

Motor Vehicle Division Administrative Memo # 22-01

Explanation of Motor Vehicle Division Administrative Rule Making Process

DATE: June 8, 2022

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TO: MVD Policy & Compliance Team and MVD Management Team

SUBJECT

This administrative memo explains the process MVD follows when initiating a standard administrative rulemaking. Initiation of an administrative rulemaking can include creating a brand-new rule for the first time, updating an existing rule, or deleting an existing rule.

EXPLANATION

Under the authority provided in various Iowa Code sections and in conformance with Iowa Code chapter 17A and administrative rule chapter 761—10, MVD is authorized to adopt administrative rules which have the force of law and govern various MVD functions.

The purpose of this memo is to explain the process MVD follows when internally developing a standard administrative rulemaking up to and until sending the proposed rulemaking to the DOT rules administrator for drafting of the Notice of Intended Action (NIA). The process that the DOT rules administrator follows through the final rule adoption process is outlined in DOT PPM 300.09 and will (for the most part) not be repeated in this memo.

STEPS IN STANDARD MVD RULEMAKING PROCESS

1. A request to initiate rulemaking is either self-initiated by the MVD Policy & Compliance (P&C) team due to a law change or because the chapter is on the 5-year review plan or is due to a request received from a DOT subject matter expert, staff person, manager or outside entity.
2. MVD P&C thoroughly vets the concept behind the proposed rule change and ensures the MVD director is generally on-board with the concept.
3. MVD P&C downloads the word version of the rule chapter or specific rule from the Iowa General Assembly website and marks up the document with proposed changes. For internal review, the mark up can be done via track changes or strike-through and underline, however, once the rulemaking is sent out for stakeholder review and is sent to the DOT rules administrator, any changes to the rule **MUST** be in strike through and underline. Of note, the Legislative Services Agency (LSA) does not accept edits in track changes.
4. While MVD P&C is drafting the proposed changes, they will work closely with subject matter experts to ensure the changes match the intent behind the requested change. This can include multiple rounds of review by email and/or meetings to discuss the proposed rule amendments. During this process is

when the MVD P&C staff person should ensure the supervisor or manager over the subject matter area of the rule has a chance to weigh-in on the change(s).

5. Once the draft rulemaking is complete, it must be sent to the MVD P&C team leader for review.
6. Once the draft rule amendments have been reviewed and approved by the MVD P&C team leader, the team leader will send the proposed rulemaking to the MVD director for review. If the rulemaking requires advanced stakeholder review (such as if it is a 5-year review change, non-regulatory plan change, or a particularly difficult or controversial change), the team leader will also draft a stakeholder memo explaining the change and include that when sending the proposed rule amendments to the MVD director.
7. The MVD P&C team leader will facilitate any questions and additional edits between the MVD director and other P&C team members working on the rulemaking and/or the subject matter experts involved in the rulemaking.
8. Once the MVD director has approved of the rule amendments and **if an advanced stakeholder review and comment period is required or desired**, the MVD P&C team leader will take the following steps:
 - a. Email the draft rule amendments and stakeholder memo to the DOT rules administrator to perform a preliminary review.
 - b. Facilitate any changes/conversations necessary between the DOT rules administrator and MVD P&C staff or subject matter experts involved in the rulemaking.
 - c. Once the DOT rules administrator has preliminarily approved the draft rule amendments and stakeholder memo, the team leader will prepare a stakeholder list.
 - d. The team leader will mail and/or email the draft rule amendments and the stakeholder memo to the list of stakeholders, giving them 30 calendar days to review and provide comments.
 - e. If a stakeholder submits comments during the comment period, the team leader will alert the DOT rules administrator that a comment has been received. The team leader will work with MVD staff and the MVD director as necessary to develop a response to the comment. Sometimes a stakeholder comment will necessitate a further change to the draft rule amendments, other times the comment is a misunderstanding or is something we cannot address via an administrative rulemaking. Once the team leader has developed the final

response to the stakeholder, the team leader will respond to the stakeholder and provide a copy of the final response to the DOT rules administrator.

f. Once the stakeholder comment period ends and no comments were made, or any comments made were incorporated to a revised draft of the rule making, the team leader will complete the following rulemaking documents (which are also fully described in DOT PPM 300.09):

- i. Rule Predevelopment Questionnaire
- ii. Fiscal Impact Statement
- iii. Jobs Impact Statement

g. Once the documents in 8(f)(i)-(iii) are prepared, the team leader will send to the MVD director for final approval.

h. Once the MVD director has approved the documents in 8(f)(i)-(iii), the team leader will send to the DOT rules administrator along with the draft rule amendments and the stakeholder list.

i. The DOT rules administrator will then use the documents to draft the notice of intended action (NIA) for the rulemaking and send back to the team leader for review.

j. The team leader will ensure the MVD director has approved the draft NIA. This largely concludes internal MVD rulemaking process, and from here, most of the steps to rule adoption are covered in DOT PPM 300.09, with the following special notes:

i. The MVD P&C team leader will work with the DOT rules administrator to make any needed changes to the draft NIA, including based on feedback from the MVD director, DOT legal or the DOT director.

ii. The team leader will sometimes need to answer questions about the rulemaking from the Governor's office rules administrator.

iii. The team leader will review any edits to the NIA from LSA when the edits might be substantive.

iv. The team leader will be on point to present the rulemaking to ARRC, both at the NIA stage and the adopted and filed stage. The team leader may also be called on to present the rulemaking at the assigned DOT commission meeting.

v. The team leader will be on point to answer any additional stakeholder questions and make any further changes to the rulemaking due to comments received from stakeholders and/or legislators during the NIA stage or at the ARRC meetings.

vi. In rare circumstances, a stakeholder may request a public hearing on the rulemaking and if that happens, the team leader is on point to conduct the public hearing with assistance from the DOT rules administrator.

vii. The team leader must keep track of the rulemaking through the adoption process and ensure MVD P&C team members and subject matter experts are aware of the

effective date of the rulemaking so that any policy and/or programming changes will coincide with the effective date.

viii. When the effective date of the rule is certain, the team leader will prepare an informational memo for staff notifying them of the rule change.

9. If an advanced stakeholder review and comment period is **not required or desired**, the MVD P&C team leader will follow all of the same (applicable) steps in section 8 above except for the steps in 8(a) – (e) related to the stakeholder review process.

QUESTIONS AND ANSWERS

The following questions and answers provide additional information.

HOW DO I KNOW WHICH STAKEHOLDERS TO INCLUDE IN A STAKEHOLDER REVIEW AND COMMENT PERIOD?

As of 2022, all MVD administrative rule chapters have undergone at least one stakeholder review period. All stakeholder lists for each chapter may be found in the Policy & Communications folder on the W drive at the following address: W:\MotorVehicle\Policy & Communications\Administrative Regulations\Stakeholder Info

IS IT EVER OK NOT TO INCLUDE A STAKEHOLDER THAT WAS PREVIOUSLY INCLUDED WHEN A CHAPTER WAS REVIEWED?

Yes, there will be times when the subject matter of the rulemaking would not be applicable for a particular stakeholder. There are also times when stakeholders have reached out to us to request we remove them from our stakeholder list(s). Keep in mind, it is always best to err on the side of over-including stakeholders to ensure we are providing the most opportunities for interested parties to comment on our proposed rules. Taking this approach is consistent with what ARRC expects and can also help cut down on additional commenting or requests for public hearing during the NIA period.

WHY DON'T WE TYPICALLY SEND REGULATORY PLAN CHANGES OUT FOR STAKEHOLDER REVIEW?

Regulatory plan changes are mandated by Iowa Code changes and any rule changes mandated by an Iowa Code change must have the NIA published within 180 days of the effective date of the legislation. Most often, we are not changing our administrative rules beyond what the Iowa Code change requires, and we also need to move quickly to meet the 180-day NIA deadline. Because of this, we usually skip the stakeholder review and comment period for regulatory plan changes since we are simply aligning our administrative rules with code requirements. Of note, if the change is particularly controversial or if you are aware of a stakeholder who will almost certainly have a comment, it is still ok to proceed with an advanced stakeholder review and comment period even though it is a regulatory change, just be mindful that the 180-day deadline to publish the NIA still applies. Regardless of whether you choose to proceed with an advanced stakeholder review and comment period, stakeholders will still have the opportunity to comment on our proposed rule amendments during the NIA comment period.

WHAT IS THE 5-YEAR ADMINISTRATIVE RULES REVIEW PLAN?

Iowa Code chapter 17A requires each executive branch agency to conduct a review of all agency rule chapters every 5 years. The DOT rules administrator creates a 5-year rules review schedule

for all DOT rule chapters and we work off of that schedule to ensure our rule chapters have been reviewed within the required timeframes.

WHAT IS THE ADMINISTRATIVE RULES REGULATORY PLAN?

After each legislative session, the DOT rules administrator develops a regulatory plan, which outlines the DOT administrative rule chapters needing to be amended due to an Iowa Code change. As noted above, there is a 180-day deadline to publish the NIA for a regulatory plan change.

CAN WE EVER INITIATE AN ADMINISTRATIVE RULE CHANGE OUTSIDE OF THE 5-YEAR REVIEW OR REGULATORY PLAN?

Although it is rare, we can initiate a “stand-alone” rulemaking outside of the 5-year review or the regulatory plan. A stand-alone rulemaking is most often initiated due to a request from the MVD director or to address a critical need that cannot wait for the next chapter review. In almost every situation, a stand-alone rulemaking should go through an advanced stakeholder review and comment period.

WHERE DO I FIND COPIES OF THE 3 RULEMAKING DOCUMENTS I MUST COMPLETE AND SUBMIT TO THE DOT RULES ADMINISTRATOR TO HAVE THE NIA DRAFTED?

Copies of the rule predevelopment questionnaire, fiscal impact statement and jobs impact statement can be found in the administrative rules folder in the Policy & Communications folder on the W drive.

WHEN DOES DOT LEGAL COUNSEL REVIEW A PROPOSED RULEMAKING?

Per DOT PPM 300.09, the DOT rules administrator will submit the draft NIA to DOT legal counsel prior to sending to the DOT director for final review and approval. In most cases, DOT legal counsel will not have reviewed the draft rule amendments until after the rulemaking has gone through the advanced stakeholder review and comment period. Of note, depending on the subject matter of the rulemaking, it may be advisable to ask DOT legal counsel to review the proposed rulemaking prior to sending out for advanced stakeholder review. If in doubt as to whether DOT legal counsel should review a rulemaking prior to stakeholder review, it’s best to consult with the DOT rules administrator and the MVD director.