

ADMINISTRATIVE RULES REVIEW COMMITTEE  
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I SYNOPSIS - In 1981, the Committee reviewed 422 adopted ARC filings, up 14% from the 371 reviewed in 1980. Each ARC filing contains varying amounts of individual rule changes, averaging four per filing. The 1981 filings represent roughly 1700 individual rule adoptions, amendments or repealers. While the number of rules adopted has increased, the number of agencies engaged in rulemaking dropped in 1981. Over the previous four years, the number of agencies making rules held steadily at an average of 55. In 1981, the number dropped to 45. This decrease came at the expense of the smaller agencies. In 1980, 29 agencies promulgated one or two filings, while in 1981, only 21 were in this category. In 1980, this category represented 13% of the total filings. In 1981, it represents only 7% of the total. The changes are:

	1981	1980		1981	1980
social services	109	(78)	aging commission	2	(4)
revenue	35	(31)	architectural examiners	2	(0)
health	31	(26)	engineering examiners	2	(1)
transportation	27	(19)	general services	2	(1)
merit employment	26	(12)	insurance commissioner	2	(3)
conservation	25	(24)	Iowa family farm development	2	(2)
job service	18	(12)	nursing examiner	2	(3)
commerce commission	15	(6)	railway finance authority	2	---*
public instruction	13	(9)	veterans affairs	2	(0)
pharmacy examiners	11	(8)	accountancy board	1	(5)
environmental quality	10	(16)	athletic commissioner	1	(0)
planning & programming	9	(3)	campaign finance disclosure	1	(2)
auditor	8	(3)	citizens aide	1	(0)
arts council	7	(0)	fair board	1	(0)
regents	7	(8)	housing finance	1	(0)
soil conservation	7	(1)	inmate transfer review	1	---*
secretary of state	6	(3)	law enforcement academy	1	(0)
labor	5	(6)	livestock health	1	(1)
real estate examiners	5	(1)	nursing home examiners	1	(3)
agriculture	4	(5)	professional & occupational	1	(2)
blind commission	4	(1)	watchmakers examiners	1	(2)
energy policy council	4	(7)			
civil rights	3	(9)			
substance abuse	3	(1)	* denotes new agency		

Eight objections were imposed in 1981, for a total of 87 since January 1977. In that year, 36 objections were imposed; in 1978, 24 objections; in 1979, 13; and in 1980, only 6 objections were voted. Two 45-day delays were imposed for a total of 8 since the power was created in 1978.

II BACKGROUND - Since January 1977, approximately 1960 ARC filings have been put into effect, representing some 7700 individual rule changes. These changes are as follows:

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social services	441	landscape architect examiners	7
health	165	fair board	7
conservation	128	industrial commissioner	6
revenue	123	Iowa development	6
transportation	116	veterinary medical examiners	6
environmental quality	115	blind commission	6
merit employment	70	campaign finance disclosure	6
job service	65	professional teaching practices	5
agriculture	58	architectural examiners	5
commerce commission	41	appeal board	4
public instruction	36	city development board	4
pharmacy examiners	35	college aid	4
regents	34	educational radio & TV	4
planning & programming	29	professional & occupational	4
labor	25	Iowa family farm	4
civil rights	22	veterans affairs	4
voter registration	21	archaeologist	3
banking	20	osha	3
nursing	20	housing finance	3
energy policy	18	watchmaking examiners	3
accountancy examiners	17	attorney general	2
public safety	17	beef industry	2
auditor	17	city finance	2
natural resources	16	egg council	2
public employment relations	15	employment agency licensing	2
insurance	15	library department	2
general services	14	mental health advisory	2
beer & liquor control	13	parole board	2
engineering examiners	12	citizens aide	2
substance abuse	12	law enforcement academy	1
arts council	12	railway finance authority	2
secretary of state	11	shorthand reporters	2
soil conservation	11	crime commission	1
comptroller	10	prison industries	1
credit union	10	inmate transfer board	1
mental health authority	9	public defense	1
aging commission	9	records commission	1
dental examiners	8	treasurer	1
nursing home examiners	8	uniform state laws	1
real estate examiners	8	vocational education council	1
historical department	7	county finance committee	1
		land preservation policy	1

The 6 most active rulemaking agencies accounted for 55% of the total amount. The half of the agencies that were least active accounted for 7 percent.

III EMERGENCY ADOPTED RULES - Seventy-two of the 1981 ARC filings were adopted without notice or public participation, representing 17% of the total filings. Over one-third of these filings, 25, were filed by the department of social services. In comparison, the second most prolific agency in total rulemaking for 1981, the department of revenue, promulgated only one emergency rule, and the third most prolific, the department of health, promulgated eight.

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IV OBJECTIONS AND THEIR CURRENT STATUS (OCTOBER 1982)

1) AGRICULTURE DEPARTMENT. On 9 January 1981, the Committee objected to subrules 17.1(3), 18.1(3) and 18.7(2) on the grounds these provisions were beyond the authority of the department. All of these provisions related to the control of bovine burcellosis. NOT AMENDED.

2) COMMERCE COMMISSION. On 21 May 1981, the Committee objected to subrules 27.11(1) and 27.11(8) on the grounds they were unreasonable. These provisions required utilities to provide financing for energy conservation home improvements for those persons unable to obtain loans from conventional sources. The Committee believed that it was unreasonable to require utilities to become lenders of last resort for persons having neither the collateral or reputation to be an acceptable risk to traditional lenders; especially at a specifically set, extremely low rate of interest. NOT AMENDED.

3) COMMERCE COMMISSION. On 8 September 1981, the Committee objected to the "emergency" filing of ARC 2226. The provisions related to practice and procedure before the commission. The purpose of the objection was to terminate the emergency filing after 180 days, ensuring these provisions would have to be adopted with notice and public participation. Emergency filing superseded by ARC 2227.

4) ENERGY POLICY COUNCIL. On 21 April 1981, the Committee objected to subrule 5.1(3) on the grounds it was unreasonable. The subrule provided that "class A energy auditors" must be registered architects or engineers. These auditors evaluate buildings for their energy efficiency. It was the opinion of the Committee that a rigorous program of testing and training was the fairest way to select applicants, while requiring applicants to be licensed professionals unfairly limits the number of available applicants and over-emphasizes the importance of purely academic credentials. NOT AMENDED.

5) FAIR BOARD. On 13 July 1981, the Committee objected to rule 4.8 on the grounds it was unreasonable and beyond the authority of the board. The rule provided that the board had a lien on all property located on the fairgrounds as security for rent or privilege money owed under contract, and could attach the property without process of law. It was the opinion of the Committee this provision was unconscionable and constituted an adhesion contract. RULE DELETED(!)

6) HEALTH DEPARTMENT. On 14 July 1981, the Committee objected to the "emergency" filing of ARC 2158. The filing related to access to vital statistics records. Genealogists opposed the rules claiming they unfairly restricted access to bona fide researchers. Emergency filing superseded by later amendments adopted thru the normal rulemaking process.

7) REGENTS. On 8 June 1981, the Committee objected to rule 4.33(14) on the grounds it was unreasonable. The rule related to faculty parking permits. Rule deleted.

8) TRANSPORTATION. On 8 January 1981, the Committee objected to the "emergency" filing of [07,F] Chapter 9. The rule related to motor vehicle axles. Rule expired 11 July 1981, 180 days after objection.

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V DELAYS INTO LEGISLATURE

1) STANDARDS OF NURSING PRACTICE. On 14 July 1981, the Committee delayed the effective date of ARC 1908 until the expiration of 45 calendar days into the 1982 session of the General Assembly. This set of rules, referred to as standards I, established in some detail the duties and obligations of a nurse. This proposal was largely opposed by the nursing profession, which alleged that it required excessive documentation of nursing activities and might also expand potential malpractice litigation against both nurses and hospitals.

Standards I were withdrawn by the nursing board following the Committee action. A new rulemaking, standards II, was then begun. This proposal contained less detail and appeared to have the general support of the profession. Standards II were filed as ARC 2763, appearing in 17 March 1982. The rules were now supported by registered nurses, but opposed by licensed practical nurses, who felt the rules usurped their role in nursing by requiring extensive RN supervision. Proposed amendments would have increased the flexibility of the LPN. In April 1982, the Committee delayed the rules for 70 days to further evaluate these amendments. An attempt to overturn these rules by legislative action failed in committee. Compromises ultimately made the rules acceptable to the LPN's and the 70-day delay was lifted on 9 June 1982.

2) THE REGULATION OF BARGE FLEETING ON THE MISSISSIPPI. In October 1981, the Committee delayed the effective date of ARC 2345 until the expiration of 45 days into the 1982 legislative session. This rule was promulgated by the conservation commission and regulated the location and operation of barge fleeting [parking] areas. Barge operators had previously been unregulated by the state and opposed the rules, alleging they would increase costs, that adequate regulation was already enforced by the coast guard, and that it was improper for Iowa to unilaterally regulate operations on the Mississippi.

The rules appeared as a notice of intended action on 4 March 1981. River district legislators immediately proposed HF 855, which would have prohibited this type of regulation. This bill passed the House in May 1981, but adjournment prevented Senate action. The Committee delay was imposed to allow additional time for the consideration of HF 855.

The Senate considered HF 855 in February 1982, made several purely technical amendments, and passed it. These amendments required the bill to be returned to the House for concurrence. By this time, almost a year had elapsed since the first consideration of HF 855, and the conservation commission had begun a determined lobbying effort to retain the regulation of barge fleeting. The revised bill was debated in the House in March 1982, and again by the Senate in April. It was vetoed by the Governor in May.

VI OTHER ISSUES OF INTEREST--GENERAL REFERRALS TO LEGISLATURE

1) TEMPERATURE COMPENSATING METERS IN DISPENSING LP GAS. LP gas is extremely sensitive to temperature, and its volume changes radically in response to heat or cold. The department of revenue proposed a rule requiring "automatic compensating meters" on all pumps dispensing LP gas as motor fuel, to ensure constant, accurate measurement for the imposition of tax. These meters measure the dispensed fuel adjusted to a constant 60° F.

LP gas dealers opposed this rule because of the high cost of the meters, over \$3,000. As an alternative, they proposed requiring "printing meters," costing only \$300. These meters simply record the amount of fuel pumped, and record the temperature at that time. The dealer then corrects this to 60° using a conversion chart.

This issue was referred to the legislature, which enacted chapter 1188, 69GA, 1982 Session. This Act amended the motor fuel tax law by providing that LP gas be dispensed using automatic temperature correction, or else be dispensed using absolutely no correction. The second alternative was based on the idea that temperature correction was not in fact necessary for LP used as motor fuel. Vehicles must be fueled on a constant, year-round basis; and over a year's period, the temperature variations would average out, yielding an accurate yearly measurement.

2) CENTRALIZED LICENSING AGENCY. In April 1981, the Committee formally took the position that a centralized licensing agency should be established for health related professions. It was the position of the Committee that since health care is a broad, single issue, it followed that the various health care practitioners should be licensed by a central authority. The Committee characterized the current system as "...a patchwork scheme [which] is an open invitation to interprofessional dispute." The Committee forwarded this recommendation to the House and Senate.

3) GRADUATES OF FOREIGN DENTAL SCHOOLS. The board of dental examiners requires that all persons wishing to sit for the licensure examination be graduates of an American dental school. The Committee believed this requirement to be unreasonable and unfairly discriminatory; noting that the board of medical examiners had a special procedure for accrediting graduates of foreign medical schools. The board defended its restriction on the grounds that the vast number of foreign dental schools made systematic accreditation impossible. The Committee forwarded the issue to the House and Senate for further study.

4) TRANSFER OF PRISON INMATES BETWEEN INSTITUTIONS. The board was created by §217.22 to hear appeals by inmates protesting an involuntary transfer out of state. The procedure became, unexpectedly, similar to a contested case, with all the due process considerations implied by that term. The Committee forwarded the issue to the House and Senate, and recommended the statute be changed to turn the procedure into a mere opportunity to protest the transfer, instead of imposing upon the institution the burden of proving that a transfer serves the best interests of the inmate or the security interests of the institution.

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5) HANDICAPPED PARKING. Under the provisions of Chapter 601E a certain percentage of all parking spaces must be reserved for the handicapped. The Committee was concerned that no mechanism existed to ensure that only vehicles containing handicapped persons could take advantage of the allotted space. The Committee recommended to the House and Senate that only handicapped individuals be allowed to possess the identification devices and that the current practice of identifying vehicles used to transport the handicapped be discarded.