THE ADMINISTRATIVE RULES REVIEW COMMITTEE
1990

I. Introduction.

In 1990 56 administrative agencies promulgated 498 filings,representing over 2000 individual rule additions, amendments or repealers. This represents a nine percent increase over the number of filings from 1989, as set out below:

In 1990 56 agencies promulgated 498 filings.
In 1989 60 agencies promulgated 463 filings.
In 1988 86 agencies promulgated 621 filings.
In 1987 60 agencies promulgated 503 filings.
In 1986 57 agencies promulgated 476 filings.
In 1985 63 agencies promulgated 505 filings.
In 1984 55 agencies promulgated 415 filings.
In 1983 55 agencies promulgated 458 filings.

94 of these filings were placed into effect using the "emergency" provisions of chapter 17, Iowa Code. Most of these were also placed under notice. This figure represents nineteen per cent of the total volume of rulemaking and continues a trend toward a reduced level of emergency rule making. For purposes of this study an emergency rule is defined as a rule which is adopted in final form without notice or public participation. It excludes those rules which are made effective on filing, after being published as a notice of intended action. The level of emergency rule making is set out below:

In 1990 94 "emergency" rules represented 19% of the total.
In 1989 92 "emergency" rules represented 20% of the total.
In 1988 111 "emergency" rules represented 18% of the total.
In 1987 133 "emergency" rules represented 26% of the total.
In 1986 142 "emergency" rules represented 30% of the total.

The decline in the percent of emergency filings in large part results from a joint effort between the Attorney General, the Administrative Rules Coordinator 20d the Administrative Rules Review Committee. Since October of 1987 all three of these entities have actively discouraged emergency rule making.

To calculate the volume of rule-making for 1990, filings are counted instead of individual rules. Each filing put into effect contained one or more individual rule promulgations; on the average each filing contains roughly four changes. The agencies which promulgated rules are listed below together with the number of filings put into effect. For purposes of this analysis the term "agency" ignores the statutory groupings of divisions, boards, commissions, etc. Instead the listing below independently lists every rule-making unit, without regard to its location within a larger "umbrella" agency. The first column of numbers represents the total number of rule-making filings adopted in final form in 1990. The second column of numbers represent the number of "emergency" rules promulgated by the agency.

HUMAN SERVICES DEPT.	86	26	MEDICAL EXAMINERS BD.	03	01
NATURAL RESOURCES COMM.	31		HISTORICAL DIV.	03	01
REVENUE DEPT.	30	02	DISASTER SERVICES	03	
EDUCATION DEPT.	28	08	ELDER AFFAIRS	03	
ENVIRONMENTAL PROTECT.	25	01	EMPLOYMENT APPEALS	03	02
PUBLIC HEALTH DEPT	24	06	JOB SERVICE DIV.	03	
UTILITIES DIV.	23	01	IOWA FINANCE AUTH	03	
TRANSPORTATION DEPT.	23	06	COMMUNITY ACTION AG.	02	01
INSPECTIONS & APPEALS	21	06	EDUCATION EXAMINERS	02	02
ECON. DEVELOPMENT DEPT.	19	04	DENTAL EXAMINERS BD.	02	
PROFESSIONAL LICENSURE	18	02	BLIND DEPT.	02	01
AGRICULTURE DEPT.	13	02	VOTER REGISTRATION COMM	02	
COLLEGE AID COMM.	12	01	INDUSTRIAL SERVICES	02	02
PUBLIC SAFETY DEPT.	09	03	AGRICULTURAL DEVELOP.	01	
LABOR SERVICES DIV.	09	02	EXECUTIVE COUNCIL	01	
INSURANCE DIV.	09		HEALTH DATA COMM.	01	
PETROLEUM BOARD	08	04	SCHOOL BUDGET REVIEW	01	01
PHARMACY BOARD	08	01	CULTURAL AFFAIRS DEPT.	01	
SECRETARY OF STATE	07	01	LOTTERY DIV.	01	01
RACING & GAMING COMM.	07	01	PER BOARD	01	
CORRECTIONS DEPT.	07	02	REAL ESTATE COMM.	01	
REGENTS BOARD	06		TREASURER	01	
LAW ENFORCEMENT ACAD.	05		LIVESTOCK HEALTH	01	
NURSING BOARD	05		NARCOTICS ADVISORY	01	
PERSONNEL DEPT.	05	01	ENERGY AND GEOLOGY	01	
SOIL CONSERVATION	04		WALLACE FOUNDATION	01	
ATTORNEY GENERAL	04	01	CIVIL RIGHTS COMM.	01	
CREDIT UNION DIV.	04	01	BANKING DIV.	01	

II. Formal Committee Actions.

While the volume of rule-making is increasing, the volume of formal "objections" filed by the committee has declined. In 1990 the

committee imposed six objections, down from a decade high of eight objections imposed in 1989. In 1987 the committee imposed three objections, down from five imposed in 1986. A total of 123 objections have been imposed since 1977, but the trend has clearly been toward a decline in their frequency, as indicated below:

1977.....36	1984.....04
1978.....24	1985.....03
1979.....13	1986.....05
1980.....06	1987.....03
1981.....08	1988.....02
1982.....02	1989.....08
1983.....03	1990.....06

The volume of session delays for 1990 increased to four. A total of thirty-four delays have been imposed since the power was created in 1978. In 1989 two delays were imposed.

III. Summary of Committee Actions

JANUARY

1. GENERAL REFERRAL: ARC 491A, a Department of Education filing concerning youth services programs {EDUCATION DEPARTMENT}
2. GENERAL REFERRAL: 761 IAC Chapter 126, relating to "disadvantaged business minority" {TRANSPORTATION DEPARTMENT}
3. GENERAL REFERRAL: ARC 518A, relating to availability of student loans {COLLEGE AID}
4. GENERAL REFERRAL: ARC 513A, relating to response time to inquiries of the Utilities Board {UTILITIES DIVISION}
5. GENERAL REFERRAL: ARC 509A, relating to the pump labeling of gasoline additives {AGRICULTURE DEPARTMENT}.

FEBRUARY

6. GENERAL REFERRAL: ARC 585A, DOT 761-121, relating to adopt-a-highway {TRANSPORTATION DEPARTMENT}.
7. LEGISLATION: SF 2299, relating to disadvantaged business minority program.
8. LEGISLATION: SF 2300, relating to transportation costs for care facility residents.
9. LEGISLATION: HF 2416, relating to physical contact in schools.

MARCH

10. SEVENTY DAY DELAY: ARC 632A, relating to the "Medipass" system for Title XIX recipients {HUMAN SERVICES DEPARTMENT}.

APRIL

11. SEVENTY DAY DELAY of selected portions of ARC 755A, relating to the plugging of abandoned wells {ENVIRONMENTAL PROTECTION DIVISION}.

MAY

12. SEVENTY DAY DELAY RESCINDED, ARC 632A, relating to medicaid patient management {HUMAN SERVICES DEPARTMENT}.
13. GENERAL REFERRAL: State bidding procedures{NATURAL RESOURCES DEPT.}.

JUNE

14. OBJECTION: 761 IAC 450.1, as it regulates the tinting of windows in motor vehicles {TRANSPORTATION DEPARTMENT}.
15. SEVENTY DAY DELAY-481 IAC Chapter 10 ARC 876A, first unnumbered paragraph {INSPECTIONS AND APPEALS DEPARTMENT}.
16. GENERAL REFERRAL: 281 IAC Chapter 65, relating to programs for

at-risk children {EDUCATION DEPARTMENT}

JULY

17. GENERAL REFERRAL-HOUSE FILE 2552, relating to above ground storage tanks for motor fuel{PUBLIC SAFETY DEPARTMENT}.
18. GENERAL REFERRAL-82.3(2)-License fees for asbestos contractors {LABOR DEPARTMENT}.
19. OBJECTION: 281 IAC 17.5, relating to the "good cause" exception for early open enrollment {EDUCATION DEPARTMENT}.
20. OBJECTION: 281 IAC 17.5, unnumbered paragraph two relating to athletic restrictions in open enrollment {EDUCATION DEPARTMENT}.

AUGUST

21. SESSION DELAY: 761 IAC 10.2, 10.3, ARC 1092A, relating to authority to adopt rules {TRANSPORTATION DEPARTMENT}.
22. GENERAL REFERRAL-ARC 973A, 281 IAC Chapter 17, relating to open enrollment {EDUCATION DEPARTMENT}.

SEPTEMBER

23. SESSION DELAY-ARC 1120A, 441 IAC 85.8(2)to 85.8(5), relating to inpatient psychiatric services {HUMAN SERVICES DEPARTMENT}.
24. THIRTY-DAY DELAY-ARC 1127A, relating to medicaid services in care facilities {HUMAN SERVICES DEPARTMENT}.
25. OBJECTION-ARC 1168A, item one, relating to the 6.4(2)"d" inventory of impounded vehicles {PUBLIC SAFETY DEPARTMENT}.
26. SEVENTY DAY DELAY-ARC 1193A, relating to the definition of immediate family for prison visits {CORRECTIONS DEPARTMENT}.
27. GENERAL REFERRAL-Surveying standards {ENGINEERING EXAMINERS}

OCTOBER

28. OBJECTION: ARC 1203A, 761 IAC chapter 520, relating to carriers 761--520 {TRANSPORTATION DEPARTMENT}
29. SEVENTY DAY DELAY-ARC 1127A, subrule 441 IAC 81.16(4) relating to in-service training for nurse aides {HUMAN SERVICES}

NOVEMBER

30. ECONOMIC IMPACT STATEMENT- ARC 1292, relating to the commercial taking of catfish on the Missouri River {NATURAL RESOURCES DEPARTMENT}
31. ECONOMIC IMPACT STATEMENT- ARC 1387A and 1390A, relating advertising and sales practices for motor vehicle dealers and retail sales businesses {DEPARTMENT OF JUSTICE}
32. SESSION DELAY- ARC 1324A, item eight, 441 IAC 81.10(5), relating to supplementation in care facilities {HUMAN SERVICES DEPARTMENT}
33. SESSION DELAY- ARC 1383A, rule 281 IAC 103.2, the last two sentences, relating to the definition of corporal punishment {DEPARTMENT OF EDUCATION}
34. SEVENTY DAY DELAY- ARC 1393A, relating to the payment of telephone service checks {UTILITIES DIVISION}

DECEMBER

35. GENERAL REFERRAL-Family farm tax credits {REVENUE DEPARTMENT}
36. GENERAL REFERRAL-DNA profiling {DEPARTMENT OF JUSTICE}
37. GENERAL REFERRAL-Targeted small business eligibility criteria, ARC 1458A {DEPARTMENT OF INSPECTIONS & APPEALS}
38. OBJECTION- ARC 1488A, relating to habitual violators of fish and game restrictions {NATURAL RESOURCES COMMISSION}

IV. Major rule-making issues of 1990

ATTORNEY GENERAL

THE CONSUMER PROTECTION CODE AND RETAIL ADVERTISING, ARC 1388A

and 1390A, NOTICE ONLY. ARC 1388A proposed standards to apply Iowa's consumer protection code. In essence they would restrict the types of advertising that retailers can use and requires them to substantiate any claims that they make. Recordkeeping will be substantial under these standards. It was the amount of this recordkeeping that was the key to the opposition to the proposal.

For example, each retailer is required to maintain substantiations for each advertisement for 12 months after the ad has been run.

For a price comparison, the retailer must maintain a file containing the sale price and the price of the product before and after the sale. When the comparison is to a competitors product, the competitor must be identified and the competitors price must be established.

Retailers opposed this regulation on the grounds that the paperwork required to document all sales was impossible to maintain. Specifically cited were grocery store operations, which maintain literally thousands of items. It was noted that the proposed rules would require maintaining a file on the price of each of these products for eighteen months. It was also contended that the requirements would have a disparate impact on small retailers who lack the sophisticated computer systems needed to maintain the extensive records.

The rules committee expressed support for the general concepts of the regulation, but was unsure whether it was feasible given the massive amounts of paperwork required of merchants, especially smaller businesses. The Attorney General was equally concerned and the rules were never implemented. NO COMMITTEE ACTION.

EDUCATION DEPARTMENT

PROGRAMS FOR AT-RISK CHILDREN, ARC 1522A. 1989 Iowa Acts Chapter 135 established a grants program to assist younger elementary school students who were "at-risk". That Act states in section 76:

> *d. For the fiscal year beginning July 1, 1990, three million dollars, and for each fiscal year thereafter, four million dollars of the funds appropriated shall be allocated as grants to school districts that have elementary schools that demonstrate the greatest need for programs for at-risk students with preference given to innovative programs for the early elementary school years.*

The program became controversial when the grants process made only sixteen awards, all going to eight metropolitan areas. The process was clouded by the addition of several factors not set out in the administrative rules. First, a point system was established, using criteria based on rule 65.6, but in much greater detail; a maximum of 150 points were available. Second, bonus points were awarded for the percentage of the student body enrolled in the free lunch program. In response to public complaints on the unfairness of using unpublished criteria, the committee held a special review ofthese issues in July, insisting that these additional criteria be set out in rule. The department then adopted amendments to rule 65.6 to comply with this request. The final set of rules applied only to the remaining $1,000,000 of appropriation and was geared toward disbursing those funds to smaller school districts.

The rules provided that (1) districts currently operating a funded program cannot apply for the newly available funding; (2) applications are limited to $200,000 or $1,000 per pupil; (3) one award shall be made in each of five specified size categories. In short, of the $4,000,000 appropriated, ultimately $3,200,000 went to large schools while $800,000 was provided to smaller schools. NO ADDITIONAL COMMITTTEE ACTION.

EDUCATION DEPARTMENT
OPEN ENROLLMENT, 281 IAC Chapter 17. In a series of meetings held in July and August, the committee reviewed new rules, promulgated by the Department of Education, relating to open enrollment. In part these rules implemented the provisions of Senate File 2306. In pertinent part the Act created several exceptions to the normal fall deadline for filing for open enrollment. Under these exceptions, if a parent can show "good cause," the parent may file for open enrollment up to June 30 after the October deadline. Both the Act and the rules interpreting it have given rise to several controversies.

The heart of the problem lay in the Act itself. Section one set out specific circumstances that constitute "good cause"; section two also contained several specific and highly limited circumstances allowing students to "open enroll" after the Fall deadline. In promulgating rules to implement the Act the Department of Education made several controversial decisions. Rule 17.4 allowed students to "open enroll" out of a district if that district had entered into a whole grade sharing arrangement; while the criteria in section one of the Act provided only that the failure of a whole grade sharing arrangement constitutes good cause for open enrollment. The department contended that this interpretation is valid because of the intent language of the Act. The very first sentence of the Act required that it be interpreted to provide: "...a wide range of educational choices for children ...and to maximize ability to use those choices."

Other problems involved the specific exemptions in section two of the Act. Under the department's interpretation in rule 17.5. In addition to the criteria set out in section two, the petitioner needed to also meet the criteria set out in section one. The committee felt that the two sections were completely independent of each other, but the statute was certainly unclear on this point. Ultimately, the committee concluded the open enrollment exceptions in section two of the Act were independent of the exceptions set out in section one, and therefore not subject to the "good cause" exception. The committee further determined that the exception relating to the failure of a grade sharing arrangement should not properly be applied to cases where an arrangement was placed into effect. The committee imposed objections to this effect. OBJECTION AND GENERAL REFERRAL.

HUMAN SERVICES DEPARTMENT
MEDIPASS MEDICAL SERVICES, ARC 632A. At its March 1990 meeting the committee delayed the so-called "Medipass" system of health care for seventy days beyond the scheduled date of April 1. In essence this system is sort of a do-it-yourself HMO where the client selects a primary care physician who then serves as a patient manager to refer the patient to needed health care. The concept is to save money by eliminating the clients ability to

simply select whatever specialist the client wishes; all referrals must go through the patient manager. The program is a pilot project, conducted in the larger counties, to determine if the system actually saves money.

This delay was imposed in response to concerns voiced by representatives of maternal and child health centers, who felt that the primary care physician would not make referrals to these centers. The committee believed that a delay would allow the department and representatives of these centers to meet and reach an agreement as to the role these centers would play under the Medipass system. The committee then arranged meetings between the department and various provider groups, in order to establish guidelines to ensure legislative monitoring of the program and to limit client loss for the health centers. An informal arrangement was reached, and the Rules Review Committee then requested that the legislative council establish an oversight committee to monitor the implementation of the Medipass program; the committee was established, with two members of the Rules Review Committee serving on the oversight committee. The department additionally agreed to fund an independent study on the impact of the Medipass system and to promulgate rules requiring the supervising physician to inform patients of the services of maternal and child care centers and to refer any patient who wished to use those services. NO FURTHER COMMITTEE ACTION.

HUMAN SERVICES DEPARTMENT
TRANSPORATION COSTS IN CARE FACILITIES, ARC 1324A. The department proposed a "clarification" of ancillary services in care facilities. The department has maintained that the Title XIX reimbursement covered the cost of non-emergency transportation for Title XIX residents. For the more enfeebled residents this often required actual ambulance transportation for such things as doctors appointments or physical therapy sessions. Paragraph 81.10(5) requires the facility to "arrange" for transportation for residents needing medical care. This provision is controversial because the department actually means "arrange and pay" for needed transportation. The department maintains that the facilities are already paid for this service via their Title XIX reimbursement, which is based on the facilities cost reports. The facilities maintained that their Title XIX reimbursement is for providing nursing services in the facility, and that transportation costs were not part of this service. This issue was subject to intense debate during the 1990 session, with several attempts being made to require the department to directly fund transportation services.

The Administrative Rules Review Committee opposed this rule, on the grounds that federal law required facilities to "arrange" for transportation, not pay for it. The committee delayed the effective date of this rule and forwarded it to the General Assembly, along with the recommendation that it be overturned. A veto resolution is now pending action in the Senate. SESSION DELAY.

HUMAN SERVICES DEPARTMENT
"OBRA" CARE FACILITY REGULATIONS, ARC 1127A. In 1990 the department promulgated a series of regulations requiring expanded levels of care in intermediate care facilities. These requirements were based on a Federal mandate established in the Omnibus Budget Reconciliation Act of 1987. Iowa's rules were virtually

word-for-word taken from the federal statute and supporting regulations. While Iowa had little discretion in promulgating this program, the committee remained concerned over the potential cost of these regulations and so scheduled extensive reviews of the requirements.

The program contained a formula for a special medicaid increase, ostensibly to cover the increased cost of "OBRA", yielding an average increase of $3.74 per bed per day. However, it was contended that the cost might run as high as $8.00 per bed per day. After extensive review, over a period of two meetings, the committee did not interfere with the implementation of the program. Testimony revealed that the federal mandate was to be enforced without exception or amendment, under the threat of a cut-off of federal funds. NO ACTION TAKEN.

PUBLIC SAFETY DEPARTMENT
MARIJUANA ERADICATION, ARC 1247A, NOTICE ONLY. In 1990 the legislature enacted House File 2166. In its original form it would had declared marijuana a noxious weed, thus forcing the county weed commissioners to take responsibility for its eradication. Counties opposed this legislation due to the high additional cost of implementation. The compromise enacted was simply to require the Department of Public Safety:

> TO IDENTIFY AND ERADICATE MARIJUANA PLANTS FOUND GROWING ON PUBLIC OR PRIVATE PROPERTY WHEN GROWING MARIJUANA PLANTS ARE REPORTED TO THE DEPARTMENT, AND ADOPT RULES GOVERNING THE IDENTIFICATION AND ERADICATION OF MARIJUANA PLANTS IN COOPERATION WITH LOCAL LAW ENFORCEMENT OFFICIALS.

Additionally, the county weed commissioners and DOT crews are required to report to the department the location of any marijuana plants found.

The rules basically provided that the local law enforcement authority would notify the landowner of the presence of the weed and attempt "to obtain the voluntary cooperation" of the landowner. The committee opposed these provision because it was left unclear as to the landowners' possible duty to eradicate the weed once it is reported. Marijuana is both difficult and expensive to eradicate; the committee noted that the legislation imposed the responsibility for eradication on the department, while the rule seemed to pass that responsibility to the landowner. The department agreed to defer any further action on this proposal and seek legislation to more clearly define the actual responsibility for eradicating these weeds. Legislation is now pending allowing the department to "assist" persons who wish to eradicate the weed growing on their property. NO COMMITTEE ACTION TAKEN.

PUBLIC SAFETY DEPARTMENT
ABOVE GROUND STORAGE TANKS FOR GASOLINE, HF 2552, SELECTIVE REVIEW. In 1989 legislation was enacted to allow above ground gasoline tanks in small towns. That legislation was flawed because it applied only to small towns and did not include unincorporated areas. In 1990 the legislature enacted H.F. 2552 to correct this oversight. It stated:

> 101.12 ABOVEGROUND PETROLEUM TANKS AUTHORIZED.

RULES OF THE STATE FIRE MARSHAL SHALL PERMIT INSTALLATION OF ABOVEGROUND PETROLEUM STORAGE TANKS FOR RETAIL MOTOR VEHICLE FUEL OUTLETS ~~IN CITIES OF ONE THOUSAND OR LESS POPULATION~~ AS PERMITTED BY THE LATEST EDITION OF THE NATIONAL FIRE PROTECTION ASSOCIATION RULE 30A, SUBJECT TO THE APPROVAL OF THE GOVERNING BODY OF THE LOCAL GOVERNMENTAL SUBDIVISION WITH JURISDICTION OVER THE SITE OF THE OUTLET.

In fact, "the latest edition" of NFPA rule #30, did NOT allow the installation of above ground storage tanks. The net effect is to worsen the situation. Under the old language, tanks could be installed in towns of a thousand or less, under the new language, tanks cannot be installed at all.

The rules committee met to review this situation, and realized that the statute was hopelessly flawed. Making matters worse, it was discovered that the National Fire Protection Association had no intention of authorizing above ground storage tanks. Members of the committee have proposed legislation to allow the installation of above ground tanks in rural Iowa.

DEPARTMENT OF TRANSPORTATION

TINTED WINDOWS ON MOTOR VEHICLES, 761 IAC 450.1, SELECTIVE REVIEW. In 1983 the legislature enacted Iowa Code subsection 321.438(2), which states:

> *2. A person shall not operate on the highway a motor vehicle equipped with a front windshield, a side window to the immediate right or left of the driver, or a side-wing forward of and to the left or right of the driver which is excessively dark or reflective so that it is difficult for a person outside the motor vehicle to see into the motor vehicle through the windshield, window, or sidewing. The department shall adopt rules establishing a minimum measurable standard of transparency which shall apply to violations of this subsection.*

Pursuant to this mandate the Department of Transportation promulgated a rule in early 1984 stating that windows must allow 30 percent of the available light to through. That provision was flawed because even in 1984 national standards called for 70 percent of the available light to pass through; moreover, the standard was unenforceable because no light meter was available to accurately measure any opacity level. As a result of these problems the rule was rescinded in 1986 and in its place the federal standard was adopted by reference (now codified as 761 IAC 540(1)). The federal provisions are contained in 49 CFR parts 501-590. (1987). This standard specifies an opacity level of 70 percent light transmission. The problem was that Iowa window tinters traditionally tinted windows to a 30 percent opacity level. The problem became apparent only i1990, when the Iowa Highway Patrol obtained equipment allowing officers to accurately measure opacity levels. Enforcement (for the first time) of this requirement then began, threatening to extinguish the window tinting business in this state.

The committees' initial review uncovered a serious flaw with the department's rule--it did not contain the actual opacity requirement. The rule simply adopted the federal standard, which in

turn simply adopted a private industry standard. In short, the actual text of the opacity requirement was virtually unavailable in Iowa. The committee then filed an objection to the rule, establishing the general principle that to the extent possible the actual text of a particular requirement should be set out in a rule; where that is not possible, at a minimum the text should be made readily available from the department itself. The department then re-promulgated the rule in line with the committee objections.

The committee continued to review this rule during the Summer and Fall of 1990. The meetings were well attended by representatives of the Departments of Transportation and Public Safety, along with numerous window tinters and concerned members of the public.

The highway patrol vigorously asserted that excessively dark windows were a motoring hazard and a threat to officer safety. Officers contended that dark windows seriously obscured vision, especially at night, and prevented officers approaching a vehicle from observing the activities of vehicle occupants. They also noted that dark windows prevented "eye-to-eye" contact between motorists, making it more difficult to predict what motorists would actually do.

These sentiments were echoed by representatives of the inner-city community, who opined that motor vehicles with excessively darkened windows were largely used by "pimps and drug dealers."

Several representatives of the window tinting industry also made presentations to the committee. They noted that the industry did not oppose limits on the acceptable level of window tinting, but they contended that the 70 percent level was too high and would result in the end of their businesses. Tproposed that Iowa adopted legislation enacted by numerous other states which allows some measure of tint on the side and rear windows, but prohibits any additional tint on the front window. The committee took no additional action on this issue, but legislation has been introduced to allow higher levels of tint on side or rear windows, while prohibiting "black" tint.

DEPARTMENT OF TRANSPORTATION

RULE-MAKING AUTHORITY OF COMMISSION, ARC 1092A. At its May meeting the committee reviewed a proposed rule by the department which provides that the director may adopt administrative rules unless the statute specifically delegates this power to the commission. The committee conceded that Iowa Code section 307.12 does empower the director to promulgate rules for the department, while Iowa Code section 307A.2 empowers the commission to promulgate rules for its operations. Current subrule 10.2(3) provides that the commission shall adopt rules while the director files those adopted rules.

It was the feeling of the Administrative Rules Review Committee that the current rule should be retained, vesting rule adoption power in the commission. even though statutory authority had been delegated to the director. The committee noted that in all larger agencies, such as the Department of Human Services and the Environmental Protection Division and the Board of Regents, policy-making power is vested in an appointed board, while the administrator is vested with the power to administer the agency on a day-to-day basis. The committee generally believes that combining

policy-making and enforcement powers in one entity is excessive and eliminates any effective check on a department directors' discretion. The committee ultimately delayed the effective date of this provision, even though the statutory scheme provided for rule-making by the director. The committee has now sponsored legislation to return rule-making to the commission. SESSION DELAY

DEPARTMENT OF TRANSPORTATION

DISADVANTAGED MINORITY ENTERPRISES, 761 IAC 126, SELECTIVE. DOT administrative rule IAC 761-Chapter 126 established a "Disadvantaged Minority Enterprise" program. Based on federal law and rules it basically required a set-aside of a portion of highway construction funds to be used by minority contractors. The provisions set out in rule did not specify the details of the program, they simply noted that the program existed. In administering the program the department simply used the current federal specifications for the "DBE" program; these specifications had never been adopted in either form or substance through the rule-making process.

At its' January meeting the committee reviewed this program and concluded that the federal "specs" detailing the program should be adopted, either by reference or in full, into the Iowa Administrative Code. The Department declined to do so, resulting in the drafting of a proposed Administrative Rules Review Committee bill to incorporate an amended version of the text of the "specs" into the Iowa Code. The bill was enacted into law during the 1990 session and simply required the department to promulgate the "DBE" program as an administrative rule. The department complied with this mandate in the Fall of 1990. COMMITTEE BILL.