

THE ADMINISTRATIVE RULES REVIEW COMMITTEE

2003 Annual Report

I. INTRODUCTION

This report covers the final rulemaking actions that were published in the Iowa Administrative Bulletin from January through December 2003; it covers the period beginning with the Committee's February 2003 meeting through the January 2004 meeting. [Note: The Committee *generally* reviews rules that were published the month previous to the actual meeting.]

Iowa state government consists of some 110 entities, set out in Appendix "C". In 2003 54 of these entities promulgated rules. The 435 filings in 2003 is a decrease of almost 20 percent from the decade-high 523 filings in 2002. The 2003 filings are detailed by agency and by month in Appendix "A". As always, the Department of Human Services leads the list, with 80 filings (down from 92 in 2002), while 23 of these agencies promulgated only one or two filings.

Rulemaking filings generally contain more than a single rule change; these 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
2003	54	435	1998	53	398
2002	59	523	1997	50	374
2001	64	419	1996	56	392
2000	52	367	1995	53	399
1999	81	506	1994	66	414

In 2003 74 filings were put into effect using the "emergency" rulemaking provisions of the rulemaking process (§§17A.4 and 17A.5, 2003 Code), an increase from the 64 filings in 2002. Virtually all of these filings were published as a notice of intended action at the same time. These emergency rulemaking filings account for 13 percent of the total filings, a somewhat higher percentage from the 2002 results. The emergency filings are tabulated in Appendix "B". Note that 30 of the 74 emergency filings were promulgated by the Department of Human Services; these emergency provisions are a tradition where the department utilizes specific emergency rulemaking authority granted by the Legislature to emergency implement legislatively mandated changes. Under this process the initial filings are submitted to the ARRC in document form to allow review before they go into effect. The 10-year history for emergency rulemaking is as follows:

YEAR	EMERGENCY	FILINGS	YEAR	EMERGENCY	FILINGS
2003	73 (17 percent)	435	1998	61 (15 percent)	398
2002	64 (13 percent)	523	1997	39 (10 percent)	374
2001	57 (14 percent)	419	1996	94 (24 percent)	392
2000	75 (20 percent)	367	1995	66 (16 percent)	399
1999	55 (10 percent)	506	1994	91 (22 percent)	414

To calculate the volume of rulemaking for 2003, filed documents are counted instead of single rule changes. A notice of intended action is not included in the count. Only an adoption in final form is counted, either through the normal process or through emergency rulemaking. 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 roughly four individual changes. The agencies which adopted rules in 2003 are set out in Appendix “A”. For the purposes of this report, the term “agency” ignores the statutory groupings of departments, divisions, boards, etc. Instead, the Appendix “A” chart independently lists every rulemaking unit without regard to its location within a larger “umbrella” department. Capitalized agencies represent departments or independent entities while lower-case agencies represent divisions, boards, or other units of state government. Regardless of size, each agency that is listed has rule-making 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. The 2003 rulemaking filings are broken down by month in the following chart:

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	TOT
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
1996	34	31	31	18	23	31	52	34	32	44	30	32	392

II. OVERVIEW OF THE COMMITTEE ACTIONS

While the average number of filings varies over the last five years, the volume of formal actions taken by the Committee has remained at a steady level for well over a decade. In 2003 the Committee imposed one formal objection, the same number from 2002. A total of 153 objections have been imposed since 1977. Three session delays were imposed in 2003; two session delays were imposed in each of the previous three years. Sixty-five delays have been imposed since the power was created in 1978. Additionally, the Committee imposed five general referrals (four in 2002), three 70-day delays (four in 2002), and four requests for a regulatory analysis. The Committee took 16 formal actions, up from 11 in 2002; 14 in 2001; and 16 in 2000. The individual actions are summarized below:

III. CALENDAR OF 2003 RULES REVIEW COMMITTEE ACTIONS

February 2003 through January 2004 ARRC Meetings

ENVIRONMENTAL PROTECTION COMMISSION, Regulatory analysis, ARC 2228B, relating to the impact of a class “A” water designation [February 2003].

HUMAN SERVICES DEPARTMENT, Session delay, ARC 2161B, waiver beds for certain residential facilities [February 2003].

ALCOHOLIC BEVERAGES DIVISION, General referral, ARC 2385B, rates for dramshop insurance [April 2003].

WORKFORCE DEVELOPMENT DEPARTMENT, Regulatory analysis, ARC 2351B, value of “room and board” in determining compensation [May 2003].

EDUCATION DEPARTMENT, General referral, special review, assessment of driver’s education fees by local districts [June 2003].

UTILITIES DIVISION, 70-day delay, ARC 2506B, utility rights-of-way [June 2003].

INSURANCE DIVISION, Session delay, ARC 2616B, consideration of diminished value [August 2003].

LAW ENFORCEMENT ACADEMY, Objection, ARC 2561B, objection to “emergency” filing [August 2003].

UTILITIES DIVISION, Regulatory analysis, ARC 2620B, broadband initiative regulation [August 2003].

UTILITIES DIVISION, Session delay, ARC 2506B, utility rights-of-way [August 2003].

IOWA FINANCE AUTHORITY, General referral, ARC 2719B, marketing study requirements for tax credits [September 2003].

DENTAL BOARD OF EXAMINERS, Regulatory analysis, ARC 3041B, dental hygiene in a public setting [October 2003].

HUMAN SERVICES DEPARTMENT, 70-day delay, ARC 2900B, adoption subsidies [November 2003].

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT, General referral, ARC 2976B, fees for hunting preserves [December 2003].

ETHICS AND CAMPAIGN DISCLOSURE BOARD, Electronic filing, ARC 2969B [December 2003].

MEDICAL EXAMINERS BOARD, 70-day delay, ARC 3042B [January 2004].

IV. 2003 LEGISLATION

FISCAL STATEMENTS ON PROPOSED ADMINISTRATIVE RULES: HOUSE FILE 636. In 2003 the Legislature enacted House File 636; section 27 of the Act added a provision to Chapter 17A, 2003 Code, requiring a “fiscal statement” for all new rules having an annual impact of \$100,000 or a five-year impact of \$500,000. This amendment, adding a new §17A.4(2A), provides:

2A. Any notice of intended action or rule filed without notice pursuant to subsection 2, which necessitates additional annual expenditures of at least one hundred thousand dollars or combined expenditures of at least five hundred thousand dollars within five years by all affected persons, including the agency itself, shall be accompanied by a fiscal impact statement outlining the expenditures. The agency shall promptly deliver a copy of the statement to the legislative services agency. To the extent feasible, the legislative services agency shall analyze the statement and provide a summary of that analysis to the administrative rules review Committee. If the agency has made a good faith effort to comply with the requirements of this subsection, the rule shall not be invalidated on the ground that the contents of the statement are insufficient or inaccurate.

The Fiscal Services Division of the Legislative Services Agency developed a model to implement this requirement, based on the forms currently used for fiscal notes. The statement

must accompany any notice of intended action or any rule adopted and filed without notice. For those filings below the statutory threshold of \$100,000 annually or \$500,000 over five years, the agency need only state that the statutory threshold is not met and then briefly state the assumptions used to make this determination. Fiscal analysts review the agency fiscal impact statements prior to the monthly Committee meetings and prepare a summary of the fiscal impacts, which is provided to the Committee prior to each meeting. This summary provides a general overview of the costs associated with a proposed rule. In those situations where a detailed cost/benefit analysis may be required, the Committee may request the §17A.4A regulatory analysis.

V. SUMMARY OF ISSUES BEFORE THE COMMITTEE

ADMINISTRATIVE SERVICES DEPARTMENT, Procurement of goods and services, 10/29/03 IAB, ARC 2885B, ADOPTED.

The department reorganized and updated its rules relating to state purchasing policies. The rules themselves were not controversial, but the rulemaking itself provided an opportunity to discuss the concepts of “sole source procurement” and the use of master contracts in making state purchases. Under a master contract the price for a product (even a large system) can be established through a bidding process and then state agencies may simply purchase the item at the contract price. Under sole source procurement an agency may purchase an item without a bidding procedure if it can demonstrate that the item can reasonably be obtained only through a single source.

In discussing one particular state building contract, one commentator noted that Iowa law calls for competitive bidding for major purchases and protested the lack of a bidding process. Department representatives responded that this particular contract involved the use of master contracts, where a bid process has been used, and that agencies were simply making purchases at that contract price. Committee members were concerned that relatively large purchases could be made without a specific bid for each purpose, but took no further action. Legislation relating to this issue was considered during the 2004 Session, but no action was taken.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT, Hunting preserves and chronic wasting disease control, 11/21/03 IAB, ARC 2976B, FILED.

2003 legislation transferred the regulation of domesticated deer to the Department of Agriculture and Land Stewardship from the Department of Natural Resources. The Department of Agriculture and Land Stewardship adopted new rules in two different areas, establishing rules for commercial hunting preserves and rules to control the spread of chronic wasting disease (CWD).

Opponents of the hunting preserve portion of the rules opposed the limits on the size of the preserve, the fencing requirements, and the tagging requirements. They contended these requirements did not serve any valid regulatory purpose. Most particularly, they objected to the \$1,000 annual fee and questioned the statutory authority to impose the fee. Concerning the regulation of chronic wasting disease, commentators generally supported the program, but contended that it was unfair to charge inspection fees for cervid slaughtered at the locker in which the meat is going to be sold for public consumption, and not charge a similar inspection fees for slaughtering beef, pork, or sheep. They also opposed the \$100 fee for joining the voluntary CWD monitoring program. Department representatives responded that no money was appropriated for

the program, which requires some \$170,000; the representatives stated that without these fees the program would not continue.

The Committee referred this rule to the General Assembly for further study, but took no additional action. With the enactment of House File 2515, the fencing restrictions have been eliminated.

ALCOHOLIC BEVERAGES DIVISION, Dramshop insurance, ARC 2385B, 04/02/03 IAB, ADOPTED.

Dramshop insurance is liability insurance required of all bars and taverns to pay for damage or injuries caused by an inebriated patron. By statute, the level of dramshop coverage is set by the Alcoholic Beverages Division. This rulemaking commenced in August 2001, with a May 2003 effective date; this was one of the longest rulemaking proceedings on record. Under the existing rules, unchanged for three decades, dramshop coverage was set at \$35,000—\$10,000 for bodily injury, with a \$20,000 maximum for multiple injuries and \$5,000 for property damage. Under this revision bodily injury is raised to \$25,000 for an individual, and a new category, loss of support, is set at \$25,000.

The Committee requested a regulatory analysis on the initial proposal. The analysis indicated that the current requirements were adopted in 1973 and since that time the cost of living has increased nearly 400 percent. Of Iowa's 5,000 licensees, 25 percent would experience an increase from 18 percent to 158 percent in their rates while 60 percent would have no increase because they already had more coverage than the amount required by the proposed amendments. The analysis estimates that the total costs of alcohol-related accidents was \$1.2 billion in 2001.

Committee members supported the change but did feel that setting dramshop rates should be done by the General Assembly, not an administrative agency. The Committee referred the rulemaking to the General Assembly, which took no action in 2004.

DENTAL EXAMINERS BOARD, Public health supervision, 12/24/03 IAB, ARC 3041B, FILED.

The board conducted two rulemaking proceeding in 2003 in order to implement the concept of "public health supervision" for dental hygienists. Under this concept, a supervising dentist may enter into an agreement with one or more dental hygienists, allowing the hygienists to perform certain services as specified in the agreement. The agreement must contain standing orders relating to the services to be provided and must contain provisions for consultation between the supervising dentist and the hygienists. The participating hygienists must have at least three years' experience. The rule specifically delineates the sites where these services may be provided: schools; head start programs; federally qualified health centers; public health dental vans; free clinics; nonprofit community health centers; and federal, state, or local public health programs.

The rules remain controversial because under this concept some dental services could be provided by a hygienist on a patient who has never seen a dentist. Specifically, opponents were concerned that the improper application of a dental sealant could result in a more serious dental problem. Another concern was that no limit was placed on the number of hygienists that could be supervised by a dentist. It was also noted that while the rules require written agreements and protocols, there is no provision for the board to approve or even review those documents. The Department of Human Services has voiced support for this change, stating that the application of sealants could significantly reduce dental costs for Medicaid-eligible children.

ARRC members determined that more information was needed concerning the fiscal impact of the proposal and more generally concerning the workings and goals of the proposal. However, the members did not wish to delay the adoption of this filing, so an “informal” regulatory analysis was requested to obtain additional information, but without the publication and adoption delays imposed by the formal process. That analysis was review by the Committee in January 2004. In essence, the analysis concluded that a dental access problem exists in Iowa, with 72 counties and one urban area designated as dental health profession shortage areas. It stated that dental caries was one of the most common problem with school-age children (57 percent), and that only one-third of Medicaid recipients received dental care. The report concluded the rules would broaden access to basic preventative services; more specifically, it stated that the applicant of a sealant was an effective means to combat decay. The Committee took no further action.

EDUCATION DEPARTMENT, Driver’s education fees, SELECTIVE.

Section 282.6, 2003 Code, specifically authorizes Iowa school districts to impose seven fees, including one for driver’s education courses. Driver’s education fees often run as high as several hundred dollars. Section 256.7(20) mandates the department to adopt rules that *require* the school district to waive school fees for indigent families. 281 IAC Chapter 18 of the department’s rules implement the statutory waiver requirement, stating that no public school student may be excluded from course offerings due to a financial inability to pay a fee. Inability to pay is assumed if student’s family meets the financial eligibility criteria for free meals offered under the Child Nutrition Program.

The statutorily mandated waiver is an issue primarily in districts where driver’s education is provided through a contract with private providers. The waiver requires that the district either pay the fee or negotiate a waiver of the fee by the private provider. The waiver costs become a particular concern in schools where waiver eligibility is a significant percentage of the school population. In 2000 the statewide PK-12 total for free or reduced price lunch was almost 27 percent; in some districts that number exceeds 50 percent.

The fee for driver’s education varies up to \$350, making the costs of the waiver significant—and unavoidable since Iowa Code §321.178 requires school districts to make driver’s education available. Private providers stated that many districts would like to privatize driver’s education, but waiver costs were a major sticking point. A private provider claimed he was unable to negotiate an agreement with a local district due to the waiver issue; the district declined to pay the fee for waiver students. Another provider stated that he simply absorbed the cost of waiver students. Department representatives noted the waiver requirements were part of Iowa law, not federal law, and could be changed.

Committee members noted this was a statutory, not a rulemaking, issue. It was referred to the General Assembly for additional consideration. No action was taken in the 2004 Legislative Session.

EDUCATION DEPARTMENT, Professional development, 05/28/03 IAB, ARC 2501B, NOTICE.

The department proposed a series of rules detailing school district responsibilities in implementing a professional development program. This development program was required by §284.6, 2003 Code. Code Chapter 284 establishes a Student Achievement and Teacher Quality Program, of which professional development is a part. At issue in this rulemaking was the

placement of the professional development program rather than the substance of the requirements themselves. The proposed rules were to be incorporated into Chapter 12 of the department's rules, relating to accreditation standards. These standards are mandated and detailed in §256.11(1) through (7), Code 2003. Placing professional development as part of the accreditation standards would have a very significant legal affect; under Iowa law, each district is periodically reviewed to determine compliance with accreditation standards. If a district cannot come into compliance, it will be dissolved and merged into surrounding districts.

Committee discussion centered around the question of whether it was lawful to place the development program as part of the accreditation standards. Committee members noted that §256.11(1) through (7) specifically detail the standards and questioned whether other standards could be added by rule. Department representatives responded that over the years many additions have been made to the accreditation standards by rule, with many of those standards mandated by other sections of the Iowa Code. They also noted that if the standards were strictly limited to those mentioned in the statute, only division five of Chapter 12 would remain; most of the remaining provisions were indeed based on Iowa law, but are not enumerated in the statutory accreditation subsections. Department representatives stated that at the time the accreditation rules were promulgated in 1988, the underlying statute was much broader than the current provisions and gave the department broad discretion to develop detailed accreditation standards in rule.

The Committee took no further action on the proposal. The department did not ultimately place the professional development provisions as part of the accreditation standards.

ENVIRONMENTAL PROTECTION COMMISSION (EPC), High-quality water designation, ARC 2228B, 01/08/03 IAB, NOTICE.

Proposed amendments to 567 IAC Chapter 61 would expand designations for Class "A" waters to include primary contact, secondary contact, and children's recreational use. The amendments would change the bacteria indicator from fecal coliform to E. coli, adopt by reference the surface water classification document, correct names and locations of water bodies, and add a Class "B" ("CW") cold water use designation to a one-mile segment of the upper portion of South Cedar Creek in Clayton County near Garnavillo (item 8). The effect of this cold water designation would be to require the city of Garnavillo to cool the effluent from its wastewater treatment facility.

Committee members were concerned about this potential cost to the small Iowa community and requested a regulatory analysis prior to the implementation of this rule. The analysis noted that a "cold water" designation would have recreational and wildlife benefits for Iowa. The statement also noted that the proposed standard would impact the city of Garnavillo's water treatment requirements by imposing stricter ammonia nitrogen limits. After consideration of the impact of this requirement, the EPC did not implement this particular designation.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, Voter education, 11/26/03 IAB, ARC 2969B, ADOPTED.

A rule change relating to the use of computers sparked a discussion concerning a searchable database for disclosure reports. Iowa law does not require disclosure forms to be filed electronically. While the board does "scan" each report into a database, this scanned information is not completely searchable. Committee members questioned why the board did not create a

searchable database. A board representative responded that the board does not have the resources to manually enter all information into the system. The only viable alternative would be to mandate that all reports be electronically filed. The representative stated that such a decision should be made by the Legislature. Committee members discussed whether it was appropriate to mandate electronic filing, but did not reach a consensus. The Committee did vote a general referral to bring this matter to the attention of the General Assembly.

ACTION: GENERAL REFERRAL of the issue of electronic filing.

GROW IOWA VALUES BOARD, Financial assistance, 08/20/03 IAB, ARC 2698B, EMERGENCY.

Section 15G.107, 2003 Code Supplement, created a “Grow Iowa Values Fund”, setting out eight performance standards which this economic development program must meet. The board “emergency” adopted and implemented temporary rules to ensure speedy implementation of this program. The emergency implementation was controversial because it meant the rules were in effect prior to review by the Committee, although an informal review did take place in August. Board representatives noted that the permanent rules, in order to replace the temporary rules, would be “filed emergency after notice”. Under this concept the notice and public participation component of the rulemaking process is completed, but the final publication waiting period is waived. In effect, this meant that the permanent rules also became effective prior to Committee review. Committee members did acquiesce to this process. Some members were concerned that an emphasis on high-wage jobs could unfairly limit projects in rural Iowa, where the term “high-wage” would have a very different meaning from the definition in urban areas. In response it was noted that high wage jobs need, although the meaning of that term might differ depending on the geographic area. Board representatives stated that the phrase “high-wage” itself has been removed from the new proposals. Members had some concern over the quorum requirement of the board. Under the Act a majority—six members—constitutes a quorum. Under the proposed rules, a vote would carry by a majority vote of those present. Members were concerned that in cases where only six members were present, a measure could be passed with as little as four votes. Committee members also emphasized the need to have the “due diligence” Committee carefully evaluate applications prior to the approval of a project.

HUMAN SERVICES DEPARTMENT, Subsidies for special needs adoptions, 10/29/03 IAB, ARC 2900B, ADOPTED.

The department adopted a series of changes to the adoption subsidy program; this program encourages the adoption of special needs children by providing a variety of benefits and assistance. Department representatives noted that in five years the program had grown from 10 percent to 25 percent of the child welfare budget. Analysis by the Legislative Services Agency indicates these changes are intended to save some \$400,000.

These revisions were very controversial. The Committee heard testimony from a number of adoptive parents who contended the changes would discourage future adoptions and make it extremely difficult to care for special needs children who are currently adopted. Commentators noted that it was especially unfair to change the subsidies available to those who had already adopted children. In part, these issues were resolved when the department agreed to continue a child care subsidy for all parents currently participating in the program; however, Committee members ultimately imposed a session delay on these provisions, with the intention that the General Assembly would resolve these issues during the 2004 Session.

HUMAN SERVICES DEPARTMENT, Medipass patient managers, 07-03-09 IAB, ARC 2583B, EMERGENCY.

House File 479, enacted in 2003, required that advanced registered nurse practitioners (ARNPs) be regarded as approved providers of health care services, including primary care, for purposes of managed care or prepaid services contracts under the Medical Assistance Program. The emergency rules implementing this provision stated that only “independently practicing” advanced registered nurse practitioners, certified in certain designated specialties, could serve as patient managers. Committee members felt this appeared to be more restrictive than the legislation itself. Opponents of this rule contended that the department was confusing the term “independent practice” with the term “self-employed”; they stated that any ARNP is an independent practitioner because an ARNP is not supervised by a physician. It was noted that there are almost 700 ARNPs in Iowa, but only 73 are self-employed.

To address these concerns, the rules were revised to allow any ARNP recognized by the Board of Nursing Examiners to obtain a Medicaid billing number, thus allowing them to bill Medicaid directly for their services. One restriction was retained relating to Medipass patient managers. Only those ARNPs who are primary care providers (six specified categories) may serve as patient managers; this same restriction is imposed on physicians providing patient manager services.

INSPECTIONS AND APPEALS, Dispensing medication in care facilities, 10/01/03 IAB, ARC 28261B, NOTICE.

This proposal, which was ultimately terminated, would have prohibited long-term care facilities from requiring use of unit dose medications as the sole method of dispensing resident prescriptions. Earlier in 2003 the department implemented a similar prohibition, applying only to bulk medications provided by the federal Veterans Administration to eligible veterans. That proposal was not controversial

At issue with this broader proposal was safety of the care facility resident versus economy in the dispensing of medication. As a safety and quality control measure, care facilities often use unit dose medication to provide a single, prepackaged dose direct from the container to the patient. The problem with unit dose is that some residents have insurance or other programs that will provide the needed medication in bulk at a reduced price. Care facilities prefer such a unit system because it is easier to administer and less prone to error. However, a unit dose system is more expensive for those residents who have an alternative source for prescription drugs. This source may be more affordable for the resident, but it is more difficult for the facility to dispense. Care facility representatives stated that the cost of dispensing multiple medications to multiple patients would greatly increase the staff time needed to dispense, increase facility costs, and increase the risk of error. They also questioned whether any cost savings would actually occur, given the increased staff time needed to prepare, document, and administer the dosages. They suggested that increased costs of monitoring and dispensing bulk drugs could amount to \$32 million. It was stated that the better solution would be to allow pharmacists to receive the bulk medications and allow those medications to be repackaged for the facility in unit dose. Nurses also expressed concern that the supervisory nurse in a care facility would face increase liability, perhaps even licensing sanctions due to medication errors. Nursing representatives stated that 75 percent of all nursing errors involved medications.

Department representatives stated that the proposal was an effort to obtain public comment on the broad concept and that the actual language of the rule could well be modified as part of the

rulemaking. They noted there was general support for this concept when applied to veterans; they suggested that residents who had an insurance drug benefit should be entitled to the same opportunity as a veteran. They also disputed that the requirement would displace the unit dose system, contending that only those few residents who had a private insurance drug benefit would opt out of the unit dose system. Department representatives also stated they had been in contact with Department of Human Services representatives, who had no problem with this change.

Committee members had a mixed reaction to this proposal. The concept of making better use of alternative sources for medication was good; it was not controversial when proposed for veterans because facilities generally had very few veterans who had a drug benefit. When applied more generally, there was concern about the fiscal impact and whether any savings to the individual resident would be offset by additional costs to the facility and by increased risk of error. Members were concerned that no fiscal analysis had been done to estimate and weigh all of these costs.

In response to public and Committee concerns, this provision was never adopted.

INSURANCE DIVISION, Unfair trade practices, 07/23/03 IAB, ARC 2616B, ADOPTED.

Pursuant to §507B.6, 2003 Code, the Commissioner of Insurance may determine whether particular insurance activities are unfair or deceptive. In this rulemaking the division introduced the concept of “diminished value” in determining the value of a repaired vehicle. This concept emerged from a 1995 Iowa Supreme Court case which held that the diminished value of a repaired vehicle was part of the compensable damage, even though the repair itself restored the vehicle to preaccident condition. Committee members were unsure whether it is necessary or even desirable to establish a general policy based on a single judicial holding. Members also noted that many issues relating to damage were decided at common law and never codified into rule. For this reason the Committee imposed a session delay on that portion of the filing relating to diminished value. This provision was rescinded by the division during the 2004 Legislative Session.

IOWA LAW ENFORCEMENT ACADEMY, Certification of officers, 07/09/03 IAB, ARC 2561B, EMERGENCY.

Legislation enacted in 2003 allows individuals, at their own expense, to pursue training as law enforcement officers. Under this legislation, an individual who is sponsored by a law enforcement agency and has completed a two-year or four-year police science or criminal justice program at an accredited Iowa educational institution may apply for a short course of study at an approved law enforcement training program. The sponsoring agency must agree to hire or have already hired the individual. That individual must also meet all the minimum hiring standards established by the academy. Legislation also creates a similar policy for individuals wishing to attend the academy itself.

Community college representatives opposed portions of the rules adopted by the academy, contending that various filing and testing requirements in the rules placed unnecessary roadblocks and expenses which discourage applicants from seeking training at community colleges. Opponents noted that applicants at the community colleges are already required to complete a two-year or four-year police science or criminal justice program. Academy representatives responded that the testing and background requirements must be met before an applicant may be

certified; they felt that any problems should be discovered before the applicant has paid for the training.

Committee members focused on the emergency filing itself. The Committee members felt this filing presented a number of unresolved issues that could have been best handled by the publication of a notice of intended action prior to implementation and a full opportunity for public input and discussion. For this reason the Committee placed a procedural objection of this filing, contending that the emergency implementation of these rules was inappropriate. In subsequent discussions compromises were developed that made further action unnecessary.

NATURAL RESOURCES DEPARTMENT, Permanent hunting blinds on the Mississippi River, ARC 2493B, 05-28-03 IAB, NOTICE.

The department proposed a new rule relating to the placement of hunting blinds on the Mississippi River. This proposal did *not* create any new policy, it codified practices that had existed for decades. Under these practice, now embodied in rule, hunters may register a site by paying the prescribed fee and marking a site on a DNR map. Hunters keep the same spot for years, sometimes for generations. Under the rules blinds cannot be locked and, if unoccupied at sunrise, may be occupied by any passerby. Opponents protested that this system allowed the same individuals to stake out the best spots year after year. They contended that a periodic lottery with specified distances between blinds would be a fairer system. Department representatives responded that the current system has been in place for decades and that a change would generate many hard feelings. The representatives also stated that the current system maximizes the use of the blinds, since many of the registrants are local residents who frequently use their blinds or loan them out. They also stated this system encourages the development of well-constructed and well-maintained blinds. No Committee action was taken.

PUBLIC HEALTH DEPARTMENT, Substances used for workplace drug testing, 641 IAC Chapter 12, SELECTIVE.

Chapter 730, 2003 Code, relates to workplace drug testing; in part, it provides that the Department of Public Health can determine the appropriate samples to be used for those tests. In implementing this provision, the department adopted 641 IAC Chapter 12, specifying breath, urine, and blood as the substances appropriate for testing the presence of alcohol or other drugs.

At the request of industry representatives, the Committee heard testimony concerning testing protocols, specifically the use of oral fluids. Commentators stated that Iowa was one of only six states that did not allow the use of oral fluids; they contended oral fluid tests now provide a simple and accurate means of testing for drug use. They also stated this testing was popular with employers and potential employees alike because of its lower cost and the ease in providing a sample by the employee. Department representatives expressed interest in the process if it provides a reliable test result. There was mixed reaction to the proposal, with some presenters favoring the use of saliva as a less intrusive substitute for urine, while others felt the current tests were adequate. Some Committee members opposed any change in rules, contending that any change should come from the statute itself.

2003 legislation has authorized the use of saliva in drug testing.

REAL ESTATE COMMISSION, Interest on trust accounts, ARC 2429B, 04/30/03 IAB, EMERGENCY.

Section 543B.46(1), 2003 Code, requires that each real estate broker maintain a common interest-bearing trust account for the deposit of client funds. In response to a United States Supreme Court decision, the emergency adopted rule *requires* the broker to enter into a written agreement to pay that interest to a buyer or seller if the client's trust funds can earn net interest for that client. If the parties agree, the interest could also be paid to a third party. The rule brings the law within the ambit of the court decision.

UTILITIES DIVISION, Iowa broadband initiative, 7/23/03 IAB, ARC 2620B, NOTICE.

In 2003 Senate File 368 created a "broadband initiative" to provide access, where feasible, to advanced telecommunications services to all areas of the state where these services are not already available at affordable rates. The cost of extending this service is to be met by a \$2 surcharge imposed on the customers in that service area. Committee members expressed concern that the application and review process imposed an excessive burden on broadband providers. It was noted that the approval process was in the form of a tribunal and required extensive preparation by the applicants. The significant issue in this proposal was the cost to the applicant in meeting these plan requirements. Specifically, questions involved the cost to the applicant in preparing a plan for board approval and moving that plan through the process and how those costs could be recovered by the applicant. A related issue involved the cost to the board itself in analyzing and approving that plan.

For these reasons, an informal regulatory analysis was requested. The Committee took no further action.

UTILITIES DIVISION, Railroad crossing by utilities, 05/28/03 IAB, ARC 2506B, ADOPTED.

With the enactment of §476.27, 2003 Code, Iowa became only the second state in the nation to regulate the easement agreements which a utility must obtain to cross each railroad right-of-way. The division then began a negotiated rulemaking to establish in rule the terms and conditions for the crossing of railroad rights-of-way by any public utility. The only controversy unresolved through the rulemaking process involved the insurance that the utility must provide to ensure that the railroad is indemnified from any liability or loss relating to the crossing. In addition to other insurance requirements, the rule required that "excess liability coverage" must be provided with limits of not less than \$5 million, and "railroad protective liability" insurance must be provided with a combined single limit of \$4 million per occurrence and \$6 million in the aggregate. Representatives of small utilities argued that these two types of insurance can be prohibitively expensive when purchased for each crossing. Railroad representatives responded that the cost of an accident was unrelated to the size of the utility, noting that in one case a local derailment, with no injuries, cost over \$1.4 million in repairs.

Committee members felt that the utility and railroad stakeholders could best resolve this issue through negotiation. For that reason the Committee imposed a 70-day delay, and later a session on this filing, in order to provide the interested parties an opportunity to resolve the issue through discussion. This delay was rescinded in December 2003 when the liability issues were resolved through discussion.

APPENDIX A—SUMMARY OF RULEMAKING IN 2003

Agency name	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
TOTAL	20	41	39	23	31	25	38	44	35	48	38	53	435
HUMAN SERVICES DEPARTMENT[441]	8	8	9	3		6	13	4	1	20	2	6	80
Natural Resource Commission[571]	1	1	6	1	4		1	3		2		7	26
Environmental Protection Commission[567]	3	4	2	1	3	3		1	1	2	2	3	25
Professional Licensure Division[645]		3	2				3	5	1	1	4	2	21
College Student Aid Commission[283]		3		6				6		5			20
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]					1		2	1	6	2	6		18
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]						1	3	1	5		1	6	17
REVENUE DEPARTMENT[701]		2			1			1		2	7	4	17
EDUCATION DEPARTMENT[281]		3	5		2				1			5	16
PUBLIC HEALTH DEPARTMENT[641]		2	4			1		2	3			2	14
TRANSPORTATION DEPARTMENT[761]	2	2		3				1		5			13
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]	1		1		3	1		1	1	2	2		12
Educational Examiners Board[282]						1	4	4			2		11
Utilities Division[199]	1				3	2	1	1	1		1	1	11
Insurance Division[191]			1				1	2	1	1		4	10
ADMINISTRATIVE SERVICES DEPARTMENT [11]							1		3	1	3	1	9
Medical Examiners Board[653]	2		1						2	1		3	9
Nursing Board[655]						5			1			2	8
PUBLIC SAFETY DEPARTMENT[661]			2		2		1			2		1	8
Credit Union Division[189]		5							1			1	7
Lottery Division[705]		1		3		2			1				7
Pharmacy Examiners Board[657]	1			2				4					7
Iowa Finance Authority[265]			1		2			1			2		6
WORKFORCE DEVELOPMENT DEPARTMENT[871]			1		1		2	1		1			6
Dental Examiners Board[650]		1			1				2			1	5
INSPECTIONS AND APPEALS DEPARTMENT[481]					1			2	1			1	5
Emergency Management Division[605]				1		1		1			1		4
Labor Services Division[875]		1	1	1							1		4
PERSONNEL DEPARTMENT[581]		1			1		1					1	4
SECRETARY OF STATE[721]			1	1							2		4

Capital Investment Board							1		2				3
Grow Iowa Values Board								1			1		2
LAW ENFORCEMENT ACADEMY[501]							1				1		2
MANAGEMENT DEPARTMENT[541]							1					1	2
Racing and Gaming Commission[491]		1					1						2
Real Estate Appraiser Examining Board[193F]				1			1						2
Agricultural Development Authority[25]					1								1
Architectural Examining Board[193B]		1											1
AUDITOR OF STATE[81]					1								1
CIVIL RIGHTS COMMISSION[161]					1								1
CORRECTIONS DEPARTMENT[201]							1						1
ELDER AFFAIRS DEPARTMENT[321]			1										1
Employment Appeal Board[486]					1								1
Energy and Geological Resources Division[565]							1						1
Engineering and Land Surveying Examining Board[193C]					1								1
GENERAL SERVICES DEPARTMENT[401]		1											1
Landscape Architectural Examining Board[193D]								1					1
Professional Licensing and Regulation Division[193]									1				1
State Public Defender[493]		1											1
Status of Women Division[435]			1										1
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION[751]												1	1
TREASURER OF STATE[781]					1								1
VETERANS AFFAIRS COMMISSION[801]										1			1
Workers' Compensation Division[876]	1												1

APPENDIX B—EMERGENCY RULEMAKING IN 2003

Agency name	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
TOTAL	6	3	4	6	3	3	17	9	6	4	3	9	73
HUMAN SERVICES DEPARTMENT[441]	2	2	1			3	11	3		2	2	3	29
ADMINISTRATIVE SERVICES DEPARTMENT[11]							1		2			1	4
Environmental Protection Commission[567]	1		1							1	1		4
PUBLIC SAFETY DEPARTMENT[661]			1		2							1	4
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]	1				1				1				3
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]								1				2	3

Lottery Division[705]		1		1					1				3
Emergency Management Division[605]				1				1					2
Insurance Division[191]									1			1	2
Pharmacy Examiners Board[657]	1			1									2
Capital Investment Board							1						1
CORRECTIONS DEPARTMENT[201]							1						1
Credit Union Division[189]												1	1
EDUCATION DEPARTMENT[281]									1				1
Grow Iowa Values Board								1					1
LAW ENFORCEMENT ACADEMY[501]							1						1
MANAGEMENT DEPARTMENT[541]							1						1
Natural Resource Commission[571]			1										1
Professional Licensure Division[645]								1					1
PUBLIC HEALTH DEPARTMENT[641]								1					1
Real Estate Appraiser Examining Board[193F]				1									1
REVENUE DEPARTMENT[701]								1					1
SECRETARY OF STATE[721]				1									1
TRANSPORTATION DEPARTMENT[761]				1									1
VETERANS AFFAIRS COMMISSION[801]										1			1
Workers' Compensation Division[876]	1												1
WORKFORCE DEVELOPMENT DEPARTMENT[871]							1						1

APPENDIX C—IOWA AGENCIES

24 Departments
60 Divisions of these departments
4 Constitutional agencies
22 Independent entities
110 Total rulemaking entities

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]
Soil Conservation Division[27]
ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CITIZENS' AIDE[141]
CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]
Banking Division[187]
Credit Union Division[189]
Insurance Division[191]
Professional Licensing and Regulation Division[193]
Accountancy Examining Board[193A]
Architectural Examining Board[193B]
Engineering and Land Surveying Examining
Board[193C]
Landscape Architectural Examining Board[193D]
Real Estate Commission[193E]
Real Estate Appraiser Examining Board[193F]
Savings and Loan Division[197]
Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]
Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]
College Student Aid Commission[283]
Higher Education Loan Authority[284]
Iowa Advance Funding Authority[285]
Libraries and Information Services Division[286]
Public Broadcasting Division[288]
School Budget Review Committee[289]
EGG COUNCIL, IOWA[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPOWERMENT BOARD, IOWA[349]
ETHICS AND CAMPAIGN DISCLOSURE
BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HUMAN INVESTMENT COUNCIL[417]

HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]
Criminal and Juvenile Justice Planning
Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

Status of African-Americans, Division on the[434]

Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INFORMATION TECHNOLOGY DEPARTMENT[471]

INSPECTIONS AND APPEALS DEPARTMENT[481]

Employment Appeal Board[486]

Foster Care Review Board[489]
Racing and Gaming Commission[491]
State Public Defender[493]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY
COUNCIL[521]
MANAGEMENT DEPARTMENT[541]
Appeal Board, State[543]
City Finance Committee[545]
County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY
COUNCIL[551]
NATIONAL AND COMMUNITY SERVICE,
IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
Energy and Geological Resources Division[565]
Environmental Protection Commission[567]
Natural Resource Commission[571]
Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE
TANK FUND
BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY
COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
Emergency Management Division[605]
Military Division[611]
PUBLIC EMPLOYMENT RELATIONS
BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
Substance Abuse Commission[643]
Professional Licensure Division[645]
Dental Examiners Board[650]
Medical Examiners Board[653]
Nursing Board[655]
Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
Archaeologist[685]
REVENUE DEPARTMENT[701]
Lottery Division[705]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]

SHEEP AND WOOL PROMOTION BOARD,
IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY
COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
**WORKFORCE DEVELOPMENT
DEPARTMENT[871]**
Labor Services Division[875]
Workers' Compensation Division[876]
Workforce Development Board and
Workforce Development Center Administration
Division[877]