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## **The Adoption and Publication of Rules**

### **Introduction**

The notice of intended action only begins the rulemaking process. The language of proposed rule changes does not become final until it is adopted by the agency. Final rule language does not become effective until after it has been published in the Iowa Administrative Bulletin (IAB).

### **Period for Adoption**

The 35-day period before a notice can be adopted is a minimum. Generally, adoption takes longer. Adopting in 35 days occurs only in rulemaking where every one of the procedural deadlines have been met on the earliest possible date. This notice period is limited. The agency has 180 days to either adopt the noticed language in final form or terminate the rulemaking. A notice which is not adopted within that period is void; the notice process must begin again if the agency still wants to pursue adoption. The 180-day period begins either on the date the notice was published in the IAB or the date of the last public hearing, whichever is later.

Substantive proposals require full and fair consideration before adoption by the agency. Since the first 20 of the minimum 35 days of the notice period are dedicated to public participation, this leaves only 15 days for consideration and analysis of that public comment, if the agency wishes to adopt as quickly as possible. More commonly the notice period runs 45-90 days, depending on the complexity of the public comment and the subject matter of the rulemaking.

### **Preamble**

In the IAB, adopted rules are preceded by a preamble, which contains information similar to that included for a notice, but also includes a summary of any public comments received, any changes made to the noticed language, and the effective date of the rules.

### **Publication and Effective Date**

Adopted rules can become effective no sooner than 35 days after they are published in the IAB. This 35-day period is a minimum. It allows the public time to come into compliance with the final rule language. When adopted rules are published in the IAB, the text of those rules is simultaneously incorporated into the Iowa Administrative Code. This means that the text of adopted rules is incorporated into the Iowa Administrative Code at least 35 days before it becomes effective. History lines following each rule and chapter in the Iowa Administrative Code can be consulted to determine if the current text of a rule is in effect. Because the IAB is published on a biweekly basis, this means changes are incorporated into the Iowa Administrative Code every two weeks.

### **Changes between Notice and Adoption**

When adopting rules, the agency is free to make changes to the rule language that was noticed, based on the public comments received or for other reasons. Even substantial changes can be made to the noticed language as long as those changes are within the scope of the original notice and a logical outgrowth of any public comment received on the notice. If changes on adoption exceed that legal standard, then the public was not given adequate notice of what would be adopted, and the failure to

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give adequate notice may be legal grounds for invalidating the rulemaking. An agency considering changes on adoption that may exceed that standard can file a second notice of intended action, known as an amended notice, for publication in the IAB. The amended notice is essentially a new notice of intended action for the changes the agency is considering. To determine whether changes from the notice are so extensive that an additional notice may be necessary, agencies should consider the following factors:

- The extent to which all persons affected by an adopted rule should have understood that the published proposed rule would have affected their interests.
- The extent to which the subject matter of the adopted rule or issues determined by that rule are different from the subject matter or issues involved in the published proposed rule.
- The extent to which the effects of the adopted rule differ from the effects of the published proposed rule had it been adopted instead.

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