

CHAPTER 4
PROCEDURE FOR ADOPTION OF RULES

189—4.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the credit union division are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

189—4.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the credit union division 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 causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

189—4.3(17A) Public rule-making docket.

4.3(1) Docket maintained. The agency shall maintain a current public rule-making docket.

4.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the agency. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the board for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The agency may also include in the docket other subjects upon which public comment is desired.

4.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced by publication in the Iowa Administrative Bulletin to the time it is terminated or the rule becomes effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which 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. Whether a written request for issuance of a regulatory analysis or a concise statement of reasons has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis or statement may be inspected;
- g. The current status of the proposed rule;
- h. Any known timetable for division decisions or other action in the proceeding;
- i. The date of the rule’s adoption;
- j. The dates of the rule’s filing and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

189—4.4(17A) Notice of proposed rule making.

4.4(1) Contents. At least 35 days before adoption of a rule the credit union division shall publish Notice of Intended Action 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; and

e. Where, when, and how persons may request 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 credit union division 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 division for the resolution of each of those issues.

4.4(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with subrule 4.12(2).

4.4(3) *Copies of notices.* Persons desiring copies of future Notices of Intended Action by subscription must file with the credit union division at the address disclosed in 189—subrule 1.3(1) a written request indicating the name and address to which such Notices of Intended Action should be sent. The request shall specify whether the person wants to receive credit union rules as defined by rule 189—1.4(17A,533). Within seven days after submission of a Notice of Intended Action for publication, the division shall mail or otherwise transmit a copy of that notice to subscribers who have filed a written request.

189—4.5(17A) Public participation.

4.5(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, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the credit union division or the person designated in the Notice of Intended Action, at the address disclosed in 189—subrule 1.3(1).

4.5(2) *Oral proceedings.* The credit union division may, at any time, schedule an oral proceeding on a proposed rule. The division 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 division by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following:

a. A request by one or more individual persons must be signed by each person and include the address and telephone number of each person;

b. 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; and

c. A request by an 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.

4.5(3) *Conduct of oral proceedings.*

a. 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 this chapter.

b. 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. The superintendent, or another person designated by the superintendent who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

d. 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 such a proceeding are encouraged to notify the division 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 may 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 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) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted 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. Such submissions become the property of the credit union division.

(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 submission made by those participants in that proceeding; but no participant shall be required to answer any questions.

(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 presentation.

4.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the credit union division may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

4.5(5) Accessibility. The credit union division shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the division at (515)281-6514 in advance to arrange access or other needed services.

189—4.6(17A) Regulatory analysis.

4.6(1) Definition of small business. A “small business” is defined in Iowa Code section 17A.4A(7).

4.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the credit union division’s small business impact list by making a written application to the division at the address disclosed in 189—subrule 1.3(1). The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. Its address;
- c. The name of the person authorized to transact business for the applicant;
- d. A description of the applicant’s business or organization; an organization representing 25 or more persons who each qualify as a small business shall indicate that fact; and
- e. Whether the applicant desires copies of Notices of Intended Action, for a reasonable cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The credit union division may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The division may periodically send a letter to each registered small business or organization, or organization of small businesses, asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

4.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the credit union division shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. For a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the division shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

4.6(4) *Qualified requesters for regulatory analysis—economic impact.* The credit union division shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2a), after a proper request from:

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

4.6(5) *Qualified requesters for regulatory analysis—business impact.* The credit union division shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2b), 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; or
- d. An organization representing at least 25 small businesses. The request shall list the name, address, and telephone number of not less than 25 small businesses it represents.

4.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the credit union division shall adhere to the time lines described in Iowa Code section 17A.4A(4).

4.6(7) *Contents of request.* A request for a regulatory analysis is made when it is received by the division, at the address disclosed in 189—subrule 1.3(1). The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

4.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A(4,5).

4.6(9) *Publication of a concise summary.* The credit union division shall make available, to the extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

4.6(10) *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(2a), unless a written request expressly waives one or more of the items listed in that section.

4.6(11) *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, and, if the credit union division determines that the rule would have a substantial impact on small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2b).

189—4.7(17A,25B) Fiscal impact statement.

4.7(1) A proposed 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.

4.7(2) If the credit union division determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the division shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

189—4.8(17A) Time and manner of rule adoption.

4.8(1) *Time of adoption.* The credit union division 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 credit union division 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.

4.8(2) *Consideration of public comment.* Before the adoption of a rule, the credit union division shall fully consider all of the written and oral submissions received in that rule-making proceeding and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

4.8(3) *Reliance on agency expertise.* Except as otherwise provided by law, the credit union division may use its own experience, technical competence, specialized knowledge and judgment in the adoption of a rule.

189—4.9(17A) Variance between adopted rule and rule proposed in Notice of Intended Action. The credit union division shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action upon which the rule is based unless:

1. 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
2. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
3. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

189—4.10(17A) Exemptions from public rule-making procedures.

4.10(1) *Omission of notice and comment.* To the extent the credit union division for good cause finds that public notice and participation are unnecessary, impracticable or contrary to the public interest in the process of adopting a particular rule, the division may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The division shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

4.10(2) *Categories exempt.* The credit union division may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 4.10(1).

189—4.11(17A) Concise statement of reasons.

4.11(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 credit union division shall issue a concise statement of reasons for the rule. Requests for such a statement shall be in writing and shall be delivered to the division at the address disclosed in 189—subrule 1.3(1). The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

4.11(2) *Contents.* The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any changes 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 such change; and
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the credit union division's reasons for overruling the arguments made against the rule.

4.11(3) *Time of issuance.* After a proper request, the credit union division 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.

189—4.12(17A) Contents, style, and form of rule.

4.12(1) Contents. Each rule adopted by the credit union division shall contain the text of the rule and, in addition:

- a. The date the division adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(1), or the credit union division in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(1), or the credit union division in its discretion decides to include such reasons; and
- g. The effective date of the rule.

4.12(2) Incorporation by reference. The credit union division may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the division finds that the incorporation of its text in the division's proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The division may incorporate such matter by reference in a proposed or adopted rule only if the division makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this division, and how and where copies may be obtained from the division of the United States, this state, another state, or the organization, association, or persons originally issuing that matter. The division shall retain permanently a copy of any materials incorporated by reference in a rule of the division.

If the division adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

4.12(3) Reference to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the division shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the division. The division will provide a copy of that full text for a reasonable charge upon request, shall make copies of the full text available for review at the state law library, and may make the standards available electronically.

At the request of the administrative code editor, the division shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

4.12(4) Style and form. In preparing its rules, the division shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

189—4.13(17A) Agency rule-making record.

4.13(1) Requirement. The credit union division shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

4.13(2) Contents. The agency rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of division submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the division's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the division, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the agency and considered by the division, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the division is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the division shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendment or repeal or suspension of the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general;

j. A copy of any significant written criticism of the rule, including a summary of any petition for waiver of the rule; and

k. A copy of any executive order concerning the rule.

4.13(3) Effect of record. Except as otherwise required by a provision of law, the rule-making record required by this rule need not constitute the exclusive basis for division action on that rule.

4.13(4) Maintenance of record. The credit union division shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in paragraph 4.13(2) "g," "h," "i," or "j."

189—4.14(17A) Filing of rules. The credit union division shall file each rule it adopts with the administrative rules coordinator. The filing must be executed as soon after adopting the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued for that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until after the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the division shall use the standard form prescribed by the administrative rules coordinator.

189—4.15(17A) Effectiveness of rules prior to publication.

4.15(1) Grounds. The credit union division 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 the division 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 division shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

4.15(2) *Special notice.* When the credit union division 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 division 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 division 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 division of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice. 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 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 this subrule.

189—4.16(17A) General statements of policy.

4.16(1) *Compilation, indexing, public inspection.* The credit union division shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10)“a,” “c,” “f,” “g,” “h,” and “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(10)“f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

4.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the credit union division to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 4.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

189—4.17(17A) Review of rules by division.

4.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the credit union division to conduct a formal review of an existing rule. Upon approval of that request by the administrative rules coordinator, the division shall conduct a formal review of a specified rule to determine whether a new rule should be adopted or whether the rule should be amended or repealed. The division may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

4.17(2) In conducting the formal review, the credit union division shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall comply with Iowa Code section 17A.7(2). A copy of the division’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 at the division at the address disclosed in 189—subrule 1.3(1).

These rules are intended to implement Iowa Code section 17A.4.

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