

THE ADMINISTRATIVE RULES REVIEW COMMITTEE

2001 Annual Report

I. INTRODUCTION. This report covers the final rulemaking actions that were published in the calendar year 2001; it covers the period beginning with the committee's February 2001 meeting through the January 2002 meeting.

Iowa state government consists of some 109 entities. There are 29 umbrella agencies, 60 divisions having some level of rulemaking autonomy, 19 independent agencies and one legislative agency. In 2001 64 of these entities promulgated rules—An increase of over 12% from the 52 agencies promulgating rules in 2000. The 419 filings in 2001 is the second highest level of rulemaking since 1995. The 2001 filings are detailed by agency and by month in Appendix "A". As always, the Department of Human Services leads the list, with 82 filings; while 33 of these agencies promulgated two or fewer filings.

Rule-making filings generally contain more than a single rule change, the 419 filings actually represent over 1600 individual rule additions, amendments or repeals. Rulemaking activity for the last ten years is set out below:

YEAR	AGENCIES	FILINGS	YEAR	AGENCY	FILINGS
2001	64	419	1996	56	392
2000	52	367	1995	53	399
1999	81	506	1994	66	414
1998	53	398	1993	62	493
1997	50	375	1992	61	493

In 2001 only 57 filings were put into effect using the "emergency" rulemaking provisions of the rulemaking process {Iowa Code §§17A.4 & 17A.5}; a decrease of over 20% 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 14% of the total filings, also a significant decrease from the 2000 percentage—and the second lowest in 10 years. The emergency filings are tabulated in appendix "B". Note that 22 of the 57 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
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
1997	39 (11%)	375	1992	92 (19%)	493

To calculate the volume of rulemaking for 2001, 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 2001 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 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 2001 total filings breaks down by month in the following chart:

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	TOT
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 2001 the committee imposed no formal objections, down from two in 1999 and one in 2000. A total of 151 objections have been imposed since 1977. Two session delays were imposed in 2001, tying the number for 1999 and 2000. 61 delays have been imposed since the power was created in 1978. Additionally, the committee imposed three general referrals (six in 2000); six seventy day delays (six in 2000); and three requests for a regulatory analysis (one for 2000). The committee took fourteen formal actions, down from the seventeen in 1999 and sixteen in 2000. The individual actions are summarized below:

III. CALENDAR OF 2001 RULES REVIEW COMMITTEE ACTIONS

Feb 2001 through Jan 2002

February 2001

70 day delay: 645 IAC 281.3, ARC 0398B; continuing education for social workers.
(Professional Licensure Division)

March 2001

70 day delay: 567 IAC 22.1, ARC 0472B; controlling pollution. (Environmental Protection)

April 2001

70 day delay: 661 IAC 5.800-810; ARC 0566B, Bed & Breakfast Inns. (Public Safety)

May 2001

70 day delay: 641 IAC 38.8(11); ARC 597B, nuclear waste (Public Health)

June 2001

General referral: 645 IAC rule 141.6; ARC 0704B, use of temporarily licensed administrators in nursing care facilities.(Professional licensure)

Regulatory analysis: 567 IAC 118, ARC 0668B, disposal of white goods. (Environmental Protection)

Session delay: 661 IAC 5.800-810; ARC 0566B, Bed & Breakfast Inns. (Public Safety)

July 2001

General referral: 701 IAC 17.9, Sales tax on elk raised as livestock. (Revenue and Finance)

Session day delay: 641 IAC 38.8(11); ARC 597B, nuclear waste (Public Health)

General referral: 481 IAC 31.7; temporary food vendor license. (Inspections & Appeals)

September 2001

Regulatory analysis: 185 IAC 5.8, ARC 0854B; Dram Shop insurance (Alcoholic Beverages).

November 2001

Regulatory analysis: 567 IAC Ch. 10; tax certification of pollution control or recycling

Property. (Environmental Quality)

January 2001

70-day delay: 282 IAC 12.2, ARC 1185B; Grounds for licensure. (Education Examiners)

70-day delay: 567 IAC 118, ARC 1190B, disposal of white goods. (Environmental Protection)

IV. SUMMARY OF ISSUES BEFORE THE COMMITTEE

CORRECTIONS DEPARTMENT, Inmate telephone calls, 05/02/01 IAB, ARC 0649B.

The collection and use of inmate telephone rebate funds has always been a perennial issue before the ARRC. All calls into a correctional institution are toll calls and that money is put into a special fund; the department will use that money only for projects that benefit offenders. Expenditures may include, but are not limited to, projects that provide educational, vocational or recreational services or projects, or work or treatment programs for offenders. Expenditures may also be used to initiate new programs, services, or projects. Institutions are to give spending priority to programs, services, and projects that promote the health and welfare of offenders.

A compromise has been worked out providing a limited amount of legislative oversight {but no direct control} over disbursement of these funds. Under this compromise the director will notify the chairpersons and ranking members of the justice systems appropriations subcommittee of the proposals *prior* to the corrections board approval of the expenditure.

CORRECTIONS DEPARTMENT, Prison Industries: sales in competition with private enterprise, SELECTIVE.

Although it is not a rulemaking issue, the sale of goods and services by Prison Industries (IPI) has frequently been reviewed by the ARRC. In 2001 the ARRC twice reviewed allegations that prison industries operated in direct and unfair competition with private Iowa business.

The first issue involved the sale of signposts by Prison Industries. The manufacture and sale of traffic *signs* has long been an accepted part of prison industries business; IPI provided the signs while a private vendor provided the supports. A controversy arose when prison industries began purchasing signposts from a vendor and re-selling them in Iowa. Post distributors contended that prison industries was acting merely as a distributor of a manufactured product, not engaging in meaningful inmate labor. They also contended that it was unfair for the government to enter a market already developed by private enterprise. The Citizens Aide/Ombudsman (CA/O) investigated this situation at the request on the Committee. The CA/O noted that Iowa law allows prison industries to act as a distributor "*only when directly related to the product line.*" It was generally conceded this would allow the sale of a post when provided in conjunction with the sale

of a sign. Representatives from IPI agreed that the department would provide posts only for those signs that prison industries sold. In addition those representatives stated that as soon as feasible prison industries would begin manufacturing posts as part of its product line.

The second issue involved Iowa Code §904.808, which specifically provides that state agencies *must* buy products from Iowa Prison Industries if IPI offers a product of comparable quality, cost and delivery timeline. In the area of modular furniture, the Department of General Services traditionally negotiated price contracts with Iowa vendors and state agencies simply “buy off the contract”, directly from the vendor, for their modular furniture needs. Prison Industries developed a new line of refurbished modular furniture and General Services implemented a new policy relating to the purchase of used modular furniture: For purchases under \$5,000 agencies could purchase directly prison industries or a targeted small business vendor. For purchases over that amount, a bid process would be used in which IPI would have an opportunity to bid. This new policy had a severe impact on a local business which held the current contract for refurbished modular furniture. The business objected first that it was unfair for IPI to enter a business in direct competition with private enterprise; second, the business opposed the provisions allowing direct purchase from IPI for amounts under \$5000. IPI representatives defended the new policy, citing their obligation to provide labor to prison inmates and their need to make a profit on that work as a self-sustaining operation. IPI has now developed the capability to refurbish modular furniture and has shortened its delivery time. For these reasons, and noting that it will issue a waiver for any product it cannot provide in a timely manner at a competitive price, IPI representatives felt that the new policy was a fair mechanism for marketing modular furniture to state agencies.

EDUCATIONAL EXAMINERS BOARD, Revocation and suspension, 04/04/01 IAB, ARC 0603B.

Under these rules the boards’ executive director, in limited and very specific circumstances, may initiate complaints against licensees (teachers and administrators); that complaint would then be adjudicated by the board, using the contested case process. This practice is common for other licensing boards; it was, however, a departure from the Educational Examiners Board’s past practice, which previously limited actions to formal complaints. The board contended this change was needed because in a number of situations licensees had committed serious offenses, which, for a variety of reasons, were never filed as complaints. Educator groups initially expressed some reservation over the change, contending that the statutory scheme allowed board action only on complaint; but ultimately they agreed that a very limited authority to initiate complaints was acceptable.

Iowa Code §272.2(14) and (15) state in part that the board may:

14. Adopt rules which permit the board to deny a license to or revoke a license of a person upon the board's finding by a preponderance of evidence that either the person has been convicted of a crime or that there has been a founded report of child abuse against the person. ...

15. Adopt rules that require specificity in written complaints that are filed by individuals who have personal knowledge of an alleged violation and which are accepted by the board, ...

Under these new rules the agency director may initiate a complaint in a small number of very specific situations, where the facts of the case are not in dispute; specifically, situations where a licensed practitioner:

⌘ Has committed a *felony* [note that misdemeanors do not count, except as outlined below] that clearly and directly relates to the practitioners fitness or ability;

- ⌘ Has committed a misdemeanor where the victim was 18 or under that clearly and directly relates to the practitioners fitness or ability;
- ⌘ Is the subject of a founded report of child abuse that clearly and directly relates to the practitioners fitness or ability and has been placed on the registry.
- ⌘ Has falsified a license or authorization or has submitted false information.

EDUCATION EXAMINERS BOARD, licensure eligibility, 12/12/01 IAB, 1185B.

The board implemented a set of rules which *authorize* (but do not require) either the denial of a license or the imposition of discipline based on a criminal conviction or a founded report of child abuse. The board licenses both educators and administrators. This filing sets out five criteria for the board to use in determining whether a person should be denied a license or whether a licensee should be disciplined based upon a criminal conviction or founded report of physical or sexual abuse of a child.

Committee members felt that a criminal conviction of child sexual abuse should automatically result in license revocation or denial. Board representatives cited Iowa Code §272.2(14) which clearly made action discretionary, not mandatory. Board representatives did concede that Chapter 272 itself had conflicting language on this point. §272.6 uses the term “shall”, which normally does not grant discretion {the word “may” is discretionary}. Instead, the word “shall” imposes a duty; in this case a duty to disqualify any time an applicant has committed any felony, act of child abuse or act of sexual abuse. On the other hand, §272.2(14) is discretionary, thus revealing a conflict within the statute itself.

The assistant attorney general for the board stated that courts had found both equal protection and due process problems in making disqualifications automatic. Committee members felt that there was clear legislative intent for automatic disqualification following a criminal conviction for child abuse, even though the statute may be otherwise ambiguous. In order to allow the General Assembly to deal with this issue and resolve the discrepancy, the committee imposed a session delay on this filing, requesting that the General Assembly clarify the statutory language.

DEPARTMENT OF ECONOMIC DEVELOPMENT, 11/14/01 IAB, 1038B.

DEPARTMENT OF TRANSPORTATION, 08/08/01 IAB, ARC 0856B.

Redevelopment of Brownfield sites.

A Brownfield site is an abandoned, idled, or underutilized industrial or commercial facility where expansion or redevelopment is hindered by environmental contamination. It includes property contiguous with the property on which the individual or commercial facility is located. In essence the program funds the rehabilitation of contaminated property that is not on the superfund list.

The Department of Transportations’ RISE program promotes economic development in Iowa through the establishment, construction, improvement, and maintenance of roads and streets. It is targeted toward value-adding activities to provide maximum economic impact to the state. 2000 Iowa Acts, Chapter 1101, §6 required the department to amend its existing rules for local development projects to include a rating factor for remediation or redevelopment of a Brownfield site. The department will award 5 points for a Brownfield remediation.

2001 Iowa Acts, Chapter 156 provides that agencies providing economic assistance may give additional consideration or points to a person or business located in a Brownfield site or similar

blighted or distressed area. The Department of Economic Development rules offer up to 10 extra points for projects in these areas.

ENVIRONMENTAL PROTECTION COMMISSION. Discarded appliance demanufacturing, 12/12/01 IAB, ARC 1192B.

The EPC completely revised and expanded its decade-old regulations for disposing of “white goods” by establishing a permit program for the “demanufacture” of discarded appliances {disassembling an appliance and removing the hazardous materials}. Anyone wishing to enter this business must obtain a permit prior to starting operation. The rules require that all electrical parts containing PCBs or containing mercury and refrigerants be removed prior to those parts being recycled or scrapped. Oils, gasses, refrigerants and other hazardous materials removed from discarded appliances must be stored and recycled or disposed of according to specific federal regulations. Commission representatives contended that the recycling requirements are already embodied in federal requirements; they stated the rules actually do little more than mandate record keeping to ensure compliance with federal law.

It was conceded that the value of the scrap material was far outweighed by the cost of demanufacturing; therefore, these rules will have a financial impact on landfills. Landfill representatives did support the program and expressed a willingness to meet the required expense. Supporters stated that the new program had been drafted by a broad-based committee with all interests represented. Opponents contended that reputable recyclers already safely remove hazardous materials and that the increased cost of compliance would actually increase unlawful disposal. They also contended the requirements would encourage the use of out-of-state scrappers where the lack of regulation would make disposal more economical.

A regulatory analysis of this proposal provided a general overview of federal regulation, generally noting that some of the material in white goods must, under current law, be treated as hazardous waste. It also summarizes the threats posed by PCBs, mercury, refrigerants, sodium chromate and asbestos. The analysis did not provide any hard data or dollar figures on the long-term cost of the program.

In response to the issues raised, the committee imposed a seventy day delay on the filing to allow the parties an opportunity to resolve these issues. The EPC then revised the rule to address some of those concerns; the change provides that an Iowa facility that accepts appliances from out-of-state demanufacturers may bring remanufactured appliances into Iowa as long as the appliances were demanufactured in accordance with the federal regulations and the laws of the state from which the appliances were received. These changes seemed acceptable to all parties.

HUMAN SERVICES DEPARTMENT, Family investment program: 5 year cut-off, 07/11/01 IAB, ARC 0768B .

The family investment program has a sixty month lifetime maximum. The department has implemented rules for hardship exceptions. At the end of calendar 2001 some Iowa families have reached the sixty month limit for FIP benefits. Under this program a hardship exemption is available when circumstances prevent the family from being self-supporting. The hardship must be a result of a past or current experience that is affecting the family’s current functioning; it can include such things as domestic abuse, a medical condition, chronic unemployability, etc. Department representatives stated there was a core of some 250 FIP clients who were unlikely to become independent. The hardship exemption can be renewed every six months.

HUMAN SERVICES DEPARTMENT, Case-mix reimbursement in care facilities, 07/11/01 IAB, ARC 0780B.

2000 Iowa Acts, chapter 1004 required the department to develop a “case mix” methodology for the reimbursement of care facilities. Traditionally, care facilities were reimbursed a percentage of their actual cost for providing services to their Medicaid residents. Under this proposal nursing facilities will be reimbursed for recipients based on a uniform standard state-wide price adjusted by the relative acuity or need for care of the residents in each particular facility. The system will be gradually phased in over the next two years; allowing facilities additional time to adapt to the new system. Facilities will be held harmless from a reduction in reimbursement through June 30, 2003.

The reimbursement rate has two components. The direct care component is the portion attributable to the salaries and benefits of direct care personnel and services; the non-direct care component is the portion attributable to administrative, environmental, property, and support care costs. The actual reimbursement to a particular facility will be adjusted based on the case mix; i.e.: the types of care required at that facility and the resources required for that care.

Other factors are also used to adjust final reimbursement. In calculating the per diem the formula will assume an occupancy level of 80% of the licensed beds. On July 1st 2002 this will increase to 85%; however, this factor is applied only to indirect expenses. A second factor, undeveloped at present, would increase reimbursement based on quality of care considerations. Also, a wage adjustment for facilities located in urban areas will be applied. The formula will also contain an inflation adjustment. Another factor would increase reimbursement based on quality of care considerations. A task force is currently working on this issue. The initial proposal was published in October 2001 and sets out a process to collect data for measuring quality of life in a facility based on a nursing facility’s achievement of multiple favorable outcomes as determined by these measurements. Based on these outcomes, reimbursement may be increased by as much as 3 percent of the reimbursement median.

INSPECTIONS AND APPEALS, Food inspections at farmers markets, SELECTIVE.

Iowa Code chapter 137F provides a specific license for a temporary food establishment which is operated in conjunction with a single event, for a period of no more than 14 days {§137F.1(16)}. That designation is really designed for fairs and festivals, but under the code it was the only viable licensing option available to several small food vendors at Iowa’s farmers markets. The problem was the \$25 license must be separately obtained for each farmers market, every two weeks. Since these markets operate through the Fall and the vendors attend several markets each week, the bi-weekly licensing costs amounted to hundreds of dollars bi-weekly. Both state and local officials agreed this was an unintended and unnecessary expense.

As a temporary resolution, the Department of Inspections and Appeals implemented an emergency rule, applicable only for the remainder of 2001, stating: “*A temporary food establishment license located in a farmers market is valid at that site until December 31, 2001 provided the food establishment does not operate more than 14 consecutive days at this location. This rule will cease as of January 1, 2002.*”.

The committee referred this issue to the General Assembly for further action. The Department of Inspections and Appeals offered legislation to resolve this problem; that legislation has now been enacted by the legislature.

IOWA FINANCE AUTHORITY, 2001 tax credit program, 10/31/01 IAB, ARC 1044B.

Iowa Code §16.52 authorizes the Authority to issue tax credits as an incentive to developers for construction or rehabilitation of low income housing. The federal Tax Reform Act of 1986 created this credit as an incentive for low income housing tax credit project owners to invest in the development of rental housing for persons with fixed or limited incomes. The tax credit is not a direct federal subsidy, instead it provides a dollar- for-dollar credit to offset an owner's federal tax liability on ordinary income. Tax credit interest may be syndicated or sold {roughly at a 30% discount} to generate equity for the developments, thus reducing the necessary mortgage financing and providing more affordable terms. The tax credit program for low-income housing is updated annually.

This filing was reviewed by the committee some five times. The main controversy involved the hard-to-house set aside which will set-aside 10 percent of the credits for projects in which at least 60% of rental units are both rent restricted and occupied by individuals whose income is 40% or less of the adjusted median gross income (AMGI). Up to another 40% of the rental units can be both rent restricted and occupied by individuals whose income is 60% or less of the AMGI, (the initial proposal required all units to be dedicated to persons at the 40% income level). Opponents of issuing credits to projects at the 40% level note that a housing shortage also exists at the 60% level and contend that 40% level projects are not economically viable. Opponents suggested that other programs already address the needs of people at the 40% level. IFA representatives maintain they have a federal obligation to fund housing for persons at the lowest income level for the longest period. IFA representatives noted the great need for housing at the 40% level; persons living on SSI or SSI supplemented by sheltered workshop employment often had incomes as low as the 25% level. They stated that using a combination of vouchers and other benefits it was feasible to provide projects at this income level.

The 10 per cent assisted living set aside was also changed: in an urban county, at least 40% of the low-income units must be both rent restricted and occupied by individuals whose income is 40% or less of AMGI (the initial proposal required all units to be dedicated to persons at the 40% income level). In a rural county, *all* low-income units must be both rent restricted and occupied by individuals whose income is 60% or less of AMGI.

All applications must now be accompanied by a market study performed by an independent researcher, to determine whether a need for low-income housing exists in the area. Agency representatives note this has caused a reduction in the number of applications.

LABOR DIVISION, Ergonomics OSHA standard, 02/07/01 IAB, ARC 0455B (notice only).

Iowa Code §88.5(1) requires that the Commissioner of Labor adopt the occupational health and safety standards adopted by the federal Department of Labor. This compliance is necessary if Iowa is to continue to administer the OSHA program.

Under that mandate the commissioner proposed to adopt new federal OSHA standards requiring most Iowa employers to inform employees about common musculoskeletal disorders {MSD} signs and symptoms. Symptoms include: painful joints; pain, tingling or numbness in hands or feet; shooting or stabbing pains in arms or legs; pain in wrists, shoulders, forearms, knees. The most well-known of these disorders is carpal tunnel syndrome, but there are many others. Under the proposal, when a employee reports these signs or symptoms, the employer must determine whether the injury is a work-related MSD that requires medical treatment. If a job

exposes the worker to risk factors that *could* trigger these problems, the employer must take a number of steps to reduce the threat. Prior to final adoption, the federal regulation that triggered this Iowa proposal was rescinded.

LABOR DIVISION, “LULA” elevators in church facilities, 875 IAC 72.19, selective review.

Since 1983 Iowa rules allowed the installation of residential elevators in certain public buildings, for use only by handicapped individuals. This exception was utilized mainly by small churches which otherwise had no affordable means to bring infirm members into the facility. The rule had numerous restrictions prohibiting any expanded or general public use. In April 2001 the division rescinded its rule authorizing this use of residential elevators and adopted by reference a standard for “limited use/limited application” (LULA) elevators.

In response to complaints from a number of small churches the committee reviewed the LULA requirement. Division representatives defended the requirement, stating that the LULA is less expensive than a commercial elevator but is also sturdier than a residential elevator and has a greater lifting capacity. It was noted that a powered wheelchair and its occupant can easily outweigh the limits of a residential elevator. The LULA has a fully enclosed compartment and a sliding door. Division representatives contend that the safety features in a LULA elevator justify eliminating residential elevators as an option.

The committee heard testimony from representatives from a small rural church, serving 200 members. They disputed the divisions cost estimates of \$18000-\$23000 for a LULA elevator noting that the quote for their church was \$50000. The church representatives also stated that the residential elevator they had initially chosen was marketed as being suitable for church use. They also noted that the variance procedure, used to request an exception, was slow and unproductive, leaving them with no alternative except to either litigate or install the LULA elevator.

PUBLIC HEALTH DEPARTMENT, Transportation of radioactive waste, 04/07/01 IAB, ARC 0597B.

Radioactive waste crosses Iowa both by rail and truck while being shipped to permanent storage facilities. The waste includes the traditional high-level waste as well as the far more common, low-level waste from hospitals or other similar sources. The rule imposes a series of fees that *shippers* must pay when transporting that waste across Iowa. The fee varies with the type of waste, with the highest fee imposed on the movement of high-level radioactive waste. The department contended the fees will generate funds to train personnel--local law enforcement, fire departments and emergency medical personnel to safely respond to emergencies relating to this waste. Opponents were very concerned at the size of the fees, which varied from \$1750 per cask for high level waste transported by highway, to \$250 per shipper shipment for low-level waste.

The committee imposed a session delay on the collection of this fee, in order to allow representatives of the department and the shipping industry an opportunity to resolve differences over the fee structure. Following five months of discussion the department proposes to retain the \$1750 fee for high-level waste, but reduce the fee for low level waste down from \$250 to \$50 per load, with the possibility of negotiating an annual single fee for multiple shipments, with a July 1st 2002 implementation. These amendments appear to be acceptable to all affected parties.

PUBLIC HEALTH DEPARTMENT, state plumbing code, 10/03/01, ARC 0982B.

The Iowa Department of Public Health is charged with maintaining a plumbing code setting the minimum standard for Iowa's cities. For years the department has adopted by reference the model "Uniform Plumbing Code"(UPC), updating it periodically as the model was revised. The Building Code Commission, part of the Fire Marshals Office also maintains a set of building codes including the 1994 UPC.

This proposal began as a routine effort to update the 1994 edition of the uniform plumbing code to the 2000 model. Controversy arose when representatives of a second code, the "International Plumbing Code" (IPC), suggested that the IPC be adopted as the state minimum code or be designated as an alternative to the UPC. They cited the advantages as including an entire family of inter-related building codes and the fact that a number of Iowa jurisdictions have already adopted the IPC. Department representatives defended the continued use of the UPC stating that it was easier to use because it did not require reference to other manuals and set out specific requirements instead of more general performance standards. The committee felt that the Department was well within its discretion to retain the uniform code.

PUBLIC SAFETY DEPARTMENT, Bed and breakfast inns and homes, 03/07/01 IAB.

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. At issue was the specific degree of fire regulation at the larger of the facilities-the bed and breakfast inns. 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. In response to these concerns the department requested that the ARRC impose a session delay to provide an opportunity for fire officials to meet with the affected innkeepers and develop revisions to these rules.

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.

RACING AND GAMING COMMISSION, Listing of purse winners, 11/14/01 IAB, ARC 1078B (NOTICE).

.At issue in this review was whether Iowa race tracks can be compelled to maintain and release a comprehensive list of purse winners without charge to the person requesting that information. Prairie Meadows is managed and operated by a private, not-for-profit corporation, the Racing Association of Central Iowa, Incorporated {RACI}, which is subject to regulation by the Iowa Racing and Gaming Commission. It is not subject to Iowa's Open Records Law; however, purse information could be demanded by the Racing and Gaming Commission under its regulatory powers.

Committee members voiced support for a written open records policy, but did suggest that any aggrieved individual could pursue this matter further by filing a petition for rulemaking with the Racing and Gaming Commission. A petition was filed by several interested persons; in response the commission proposed a rule requiring tracks to submit to the commission the identity and address of each owner, together with the amount won, along with other pertinent

information. This rulemaking was not completed until 2002 and the scope was significantly reduced. In response to complaints that it would be extremely difficult to track the winnings of each owner of record. The final rule required the track to identify only the person to whom the check was issued.

REVENUE DEPARTMENT, Sales taxation of livestock: elk. SELECTIVE.

Department of Revenue and Finance rule 701 IAC 17.9(1) states that non-domesticated animals are excluded from the definition of livestock even if raised in captivity as a source of food or clothing. A number of Iowa farmers raise elk and contend that elk should be treated as livestock for taxation purposes. They note that Iowa agriculture is evolving and contend that the department definition should recognize this evolution and include farm raised elk as livestock. They also contend that livestock should be broadly construed since ostriches, buffalo, and catfish already have tax exemptions. In response to these concerns committee members requested an Attorney General's opinion on this point.

Applying the rules of statutory construction, the Attorney General confirmed that elk are not considered livestock for tax purposes, thus making their sale subject to sales tax. Committee members noted that elk are statutorily defined as livestock for Agriculture and Land Stewardship purposes and felt that the issue should be reviewed more fully by the General Assembly. No final action has yet been taken by the legislature.

TREASURER, Unclaimed property, ARC 0747B, 06/27/01 IAB.

House File 2557 required the Treasurer to adopt rules for entering into contracts with an independent auditor to uncover unclaimed property on behalf of the treasurer. The issue in this rulemaking was the use of contingency fees. Opponents of this system felt that auditors working on contingency fees, especially those fees based on the amount of property claimed as opposed to the amount ultimately collected, encouraged auditors to be overly inclusive in identifying unclaimed property. Opponents suggested either a per hour reimbursement or the implementation of a "holders bill of rights" to specify in detail the auditing process. Representatives of the Treasurer's office responded that all in-state audits were on a per hour basis, and that any complaint concerning out-of-state auditors would be reviewed by the Treasurer's office. Committee members suggested that the Treasurer again review these concerns but took no further action.

APPENDIX #A-SUMMARY OF RULEMAKING IN 2001

Agency name	Jan	Feb	Mar	Apr*	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
TOTAL	34	44	23	31	43	19	36	23	34	60	21	51	419
HUMAN SERVICES DEPARTMENT[441]	5	2	5	2	10		20	5		24		9	82
PUBLIC HEALTH DEPARTMENT[641]		2		1	4	2				6		6	21
Utilities Division[199]	1	2	1	2				2	1	1		11	21
Environmental Protection Commission[567]		1	1	2	1	3	3		3	3	1	1	19
Educational Examiners Board[282]	1	5		1		4		1	2			4	18
REVENUE AND FINANCE DEPARTMENT[701]	3			2		1	2		2	3	2	3	18
Natural Resource Commission[571]			3	1	2		3	1	2	2	3		17
Insurance Division[191]	2	1		1		1			2		4	3	14
Professional Licensure Division[645]		6			1	1	1		4			1	14
Nursing Board[655]			1	2						6		4	13
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]	5	2									3	2	12
PERSONNEL DEPARTMENT[581]	2		2	2	1		1		1		1	1	11
Dental Examiners Board[650]		7		1				2					10
INSPECTIONS AND APPEALS DEPARTMENT[481]					3			1		4		2	10
TRANSPORTATION DEPARTMENT[761]		2		1	2			3	1		1		10
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]	4			2	1			1				1	9
INFORMATION TECHNOLOGY DEPARTMENT		7			1				1				9
PUBLIC SAFETY DEPARTMENT[661]		1	4	1	1					2			9
CORRECTIONS DEPARTMENT[201]			1		3	1		2		1			8
EDUCATION DEPARTMENT[281]		1		1					5				7
Iowa Finance Authority[265]	1					3		1		1			6
Medical Examiners Board[653]			1		3				1				5
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD	4				1								5
Professional Licensing and Regulation Division[193]	2		1		1				1				5
Racing and Gaming Commission[491]					2				2	1			5
Labor Services Division[875]			1	1								2	4
SECRETARY OF STATE[721]		1			1	1		1					4
College Student Aid Commission[283]		1		2									3
ELDER AFFAIRS DEPARTMENT[321]							1		2				3
LAW ENFORCEMENT ACADEMY[501]	1				1					1			3
Substance Abuse Commission[643]	1		1				1						3
Alcoholic Beverages Division[185]				1						1			2
Emergency Management Division[605]				2									2
Engineering and Land Surveying Examining Board[193C]		1									1		2
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]									1		1		2
GENERAL SERVICES DEPARTMENT[401]	1					1							2
PUBLIC EMPLOYMENT RELATIONS BOARD[621]					1				1				2
Status of Women Division[435]				1	1								2
TREASURER OF STATE[781]						1						1	2
Accountancy Examining Board[193A]											1		1
Agricultural Development Authority[25]										1			1
Architectural Examining Board[193B]										1			1

APPENDIX #B-EMERGENCY RULEMAKING IN 2001

Agency name	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL
HUMAN SERVICES DEPARTMENT[441]	1	0	1	0	2	0	13	2	0	0	0	3	22
PERSONNEL DEPARTMENT[581]	1	0	1	1	1	0	1	0	1	0	1	1	8
CORRECTIONS DEPARTMENT[201]	0	0	0	1	1	0	0	0	1	0	0	0	3
Educational Examiners Board[282]	0	1	0	0	0	0	0	1	1	0	0	0	3
Environmental Protection Commission[567]	0	0	0	1	0	1	0	0	0	0	1	0	3
PUBLIC SAFETY DEPARTMENT[661]	0	0	0	1	1	0	0	0	0	1	0	0	3
Insurance Division[191]	1	0	0	0	0	0	0	0	0	0	1	0	2
Natural Resource Commission[571]	0	0	0	1	0	0	0	1	0	0	0	0	2
PUBLIC HEALTH DEPARTMENT[641]	0	0	0	0	0	1	0	0	0	1	0	0	2
SECRETARY OF STATE[721]	0	1	0	0	0	1	0	0	0	0	0	0	2
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]	0	0	0	0	0	0	0	0	0	0	0	1	1
GENERAL SERVICES DEPARTMENT[401]	1	0	0	0	0	0	0	0	0	0	0	0	1
Historical Division[223]	0	1	0	0	0	0	0	0	0	0	0	0	1
Libraries and Information Services Division[286]	0	0	0	0	0	0	1	0	0	0	0	0	1
Preserves, State Advisory Board[575]	0	0	0	0	0	0	0	0	0	0	0	1	1
REGENTS BOARD[681]	0	0	0	0	0	0	0	0	0	0	1	0	1
Utilities Division[199]	0	0	0	1	0	0	0	0	0	0	0	0	1
TOTAL	4	3	2	6	5	3	15	4	3	2	4	6	57