

Iowa DNR 5-Year Rule Review Plan

**Iowa Department of Natural Resources
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The DNR's 5-Year Rule Review Group consists of the following members:

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I. Introduction

During the 2012 session of the Iowa legislature, Iowa Code section 17A.7(2) was amended to require that agencies conduct ongoing and comprehensive five-year reviews of all of their administrative rules. The new statute reads:

17A.7(2) Beginning July 1, 2012, over each five-year period of time, an agency shall conduct an ongoing and comprehensive review of all of the agency's rules. The goal of the review is the identification and elimination of all rules of the agency that are outdated, redundant, or inconsistent or incompatible with statute or its own rules or those of other agencies. An agency shall commence its review by developing a plan of review in consultation with major stakeholders and constituent groups. When the agency completes its five-year review of its rules, the agency shall provide a summary of the results to the administrative rules coordinator and the administrative rules review committee.

Pursuant to this new law, the DNR must conduct an ongoing review of all administrative code divisions which fall under the jurisdiction of the DNR. In many instances, this review process has been underway for many years. The DNR is continually updating and revising its rules and will continue to do so. This process simply provides for a more structured and comprehensive approach which is designed to address specific concerns about the overall regulatory burden of state government in Iowa.

This review also coincides with the requirements of Governor Branstad's Executive Order 71 which requires:

- All state agencies to take steps to minimize the adverse impact on jobs and the development of new employment opportunities before proposing a rule.
- All state agencies to prepare a Jobs Impact Statement prior to publication of the rule, and solicit comments and information from stakeholders prior to preparing that document.

and Executive Order 80 which requires:

- A state agency to create a stakeholder group for a specific rulemaking if requested to do so by the head of the agency or the Administrative Rules Coordinator in the office of the Governor.

The first required step in the new statutory approach is the development of a plan for the review of the rules over the initial five-year period beginning in July of 2012. The DNR review shall be in consultation with major stakeholders and constituent groups.

The DNR has formed an internal working group. The members of that group are tasked with coordinating the review of specific administrative code chapters. The reviews for specific

chapters and rules will be conducted and coordinated by those individuals who administer the specific programs and chapters.

II. Criteria for Review.

Based upon the statutory requirements of Code of Iowa section 17A.7(2), Governor Branstad's Executive Order Nos. 71 and 80, and the DNR's understanding of the purposes to be achieved by this review process, the DNR will look at the following topics when reviewing its rules:

1. Rescinding rules that no longer have statutory authority
 - a. Rules that did not have legal authority in the first place
 - b. Rules where the statutory authority was repealed;
2. Revising or rescinding overly burdensome rules
3. Identifying rules that are unnecessarily more stringent than required by the federal government
4. Revising or rescinding redundant rules
5. Creating more user-friendly rules (e.g., easy to read with proper citations)

DNR staff will ask the following questions when reviewing these rules:

1. Does the rule do the job it sets out to do or are there unintended consequences?
2. Can the goal of the rule be achieved in a more efficient manner?
3. Does this rule require red tape that is unnecessary?
4. Does another department regulate this issue? Is this duplicative?
5. Does the rule burden business and job creation? Have industry standards changed?
6. Is the purpose of this rule achieved in the least restrictive manner?
7. Do the costs of this rule outweigh the benefits?
8. Does the rule go beyond federal legal requirements?
9. Is there legal authority for the rule?
10. Is the paperwork required by the rule necessary? Does anyone read it?

The intent of this analysis will be the elimination of any unnecessary regulations and the improvement of all regulations where modifications are determined to be necessary and appropriate. In addition to these basic questions, each program area will develop additional questions or criteria applicable to the specific programs.

III. Review Process.

The DNR regulates a wide variety of activities related to the discharge of pollutants, the use and enjoyment of state lands, and the management of the fish and wildlife of the State. In order for the review process to achieve the greatest possible improvement while providing the

appropriate level of stakeholder input, specific program areas will develop review plans that fit the scope and subject matter of the regulations which they oversee. This will allow those programs to tailor the process to the types of activities they regulate and the stakeholders impacted by those regulations.

These program-specific rule review plans will follow a general, overarching, framework. The general framework involves 2 phases, with differing steps and review criteria for each phase.

The initial phase of the review (Phase 1) is intended to identify those rules which can be repealed or amended because they are obsolete (i.e., outdated, redundant or inconsistent with other rules). Phase 2 is a deeper look, encompassing all of DNR's rules.

These Phase 1 rules will be identified by March 31, 2013 and proceed to rulemaking as set forth in the Schedule herein (See Section IV. Schedule). Phase 1 is intended to provide more immediate results from the 5-year review process and to allow for a sharper focus during Phase 2. Examples of rules to be covered in Phase 1 include 565 Iowa Administrative Code Chapters 1, 3, 5, 6, 13 & 18. These chapters provide rules related to energy efficiency programs. The DNR has not had responsibility for these programs since 2006.

Phase 2 can begin immediately but each step in the process will be significantly longer and the public review and input processes will be substantially more in-depth. All rule chapters which are not repealed or amended through Phase 1 will be reviewed through Phase 2. The Phase 2 public input process may result in changes being made to a rule or might lead to a decision that repealing or amending a rule is not appropriate at this time.

IV. Schedule

The review process will be undertaken pursuant to the following general schedule:

Estimated Timeline

Phase 1:

March 31, 2013

Internal review identifies Phase 1 rulemakings

April – June 2013

Draft proposed repeal or amendment to rule

July 1, 2013

Place rulemakings in State Fiscal Year 2014 Regulatory Plan

July-September 2013

Receive public comment

October 2013

Response to comments/revise rule or remove from Phase 1

November 2013

Start Phase I rulemaking process

Phase 2:

Now – March 2014

Internal regulatory review

March – July 2014	Program areas will develop schedules for the review and potential modification of specific rule chapters under the jurisdiction of that program area. This step establishes the order in which review will occur.
Per schedules	Gather public input in regard to possible changes to specific rules.
Per schedules	Review input from the public and draft rulemaking proposals, if appropriate.
Per schedules	Provide draft rulemaking to public for comment
Per schedules	Initiate rulemaking as determined to be necessary and appropriate.

These timelines are intended to provide a framework and to ensure that the process of review and rulemaking is moving forward. All timelines must be adjusted as circumstances warrant in order to meet the needs of the stakeholders, allow for internal work prioritization, and respond to changing circumstances. The intent is that all chapters are reviewed during the first 2 years of the process so that adequate time remains to undertake rulemaking actions within the 5-year review period.

V. Recent DNR Rule Improvements.

Although this 5-year process is being undertaken by the DNR pursuant to a legislative directive, the DNR's efforts to reduce regulatory burdens and improve regulations have been ongoing. Since January of 2011, the DNR has undertaken several actions to rescind rules or improve the regulatory process. Examples include:

1. Revisions to 567 IAC Chapter 22. Adopted on December 14, 2011. These rule changes deferred for a three-year period the counting of carbon dioxide emissions from biological processes toward Title V permitting thresholds. This delay provides regulatory relief, regulatory certainty, and ensured conformity between state and federal requirements.

2. Rescission of 567 IAC Chapters 140, 141, 148, 150 & 151. Effective July 18, 2012. These chapters contained regulations related to the processing and disposal of hazardous waste. The chapters were rescinded because the statutory authority has been rescinded and because another agency, the U.S. EPA, regulates in this area.

3. Revisions to 567 IAC Chapters 20, 23, and 25. Effective September 19, 2012. These changes to the Iowa Air Quality Programs included the elimination of a State Compliance Sampling Manual in favor of the use of federally-approved methods to eliminate any inconsistency or additional requirements. Additional changes to Chapters 22 and 23 were designed to increase flexibility and provide clarification.

4. Revisions to 567 IAC Chapters 68 and 69. Effective August 15, 2012. These amendments provide additional wastewater disposal options for small-scale on-farm food processing operations and are intended to lessen the burden of the regulations and allow for the continued growth of Iowa small businesses. Additional changes to the time of transfer inspection rules simplify and clarify requirements for private sewage disposal systems.

5. Revisions to 567 IAC Chapters 64. Effective January 16, 2013. These changes provide economically disadvantaged communities with relief from costs related to compliance with state and federal water pollution control laws. This ensures that no community is required to install a wastewater treatment system that causes substantial and widespread economic and social impact. The final amendments allow a community or entity that qualifies as disadvantaged more time to consider affordable treatment options and to seek funding.