

CHAPTER 3  
DEPARTMENT PROCEDURE FOR RULE MAKING

[Ch 3, 1973 IDR, renumbered as [770] Ch 77]

[Prior to 7/1/83, Social Services[770] Ch 3]

[Prior to 2/11/87, Human Services[498]]

**441—3.1(17A) Applicability.** Except to the extent otherwise expressly provided by statute, all rules adopted by the department are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

**441—3.2(17A) Advice on possible rules before notice of proposed rule adoption.** In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)“a,” solicit comments from the public on a subject matter of possible rule making by the department by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

**441—3.3(17A) Public rule-making docket.** The department shall utilize the electronic public rule-making docket provided by the office of the chief information officer.

[ARC 6345C, IAB 6/15/22, effective 8/1/22]

**441—3.4(17A) Notice of proposed rule making.**

**3.4(1) Contents.** At least 35 days before the adoption of a rule the department shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule.
- b. The specific legal authority for the proposed rule.
- c. Except to the extent impracticable, the text of the proposed rule.
- d. Where, when, and how persons may present their views on the proposed rule.
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the department shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the department for the resolution of each of those issues.

**3.4(2) Copies of notices.** All Notices of Intended Action are published on the legislative services agency website and are available for download at [www.legis.iowa.gov/law/administrativeRules/bulletinSupplementListings](http://www.legis.iowa.gov/law/administrativeRules/bulletinSupplementListings).

[ARC 6345C, IAB 6/15/22, effective 8/1/22]

**441—3.5(17A) Public participation.**

**3.5(1) Written comments.** For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing or via electronic transmission, on the proposed rule. These submissions should identify the proposed rule to which they relate and should be submitted to the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut, Des Moines, Iowa 50319-0114, or to the department’s rules administrator at [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us). Persons may also submit written comments on a Notice of Intended Action at the website [rules.iowa.gov](http://rules.iowa.gov), which lists all Notices of Intended Action that are open for public comment.

**3.5(2) Oral proceedings.** The department may, at any time, schedule an oral proceeding on a proposed rule. The department shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the department by the administrative rules review committee, a governmental subdivision, a state agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.
3. A request by a state agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

The department may waive technical compliance with these procedures.

The department shall determine for each rule for which oral proceedings are scheduled the number of locations at which hearings will be held throughout the state, if needed. Anyone may object to the department's decision prior to the date of the proceedings by writing the same addressee specified in the Notice of Intended Action for receiving written data, views, or arguments. The department shall review the adequacy of the number of locations in light of the comments received.

**3.5(3) Conduct of oral proceedings.**

*a. Applicability.* This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1) "b" or subrule 3.5(2).

*b. Scheduling and notice.* An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

*c. Presiding officer.* An employee of the department shall preside at the oral proceeding on the proposed rules and shall present a prepared statement on the substance of the rules. The presiding officer shall transcribe the proceeding or prepare a written summary of the presentations made.

*d. Conduct of proceeding.* At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at the proceeding are encouraged to notify the department at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the department decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Whenever possible, persons making oral presentations should submit their testimony in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. These submissions become the property of the department.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making

proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

**3.5(4) *Additional information.*** In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the department may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

The department may send notices of proposed rule making and a request for comments to any agency, organization, or association known to it to have a direct interest or expertise pertaining to the substance of the proposed rule.

**3.5(5) *Accessibility.*** The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Bureau of Policy Analysis, Department of Human Services, at [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us) in advance to arrange access or other needed services.

[ARC 6345C, IAB 6/15/22, effective 8/1/22]

#### **441—3.6(17A) Regulatory analysis.**

**3.6(1) *Definition of small business.*** A “small business” is defined in Iowa Code section 17A.4A(7).

**3.6(2) *Qualified requestors for regulatory analysis—economic impact.*** The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) “a” after a proper request from:

- a. The administrative rules coordinator.
- b. The administrative rules review committee.

**3.6(3) *Qualified requestors for regulatory analysis—business impact.*** The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) “b” after a proper request from:

- a. The administrative rules review committee.
- b. The administrative rules coordinator.

c. At least 25 or more persons who sign the request provided that each represents a different small business.

d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

**3.6(4) *Time period for analysis.*** Upon receipt of a timely request for a regulatory analysis, the agency shall adhere to the time lines described in Iowa Code section 17A.4A(4).

**3.6(5) *Contents of request.*** A request for a regulatory analysis is made when it is mailed, emailed, or delivered to the department. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

**3.6(6) *Contents of concise summary.*** The contents of the concise summary shall conform to the requirements of Iowa Code sections 17A.4A(4) and (5).

**3.6(7) *Publication of a concise summary.*** The department shall make available to the maximum extent feasible, copies of the published summary on the department’s website.

**3.6(8) *Regulatory analysis contents—rules review committee or rules coordinator.*** When a regulatory analysis is issued in response to a written request from the administrative rules review committee or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) “a,” unless a written request expressly waives one or more of the items listed therein.

**3.6(9) *Regulatory analysis contents—substantial impact on small business.*** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) “b.”

[ARC 6345C, IAB 6/15/22, effective 8/1/22]

**441—3.7(17A,25B) Fiscal impact statement.** A rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions, or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

If the department determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the department shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

**441—3.8(17A) Time and manner of rule adoption.**

**3.8(1) *Time of adoption.*** The department shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the department shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

**3.8(2) *Consideration of public comment.*** Before the adoption of a rule, the department shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any written summary of the oral submissions and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

**3.8(3) *Reliance on department expertise.*** Except as otherwise provided by law, the department may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

**441—3.9(17A) Variance between adopted rule and published notice of proposed rule adoption.**

**3.9(1) *Allowable variances.*** The department shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b. The differences are a logical outgrowth of the contents of that Notice of Intended Action or the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

**3.9(2) *Fair warning.*** In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question the department shall consider the following factors:

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests.
- b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action.
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

**3.9(3) *Petition for rule making.*** The department shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the department finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

**3.9(4) *Concurrent rule-making proceedings.*** Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

**441—3.10(17A) Concise statement of reasons.**

**3.10(1) General.** When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Bureau of Policy Analysis, Department of Human Services, Fifth Floor, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319-0114. Requests may also be sent via email to [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us). The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests shall be considered made on the date received.

**3.10(2) Contents.** The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the department's reasons for overruling the arguments made against the rule.

**3.10(3) Time of issuance.** After a proper request, the department shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

[ARC 6345C, IAB 6/15/22, effective 8/1/22]

**441—3.11(17A) Contents, style, and form of rule.** In preparing its rules, the department shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

[ARC 6345C, IAB 6/15/22, effective 8/1/22]

**441—3.12(17A) Department rule-making record.** The legislative services agency maintains an official rule-making record of each rule the department proposes or adopts on the legislative services agency website at [www.legis.iowa.gov/law/administrativeRules/bulletinSupplementListings](http://www.legis.iowa.gov/law/administrativeRules/bulletinSupplementListings).

[ARC 6345C, IAB 6/15/22, effective 8/1/22]

**441—3.13(17A) Filing of rules.** The department shall file each rule it adopts in the office of the administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule shall have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the fiscal impact statement or concise statement is issued. In filing a rule, the department shall use the standard form prescribed by the administrative rules coordinator.

[ARC 6345C, IAB 6/15/22, effective 8/1/22]

**441—3.14(17A) Effectiveness of rules prior to publication.**

**3.14(1) Grounds.** The department may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**3.14(2) Special notice.** When the department makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) "b"(3), the department shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the department to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used

for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice, or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 3.15(2).

[ARC 6345C, IAB 6/15/22, effective 8/1/22]

#### **441—3.15(17A) Review by department of rules.**

**3.15(1) Request for review.** Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator for the department to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the department shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The department may refuse to conduct a review if it has conducted a review of the specified rule within five years prior to the filing of the written request.

**3.15(2) Conduct of review.** In conducting the formal review, the department shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall include a concise statement of the department’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any requests for exceptions to the rule received by the department or granted by the department. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the department’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report shall also be available for public inspection.

[ARC 6345C, IAB 6/15/22, effective 8/1/22]

These rules are intended to implement Iowa Code chapter 17A and Iowa Code section 25B.6.

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