INSPECTIONS AND APPEALS DEPARTMENT[481]				01			02	03	02	03		01	12
Professional Licensure Division[645]	02		01	01	01			02	02		02	01	12
REVENUE AND FINANCE DEPARTMENT[701]	03								01	03	04	01	12
Medical Examiners Board[653]	03	03			01			01				02	10
TRANSPORTATION DEPARTMENT[761]	02		01	02	01		02				02		10
Ethics And Campaign Disclosure Board, Iowa[351]			01					08					09
Telecommunications And Technology Commission[751]										09			09
VETERANS AFFAIRS, DEPARTMENT [801]	01	02						02		02	01	01	09
College Student Aid Commission[283]							04	02		02			08
Iowa Finance Authority[265]	01			02			01	01		03			08
Utilities Division[199]		01		01	01	02	01				01	01	08
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]			02					01		01	01	01	06
Homeland Security And Emergency Management Division[605]				01				03		01		01	06
SECRETARY OF STATE[721]						01	01	02	02				06
State Public Defender [493]	01						01	02		01		01	06

Dental Examiners Board[650]		03			02								05
Engineering and Land Surveying Examining Board[193C]								02				03	05
Real Estate Appraisers Board [193F]						01		02		01	01		05
ADMINISTRATIVE SERVICES DEPARTMENT [11]					01				01	01		01	4
Architectural Examining Board[193B]				01				01		01			03
Interior Design Examining Board[193g]						02			01				03
Petroleum UST Fund Board, Iowa Comprehensive[591]		01						01			01		03
CORRECTIONS DEPARTMENT[201]					02								02
CULTURAL AFFAIRS DEPARTMENT[221]												02	02
EMPLOYMENT APPEAL BOARD[486]												02	02
Historical Division[223]					01		01						02
IPERS [495]					01			01					02
Nursing Board[655]							01			01			02
Racing and Gaming Commission[491]					02								02
Real Estate Commission[193E]			01			01							02
Regents [681]					01						01		02
Volunteer Services Commission[817]									02				02
Capital Investment Board[123]									01				1
Landscape Architectural Examining Board[193D]					01								01
Law Enforcement Academy[501]								01					01
Lottery Division[705]							01						01
NATURAL RESOURCE DEPARTMENT[561]	01												01
Professional Licensing And Regulation Bureau[193]		01											01
Public Employment Relations Board[621]										01			01
Workers' Compensation Division[876]									01				01
TOTAL	36	33	14	26	25	30	38	80	26	62	32	44	446

**APPENDIX B—EMERGENCY RULEMAKING IN 2007**

Agency name	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
HUMAN SERVICES DEPARTMENT[441]	02	01	02	01	01		10	04		03	02	02	28
Ethics And Campaign Disclosure Board, Iowa[351]								08					08
ECONOMIC DEVELOPMENT DEPARTMENT [261]	01						02	01	01	02			07
College Student Aid Commission[283]							04	02					06
PUBLIC HEALTH DEPARTMENT[641]				01		01		01				02	05
VETERANS AFFAIRS, DEPARTMENT [801]		02						02			01		05
INSPECTIONS AND APPEALS DEPARTMENT[481]							02	02					04
PUBLIC SAFETY DEPARTMENT[661]				01			02	01					04
SECRETARY OF STATE[721]						01	01	02					04
Insurance Division[191]					01		01			01			03
Iowa Finance Authority[265]	01			02									03
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]			01					01					2
Environmental Protection Commission[567]								01			01		02
State Public Defender [493]							01	01					02
Agricultural Development Authority[25]											01		1
EDUCATION DEPARTMENT[281]						01							01
Educational Examiners Board[282]						01							01
Historical Division[223]							01						01
Labor Services Division[875]					01								01
Natural Resources Commission[571]												01	01
Homeland Security And Emergency Management Division[605]										01			01
Petroleum UST Fund Board, Iowa Comprehensive[591]								01					01
Pharmacy Examiners Board[657]								01					01
Professional Licensure Division[645]									01				01
TOTAL	4	3	3	5	3	4	24	28	2	7	5	5	93

## APPENDIX C: IOWA AGENCIES

The Reorganization Act of 1986 (Iowa Code Chapter 7E) established most of Iowa's state agencies in a number of umbrella departments, with divisions, bureaus, sections, and units as subunits of a department. In addition to these departments, a variety of independent agencies are also established. Iowa Code chapter 7E defines a variety of agencies which include:

- An authority which is a body with independent power to issue and sell bonds.
- A board which has policymaking powers and the power to hear contested cases.
- A commission which has rulemaking powers.
- A committee which is appointed to study a specific problem and terminate on the completion of its assignment.
- A council which is an advisory body.
- A licensing board which sets standards of professional competence and conduct for a profession or occupation under its supervision.

As mentioned on the first page, Iowa state government is made up of some 103 entities:

- 22 umbrella departments, with one headed by an elected official.
- 4 agencies created in the Iowa Constitution and headed by elected officials.
- 31 divisions within a department.
- 32 small health-related licensing boards.
- 19 independent agencies, which includes a single legislative agency.

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