

ADMINISTRATIVE RULES REVIEW COMMITTEE
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I. SYNOPSIS-In the calendar year of 1980 agencies implemented 371 ARC filings. This number is down some 10% from the 413 ARC filings adopted in 1979. Each ARC filing contained from one rule change up to the adoption or repeal of entire chapters. The 1980 filings represent roughly 1400 individual rule adoptions, amendments or repeals. These changes are as follows:

	1980	(1979)		1980	(1979)
social services	78	(98)	beef industry council	2	(0)
revenue dept.	31	(31)	comptroller	2	(4)
health dept.	26	(39)	historical dept.	2	(0)
conservation commission	24	(21)	Iowa development commission	2	(1)
transportation dept.	19	(23)	Iowa family farm development*	2	(0)
environmental quality dept	16	(30)	landscape architect board	2	(0)
job service dept.	12	(13)	mental health advisory coun.	2	(7)
merit employment dept.	12	(16)	natural resources coun.	2	(0)
public employment relat.	10	(1)	OSHA	2	(0)
civil rights comm.	9	(4)	professional occupation review	2	(1)
public instruction dept	9	(6)	professional teaching prac.	2	(0)
beer and liquor dept.	8	(2)	voter registration	2	(1)
pharmacy board	8	(9)	campaign finance disclosure	2	(0)
regents board	8	(5)	watchmakers board	2	(0)
energy policy council	7	(6)	banking department	1	(8)
commerce commission	6	(8)	educational radio & TV	1	(1)
labor bureau	6	(6)	engineering examiners	1	(4)
accountancy board	5	(2)	general services dept.	1	(0)
agriculture	5	(3)	livestock health advisory	1	(1)
aging commission	4	(1)	mental health authority	1	(7)
industrial commissioner	4	(1)	parole board	1	(1)
credit union dept.	3	(7)	public safety dept.	1	(4)
auditor	3	(6)	real estate commission	1	(1)
insurance dept.	3	(5)	shorthand reporters board	1	(1)
nursing board	3	(1)	soil conservation dept	1	(2)
nursing home board	3	(3)	substance abuse dept	1	(1)
secretary of state	3	(0)	veterinary medical board	1	(0)
planning and programming	3	(3)	appeal board	1	(0)
			blind commission	1	(1)

*denotes new agency

Only 6 objections were filed against these 371 adoptions (one additional objection filed against a rule under notice), continuing the decline begun in 1977. In that year 36 objections were imposed, in 1978 24 objections, and in 1979 only 13 objections appeared.

Only one 45-day delay into the general assembly was imposed in 1980, down from three in 1978 and two in 1979.

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II BACKGROUND Beginning January of 1977 approximately 1539 filings have been put into effect, representing over 6,000 individual rule changes. 79 objections were voted during this period, involving some 5 per cent of the total filings. The breakdown of filings by agency, from 1977 through 1980 is as follows:

social services	332	professional teaching practices	5
health department	134	secretary of state	5
department of environmental qual.	105	appeal board	4
conservation commission	103	city development board	4
department of transportation	89	college aid commission	4
revenue department	88	educational radio & TV	4
department of agriculture	54	soil conservation department	4
department of job service	47	veterinary medical examiners	4
merit employment department	44	archaeologist	3
board of regents	27	professional & occupational	3
commerce commission	26	osha	3
pharmacy board	24	real estate examiners board	3
department of public instruction	23	architectural examiners board	3
voter registration commission	21	attorney general	2
department of banking	20	beef industry council	2
department of labor	20	commission for the blind	2
office of planning & programming	20	city finance committee	2
civil rights commission	19	egg council	2
board of nursing	18	employment agency licensing	2
department of public safety	17	housing finance authority	2
board of accountancy	16	library department	2
natural resources council	16	mental health advisory	2
public employment relations board	15	parole board	2
energy policy council	14	veterans affairs	2
beer and liquor control department	13	watchmaking examiners	2
department of insurance	13	board of shorthand reporters	2
department of general services	12	Iowa family farm development	2
comptroller	10	crime commission	1
credit union	10	land preservation policy	1
board of engineering examiners	10	law enforcement academy	1
auditor	9	prison industries	1
mental health authority	9	public defense department	1
substance abuse department	9	records commission	1
dentistry board	8	treasurer	1
aging commission	7	uniform state laws	1
historical department	7	citizens aide	1
board of landscape architects	7	vocational education council	1
board of nursing home administrators	7	county finance committee	1
fair board	6		
industrial commissioner	6	Note: defunct agencies are removed	
Iowa development commission	6	from the compilation. Livestock ad-	
Iowa arts council	5	visory removed because it does not	
campaign finance disclosure comm.	5	actually promulgate rules	

The six most active rule-making agencies account for 55% of the total amount. The half of the agencies that were least active accounted for only 6% of the total. The less active agencies tend to have a specific

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and limited mission (the land preservation policy commission), or serve a limited clientele (watchmaking examiners). The less active agencies tend to promulgate rule in large blocks involving entire chapters, or entire sets of rules; the more active agencies mainly promulgate numerous amendments to existing rules. The conclusion is that numerical listing the rulemaking activity of the various agencies reveals the relative size of the agency, the stability of its statutory mandate, and the scope of its authority. The listing reveals the relative amount of change an agency has undergone; it does not measure the quality of the change.

III OBJECTIONS BY THE COMMITTEE The committee voted only six objections on adopted rules, and one objection on a proposed rule in 1980; less than half of the 13 objections imposed in 1979. Since July of 1975 the committee has voted 163 objections on adopted rules.

1) **SOCIAL SERVICES**-Two relatively simple objections were imposed. The first objection concerned staffing requirements for juvenile shelter and detention facilities. The proposal required that co-ed facilities have a staff member of both sexes on duty at all times. It was the feeling of the committee this placed an unreasonable hardship on smaller homes, which would need only one staffer if they were single-sex facilities. The department devised a solution using "on call" staffers who would report as needed, allowing a single on premises staffer to handle the routine operations. ARC 0866

The second objection concerned the provision of "chore service" for plowing a garden, but only "on the lot where the client lives". The committee felt the service should be provided on any plot readily accessible to the client. The department amended its rules accordingly. ARC1014

2) **PUBLIC INSTRUCTION**-An objection was imposed concerning a requirement that certain schools with large foreign enrollments offer a "transitional bilingual program". This type of program allows a student to receive the full gamut of education in the student's native language, while learning English as part of the curriculum. The alternative was the "English as a second language program", where English was the entire curriculum and the other subjects delayed until the student had mastered English.

Section 280.4, The Code, provided that schools must offer either program. It was the opinion of the committee this language gave the school district the discretion to decide which program was appropriate, and that the department of public instruction was not authorized to mandate a particular type of program. In discussions with the agency it was noted that the "TB" program offers the advantage of allowing students to proceed at their normal pace while the "ESL" program delayed their education until English was mastered. The main problem with "TB" programs was the expense and difficulty of finding qualified teachers fluent in the particular language needed. After considering the position of the committee, and evaluating public comments, the department amended its proposal to allow schools to provide either sort of program. ARC 1428.

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3) CIVIL RIGHTS COMMISSION—An objection was imposed concerning a requirement by the commission that employers provide "reasonable accommodation to the physical or mental handicaps of a job applicant. This term was defined to include "job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar action.

It was the opinion of the committee the Civil Rights Act did not contemplate "reasonable accommodation" and provided only that the mere existence of a handicap could not be used as a basis to deny an applicant a position. The committee was also concerned that statutory language could be so broadly interpreted that it might include concepts not even mentioned in the statute or envisioned by the drafters.

The provisions have NOT been modified by the department and the objection remains in effect. No court challenges to the concept of reasonable accommodation have been instituted.

4) PHARMACY BOARD OF EXAMINERS—An objection was imposed concerning a provision declaring that an employer/employee relationship between a physician and a pharmacist was unethical and subject to the imposition of licensee discipline. It was the opinion of the committee that the statutory grounds for licensee discipline proscribed only those activities that were inherently wrong, and that any allegation that an employer/employee posed a threat was speculative, not real and direct. The committee concluded that there was no rational reason to ban the employment of a pharmacist by a physician.

The pharmacy board was subsequently sued in Polk County district court, Taylor Pharmacy v. Board of Pharmacy Examiners. As of December of 1981 this case remains in the pleading stages. The board defends the validity of its rule on the following grounds:

1) That the committee action was invalid because the committee had not adopted any rules of procedure under Chapter 17A, The Code.

2) That the committee action was invalid because the action was based on an erroneous interpretation of state law.

3) That the committee action was invalid because it used improper criteria in determining whether the rule was unreasonable or beyond the authority of the board.

4) That the committee action was invalid because it violates the separation of powers section of the Iowa Constitution. The first and forth allegation are of some concern to the committee, the remainder merely speak to the correctness of that particular objection. The question whether the committee must adopt rules under chapter 17A is significant. It will determine whether the committee is an agency under the definition in §17A.1.

The question dealing with the separation of powers is crucial to the committee. If the power of objection violates this constitutional doctrine, then all other powers of the committee are similarly invalid, rendering the committee largely powerless.

5) LANDSCAPE ARCHITECTS—An objection was imposed concerning a provision establishing a registration for an "architect in training". It was the opinion of the committee that only statutes could establish forms of licensing, and that an agency cannot create by rule that which is not authorized by statute. The provision has NOT been modified by the board.

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6) TRANSPORTATION-A seventh objection was imposed upon a rule appearing under notice. It does not appear as a formal objection because a rule under notice has no legal effect, and an objection serves only to give the agency strong warning of what the committee intends to do if the provision is adopted. The department's proposal lowered the speeding violations at which motorists could have their licenses suspended, accomplished by changing the definition of a "serious violation". It was the opinion of the committee that this solution to the problem of speeders was more drastic than the problem itself. The rulemaking process was later terminated.

IV 45 DAY SUSPENSIONS-Only one suspension was imposed in 1980, relating to a health department proposal regulating the installation of private water wells. The issue began in 1979 when the rule was proposed. It was then the position of the committee that Chapter 455B, the Code, empowered the department of environmental quality to regulate public wells; since no similar statutory language appeared for private wells, no authority existed for the health department to regulate their construction. The proposal was withdrawn, and again proposed in modified form in November of 1979. The proposal received support in May of 1980 when the attorney general opined that sufficient authority could be implied to support the rule. The rule was adopted in that same month and promptly delayed by the committee until 45 days into the 1981 session of the General Assembly. In February of 1981, two years after rulemaking first began, the regulation of private water well construction went into effect. Legislative action to void the rule has not been enacted, but a bill to modify specific portions of the rule was adopted by the house (HF 864). That bill is now pending action in the senate for the 1982 session.