



General Definition of Administrative Rules

Under the Iowa Administrative Procedure Act (IAPA), §17A.2(11), the general definition of an administrative rule has two parts: a broad inclusive definition and a series of narrow exclusions. The statute defines “rule” as “each agency 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 are three distinct criteria that establish the broadest possible application of the definition and make it impossible to avoid the rulemaking process by simply calling a “statement” something other than a rule. If a statement meets the criteria identified below, it is a rule and must be adopted through the rulemaking 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 styled.

The term “general applicability” refers to statements that apply to groups or classes. This is different from statements which apply only to named individuals or entities based on their specific fact situation; such 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 the statement is 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 or interpretation of a policy. It doesn’t matter whether the agency is establishing a new policy with the force and effect of law or simply interpreting or opining what existing law might mean.

The term “organization, procedure, or practice requirements of any agency” requires an agency to set out in rule its basic organizational structure as well as the means by which the agency carries out its various functions as they relate to the public.

In certain situations, even an executive order or directive of the Governor could be subject to the rulemaking process if it is an order or directive “which creates an agency or establishes a program or which transfers a program between agencies established by statute or rule.”

Exclusions from the Rulemaking Process

The IAPA establishes twelve specific, narrow exclusions for certain agency statements. Those exclusions are set out in §17A.2(11), paragraphs “a” through “k”. Even if a statement falls under one of the §17A.2(11) exclusions, that statement is still subject to the rulemaking process if another statute requires that the specific statement be adopted as a rule.



Types of Exclusions

The twelve specific exclusions are best presented in categories:

- Paragraphs “a” and “c” apply to certain internal management statements and inter-agency communications or directives. In essence, these provisions exclude 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, or procedures available to, the public.
- Paragraphs “b,” “d,” “e,” “j,” and “l” apply to statements that arguably do not meet the general definition of a rule anyway, but a specific exclusion is provided to eliminate any uncertainty that these functions do not require rulemaking:
 - Paragraph “b” excludes 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 they have no immediate general applicability. While declaratory orders are an important policy-making tool, a rulemaking requirement here would discourage agencies from issuing such orders. The paragraph also excludes “an interpretation issued by an agency with respect to a specific set of facts and intended to apply only to that specific set of facts,” which refers to interpretations similar to declaratory orders, but made on a more informal or nonbinding basis.
 - Paragraph “d” excludes decisions in contested cases. The underlying principle for the exclusion 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.
 - Paragraphs “e” and “l” exclude opinions of the Attorney General and Iowa Ethics and Campaign Disclosure Board. Such opinions consist more of an application of law to a fact pattern, rather than statements of general applicability.
 - 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 policymaking of a general nature is involved.
- Paragraph “f” excludes government policies that need to be secret to maintain effective administration of the law. The exclusion applies to statements the disclosure of which would do any of the following:
 - Allow law violators to escape detection.
 - Encourage disregard of the law.
 - Give a clearly improper advantage to persons in an adverse position to the state.
- Paragraph “g” excludes from rulemaking the prices charged by an agency for goods or

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services. This does not include a license fee, application fee, or other fees. The exclusion applies when the state is, in effect, acting as a merchant, selling a good or a service, such as sales conducted by Iowa Prison Industries. Fees such as license fees are not excluded and hence must be adopted as rules.

- Paragraphs “h” and “i” exclude statements relating to the maintenance, care, and public use of a state building or property. Statements relating to maintenance or care of such places are internal agency matters of minimal interest to the public, while statements concerning public use of such places are too numerous, variable, and specific for rulemaking to be practical, with required signage used as a substitute for notice to the public.
- Paragraph “k” excludes statements relating only to inmates of a penal institution, students enrolled in a state educational institution, 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.

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