



Introduction

Recently we were asked to provide a summary of Indiana’s administrative rulemaking process, which is governed by Indiana Code § 4-22-2. When the Indiana legislature promulgates a new statute, it sometimes grants the agency having authority over the subject matter of the statute the authority to promulgate rules that further elaborate on the statute itself. For example, when the legislature created the statute that governs which drivers are required to obtain a commercial driver’s license, the legislature granted the Bureau of Motor Vehicles the authority to promulgate rules that further explain in what circumstances a commercial driver’s license is required and what criteria an individual must meet before one can be granted. The purpose of this memorandum is to explain the steps through which an agency must go in adopting a formal rule.¹

Discussion

When the legislature enacts a statute that authorizes an agency to adopt a rule, the agency generally has sixty (60) days from the effective date of the statute to begin the rulemaking process.² The first step in formal rulemaking requires the agency to publish in the Indiana Register notice of its intention to adopt a rule. This notice must be published at least twenty-eight (28) days prior to the next step in rulemaking, and the notice must include an overview of the intent and scope of the proposed rule and statutory authority for the rule.³ In conjunction with the published notice of intent to adopt a rule, the agency may also solicit comments regarding the need for the proposed rule, drafting of the proposed rule, or any other subject relating to the rule. If the agency solicits comments at this stage in rulemaking, it must prepare a written response containing a summary of the comments received, which response shall be a public document available to the public upon request.⁴ After twenty-eight (28) days have passed since the published notice of intent to adopt a rule, the agency must next publish a notice of public hearing in a newspaper of general circulation in Marion County, Indiana.⁵ Additionally at this time, the agency must also publish in the Indiana Register the notice of public hearing and complete text of the proposed rule.⁶ The notice of public hearing must be published at least

¹ This memorandum will not explain certain processing exemptions applicable to emergency rules.

² IC § 4-22-2-19(c).

³ IC § 4-22-2-23(b).

⁴ IC § 4-2-22-23(e).

⁵ IC § 4-22-2-24(b).

⁶ IC § 4-22-2-24(c).

twenty-one (21) days before the public hearing is scheduled to convene.⁷ The agency adopting the rule must consider all comments made at the public hearing with respect to the proposed rule. If the agency does not wish to make any changes to the proposed rule, it may adopt, in final form, a rule that is identical to the proposed rule.⁸ Indiana also follows the “logical outgrowth” test to public rulemaking, meaning that changes made to the published rule must be a logical outgrowth of the testimony offered. If they are broader than that, or if the agency makes substantial changes to the proposed rule, the rule must be republished as a new proposed rule and must be subject to a new public hearing.

After the agency adopts a final rule, it must be submitted to the attorney general for his review and approval. The attorney general will disapprove any rule that was not promulgated in accordance with formal rulemaking procedures. Finally, after a rule has been approved by the attorney general, it must then be submitted to the governor for review and approval. Once the rule has been approved by the governor it must be submitted to the publisher for filing. The rule may become effective not less than thirty (30) days after the rule is submitted to the publisher for filing.

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⁷ IC § 4-22-2-24(e). In the case of rules that are estimated to have a total economic impact of more than Five Hundred Thousand Dollars (\$500,000) the agency must submit the proposed rule to the office of management and budget for its consideration at least fifty (50) days prior to the convening of the public hearing.

⁸ IC § 4-2-22-29(a)(1).