

THE ADMINISTRATIVE RULES REVIEW COMMITTEE

2002 Annual Report

I. INTRODUCTION. This report covers the final rulemaking actions that were published in the calendar year 2002; it covers the period beginning with the committee's February 2002 meeting through the January 2003 meeting [note that the committee *generally* reviews rules that were published in the previous month].

Iowa state government consists of some 110 entities, set out in Appendix "C". In 2002 59 of these entities promulgated rules—A slight decrease from 2001. The 523 filings in 2002 is the highest level of rulemaking in over ten years. The increase is largely due to the "housecleaning" required by Executive Order #8; that order required all agencies to review all of their rules and eliminate any obsolete provisions and update and revise any others as needed to make them current. The changes are non-controversial but they are numerous. The 2002 filings are detailed by agency and by month in Appendix "A". As always, the Department of Human Services leads the list, with 92 filings (up from 82 in 2001); while 24 of these agencies promulgated one or two filings.

Rule-making filings generally contain more than a single rule change, these filings actually represent over 2000 individual rule additions, amendments or repeals. Rulemaking activity for the last ten years is set out below:

YEAR	AGENCIES	FILINGS	YEAR	AGENCIES	FILINGS
2002	59	523	1997	50	375
2001	64	419	1996	56	392
2000	52	367	1995	53	399
1999	81	506	1994	66	414
1998	53	398	1993	62	493

In 2002 only 64 filings were put into effect using the "emergency" rulemaking provisions of the rulemaking process {Iowa Code §§17A.4 & 17A.5}; this is similar to the 57 emergency filings in 2001, but shows a decrease of over 12% from the 75 emergencies in 2000. Most of these filings were published as a notice of intended action at the same time. These emergency rulemaking filings account for 13 % of the total filings, a similar percentage to the 2001 results. The emergency filings are tabulated in appendix "B". Note that 18 of the 64 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 ten year history for emergency rulemaking is as follows:

YEAR	EMERGENCY FILINGS		YEAR	EMERGENCY FILINGS	
2002	64 (13%)	523	1997	39 (11%)	375
2001	57 (14%)	419	1996	94 (24%)	392
2000	75 (20%)	367	1995	66 (16%)	399
1999	55 (10%)	506	1994	91 (22%)	414
1998	61 (15%)	398	1993	116 (23%)	493

To calculate the volume of rulemaking for 2002, filed documents are counted instead of single rule changes. A filing is *not* a notice of intended action; a filing is only the adoption in final form, 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 2002 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 rule-making 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 2002 total filings breaks down by month in the following chart:

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	TOT
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	375
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 2002 the committee imposed one formal objections, down from two in 1999, one in 2000 and none in 2001. A total of 152 objections have been imposed since 1977. Two session delays were imposed in 2002, tying the number for the previous three years. 63 delays have been imposed since the power was created in 1978. Additionally, the committee imposed four general referrals (three in 2001); four seventy day delays (six in 2001). The committee took eleven formal actions, down from the fourteen in 2001 and sixteen in 2000. The individual actions are summarized below:

III. CALENDAR OF 2002 RULES REVIEW COMMITTEE ACTIONS

Feb 2002 through Jan 2003 ARRC meetings

REVENUE AND FINANCE DEPARTMENT-General Referral, ARC 1342B, Proposed amendments to chs 7, 10, 67, and 81. [Mar-2002]

ENVIRONMENTAL PROTECTION COMMISSION -70-day delay, ARC 1538B, bottle bill [May]. Additional review in July.

HUMAN SERVICES DEPARTMENT-General referral, ARC 1243B, subrule 88.67(8), hospital care [June].

GENERAL SERVICES DEPARTMENT-70 day delay, ARC 1624B, rule 3.4, use of capitol building. [June].

ENVIRONMENTAL PROTECTION COMMISSION-Session delay, ARC 1538B, bottle bill [July]. Note: This issue was resolved in late 2002, thus the actual referral was never made. Compromise language was adopted early in 2003.

HUMAN SERVICES DEPARTMENT-70 day delay, ARC 1839B, Offset procedures[Sept.].

HUMAN SERVICES DEPARTMENT-70 day delay, ARC 1840B, 79.1(15)“d”(4), Waiver services[Sept.]. This issue is unresolved and is the subject of additional committee review in 2003.

INSPECTIONS AND APPEALS DEPARTMENT-Objection, ARC 1760B, vendor licenses [Sept]. This objection has not been resolved.

HUMAN SERVICES DEPARTMENT-Session delay, ARC 1840B, 79.1(15)“d”(4), Waiver services[Nov.].

HUMAN SERVICES DEPARTMENT-General referral, Hawk-I coverage ARC 2087B, [Dec., 2002].

HUMAN SERVICES DEPARTMENT-General referral, Care facility reimbursement ARC 2214B, [Jan. 2003].

IV. SUMMARY OF ISSUES BEFORE THE COMMITTEE

ACCOUNTANCY BOARD. Inactive status, ARC 1581B, 05/01/02 IAB, ADOPTED.

This filing was controversial because it did not allow licensees who do not offer Certified Public Accountant services directly to the public to display the CPA designation followed by the disclaimer “inactive”. Such a designation is desirable because a licensee on inactive status would not be required to obtain continuing education. The board’s position was that in Iowa all working members of licensed professions are required to attend continuing education if they wish to hold themselves out as members of that profession and use the professional titles. The issue was resolved when a special category was created entitled “inactive status”; however, it does not allow persons to practice public accounting or use restricted titles, such as “CPA” and “LPA.” Retired practitioners may use the appellation “CPA, retired”.

DENTAL BOARD EXAMINERS. dental amalgams, 650 IAC 27.7(8), SELECTIVE.

Subrule 650 IAC 27.7(8) prohibited a dentist from recommending the removal of silver amalgams as a cure for illness; it stated:

Recommending removal of restorations or removing said restorations from the nonallergic patient for the alleged purpose of removing toxic substances from the body, when such activity is initiated by the dentist, is an improper and unacceptable treatment regimen.

This prohibition was implemented early in 1995; it involved a situation where a licensee recommended that patients have silver amalgam fillings removed on the theory that the amalgams release tiny amounts of the mercury contained in the amalgams and thus threaten the patient’s health. The board maintains that all scientific studies, including those conducted by the Federal Food and Drug Administration and the Public Health Service do not confirm any long-term adverse affects from silver amalgams. Opponents of this restriction contended that the rule was an unconstitutional restriction on free speech to prohibit a dentist from offering his or her professional opinion on the need to remove amalgams. A board representative noted that if the *patient* initiated the request to have amalgams removed, the dentist could ethically do so.

In May, 2002 the committee requested an Attorney Generals opinion to determine whether this restriction violates the free speech rights of board licensees. In December the Attorney General opined that dentists have a free speech right to voice a personal opinion, while at the same time commercial speech can be regulated by the agency to ensure that it is not false, deceptive or

misleading. As an example, a dentist could not properly state that an amalgam containing mercury was the cause a patients specific ailment, because diagnosis of such ailments is not within the scope of a dental license. However, a dentist could state that mercury is a toxin and the suggest that the patient seek a qualified medical professional for diagnosis and advise.

In response to this opinion the board commenced action to rescind this rule; noting that on a case-by-case the board would review individual cases to determine whether inappropriate advise was given.

EDUCATION DEPARTMENT. Charter schools, ARC 2027, 10/02/02, ADOPTED.

2002 Acts, Senate File 348 requires that the department institute a pilot program for 10 “charter schools”; pursuant to §16 of the Act the legislation is not effective until the department receives federal funds under the federal No Child Left Behind Act of 2001 providing financial assistance for the planning, program design, and initial implementation of these schools. In a surprise announcement department representatives revealed that Iowa’s program was not approved for funding. The representatives noted this disapproval was unexpected, especially in light of the fact that Iowa had asked for only some \$800,000 while other states had requested and received millions of dollars. Committee members speculated that making the legislation conditional on receiving federal funds implied that Iowa had no real commitment to the program. The rules were subsequently rescinded.

EDUCATION DEPARTMENT. “Varsity” competitions, ARC 1363B, 12/06/02, NOTICE ONLY.

To discourage athlete recruiting Iowa Code §282.18(13) prohibits open enrollment students from participating in interscholastic athletic contests and athletic competitions during the student's first ninety days of enrollment in the receiving district. In essence the student is required to wait out the athletic season. The problem is that it applies to all levels of competition, even those low-level competitions where recruiting simply is not an issue. The department attempted to resolve this issue by applying the statutory restriction only to “varsity” competition. This well-meaning proposal had two fatal flaws. The statutory language clearly applies to *all* interscholastic contests and competitions; the statute is unambiguous, making it difficult to find an ambiguity in that language that requires an administrative interpretation. Committee members noted that the plain language of statute could not be changed by rule. The second problem was that no general definition existed for the term “varsity”, meaning that local districts might define any level of competition as non-varsity. Because of these concerns, the rule was never adopted.

EDUCATIONAL EXAMINERS BOARD/EDUCATION DEPARTMENT, Alternative teacher preparation, ARC 1639B & 1650B, 05/29/02 IAB ADOPTED.

Iowa Code §272.2(13) empowers the board of education examiners to “[a]dopt rules to provide for nontraditional preparation options for licensing persons who hold a bachelor's degree from an accredited college or university, who do not meet other requirements for licensure.” The examining board has created a teacher intern program allowing an individual with a baccalaureate degree and three years of experience to become a high school teacher; the license is valid for one year and is not renewable. After completion of the teacher internship year, the teacher intern is eligible for an initial license if the teacher intern has successfully completed the prescribed requirements.

The Department of Education rules relate to the training program itself. Each participating educational institution must form a partnership with a school district or the local area education agency. Under this arrangement The educational institution will screen the applicants for an intern license, verify completion of the program; recommend candidates for intern licensure; supervise the intern during the internship; and recommend those interns eligible for initial licensure. The school district or the AEA must provide employment and supervision for the applicant; participate in the mentoring and induction program; and avoid placing excessive extracurricular obligations on the intern.

ELDER AFFAIRS DEPARTMENT. Assisted living programs, 7/10/02 IAB, ARC 1814B, ADOPTED.

The Department of Inspections and Appeals, acting on behalf of the Department of Elder Affairs now provides the “re-certification monitoring” for assisted living programs as required by Iowa Code §231C.3. At issue in this rulemaking was not the rules themselves, instead it was the procedure used by the Department of Inspections and Appeals to determine whether residents in an assisted living facility need a higher level of care than the program is licensed to provide. The department monitors assisted living programs and sometimes determine that a particular resident requires a higher level of care than the program can lawfully provide. Department representative contended that in these situations the program is actually operating as an unlicensed residential or intermediate care facility, and has threatened action unless the resident was moved. To some extent the adopted rules helped this situation by establishing a series of general criteria used to determine whether assisted living provides an appropriate level of care. Additional detail is also provided for each residents service plan, which notes changes in residents’ health and required level of care. Committee members did feel these standards were appropriate to determine whether assisted living provided the appropriate level of care; however, members did not feel that the Department of Inspections and Appeals should have the sole authority to make that decision.

In consultation with the Committee, the Administrative Rules Coordinator formed an ad hoc committee to develop an informal review procedure for level of care issues. A form letter was developed for those situations where the Department of Inspections and Appeals determined that a client requires a higher level of care than the program is certified to provide. The letter invites the program, the tenant or any other interested person to provide “*comment, information, and/or documentation*” relating to the tenants condition. This provision allowed for an independent assessment of the tenants condition by a trained professional. The department will then “thoroughly consider the response” prior to issuing its report. The committee accepted this process as a stop-gap measure until the legislature had an opportunity to fully review this issue.

ENVIRONMENTAL PROTECTION COMMISSION. Manure management plans, ARC 0938B, 01/09/02 IAB, ADOPTED.

Overshadowed by later livestock confinement rulemaking, this filing expanded the use of manure management plans by requiring the owner of planned medium-sized confinement facilities to file the plan at least 30 days prior to initiating construction. This revision applies to any facilities which is not required to obtain a construction permit but which still must file a manure management plan. The plan must include documentation that the plan has been filed with the county where the operation is located and information pertaining to separation distances and ownership/management of other nearby operations.

Under current provisions, “large” confinement feeding operations (1000 cattle, 2500 swine) must obtain a permit prior to construction, which means these operations have to submit a manure management plan and have it approved by the EPD before a permit can be issued. “Medium” facilities (over 200,000 pounds swine, 400,000 cattle) are not required to obtain a permit, but must submit a manure management plan. Submittal is not required until well after construction has already occurred. Under this change these medium facilities must file manure management plans with the EPC and submit copies to the county where the facilities will be located; *however, no approval by either entity is required.*

ENVIRONMENTAL PROTECTION COMMISSION. Interim matrix, ARC 1899B, 08/21/02 IAB, EMERGENCY.

Senate File 2293 called for the creation of a temporary matrix for the evaluation of applications for confinement feeding operations; this “interim matrix” was to be used until a permanent matrix was adopted and effect on March 1, 2003. [That permanent matrix was reviewed by the committee in February, 2003]. The interim matrix used a point system, based on a series of criteria set out in the Act. Under this matrix, points were awarded based on separation distances in excess of minimum requirements; a successful applicant was required to obtain at least 100 points. Points were awarded for increasing levels of separation from a residence, commercial enterprise or religious institution; a public use area; a primary highway; a major or high quality water source or other waterway; and a critical public area. There was some concern that the criteria for critical public area does not reflect the specific limitation on this term set out in 6 of the Act, which requires that the have “*unique scenic, cultural, archaeological, scientific, or historic significance or contains a rare or valuable ecological system.*” The interim matrix included all refuges, wildlife areas and parks.

ENVIRONMENTAL PROTECTION COMMISSION. Beverage container deposits, ARC 1538B, 04/17/02 IAB, ADOPTED.

For the first time in over 15 years the division redrafted the rules implementing the deposit law. Iowa Code Chapter 455C requires that beverage distributors pick up empty containers from approved redemption centers and retailers. In April 2002 new rulemaking expanded this requirement by enlarging the definition of an approved center and by including “deal-agents” in the pick-up requirement and by expanding the distributor reimbursement requirements. The rules also allow redemption centers to be approved even if they do not have a pick-up agreement with a specific dealer. These dealer agents contract with retailers to pick-up their cans in order to get them out of the retail establishment. Opponents contended these provisions go well beyond the authority delegated in Chapter 455C, maintaining that the statute explicitly identifies the entities from whom distributors must pick up containers; the opponents state that the rules improperly impose additional obligations not set out in the statute. The department responded that the rules did nothing more that reflect current business practices and encourage the growth of redemption centers.

After almost a year, two rulemaking procedures, two delays and an Attorney General opinion, all issues were satisfactorily resolved early in 2003. Under the final version a redemption center that provides beverage container sorting or handling services for a dealer but which is not an approved redemption center for the dealer may file with the department an application for certification as a redemption center for the dealer. Additionally, unapproved redemption centers in existence on May 22, 2002, and served by distributors on a voluntary basis may formalize that

arrangement by registering with the department. Distributors must pick up cans from these “registered” centers, but the frequency of pickup depends on the distance from the retailer.

GENERAL SERVICES DEPARTMENT. Service contracts, ARC 1911B & 1912B, 08/21/02 IAB. ADOPTED.

Iowa Code §8.47 requires the department to adopt uniform terms and conditions for service contracts executed by a department or establishment benefiting from service contracts. The contracts often cover a wide variety of services, including professional services such as architects or engineers services To implement this requirement the department implemented rules which were drafted in consultation with the Attorney General, the Departments of Management, Revenue and Finance and Personnel.

The rules set out a number of clauses that must be contained in service contracts. Agencies have discretion to include a variety of provisions in service contracts, but certain clauses must be present in all contracts. A payment clause must describe the amount or basis for paying consideration based on the performance of the service provider. One professional service provider noted that in service contracts the fee was often of less consideration than the qualifications and skills of the professional and that individual’s general competence to perform the required service. It was suggested that a “competitive procurement process based on qualifications” be utilized instead. Under this process, after qualified applicants were found, costs would be negotiated that were fair and reasonable. Committee members generally supported the concept of including price as part of the bidding process A second concern, particularly for architects and engineers, was contingency fees. The comment was made that often the completion of a project hinged on matters beyond the control of the architect or the engineer and that payment should be contingent only on the successful performance of those services. A third concern was that the performance criteria were vague.

GENERAL SERVICES DEPARTMENT. Amplified sound in public buildings, ARC 1730B, 06/26/02 IAB, NOTICE.

Under Iowa law the Department of General Services is the responsible for management for the public areas in state buildings. Pursuant to this authority the department proposes rules restricting the use of sound equipment in state buildings. In response to noise complaints the department proposed to restrict the use of sound equipment in the state capitol itself. Committee members felt that the capitol, as the seat of government, should not restrict the right of peaceful public assembly in the building. Members felt that any problems with loudness could be individually addressed by patrol members stationed in the building. A secondary issue involved the use of the second floor rotunda. Members maintained this was legislative space that should not be regulated by the department. Members felt that the second floor rotunda was jointly controlled by the House and Senate and that any approval by the department in the second floor rotunda area was inappropriate. The proposal was never implemented.

HUMAN SERVICES DEPARTMENT. Iowa plan for behavioral health, ARC 1243B, 01/09/02 IAB, ADOPTED.

Under the Department's "keep kids safe" policy, even when there is no longer psychosocial necessity or service necessity for hospital treatment, payment for continued care will be extended up to 14 days while appropriate alternative care is found for the child. Opponents of this provision contend it limits, not extends care since the prior rules had no such limitation; in essence that meant that hospital care could continue care and receive payment until an appropriate non-hospital placement could be found. The opponents noted that the most common scenario occurred when an appropriate placement had in fact been found, but there was a waiting list delaying actual transfer. Opponents wanted the rule to state that in such a circumstance payment would continue until an appropriate bed was available. Committee members did feel that it was appropriate that some cap be placed on hospitalization, to ensure that clients were promptly moved to other settings, with reimbursement continuing when a transfer was actually impossible. The committee did commit to additional review if problems developed with this limitation.

HUMAN SERVICES DEPARTMENT. In-home child care, ARC 2085B, 10/30/02 IAB, EMERGENCY AFTER NOTICE.

2002 Acts Senate File 2205 requires all homes serving six or more children to register as day care providers. The Act creates three categories of registration with increasing regulation at each level. Committee members noted that the general language of Senate File 2205 has resulted in a complicated series of regulations that can be intimidating to day care providers. Members were concerned this level of regulation would especially impact the availability of affordable child care in rural Iowa. Proponents of the rules noted that under these rules day care means more than mere baby sitting and that the care provider must now play a role in child care development. Department representatives stated that the burdens imposed by the rules are far less than the care providers initially perceived and that the requirements gradually increase as the number of children increase. They also noted the provisions for temporary or part-time child care provide the flexibility providers need to adjust to special or emergency situations.

HUMAN SERVICES DEPARTMENT. Residential programs under home and community based waiver, Ch. 77 & 78, SPECIAL REVIEW.

Certain residential programs for persons requiring mental health or developmental disability services are exempted from licensure requirements as care facilities under Iowa Code Chapter 135C. 2002 Iowa Acts, House File 2416 eliminated a provision from Iowa Code Chapter 135C that created an exemption from licensure for five bed programs; it was thought at that time an exemption could be administratively provided; the Department of Inspections and Appeals stated that the elimination of this exemption required Chapter 135C licensure for these facilities. The department felt legally obligated to implement the letter of the Act.

The implementation of this requirement would have imposed a significant hardship on five bed facilities that would be required to begin the process of obtaining a license as a residential care facility under Chapter 135C. Committee members strongly urged that the intent of HF 2416 was *not* to require licensure and members insisted delaying this provision until legislation could address this problem.

HUMAN SERVICES DEPARTMENT, Reimbursement: home and community based waiver, ARC 1840B, 79.1(15) 8/07/02 IAB, ADOPTED.

Following a several reviews a session delay was placed on this specific provision in October. 2002 Acts House File 2416, §5 provides that the annual inflation factor used to adjust home and community based waiver service provider's reimbursement rate shall not exceed the percentage increase in the employment cost index (ECI) for the most recently completed calendar year. The provisions adopted by the Department of Human Services retain current rule language utilizing the consumer price index (CPI) for all urban consumers. The rule is lawful because the Act uses the phrase "shall not exceed", meaning that the actual level could be set at less than the ECI. Committee members still felt this action was a complete rejection of the legislative intent of the Act and imposed the delay with the intent of seeking new legislation.

HUMAN SERVICES DEPARTMENT, Targeted case management: MI, MR, DD, 01/08/03 IAB, ARC 2233B, EMERGENCY AFTER NOTICE.

This filing has been reviewed several times. Late in 2002 the department discovered that it did not have rules in place detailing eligibility for mental illness, mental retardation and developmental disabilities services. Fearing a federal audit, the department emergency implemented case management and prior authorization rules for these services.

Case management does not provide direct care. It is essentially an administrative service, first providing assessment of the individual's need and then enrolling the individual into the needed diagnostic and evaluation services. The prior authorization component would require that the case manager obtain approval for the client before case management can be instituted. The overriding controversy has always been that a third-party contractor will provide the prior authorization for services to the chronically mentally ill. Case management services are provided on the county level; county representatives were willing to accept prior authorization by state employees but they opposed delegating that authority to a private contractor. Their concern was that the contractor had a financial incentive to deny services. Department representatives responded that only the contractor had the necessary expertise provide prior authorization for the chronically mentally ill. In addition, they noted that the contractor's reimbursement was capped at a certain level, removing any financial incentive to deny care. Lastly, department representative promised through oversight and review of the contractor's actions.

In January the committee imposed a 70 day delay on the prior authorization portion of the rules. Based on the department's assurances that it would carefully monitor the activities of the contractor, the committee took no further action, allowing the delayed portions relating to prior authorization to go into effect in 2003.

NATURAL RESOURCES DEPARTMENT, Chronic wasting disease in deer, ARC 1664B, 05/29/02 IAB, EMERGENCY.

Chronic Wasting Disease, or CWD, is distantly related to scrapie and mad cow disease; it was first observed in Colorado in 1967, where captive deer began losing weight on diets that were sustaining other deer. The disease has only been found in cervids (members of the deer family), and is seemingly not harmful to humans. However, no part of a deer or elk with evidence of CWD should be eaten by people or other animals. CWD has been identified in seven Midwestern and Western states. The Department of Natural Resources is now worried that if CWD spread to Iowa deer, it could affect the hunting industry. This rule has three main parts: it imposes a four month moratorium on importing live, adult white tailed deer into Iowa; it places restrictions on importing deer carcasses from areas where chronic wasting disease is endemic; and it requires

new game breeders and shooting preserves to purchase white-tailed deer only within the state of Iowa for a period of one year.

NATURAL RESOURCES COMMISSION, bow hunting, 12/11/02 IAB, ARC 2184B, ADOPTED.

The DNR regulates both the length of hunting seasons and the method of taken. Traditionally the bow season is longer than the firearm season because of the increased difficulty in bow hunting. In this rulemaking the DNR established minimum bow and arrow lengths for both the deer and turkey season. At issue was a new high-technology bow which discharges a short, bolt-like projectile—however, it is not a crossbow. The department's rule prohibits this new bow, contending that the longer bow season is set aside for the more primitive, and difficult to use traditional bows. A representative from the Iowa Sportsmen's Federation opposed this restriction noting the new bows cost over \$600 and that prohibiting their use imposes a financial hardship on persons purchasing these devices before the ban was put in place. Iowa bow hunters supported the restriction, stating that the new device should not be treated as a bow because it had a far greater range than the traditional bow and required less practice and skill. The committee took no adverse action on this filing.

PUBLIC HEALTH DEPARTMENT, Dispensing of birth control pills to minors, 641 IAC Ch. 74, SELECTIVE.

The committee reviewed the question of confidentiality for birth control services provided to minors. Specifically whether federal law requires that family planning services, including birth control, be provided to unemancipated minors without parental notification or consent. The rules implementing the federal legislation were adopted in 1980 and require local projects to provide services without regard to religion, race, color, national origin, handicapping condition, age, sex, number of pregnancies, or marital status and require confidentiality. The federal legislation does not require confidentiality. Members requested statistical information concerning the numbers of adolescents obtaining birth control pills and the protocols used to ensure that sexual abuse was not occurring.

PUBLIC SAFETY DEPARTMENT. Fire safety: bed and breakfast homes & inns, ARC 1279B, 01/23/02 IAB, EMERGENCY.

Iowa Code §137C.35 empowers the fire marshal to develop specific rules for “bed and breakfast” homes and inns. Bed and breakfast homes and inns are basically tiny hotels. Homes may have no more than four guest families while inns may have no more than nine guest rooms. In keeping with their unique status Iowa law calls on the fire marshal to develop limited fire safety rules for these facilities.

Late in 2001 the committee heard allegations that the fire safety rules were at odds with the requirements of some local fire safety codes. Other concerns centered around the cost of installing *interconnected* fire alarms in every guest room. Finally in 2002 the department compromised these concerns by allowing battery operated smoke detectors in existing facilities, dropping the interconnection requirement. However, the department insisted that each story have two separate exits; “emergency” ladders are not acceptable. The compromise was agreed to by all those concerned.

VISION IOWA BOARD, Vision Iowa grants, Chapter 212 IAC, SELECTIVE REVIEW.

In response to a legislator request the committee reviewed the grant procedures for disbursing Vision Iowa funds. Two reviews were held in 2002. As part of the award process, following board approval of a project, the board appoints a negotiating team, made up of board and staff members, to negotiate project terms with the applicant. If the negotiations are not finalized the award will not be made. Once the negotiations have been completed the project and its terms are reviewed by the entire board and final approval is given. This negotiation process is not detailed in the rules; however, board representatives cite to various existing rules that provide the foundation for these negotiations.

Opponents of this negotiation process contend that the process should be fully detailed in rule, in part to limit the board's discretion in negotiating these agreements. They contend that the negotiation process was one-sided and that the applicant had little leverage in the process. The opponents cite the example of Polk County, contending that the negotiation process required the commitment of certain funds that will in the future imperil county contributions to numerous civic projects. Board representatives deny this allegation and respond that the negotiations ensure that the Polk County Event Center could be built without a tax increase. More generally, board representatives contended that the negotiations resulted in increased local contributions and resulted in an increased number of grants.

Committee members applauded the Vision Iowa process, especially the number of projects funded by the program. Members did request that the negotiation process should be at least generally outlined in the rules if any future grants were possible.

Emergency Management Division[605]	0	0	0	1	0	0	0	0	0	0	0	0	1
EMPOWERMENT BOARD, IOWA[349]	0	0	0	0	0	0	0	1	0	0	0	0	1
Energy and Geological Resources Division[565]	0	0	1	0	0	0	0	0	0	0	0	0	1
Landscape Architectural Examining Board[193D]	1	0	0	0	0	0	0	0	0	0	0	0	1
Persons With Disabilities Division[431]	0	0	1	0	0	0	0	0	0	0	0	0	1
Real Estate Appraiser Examining Board[193F]	0	0	0	0	0	0	0	0	0	1	0	0	1
School Budget Review Committee[289]	0	0	0	1	0	0	0	0	0	0	0	0	1
Soil Conservation Division[27]	0	0	0	0	1	0	0	0	0	0	0	0	1
Status of African-Americans, Division on the[434]	0	0	1	0	0	0	0	0	0	0	0	0	1
TELECOMMUNICATIONS & TECHNOLOGY COMM.[751]	0	1	0	0	0	0	0	0	0	0	0	0	1
TREASURER OF STATE[781]	1	0	0	0	0	0	0	0	0	0	0	0	1
WORKFORCE DEVELOPMENT DEPARTMENT[871]	0	0	0	0	1	0	0	0	0	0	0	0	1
Preserves, State Advisory Board[575]	0	1	0	0	0	0	0	0	0	0	0	0	1
TOTALS	39	52	43	45	56	33	32	52	57	49	35	30	523

APPENDIX #B-EMERGENCY RULEMAKING IN 2002

Agency name	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
HUMAN SERVICES DEPARTMENT[441]	1	2	1	1	2	0	3	3	2	1	0	2	18
Environmental Protection Commission[567]	0	1	0	1	0	0	2	2	0	1	0	0	7
PERSONNEL DEPARTMENT[581]	0	0	1	0	1	1	1	0	0	1	0	0	5
PUBLIC SAFETY DEPARTMENT[661]	1	1	0	0	0	2	0	0	0	0	0	0	4
PUBLIC HEALTH DEPARTMENT[641]	0	1	0	0	1	0	0	0	1	0	0	0	3
SECRETARY OF STATE[721]	0	0	0	1	0	0	0	1	0	1	0	0	3
Dental Examiners Board[650]	0	0	0	0	0	0	1	0	0	0	1	0	2
EDUCATION DEPARTMENT[281]	0	0	0	0	0	0	0	0	0	0	0	2	2
INSPECTIONS & APPEALS DEPARTMENT[481]	0	0	0	0	0	1	1	0	0	0	0	0	2
Natural Resource Commission[571]	1	0	0	0	1	0	0	0	0	0	0	0	2
City Finance Committee[545]	0	0	0	0	0	0	0	0	0	1	0	0	1
CORRECTIONS DEPARTMENT[201]	0	0	0	0	1	0	0	0	0	0	0	0	1
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]	1	0	0	0	0	0	0	0	0	0	0	0	1
Educational Examiners Board[282]	0	0	0	0	0	0	0	0	0	1	0	0	1
GENERAL SERVICES DEPARTMENT[401]	0	1	0	0	0	0	0	0	0	0	0	0	1
INFORMATION TECHNOLOGY DEPARTMENT	0	0	0	0	1	0	0	0	0	0	0	0	1
Insurance Division[191]	0	0	1	0	0	0	0	0	0	0	0	0	1
Labor Services Division[875]	0	0	0	0	0	0	0	0	0	0	0	1	1
Medical Examiners Board[653]	0	0	0	0	1	0	0	0	0	0	0	0	1
Nursing Board[655]	0	0	0	0	0	1	0	0	0	0	0	0	1
REVENUE AND FINANCE DEPARTMENT[701]	0	0	1	0	0	0	0	0	0	0	0	0	1
State Public Defender[493]	0	0	0	0	0	0	0	0	1	0	0	0	1
TREASURER OF STATE[781]	1	0	0	0	0	0	0	0	0	0	0	0	1
Utilities Division[199]	1	0	0	0	0	0	0	0	0	0	0	0	1
Workers' Compensation Division[876]	0	0	0	0	1	0	0	0	0	0	0	0	1
WORKFORCE DEVELOPMENT DEPARTMENT[871]	0	0	0	0	1	0	0	0	0	0	0	0	1
TOTALS	6	6	4	3	10	5	8	6	4	6	1	5	64

APPENDIX #C-IOWA AGENCIES

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60 Divisions of these departments

04 Constitutional agencies

22 Independent entities

110 total rulemaking entities

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Deaf Services Division[429]
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PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
Substance Abuse Commission[643]
Professional Licensure Division[645]
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VETERANS AFFAIRS COMMISSION[801]

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VOTER REGISTRATION COMMISSION[821]

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Workers' Compensation Division[876]

Workforce Development Board and

Workforce Development Center Administration Division[877]