

BOOK REVIEW

IOWA DEPARTMENTAL RULES, 1952. Des Moines: State of Iowa, 1952.
Pp. iv, 546. \$.....*

*Goodlove v. Logan*¹ to the contrary notwithstanding, regulatory agencies make law and there must be some way in which the citizen affected by that law, and the lawyer who seeks to advise him, can find out what law they have made.

The struggle to make this form of law accessible has been a long one and it is still continuing.² It was given great impetus, in relation to federal regulations, by the *Hot Oil* case in 1935,³ in which it was discovered in the Supreme Court that the government attorneys, the oil companies and the lower federal courts had all tried the case with reference to a regulation which had ceased to exist. This juicy revelation had much to do with the passage of the Federal Register Act,⁴ which requires the publication of "such documents or classes of documents as the President shall determine from time to time have general applicability and legal effect."⁵ This was evidently found insufficient, as further publication requirements were embodied in the Administrative Procedure Act⁶ adopted in 1946. Even the latter measure, however, seems not to have succeeded in making federal regulatory law fully accessible to the researcher.⁷

The Model State Administrative Procedure Act⁸ drafted by the National Conference of Commissioners on Uniform State Laws⁹ would require the Secretary of State to "compile, index and publish all rules adopted by each agency and remaining in effect," to publish a supplement or revision at least every two years, and to publish a current supplement in the form of a monthly bulletin.¹⁰

Iowa's answer to this problem is an act adopted in 1951,¹¹ which directed the code editor to prepare and publish the volume

* At the time this review—done from page proofs—was prepared for the printer the price of the volume had not yet been announced.

¹ 217 Iowa 98, 251 N.W. 39 (1933).

² Griswold, *Government in Ignorance of the Law—A Plea for Better Publication of Executive Legislation*, 48 HARV. L. REV. 198 (1934); Newman, *Government and Ignorance—A Progress Report on Publication of Federal Regulations*, 63 HARV. L. REV. 929 (1950).

³ *Panama Refining Co. v. Ryan*, 293 U.S. 388, 412 (1935).

⁴ 49 STAT. 500 (1935), as amended, 44 U.S.C. § 301 et seq. (1946).

⁵ 44 U.S.C. § 305(a) (1946).

⁶ 60 STAT. 238, 5 U.S.C. § 1002 (1946).

⁷ See Newman, *supra* note 2.

⁸ HANDBOOK, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 206 (1946); text printed in 33 IOWA L. REV. 372-375 (1948).

⁹ Stason, *The Model State Administrative Procedure Act*, 33 IOWA L. REV. 196 (1948).

¹⁰ MODEL STATE ADMINISTRATIVE PROCEDURE ACT § 4 (1946).

¹¹ 54 G.A. c. 51; *supra* p. 35. See also *The Adoption and Promulgation of Administrative Regulations in Iowa*, 37 IOWA L. REV. 424 (1952).

now under review. It provides that the publication shall be known as the Iowa Departmental Rules and that it "shall contain the permanent rules and regulations of general application, promulgated by each state board, commission, bureau, division or department, other than a court, having statewide jurisdiction and authority to make such rules. The code editor may omit from said volume all rules and regulations applying to professional and regulatory examining and licensing provisions and any rules and regulations of limited application."¹² The scope of publication required is thus much narrower than the Model State Administrative Procedure Act, which would include, among the rules the Secretary of State is required to compile, index and publish, "every regulation, standard, or statement of policy or interpretation of general application and future effect."¹³ It is also much narrower than the Administrative Procedure Act, which requires the publication, in addition to rules, of descriptions of the agency's central and field organization, certain information on agency forms and procedures, and "statements of general policy or interpretation formulated and adopted by the agency for the guidance of the public . . ."¹⁴ Both the Iowa act and the model state act differ from the federal act in failing to note any exception for functions "requiring secrecy in the public interest."¹⁵

The first edition of the Iowa Departmental Rules seems to consist of little more than the arranging and printing of the rules which the agencies have filed with the Secretary of State in compliance with Section 7 of the Act. Despite legislative authority to omit them, a few provisions relative to professional examinations and licensing have been included.¹⁶ A number of agencies, notably the Highway Commission, are represented only by editor's notes listing the subjects on which they regulate and suggesting that information may be obtained from the agency. Apparently their entire output is regarded as "of limited application." No editorial material to assist in the use of the rules has been added. There is, for example, no indication when any rule was adopted or whether its present form is its first formulation or the product of amendments. No court decisions are cited. There seem to be no cross references. Even the statutes to which the rules relate are not cited, except insofar as the text of the rules themselves may refer to them.

¹² 54 G.A. c. 51 § 8 (Iowa 1951). Rules relating to internal operation of agencies, discipline or release of persons committed to state institutions, and emergency regulations by the Department of Health are excluded by definition in Sec. 1.

¹³ MODEL STATE ADMINISTRATIVE PROCEDURE ACT § 1 (1946).

¹⁴ 60 STAT. 238 § 3(a), 5 U.S.C. 1002(a) (1946).

¹⁵ *Id.* § 3, 5 U.S.C. § 1002.

¹⁶ *E.g.*, accountants, pp. 1-5, watchmakers, pp. 540-541. But see editor's note under State Department of Health, p. 86.

It is unfortunate that so few of the techniques developed over the years for making law books usable have been applied to this one. The rules have been arranged by agency and, fortunately, the agencies have been alphabetized, not by their official titles, but by the most significant word, so that the volume starts with Board of Accountancy, which is followed by Department of Agriculture and then by Commission for the Blind. Beyond this, no uniform and consistent plan of organization has been followed. The units of the material are known under some agencies as "rules," under others as "regulations," "articles," or "sections." Some of them are numbered consecutively and some are not. They are subdivided by almost every conceivable system. A number of agencies have filed two or more sets of rules, each of which has its own independent numbering system. Much of the material under the Department of Social Welfare runs on for many pages of headings and subheadings which bear no numbers at all.

It is to be hoped that future editions of the I.D.R. will adopt a uniform system of consecutive numbering similar to that used in the Code, so that each rule may have its own unique number. This would greatly simplify citation and supplementation and would also make it easy for Shepard's Citations, if so inclined, to include the I.D.R. in their Iowa service.

Another feature which should be included in future editions is a table like that in Title 2 of the Code of Federal Regulations, in which one can look up a Code section by number and find a reference to the regulations which implement it.

Considerably more editorial aid is needed to help the user of this book find what he is looking for. There is no general table of contents. In some instances, tables of contents are included for particular agencies, but these are much too brief and sketchy and other agencies have none. The index consists of four pages for 541 pages of text. It is woefully inadequate.

The statute apparently contemplates that the entire body of rules included shall be republished in a revised and up-to-date form every two years.¹⁷ This leaves the problem of supplementation during the two year period. No formal supplement is provided for, but the Act does provide that:

Sec. 5. Each administrative agency shall mail a copy of each of its rules and regulations to the office of the clerk of each district court, to the secretary of the state bar association, to each district and supreme court judge, and to any person requesting same.

It would seem a plausible construction of this that every user

¹⁷ 54 G.A. c. 51 § 8 (Iowa 1951).

of the I.D.R. has the right, if sufficiently interested, to write to each agency and have himself put on the mailing list to receive all new rules and regulations as they appear. Another possibility is that the State Bar Association might publish the new rules in its News Bulletin and thus furnish a monthly supplement to the I.D.R. Without either of these, the text of new regulations will now be available in each county through the filing with the district court clerks. However, this is unlikely to prove satisfactory as a means of supplementation unless the clerks have sufficient personnel and sufficient interest to create a subject index to the material as it comes in.

A cumulative pamphlet supplement, prepared by the Code Editor and published at fairly frequent intervals, would be substantially more satisfactory than any of these methods, although it would increase the cost of I.D.R. to the purchaser. Still more satisfactory would be to publish the I.D.R. in loose leaf form and keep it continuously up to date. This is being tried in Wisconsin and it is to be hoped that this experiment will be studied carefully with a view to its possible adoption here.

Though much remains to be done to make Iowa administrative regulations fully accessible, the publication of the I.D.R. is a long step forward in that direction.

