THE ADMINISTRATIVE RULES REVIEW COMMITTEE
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While the volume of rule-making is decreasing, the ability of the committee and the various agencies to compromise their seems to be holding steady. This is reflected by the a stabilization in the number number of objections. In 1986 the committee imposed five objections, up from three objections in 1985. However, only two session delays were imposed, down from four in 1985. Eighteen of these delays have been imposed since 1978, when the power was enacted into law.

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II. Major rule-making issues of 1986

1. College Aid Commission

Standards for college eligibility, VIII IAB 25, ARC 6604. Educational institutions are not automatically elibible to participate in the tuition grant program; the commission adopted rules to detail the elibility criteria. These provisions were based on section 261.9, Iowa Code, which established very specific eligibility criteria, which in part required acceditation may a national educational association (NCA) The controversy presented by the statute and the rules was the requirement that schools must either be accredited by the NCA or present letters from three NCA accredited institutions that they will accept transfer credits from these schools. The rules expanded on the statutory language by providing 1) that the credits must be accepted in the identical manner that it accepts credits from NCA approved schools; and 2) that "life experience" or "credit by examination" will not be used as transfer credit. These provisions in the rule accurately implemented and added detail to the statutory mandate.

The result of these provisions was that some non-accredited schools did not be able to take advantage of the three letter provision. Most four year accredited schools accept all the credits from other accredited schools, but the do not accept all the credits given from non-accredited schools (ie: business schools). Since this provision was the only method available to many of these schools to participate in the tuition grant program, the rules largely eliminated the participation of non-accredited schools.

2. Conservation Division.

Trapping Limitations, IX IAB 1, ARC 6501. The division promulgated rules to restrict the use of traps. In essence these rules placed additional restrictions on the use of snares and conibear traps. At the July 31st and August 21st meetings, the committee expressed concern in three basic areas:

1) The committees primary concern was the establishment of an eight inch loop for snares set on dry land. When these rules were

originally proposed, the maximum loop size was set at twelve inches. The four inch reduction in the adopted rule appears to significantly impact the taking of beaver and coyote, while at the same time providing protection against the accidental trapping of dogs, pets and other non-target animals. More significantly, the eight inch loop provision did not appear under notice, which meant that trappers did not have an opportunity to comment on the impact of this restriction before it was implemented.

2) Rule 144.4 banned the use, on land, of traps with toothed jaws. It appeared that traps with rubber teeth will be banned along with those with metal serrations.

3) Rule 114.5 provided that all traps must be tagged "[when] possessed by a person who can reasonably be presumed to be trapping". The committee is concerned with the vagueness of this presumption. The rule contained no standards to reveal the circumstances or facts which might lead to such a presumption.

This rule was delayed by the committee and refefrred to the House and Senate Natural Resources Committees. The Senate passed legislation to veto this rule; however, the resolution was never taken up in the House.

Taking of mussels, IX IAB 3, ARC 6781, The language in these rules originally appeared in April 1986. At its May 14th meeting the committee voted to object to that rule on the grounds that the filing was beyond the authority of the department. This objection did not go to the substance of the rules; it was the opinion of the committee that the filing itself was invalid because all of the items contained in it did not appear in the original notice of intended action. The department then "re-promulgated" those provision that were subject to the committee objection. Completion of this rule-making process eliminated the procedural defects of the previous rule-making.

The rule was controversial because it limited the species and size of mussels that could be taken from the Mississippi. The action was taken in response to allegations that over-harvest was seriously depleting some species. The rule was vigorously opposed by the clamming industry, which sells its stock to Japan for the pearl industry. They noted that there was no scientifically prepared study that documented the problem. After hearing extensive testimony on the issue the committee took no further action on this rule.

3. Labor Department

Hazardous chemicals, right to know, VIII IAB 21, ARC 6468, Chapter 455D, Iowa Code, in part provided that industries using hazardous materials must identify them both for their own employees and the general public. In part this chapter provided that employers must provide extensive information to the government, company employees and the public concerning hazardous materials used in the workplace. Training and safety requirements were required for all employees who will be working with the material. The department was granted sweeping rule-making authority to compel disclosure of hazardous material information.

Extensive rules were proposed: 1). Training programs were required to ensure that employees were aware of the risks involved in these chemicals and how to safely handle them; 2) A procedure was set up for employers use in determining which chemicals are in fact "hazardous" 3) labels were required for all hazardous material

leaving the workplace; 4) a safety information sheet must be developed for each type of hazardous material used; 5) Employees must be told of the specific chemicals in use; 6) A procedure was established which requires the employer make available, to the community, information concerning hazardous materials used in the community. These complicated rules implemented the statutory mandate accurately and fairly. The committee took no adverse action on this filing.

4. Personnel Department.
Definition of confidential employees, IX IAB 10, ARC 7103. In November 1986 the administrative rules review committee objected to a personnel department rule which related to the definition of a confidential employee. It was the opinion of the committee this definition is unreasonable in that it overly restricts the availability of confidential secretaries.

This rule in pertinent part provided that a confidential employee is the secretary of an elected official. All other secretaries are not defined as confidential and are protected by the merit provisions of Chapter 19A, Iowa Code. In the committees opinion this definition was too narrow and should be broadened to include the secretary of the deputy official and the secretaries of the division heads.

The authority for this rule appeared in Senate File 2175. The committee believed that the re-write of section 19A.3 was intended to reduce the number of automatic exemptions (from twenty-four to seventeen) and to vest in the Personnel Department authority to create exemptions as needed in particular situations.

The committee felt that deputy and division level secretaries were within those "particular situations" where the department should provide an exemption by rule. In addition to an objection the committee also forwarded the rule to the House and Senate for further study. No further action was taken on this rule either by the committee or by the legislature.

5. Department of Public Safety
Established margin of error for OWI breath tests, IX IAB 2, ARC 6716 & 17. 1986 Iowa Acts, HF 2493 created a new Chapter 321J, It stated in part:

> THE RESULTS OF A CHEMICAL TEST MAY NOT BE USED AS THE BASIS FOR A REVOCATION OF A PERSON'S MOTOR VEHICLE LICENSE OR NONRESIDENT OPERATING PRIVILEGE IF THE ALCOHOL CONCENTRATION INDICATED BY THE CHEMICAL TEST MINUS THE ESTABLISHED MARGIN OF ERROR INHERENT IN THE DEVICE OR METHOD USED TO CONDUCT THE CHEMICAL TEST DOES NOT EQUAL AN ALCOHOL CONCENTRATION OF .10 OR MORE.

The department has authority under section 321J.5 to approve devices for the use as breath testers; pursuant to this authority the department emergency adopted rules to specify a margin of error at five percent. In essence, whatever a suspect "blows" into the drunk-O-meter will be reduced by that percentage to determine whether the person has a .10 level. This estimate is used by the officer to determine whether there is probable cause to arrest the person and perform blood or urine tests. This same margin or error

will then be applied to these evidentiary tests.

An initial committee concern was whether the department in fact has authority to establish a margin of error by rule. section 321j.5 provided that the department "approves" the devices to be used to administer a breath test. The committee felt this authority was somewhat meager to support an attempt to establish a margin of error as a matter of law (note that a rule is a "law", just as is a statute enacted by the General Assembly, and is binding on the courts). The committee objected to the rule on the grounds that it was beyond the authority of the department, subsequent negotiations failed to achieve any compromise and the objection remain in effect.

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