

## Rule-making: Implementing Legislation

Some laws require a regulatory framework to be established by the state agency responsible for implementing the law. Implementing this framework is process called rule-making. Some federal laws and regulations also require a regulatory framework.

In general, the rule-making process is

- The staff writes the proposed rules.
- The agency has to ask the governor for his permission to proceed with the rulemaking process.
- A Notice of Intended Action is published in the Administrative Bulletin.
- The Administrative Rules Review Committee (ARRC) is advised that a rule-making process has begun.<sup>1</sup>
- Public hearings are held and written public comments are collected.
- The proposed rules may be revised. If a significant amount of rewriting is required, the agency might issue another Notice of Intended Action and gather public comments.
- The agency head approves the rules. In the case of the Iowa Department of Natural Resources (DNR), the Natural Resources Commission and the Environmental Protection Commission are responsible for reviewing and approving the rules, instead of the director of the DNR.
- The approved final rules are published in the Administrative bulletin.
- The rules are reviewed by the Administrative Rules Review Committee. The ARRC can
  - Approve the rules, which allows the rule to go into effect. At the time the rules are approved, the ARRC can exercise a general referral which alerts the legislature that the rule has been approved.
  - Suspend or delay the rules by sending the rules to the Iowa legislature for legislative review; another term for this is session delay. In this case, the rules are suspended until the end of the next legislative session if the legislature is not in session or until the end of the current legislative session if the legislature is in session at the time of the ARRC meeting. The legislature can pass a resolution that would overturn the rule. If the legislature does not act, that allows the rule to go into effect when the legislature adjourns.
  - The ARRC can elect to defer, or table, the rule for 70 days.
  - Object to the rules which allows the rules to be implemented but allows regulated parties to force the agency to prove the rules are reasonable. What this means is that when a party takes an action to court as a result of this rule, the agency must show rule is reasonable in the



*Photo by Neila Seaman*

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<sup>1</sup> The Administrative Rules Review Committee is a joint standing committee of the legislature, consisting of 4 Democratic members of the House, 4 Democratic members of the Senate, 4 Republican members of the House, and 4 Republican members of the Senate.

court challenge. The effect of an objection is to force the court to determine if the rule is reasonable. Without an objection made by the ARRC, the court will automatically assume that the rule is reasonable.

- Under Section 17A.4(8) of the Iowa Code, the Governor can rescind the rules up to 70 days from the time they are effective, in essence exercising a veto of the rule. The Governor must do this with an executive order.
- If they pass all of the screenings mentioned above, the rules are implemented.
- When an agency makes a decision, by following the rules and the law in the Iowa Code, an aggrieved party can appeal the determination. Each agency has rules on how an appeal needs to be pursued and the timetable. The most important thing to consider is that these appeals have time frames, some of them very short.

Emergency rules can be adopted when they must go into effect quickly. In those cases, the rules are implemented without notice and comment.

### **Stakeholders groups**

Sometimes stakeholders groups are called together throughout the process to determine what would be required in the rules, to review the proposed rules before they are announced with a Notice of Intended Action, or to review items flagged by the public and interested parties during the public comment period.

Governor Terry Branstad issued Executive Order 80 that dictates that the agency must create a stakeholders group if a representative of the Governor's Office or the agency head requests it. The Governor has an employee serving as the Administrative Rules Coordinator (ARC). The members of the stakeholders group will be appointed by the agency working in consultation with the rules coordinator in the Governor's office. The executive order indicates that the stakeholders are to represent the "varying interests that will be significantly affected by any contemplated draft rule proposal that may result. . . ." The stakeholders group will receive public comment during its meetings. The rules that are developed by the stakeholder process are presented to the agency; the agency then will follow the processes to formally establish the rule.

### **Viewing rules**

The rules that are under consideration can be viewed on the state website at <https://rules.iowa.gov/>

Over 100 state agencies are involved in rule-making. The Iowa Administrative Code has over 26,000 active rules (those not rescinded or reserved for future uses) in about 900 chapters.<sup>2</sup>

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<sup>2</sup> Legislative Services Agency, Fiscal Note for SF2319, February 21, 2018