

Draft

IOWA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION

POLICY/PROCEDURE STATEMENT

TOPIC: Policy Procedure and Definitions

Policy Procedure Number:

Replaces Number: NA

Date: September 17, 1998

Effective Date:

Preparer: Scott Vander Hart

Reviewer: Catharine Fitzsimmons

Approval: Bureau Chief: Peter Hamlin 

Date: September 17, 1998

Division Administrator:

Date:

Applicable Code of Iowa or Iowa Administrative Code Rule:

Iowa Code Section 17A.2 Subsection 10, Iowa Code Section 17A.3 Subsection 1 Paragraph "b," and 567 IAC 4.1(17A).

Attachments:

None

REASON OR BACKGROUND

The reason for developing this policy is to outline which issues should be adopted as rules, made into policies, or left as internal procedures; and provide definitions for each. It is also intended to clarify procedures for the development and approval of air quality policies. This guidance is necessary to help staff and the public understand which mechanism is best suited for a specific issue and provide consistent application of each.

DETAILS

Administrative Rules

Iowa Code Section 17A.2 Subsection 10 provides the definition of a rule as the following:

"Rule" means 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. Notwithstanding any other provision of law, the term includes an executive order or directive of the governor which creates an agency or establishes a

program or which transfers a program between agencies established by statute or rule. The term includes the amendment or repeal of an existing rule, but does not include:

- a. A statement concerning only the internal management of an agency and which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof.
- b. A declaratory ruling issued pursuant to section 17A.9, or 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.
- c. An intergovernmental, interagency, or intra-agency memorandum, directive, manual or other communication which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof.
- d. A determination, decision, or order in a contested case.
- e. An opinion of the attorney general.
- f. Those portions of staff manuals, instructions or other statements issued by an agency which set forth criteria or guidelines to be used by its staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when the disclosure of such statements would: (1) Enable law violators to avoid detection; or (2) facilitate disregard of requirements imposed by law; or (3) give a clearly improper advantage to persons who are in an adverse position to the state.
- g. A specification of the prices to be charged for goods or services sold by an agency as distinguished from a license fee, application fee, or other fees.
- h. A statement concerning only the physical servicing, maintenance or care of publicly owned or operated facilities or property.
- i. A statement relating to the use of a particular publicly owned or operated facility or property, the substance of which is indicated to the public by means of signs or signals.
- j. A decision by an agency not to exercise a discretionary power.
- k. A statement concerning only inmates of a penal institution, students enrolled in an educational institution, or patients admitted to a hospital, when issued by such an agency.

Essentially, an administrative rule is the following:

‘Administrative **rule**’ is a statement, requirement, or standard that implements, interprets, or prescribes law, policy, or procedure, which substantially affect the legal rights of, or procedures available to, the public or any segment thereof.

Iowa Code Section 17A.3 Subsection 1 Paragraph “b” further elaborates on administrative rules by specifying that in addition to other requirements imposed by Constitution or statute, each agency shall:

- b. Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available to the public, including a description of all forms and instructions that are to be used by the public in dealing with the agency.

This specifies the requirement for the agency to put into rule, any procedure the public is required to follow in order to demonstrate compliance with any statement, requirement, or standard that is already expressed as a rule. This also requires that information needed to

consider a specific permit application or form complete be outlined in an administrative rule. The department shall follow the procedure for rule making as adopted by 567 IAC 4.1(17A).

Agency Policy

Based on previous discussion, “*policy*” and “*internal procedure*” *can* only account for items or issues not currently provided for in statute. Two conditions apply for any inconsistencies between rule, policy, and internal procedure. They are as follows:

1. If there are inconsistencies between a rule and a policy, then the rule shall have precedence. This condition includes federal, state, and local (if applicable) rules.
2. If there are inconsistencies between a policy and an internal procedure, then the policy shall have precedence.

“***Policy***” is a plan or course of action designed to provide a decision making matrix, or outline a technical procedure or guideline, which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof. Policies are designed for general and common occurrences, and to clarify intent. However, they must maintain flexibility and allow discretion for unique situations or circumstances.

Policies would include procedures and guidelines used by staff while auditing permit applications or other reports, and when conducting facility inspections.

Procedures for Adoption of Policies

All draft policies must be reviewed by the immediate supervisor of the “preparer” (Air Quality staff member), and approved by the bureau chief. The policy will be presented to the Client Contact Group and the Air Quality Bureau staff and EPD field staff for consideration. The final policy, considering revisions recommended by staff or members of the public will be reviewed, and if appropriate, approved by the division administrator. They will be considered effective immediately upon approval of the division administrator. Policies **must** be documented and numbered using forms and numbering system established by the Bureau.

Policies will be made available to the public for comment through the inter-net, *Air Currents*, Client Contact meeting, or general mailing. Comments will be considered and the policy will be revised where appropriate. If substantive changes are made, then the policy will once again be made available to the public through the media previously mentioned. Policies must also be available from the Air Quality Bureau’s record center for public inspection or purchase. Written policies shall be reviewed and revised (if necessary) by the Department at least every four years.

In addition to policies drafted on an “as needed” basis by Air Quality Staff, the “Policy Work Group,” appointed by the bureau chief (under “Policy for appointing individuals to task forces,“) may draft, review, and/or make recommendations on policies on the agenda of the work group.

Internal Procedures

“Internal procedure” is a set of established methods or a statement concerning internal workflow, communication, and management of personnel and other agency resources.

Public comment is not required for internal procedures.