

General Definition of Administrative Rules

Under the Iowa Administrative Procedures Act (IAPA) §17A.2 (11) the general definition of an administrative rules has two parts, a broad all-inclusive definition, and a series of narrow exemptions. The statute states:

“Rule means each statement of general applicability that implements interprets or prescribes law or policy, or that describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of an existing rule.”

Within this definition itself are three distinct criteria that establish the broadest possible application of a rule and make it impossible to avoid the rule-making process by simply calling a “statement” something other than a rule. If a statement meets the three criteria identified below it is a rule and must be adopted through the process outlined in §§17A.4 and 17A.5 of the IAPA.

The term “**statement**” is a generic, all-inclusive word. It does not matter how the agency statement is titled or couched. If it falls within the statutory definition, the rule-making requirements must be followed as outlined in §§17A.4 and 17A.5.

The term “**general applicability**” refers to statements that apply to groups or classes . This is different from statements which apply only to named individuals based on their specific fact situation; these statements of specific applicability are generally handled through contested cases, declaratory rulings or other agency actions which do not establish a general policy. The term **general applicability** does not necessarily mean applicable to everybody or to society as a whole. It means that the statement applies to some identifiable group or segment of society, even if that group in fact has only one member.

The term “**implements, interprets or prescribes law or policy**” covers any action relating to the creation of interpretation of a policy. It doesn’t matter whether the agency is establishing a policy with the force and effect of law or simply interpreting or opining what the law might mean.

In certain narrow situations even an executive order of the Governor can be subject to the rulemaking requirements. An executive order is not defined in the Code of Iowa; traditionally it is a formal document used by the Governor to establish policy internal to the executive branch.

Exclusions from the Rulemaking Process

Only the Office of the Consumer Advocate of the Iowa Attorney General is excluded by name from the rule-making process. The IAPA establishes eleven specific, narrow exclusions for certain agency statements; those exclusions are set out in §17A.2(11)”a” through “k”. Even if a statement exempted under one of the §17A.2 (11) exclusions, that statement is still subject to rulemaking if a statute mandates that the statement be adopted as a ”rule”

Types of Exemptions

Eleven specific exemptions are contained in §17A.2 (11) of the IAPA and are best presented in grouped in categories.

“a” and “c” exclusions apply to certain internal management statements and inter-agency communications or directives. In essence these provisions exempt personnel, general management and housekeeping matters of little interest to the public. These exclusions are specifically limited to statements that do not substantially affect the legal rights of the public. The statutory phrase contains the additional limitation that the statement must impact “legal” rights, which are rights enforceable through judicial process.

“b, d, e and j” exclusions apply to statements that do not meet the exact definition of a rule a specific exemption is provided to eliminate any uncertainty that these functions do not require rulemaking.

- **Paragraph “b”** exempts **“declaratory orders”** which are established in §17A.9 as a mechanism to obtain binding advice from an agency, based on a specific set of facts. Since declaratory orders are tied to specific fact situations they may serve as precedent for further decisions, but have no immediate general applicability. While declaratory orders are an important policy-making tool, a rulemaking requirement would seriously discourage agencies from issuing these opinions.
- **Paragraph “d”** exempts decisions in **“contested cases.”** The underlying principle for the exemption is similar to that for declaratory orders. However, it should be emphasized that the precedent set in contested case decisions is a major source of state policy making. Agencies should seriously consider adopting rules to codify precedent when it becomes so well developed that it has broad and frequent application.
- **Paragraph “j”** excludes a decision not **to exercise a discretionary power**. This is limited to situations where the agency declines to act in a particular fact situation and not where general policy is involved.
- **Paragraph “e”** excludes **Attorney General Opinions**. These opinions constitute legal advice from an attorney to a client, even though the advice is public information.
- **Paragraph “f”** excludes **government policies that need to be secret** to maintain effective administration of the law. To claim coverage under this provision the agency must show that publication would:
 1. Allow law violators to escape detection;
 2. Encourage disregard for the law; or
 3. Give unfair advantage to persons in an adverse position to the state.

For example: The 65 mile per hour speed limit is not rigidly enforced at that speed. The Iowa Highway Patrol enforces the limit at 70 miles per hour. If this was adopted as a rule, the public would routinely violate the statute and drive at the higher height.

- **Paragraph “g”** excludes from rulemaking the **prices charged for goods or services**. This does not include a license or other type of fee. The exemption applies when the state is, in effect, acting as a merchant, selling a good or a service, such as sales conducted by Prison Industries. Fees, such as license fees are not excluded and must be adopted as rules. The

difference is that a fee is part of an overall regulatory scheme; a sort of government monopoly where a fee must be paid in order to participate.

- **Paragraphs “h” and “i”** exclude statements relating to *the maintenance, care and public use of a state building or property*. These statements must be available as signs.
- **Paragraph “k”** excludes *statements relating only to inmates of a penal institution, students enrolled in a state school or patients in a state hospital*, when those statements are issued by that agency. The exclusion applies to statements relating only to those named groups, if the statement affects family, visitors or other members of the public, the exclusion does not apply.