

## The Oversight Process

### Introduction

The oversight process for administrative rulemaking is not a single process and is not codified in a single provision. Statutes relating to review of rules appear in Iowa Code, sections 7.17, 17A.4, 17A.5, 17A.6, 17A.8. Moreover, review of administrative rules is not limited to the legislature; there are several entities responsible for rules review, each is independent of the other.

**General Assembly.** The legislature can reverse or modify any rule through a joint resolution approved by both chambers.

**Governor.** As the "supreme executive authority" (Iowa Constitution, Art. IV, sec. 1) the Governor has a constitutional mandate to direct the operations of the executive branch.

**Administrative Rules Coordinator (ARC).** The ARC provides the Governor with direct control and oversight of the rulemaking process. The office of the ARC serves as the repository for the original copies of all rules changes, and generally advises the Governor on rulemaking and administrative law issues.

**The Administrative Rules Review Committee (ARRC).** This special legislative committee provides general oversight of the rulemaking process on behalf of the legislature.

**The Attorney General.** In addition to providing legal advice to most agencies, the Attorney General is empowered to "object" to administrative rules by Iowa Code section 17A.4. Historically, the Attorney General has not used this objection process nor taken a prominent role in rules review. The Attorney General regularly advises agencies on rulemaking matters and the office itself maintains a client-attorney relationship with government agencies. This relationship generally precludes public review and criticism of agency rulemaking.

### The Major Powers and Framework

Each reviewing entity has one or more powers that it may exercise over agency rulemaking to influence or delay the process. Only the governor and the legislature have the right to rescind a rule. The more significant powers are:

- The objection. The objection is the workhorse of the rules review process. It is used almost exclusively by the Administrative Rules Review Committee, but is also available to the Governor and the Attorney General. The objection removes the presumption of validity that courts accord administrative rules. This power may be exercised over any rule, whether proposed or in effect {§17A.4(4)}.
- The Gubernatorial rescission {veto}. The Governor may rescind any administrative rule within seventy days after it becomes effective. This action is accomplished by executive order {§17A.4(6)}.
- The session delay. The ARRC may delay the effective date of a rule until the adjournment of the next session of the General Assembly. The committee refers the

delayed rule to the Speaker of the House and the President of the Senate. The rule is then forwarded to the appropriate standing committee for study and possible legislative action {§17A.8(10)}.

- The notice delay. The ARRC may postpone the adoption of a notice of intended action by an agency for 70 days by a two-thirds vote.
- The 70 day delay. A temporary, 70 day delay may be imposed by the ARRC in order to allow additional time to study and discuss an adopted rule {§17A.4(5)}.
- The general referral. The ARRC may refer any rule, whether proposed or in effect, to the General Assembly for further study. This action does not impact the legality or implementation of a rule, it is simply a mechanism to bring particular rules issue to the attention of the legislature. {§17A.8(7)}.
- The regulatory analysis. Both the Governor and the ARRC may request a regulatory analysis for a noticed or emergency filed rule. The analysis is a cost/benefit analysis of the proposal comparing the anticipated benefits against the long term costs of the rule. {§17A.4A}.
- The legislative veto. Under the Iowa Constitution the General Assembly has an independent power to rescind any administrative rule. The process known as nullification is identical to the enactment of a bill, requiring an absolute majority vote in each chamber, except that it does not require the signature of the Governor (Iowa Constitution, Art. III, section 40).

With the exception of the objection and the legislative veto, all of these powers are tied to the rulemaking process. Informal review can occur at any time, but only limited authority can be exerted. In essence the framework extends to the period between the publication of the first notice of intended action to the final effective date.

The public segment of the review process occurs on the second Tuesday of each month, at the meetings of the Administrative Rules Review Committee. The Administrative Rules Coordinator sits on the committee as an ex officio, non-voting member. The meetings generally review all rules currently in the notice or adopted waiting period. Note that the ARC can independently review rule at any time during the process.

Standing committees of the General Assembly can review rules at any time. Any legislative action to overturn a rule either by bill or nullification resolution could occur during the January through May annual session.

### **The “Emergency” Rulemaking Process**

All rules filed without notice must be approved by the Administrative Rules Review Committee (ARRC). Committee approval a simple majority vote. The committee must find good cause that “notice and public participation would be unnecessary, impracticable, or House File contrary to the public interest.”

The ARRC currently has the power to sunset an emergency filed rule by filing an objection to the use of the emergency process; that sunset is effective 180 days after the objection is filed. If the ARRC votes the objection the Committee may also suspend the current

implementation of an emergency rule, by a two-thirds vote, until the sunset takes place and the suspended rule becomes void.

The ARRC may suspend the effect of an emergency rule for 70 days, in order to allow time for further study, or suspend the effective date until the adjournment of the next regular session of the general assembly. Both actions require a two-thirds vote. If a session delay is imposed on an emergency rule, the rule is forwarded to the speaker of the House and the president of the Senate, who will forward the rule to the appropriate standing committee for further action.