

Emergency Rulemaking Process

Introduction

The standard rulemaking process takes a minimum of 108 days and frequently lasts six months or longer. Such delays can hamstring an agency's ability to swiftly react to emergency situations; the ability to respond swiftly to changing circumstances was a major reason why agency rulemaking was initially created. The Iowa Administrative Procedures Act (IAPA) has two procedures which can be used individually or jointly to either shorten or even eliminate delays caused by the rulemaking process. These two procedures have been nicknamed the "emergency" rulemaking process, but that name is a misnomer. The process is not limited to emergency situations and that particular word does not appear in the statute.

Eliminating notice: Approval by the Administrative Rules Review Committee

The emergency rulemaking mechanism is a combination of Iowa Code, section 17A.4(2), which relates to the publication of a notice of intended action, and Iowa Code, section 17A.5(2)"b", which relates to effective dates. Since there are two different parts to the emergency rulemaking process, there are two procedures an agency must follow in order to shorten the rulemaking process. To eliminate the notice requirements the Administrative Rules Review Committee (ARRC) must approve the adoption of a rule without notice. Committee approval to file an emergency rule requires a simple majority vote. The standard for that approval is a Committee finding that: "notice and public participation would be unnecessary, impracticable, or contrary to the public interest."

The underlying facts that support these findings must also be set out as part of the approval. These three grounds cover general situations where the value of having a rule in place outweighs the value of providing notice and public participation. The three grounds are alternatives-any one is individually sufficient to support a filing without notice. The term "impracticable" is defined as infeasible, unwise or imprudent. rulemaking is impracticable when notice and public participation would automatically prevent the agency from functioning. An example would be newly enacted legislation calling for a specific effective date; to be implemented the legislation must be supplemented through rulemaking. In this situation the "impracticable" exemption might apply, since any delay in rulemaking would result in a delay in the implementation of the statute.

The term "unnecessary" means useless or needless. rulemaking is unnecessary when the rule is strictly ministerial or routine, such as changing an address; in such cases notice and public participation would be pointless.

The term "contrary to the public interest" is a catch-all phrase that a balance between the value of notice and public participation against the value of speeding implementation of the rule.

Making Rules Effective Prior to Publication. Iowa Code §17A.5(2)"b"(1) and (2)

This is the second portion of the emergency rulemaking process. A rule may never be effective prior to its filing with the Administrative Rules Coordinator, but it can be made effective on the

date of filing or any subsequent date, as specified by the agency in the filing. Approval by the Administrative Rules Review Committee is not required to make a rule effective prior to publication.

Rules may become effective prior to publication if the agency finds that the:

1. Statute so provides;
2. Rule confers a benefit or removes a restriction on the public; or
3. Effective date is necessary because of an “imminent peril to the public health, safety or welfare.”

There are special notice requirements for emergency implemented rules. When a rule is placed into effect the agency is required to make “reasonable efforts” to inform all persons who may be affected by that rule.

Objection, Sunset, and Suspension. Emergency rules can be “sunsetting” which means the rules are no longer effective on a specified date. Although emergency rules are permanent, the Governor, Attorney General or the Administrative Rules Review Committee may file an objection to an emergency rule pursuant to Iowa Code §17A.4(2). An objection terminates rule 180 days after the objection is filed.

If the Committee files such an objection, the Committee may suspend the implementation of an emergency adopted rule by a two-thirds (7) vote of the ten member committee, until the sunset takes place and the suspended rule becomes void.

Within 35 days of the effective date of an emergency effective rule, the Committee may also, by a two-thirds (7) vote, suspend the applicability of the rule until the adjournment of the next regular session of the General Assembly.

The “Double-Barreled” Filing

The non-statutory remedy known as the “double-barreled filing” was devised as an alternative to the objection. When an agency implements an emergency rule it also publishes a notice of intended action, thus providing for public participation. This notice is ultimately adopted and replaces the earlier emergency filing.