



# State of Iowa

## Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

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### EXECUTIVE ORDER NUMBER NINE

- WHEREAS, the wide array of regulatory programs administered by the State of Iowa creates the potential for duplication and inefficiency in agency rule-making, in the absence of a coordinated management mechanism; and
- WHEREAS, effective agency planning is vital to the operation of a coordinated and well-managed rule-making process; and
- WHEREAS, effective agency planning requires adherence to sound regulatory principles that guide agencies in the exercise of their discretion; and
- WHEREAS, the creation of a well-coordinated and sound administrative policy also requires agencies to engage in a comprehensive and ongoing planning process that includes early and widespread communication with the public and other agencies or governmental bodies; and
- WHEREAS, this administration launched a quality and efficiency in government initiative on February 8, 1999, wherein a task force was assembled to prepare and submit a series of recommendations to the Governor on the creation of a process for reviewing and streamlining existing state regulations and the rule-making process as a whole; and
- WHEREAS, the task force has been charged with the task of preparing a series of recommendations for creating a system to improve the execution of state government, thereby benefiting the people of this state, and improving the state's economy; and
- WHEREAS, the objective of this executive order is to enhance agency planning and coordination, with respect to new and existing regulations, and to restore the integrity and legitimacy of regulatory review and oversight.

**NOW, THEREFORE, I, Thomas J. Vilsack, Governor of the State of Iowa do hereby order that upon the effective date of this executive order, each state agency, with the authority to adopt rules, as defined in Iowa Code section 17A.2(1), (10) shall adhere to the following principles and procedures when engaging in agency rule-making:**

#### I. Regulatory Principles

- A. To the extent permitted by statute, and wherever applicable, each agency shall only issue rules that are authorized by state law and that aid in interpreting the law or serve an important public need. In deciding whether and how to regulate, each agency shall assess all costs and benefits of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, each agency shall select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages) and that are most equitable in their result.
- B. Each agency shall identify and assess the significance of the specific problem any contemplated regulation intends to address.
- C. To the extent that it is reasonable and practicable, each agency shall examine whether existing rules (or laws) have created or contributed to the problem that a new rule is intended to correct, and whether those rules (or laws) should be modified to achieve the intended goal of regulation more effectively.
- D. Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, or providing information upon which choices can be made by the public.
- E. Each agency shall, in setting its regulatory priorities, consider the varying degrees and natures of the risks posed by the different substances or activities within its jurisdiction.
- F. Each agency shall design its rules in the most cost-effective manner to achieve the desired regulatory objective. In doing so, each agency shall consider incentives,

innovation, consistency, predictability, enforcement and compliance costs (to government, regulated entities, and the public), flexibility, and equity.

- G. Each agency shall assess both the costs and the benefits of contemplated rules and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a rule only upon a reasoned determination that the benefits of the intended rule justify its costs and that the rule is the best available method of achieving the desired regulatory objective, consistent with the other principles contained in this section.
- H. To the extent that it is reasonable and practicable, each agency shall base its decisions on scientific, technical, economic, and other information concerning the need for, and consequences of, the intended rule.
- I. Each agency shall identify and assess alternative forms of regulation and shall, to the extent that it is reasonable and practicable, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.
- J. To the extent that it is reasonable and practicable, each agency shall seek the views of appropriate local officials or their representatives before imposing regulatory requirements that might specifically or uniquely affect those governmental entities. Each agency shall assess the effects of its contemplated rule on local governments, including the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize their rulemaking actions with related local regulatory and other governmental functions.
- K. Each agency shall avoid rules that are inconsistent, incompatible, or duplicative with its own rules or those of other state agencies.
- L. Each agency shall narrowly-tailor its rules to impose the least possible burden on society, including, individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.
- M. Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

## II. Agency Rules Administrator

Each agency shall designate an individual as its Agency Rules Administrator, and provide the name of that person to the Administrative Rules Coordinator. The agency shall publish the name, address, telephone number, and fax number of the Agency Rules Administrator on its web-site. The Agency Rules Administrator shall be the agency official responsible for the administration of the agency rule-making process.

## III. Summary of Noticed and Adopted and Filed Rules

Each agency shall adopt and utilize the Uniform Summary Review Forms prepared and distributed by the Administrative Rules Coordinator when filing agency rules.

## IV. Regulatory Plan

To the extent permitted by statute:

- A. Each agency shall prepare a Regulatory Plan listing each "regulatory action" (each potential rule currently under active consideration or development within the agency excluding those rules that do not have a substantial impact on the legal rights, privileges, or duties of persons) that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved by the Agency Head, and shall contain at a minimum:
  - 1. a statement of the agency's current regulatory objectives and priorities and how they relate to the obligations imposed on the agency by statute and the Governor's priorities; and
  - 2. a description of each such contemplated regulatory action, including, to the extent reasonable and practicable, alternatives to be considered and a preliminary estimate of the anticipated costs and benefits of the action; and
  - 3. a summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order; and
  - 4. a statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency; and
  - 5. the agency's contemplated schedule for action, including a

statement of any applicable statutory or judicial deadlines, and

6. the name, address, and telephone number of a person knowledgeable about the contemplated action who the public may contact for additional information about that action.
- B. Each agency shall forward a copy of its Plan to the Administrative Rules Coordinator by August 1<sup>st</sup> of each year and shall also publish its Plan on the agency's web-site by that date. During the year, each agency shall update its plan on the web-site as often as reasonable and practicable, or as requested by the Administrative Rules Coordinator.
- C. At the time an agency submits its plan to the Administrative Rules Coordinator, the agency shall circulate copies of the plan to "affected agencies" that are listed on the Administrative Rules Coordinator's master list.
- D. An Agency Rules Administrator who believes that the planned regulatory action of another agency may conflict with an agency policy, planning, or existing rules shall promptly notify the other agency and the Administrative Rules Coordinator.
- E. If the Administrative Rules Coordinator believes that a planned regulatory action of an agency may be inconsistent with the policy, plans, or existing rules of another agency, or any of the principles set forth in this Order, the Administrative Rules Coordinator shall promptly notify that agency.
- F. Any views by any person on any aspect of any agency Plan, including whether a planned regulatory action might conflict with other planned or existing rules, should be directed to the issuing agency, with a copy to the Administrative Rules Coordinator.
- G. The Administrative Rules Coordinator should, at least annually, convene a meeting of local governments or their representatives to identify both existing and proposed rules that may uniquely or significantly affect those governmental entities. The Administrative Rules Coordinator shall also convene, at least annually, a meeting with representatives of businesses, non-governmental organizations, and the public to discuss regulatory issues of common concern.
- H. Any views by any person on any aspect of any agency plan, should be directed to the issuing agency, with a copy to the Administrative Rules Coordinator.
- I. The Administrative Rules Coordinator should, at least annually, convene a meeting of local governments or their representatives to identify both existing and proposed rules that may uniquely or significantly affect those governmental entities. The Administrative Rules Coordinator shall also convene, at least annually, a meeting with representatives of businesses, non-governmental organizations, and the public to discuss regulatory issues of common concern.
- J. The Administrative Rules Coordinator should, semi-annually, convene a meeting with the designated Administrative Rules Administrators of each state agency to discuss pending rule-making issues.

V. Rule-making Docket

To the extent permitted by statute, each agency shall maintain a current, public rule-making docket listing each pending rule-making proceeding. The docket shall be posted on the agency web-site, and otherwise readily accessible to the public for review. A rule-making proceeding is pending for the time it is commenced, by publication of a notice of proposed rule adoption, to the time it is terminated, by publication of notice of termination, or the rule becomes effective.

For each rule-making proceeding, the docket shall provide the following information:

- A. the subject matter of the proposed rule;
- B. a citation to all published notices relating to the proceeding;
- C. the location where written submissions on the proposed rule may be inspected;
- D. the time period wherein written submissions may be made;
- E. the names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- F. a statement on whether a written request for the issuance of a regulatory analysis of the proposed rule has been filed, whether that analysis has been issued, and where the written request and analysis may be inspected;
- G. the current status of the proposed rule and any agency determinations with respect thereto;
- H. any known timetable for agency decisions or other action in the proceeding;

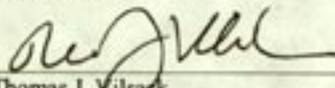
- I. the date of the rule's adoption;
- J. the date or dates in which the rule is to be or was to be considered by the Administrative Rules Review Committee and an indication of any action taken by that committee on the rule;
- K. the date of the rule's filing, indexing, and publication;
- L. the date in which the rule will become effective.

VI. Judicial Review

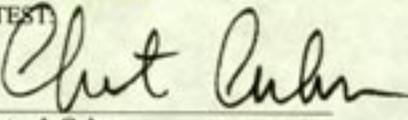
Nothing in this Order shall affect any otherwise available judicial review of agency action. This Order is intended only to improve the internal management of Iowa state government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the state, its agencies or instrumentalities, its officers or employees, or any other person.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 14<sup>th</sup> day of September in the year of our Lord one thousand nine hundred and ninety-nine.

  
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Thomas J. Vilsack  
Governor

ATTEST:

  
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Chester J. Culver  
Secretary of State