THE ADMINISTRATIVE RULES REVIEW COMMITTEE
1988

I. Introduction.

In 1988 86 administrative agencies promulgated 621 filings,representing over 2500 individual rule additions, amendments or repealers. This continues a tendency over the last six years towards an uneven but steady increase in the volume of rule making, as set out below:

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.

111 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 Eighteen per cent of the total volume of rulemaking. It is a major decline from the volume of emergency rulemaking in 1987 when 133 "emergency" filings were implemented, representing twenty-six percent of the total or 1986 when 142 "emergency" rules were implemented, representing thirty percent of all rulemaking. In short, since October of 1987 agencies have been actively discouraged from adopting emergency rules, and in fifteen months the number has decreased by twelve percent.

The "spike" in the number of rule makings, up over 100 filings and up 26 agencies, is probably not a long-term trend. Fifty agencies promulgated two or less filings, up from 26 in 1987. This sudden surge was the result of model rules relating to the Fair Information Practice Act, Iowa Code section 22.11. All agencies were required to promulgate rules by 1988 to implement that requirement; thus many agencies that virtually never adopt rules became active. Of Iowa's 96 agencies, only ten did not engage in rule making in 1988.

To calculate the volume of rule-making for 1988, 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. Names followed by an * are administrative units which house a number of agencies, but themselves promulgate few substantive rules. The second column of numbers represent the number of "emergency" rules promulgated by the agency.

HUMAN SERVICES DEPT	87	20	EMPLOYMENT SERVICES	02	
REVENUE DEPARTMENT	41	01	INDUSTRIAL SERVICES	02	01
E.P.C.	31	04	ALCOHOLIC BEVERAGES	02	
INSPECTION & APPEALS	30	03	BANKING DIVISION	02	
ECONOMIC DEVELOPMENT	28	13	CREDIT UNION DIVISION	02	
PROFESSIONAL LICENSURE	28		PERSONNEL DEPARTMENT	02	
INSURANCE DIVISION	27	07	P.E.R.B.	02	02
TRANSPORTATION	25	06	CAMPAIGN FINANCE	02	
PHARMACY EXAMINERS BD	19	02	CIVIL RIGHTS COMM.	02	
PUBLIC HEALTH DEPT.	19	03	ATTORNEY GENERAL	02	01
NATURAL RESOURCES COMM	19	01	REAL ESTATE COMM.	02	
AGRICULTURE DEPT	18	06	HEALTH DATA COMM	02	
EDUCATION DEPARTMENT	16	03	APPEAL BOARD	02	01
NURSING EXAMINERS BD	16		ACCOUNTANCY BOARD	02	
LABOR SERVICES DIV	13	02	ARCHITECTURAL BOARD	02	
UTILITY DIVISION	12		ENERGY AND GEOLOGICAL	02	
CORRECTIONS DEPARTMENT	11	03	ARCHAEOLOGIST	02	01
RACING & GAMING	09	01	HUMAN RIGHTS DEPT	01	
JOB SERVICE DIVISION	08		CHILDREN, YOUTH & FAM	01	
COLLEGE AID COMM	08		PRESERVES BOARD	01	01
LOTTERY DIVISION	07	05	CITY DEVELOPMENT BD	01	01
NATURAL RESOURCES DEPT	07		HIGH TECHNOLOGY BOARD	01	01
PUBLIC SAFETY DEPT	07	02	EMPLOYMENT APPEAL BD	01	
REGENTS BOARD	07	01	AUDITOR	01	
SECRETARY OF STATE	06	03	BEEF INDUSTRY COUNCIL	01	01
DENTAL EXAMINERS BD	06	01	DISABILITIES DIVISION	01	
MANAGEMENT DEPARTMENT	05	01	SPANISH SPEAKING DIV	01	
BLIND DEPARTMENT	05	02	STATUS OF WOMEN	01	
SOIL CONSERVATION DIV.	05		COMMERCE DEPARTMENT	01	
GENERAL SERVICES DIV	04	01	LIVESTOCK HEALTH	01	
ENGINEERING BOARD	04		PAROLE BOARD	01	
FAIR BOARD	03		HISTORICAL SOCIETY	01	
IOWA FINANCE DEPT	03		PUBLIC BROADCASTING	01	
COMMUNITY ACTION DIV	03	01	HIGHER ED. LOAN	01	
LANDSCAPE BOARD	03		SCHOOL BUDGET REVIEW	01	01
FOSTER CARE REVIEW BD	03		EGG COUNCIL	01	01
ELDER AFFAIRS DEPT	03	01	COUNTY FINANCE COMM	01	
CITY FINANCE COMMITTEE	03	01	SHEEP & WOOL BD	01	01
MEDICAL EXAMINERS BD	03	01	SAVINGS & LOAN DIVISION	01	
SUBSTANCE ABUSE COMM	03		RAILWAY FINANCE AUTH	01	01
DEAF SERVICES DIVISION	02		PRODUCT DEVELOPMENT	01	01
CULTURAL AFFAIRS	02		PROFESSIONAL TEACHING	01	

LAW ENFORCEMENT ACADEMY 02 01 VETERANS AFFAIRS 01

II. Formal Committee Actions.

While the volume of rule-making is increasing, the volume of formal "objections" filed by the committee has dropped somewhat. In 1988 the committee imposed two objections, with one objection being strictly a reimposition of a 1979 action that was voided by an editorial revision. The substantive objection was overcome when the agency revised the rule in line with the committee request.

1988 continued a long trend in a decline in the frequency of objections. In 1987 the committee imposed three objections, down from five imposed in 1986. A total of 109 objections have been imposed since 1977, but the trend has clearly been toward a decline in their frequency, as indicated below:

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

The volume of session delays for 1988 also dropped slightly, down to four for a total of twenty-seven since the power was created in 1978. In 1987 five delays were imposed. Of the 1988 delays, two went into effect when the legislature took no action and two await action by the 1989 legislature.

III. Major rule-making issues of 1988

1. **DEPARTMENT OF AGRICULTURE**

Pseudorabies control, X IAB 26, ARC 8852. The department promulgated a major update of its rules concerning swine pseudorabies. The rules significantly increased testing and movement requirements in an attempt to make Iowa a pseudorabies free state.

Perhaps the most important part of these rules was the restriction on movement. Feeder pigs must originate from a negative test herd unless being moved to slaughter or a quarantine premises. They may not pass thru a sale barn unless they go to slaughter or to a quarantined premises. These restrictions had a major impact on producers who sell young pigs to other farmers. In a series of hearings throughout the state the legislature's agriculture committee took testimony from farmers, mainly opposed to the restrictions. The agriculture committee later asked the rules committee to delay implementation of this new program. After a additional meetings between the department and the rules committee compromises were worked out that allowed intra-state movement of swine after vaccination. The rules were later amended to reflect this compromise. **No action taken by the committee.**

2. **CORRECTIONS DEPARTMENT**

Sexually explicit material in prisons, XI IAB 13, ARC 9568. For ten years the department has had in place a rule that limited the availability of sexually explicit material in Iowa's prisons. "Soft

core" material such as Playboy magazine was permitted, but "hard core" material was not. Earlier in 1988 the Federal District Court ruled the restrictions unconstitutional. The decision follows a line of cases around the nation that held that a prisoner had a First Amendment right to all legally available material, except as limited by security and treatment concerns. This means that any sexually explicit material that is available to the public is also available to prison inmates, except for those inmates imprisoned for sex crimes. **No committee action taken.**

3. **EMPLOYMENT SERVICES DEPARTMENT**-Job Service

lock-outs not a labor dispute, XI IAB 4, ARC 9123. In 1987 the Iowa General Assembly vetoed a subrule which defined a "lock-out" as a labor dispute which prevents employees from receiving unemployment benefits. The department then proposed to replace this subrule with a detailed regulation which in essence stated that a lock-out was not a labor dispute if the decision was unilaterally the employers and the employees were willing to continue work under the existing contract. Four exceptions were listed: 1) when the employees were not willing to continue work; 2) when other workers are striking and those negotiations will affect the employment of the locked out workers; 3) when sabotage or a work slowdown occurred; 4) when it was "unreasonable" to expect the employer to continue employment under the same contract.

In part it implemented a 1988 Iowa Supreme Court case, Alexander v. Employment Appeal Board. Exception #4, where an employer can demonstrate a "compelling reason" for failure to provide continuing work, was essentially the Alexander decision. Exception one through three are largely spin offs of item four; they addressed specific fact situations NOT addressed in the Alexander decision.

These additional items were actively opposed by labor representatives, who contended these additional restrictions were not part of the Iowa Supreme Court decision and should not be codified in a new lockout rule. **No action taken by the committee, however, 1989 General Assembly is considering a legislative veto of this provision.**

4. **EMPLOYMENT SERVICES DEPARTMENT**--Division of Labor

Railroads regulated as amusement rides, X IAB 24, ARC 8760. The division proposed to treat "scenic" railroads as amusement rides and regulate their operation under chapter 88A, Iowa Code. While the statutory definition was broad enough to include these railroads the committee (and even the department) questioned whether the language of the statute could reasonably include railroads. In essence a scenic railroad is an actual train running along an otherwise unused track, simply to provide its riders with the experience of a train ride. It does not serve an actual transportation purpose.

The proposal did not even come from the division. Initially the Department of Transportation performed courtesy inspections of the trackage, but contended that "scenic" railways were not common carriers subject to their jurisdiction. The department contacted the Division of Labor, suggesting that these railways were in fact amusement rides. The department then commenced rule-making to adopt by reference a series of federal DOT regulations relating to

passenger cars, brakes, locomotives, etc.

The committee was concerned 1) whether any regulation was in fact needed, and 2) who had authority to regulate. Members of the committee noted that the railroad carried liability insurance and that some level of inspections were already required by the insuror. Representatives of the railroad suggested that the public's safety was adequately protected by this inspection. They also noted that the train speed was limited to around 30 mph, greatly reducing the risk of mishap.

The second problem, statutory authority, was submitted to the Attorney General. The question being whether these railroads were amusement rides regulated by the division of labor or common carriers regulated by the department of transportation. After several months of consideration the Attorney General opined that NOBODY had authority to regulate these railroads--they were neither amusement rides nor common carriers. This had the effect of terminating the rule making, but the issue remained whether these railroads should be regulated. This decision was a legislative issue and for that reason the general issue was forwarded to the General Assembly. **No formal committee action.**

5. **HEALTH DATA COMMISSION**

Severity coding for hospital patients, XI IAB 9, ARC 9419. The commission implemented a new program that required Iowa's larger hospitals to implement to computer program designed to measure the effectiveness of their treatment regimens. The rule mandated that all admitted patients be graded according to the severity of their conditions, on a scale of one through five. The results then must be grouped according to the various diagnostic related groups (DRG's). A follow-up rating must be performed on patients hospitalized for more than two days.

The program was supported by business, labor and insurance groups who contended that severity coding is a cost-containment measure that will enable consumers to determine which hospitals treat ailments most effectively for the least cost. These groups argued that the cost of this system should not be at issue because they, as consumers, ultimately will pay the price for the system.

The proposal was opposed by Iowa hospitals because of the cost of implementation. The processing of severity codes would required the purchase of expensive computer software and the hiring of additional staff. One hospital estimated it will increase patient costs by ten dollars per day. The hospitals also contended that the system is largely experimental at this point and should not be implemented until it has been further perfected. They noted that implementation at this point largely means that hospitals will be underwriting the cost of further research and development, with no actual benefit at this point. **No action taken by the committee.**

6. **GENERAL SERVICES DEPARTMENT**

Special Events on Capitol Complex, X IAB 27, ARC 8898. The department implemented a waiver provision which would allow the capitol grounds to be used for special events. The waiver allows the regulations restricting the use of the grounds to be temporarily suspended for government sponsored special events. The current regulations concerning the use of the capitol grounds would prohibit

their organized use except those protected by the first amendment. The origin of this waiver provision, and the need for its emergency filing, is the scheduled stopover of the RAGBRAI cyclists in Des Moines. The waiver must be in place by July if they are to be allowed to camp one night on capitol grounds.

The waiver will have a long term effect in that it will allow for expanded and innovative use of the capitol grounds. Sponsorship of events will be limited to government organizations, to avoid the possibility of commercialization of the capitol grounds or problems of selecting between competing private interests.

7. **HUMAN SERVICES DEPARTMENT**

Case management program, ARC 9570, XI IAB 13. Senate File 2330 required the department to institute a case management system to coordinate the available services with the needs of chronically mental ill clients. The key to the plan is the diagnosis of the clients condition and the coordination of services to best meet that condition. Management services are provided by the department, the county, or an agency under contract to the county. A case manager is appointed for each client. The manager arranges for a diagnosis of the client and then forms an interdisciplinary team consisting of the clients service providers who develop a program plan based on the needs of the client. The goal of the program is to allow the client attain at least a modicum of independent living and socialization. The rules were controversial because of a fear that they might be interpreted as implementing the "Patients Bill of Rights." That legislation, Iowa Code section 225C.25, established in law a series of treatment rights to which persons with mental disabilities were entitled. The legislation was never implemented due to a failure to appropriate funds for the program. The case management rules excerpted some language from the bill of rights and used the phrases in the adopted rules. County governments were concerned that use of this language might be misconstrued as actually implementing the bill of rights itself, thus mandating the expensive treatments specified in the Act. Without a legislative appropriation, the cost of these treatments would be carried by the counties. This fear was based on an actual district court decision in Iowa. **Committee objection to the use of this language filed in 1989.**

8. **HUMAN SERVICESDEPARTMENT**

Standards for child care, Chapter 110, SELECTIVE REVIEW. Chapter 110 establishes the physical standards for the licensing of in-home child care. A review of the current regulations was scheduled at the request of providers in rural Iowa who contend that the licensing standards make it impractical, if not impossible, to provide child care as a home based business.

In-home child care is regulated by Iowa Code Chapter 237A. "Group day care homes" are those homes which care for seven to twelve children, with no more than six being under six years old. These homes must be licensed by the state. For those homes caring for less than seven children, licensing is optional. Group homes are subject to numerous requirements, both in statute and rule.

Code section 237A.3(2) mandates that two staff members be on the premises of a group home when more than six children are present.

That section also mandates two exits from the children care area, a separate sick room for ill children and mandates the use of smoke detectors and fire extinguishers. Section 237A.5 requires that the care provider have a tri-annual physical examination and a criminal background investigation. Section 237A.12 requires the department to adopt rules establish the programming and safety standards for the homes.

The regulations for group homes are set out in Chapter 110. The most costly rules appear in rule 110.9. Smoke detectors are required for every child occupied room and every stairway. In most cases this means a minimum of four detectors. The "two exit" requirement is particularly difficult for two-story homes. If children are allowed in the second story there must be a direct exit to the outside; i.e., a fire escape to the second floor. Basements must also have a direct exit. A basement window can be used only if it is thirty inches square-an impossible requirement for most homes.

The remainder of chapter 110 contains numerous other requirements, modest in individual cost and desirable for any premises housing children. However, when added to the regulations outlined in 110.9, it became apparent that group homes were subject to extensive regulation. The committee could take no independent action on these rules because they were clearly not unlawful, in that they were neither unreasonable or beyond the authority of the department. The committee did believe, however, that the regulations did place an extreme burden on in-home day care and referred the entire package to the general assembly with the suggestion that legislation might be developed to reduce the burden on small providers. **Generall Referral to GA-no action final.**

9. **HUMAN SERVICES DEPARTMENT**

HMO enrollment in Polk County, X IAB 26, ARC 8872. In 1988 the General Assembly enacted H.F. 2447 which empowered the department to mandate enrollment for medicaid recipients in an HMO and provided some guidelines for enrollment. Pursuant to this legislation the department adopted rules to provide that patients in Polk County who fail to specify the type of medicaid service they want will automatically be enrolled in an HMO. They could opt out of the program at any time. The department estimated that 30% of eligible recipients, some 4,000 clients, would enter the HMO program.

The rule was controversial because of the limited number of physicians participating in the program.Of the twenty-one primary physicians located in Polk County, eleven practice in the same clinic, including all pediatricians and internists. During the course of the rule making the number raised to over fifty. The program contained an ample number of specialists. Over fifty physicians are available in all major specialities. opponents of the rule were vehement, arguing that the plan denied recipients reasonable access to medical care. However, proponents of the plan noted that it would make the same medicaid care available to patients, at a ten percent reduction in cost. The committee concluded that this pilot project was adequate to serve the public needs and that no serious availability problem existed. **No action taken by the committee.**

10. **NATURAL RESOURCES DEPARTMENT**-Environmental Protection Division Plugging abandoned wells, XI IAB 8, ARC 9343. The Groundwater

Protection Act in part required the department to promulgate rules establishing a procedure for the sealing of abandoned water wells and establishing a time for compliance. (Iowa Code section 455B.190). In essence the capping procedure set out detailed criteria for the methods and materials used to close wells; most types required the use of a registered well driller. The rule was controversial because of the high expense in capping these wells. In an economic impact statement, published by the division on August 10th, 1988, the total cost of the program was roughly estimated to be some $30,000,000. The committee noted that only a small fraction of this cost would be covered by the states grant program, leaving most of the cost to the individual farmer. While the Groundwater Protection Act did empower the Department of Natural Resources to provide cost-share money for this project, only $147,000 had been distributed to some 37 counties. The committee had no problem with the substance of the rules, but was seriously concerned over the cost to the individual farmer. **Session delay imposed by the committee.**

11. **TRANSPORTATION DEPARTMENT**

Salvage vehicle regulation, IX IAB 9, ARC 9386. Senate File 2285 largely rewrote Iowa's regulation of the rebuilding of salvage vehicles. A portion of the statute and the rules establish procedures to allow certain vehicles to be titled without the "rebuilt" designation and established a review system to deal with the problem of stolen parts being used in vehicle salvage. Both of these provisions are a significant change from current practice.

The most significant portion of these rules related to the theft examination of the component parts used to rebuild a vehicle. Rule 405.15 requires a bill of sale be provided for each component part or portion of a component, used to rebuild the vehicle. This bill of sale must identify the seller of the part and identify the vehicle identification number for any component part which has that number affixed. The initial proposal required the VIN number be included for any part of a component part. This massive record-keeping requirement would have made it virtually impossible to obtain individual parts because most parts making up a component part do not have a number stamped on them and most wholesalers could not establish an inventory system to track VIN numbers for the dozens of pieces that make up a component part. The discussion and compromises reached by the department and the salvage dealers resulted in a final rule that was virtually non-controversial, with both sides agreeing that any further problems would be worked out in future discussions. **No action by the committee.**