

CHAPTER 3
RULE MAKING

[Prior to 10/8/86, Commerce Commission[250]]

199—3.1(17A,474) Purpose and scope.

3.1(1) Scope. These rules shall govern the practice and procedure in all rule-making proceedings of the board.

3.1(2) Rules of construction. If any provision of a rule or the application of a rule to any person or circumstance is itself or through its enabling statute held invalid, the invalidity shall not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and to this end the provisions of the rule shall be severable.

3.1(3) Waiver. The board may waive the application of any of these rules pursuant to rule 199—1.3(17A,474,476).

3.1(4) Forms and filing requirements. All rule-making filings may comply with forms provided by the board. All filings shall be made electronically except as otherwise permitted by the board.
[ARC 3502C, IAB 12/6/17, effective 1/10/18]

199—3.2(17A,474) Initial stakeholder input. In addition to seeking information by other methods, the board may solicit comments from the public on the subject matter of possible rule making by issuing an order through its electronic filing system or by causing notice of the subject matter to be published in the Iowa Administrative Bulletin, indicating where, when, and how persons may comment.
[ARC 3502C, IAB 12/6/17, effective 1/10/18]

199—3.3(17A,474) Petition for adoption of rules.

3.3(1) Petitions. Any interested person may petition the board for the adoption, amendment, or repeal of a rule.

3.3(2) Stakeholder comments. Other interested persons may file written comments containing data, views, or arguments concerning the petition within 20 days of the filing of the petition. Reply comments may be filed within 27 days of the filing of the petition. The board may allow additional time for filing comments and reply comments at its discretion.

3.3(3) Board action on petition. Pursuant to Iowa Code section 17A.7(1), the board, by written order within 60 days after the filing of a petition for rule making, shall either deny the petition on the merits and state the reasons for the denial, commence a rule-making proceeding in accordance with Iowa Code section 17A.4, or, if exempt from the procedures of Iowa Code section 17A.4(1), adopt a rule.
[ARC 3502C, IAB 12/6/17, effective 1/10/18]

199—3.4(17A,474) Commencement of proceedings.

3.4(1) Commenced by order. Rule-making proceedings shall be commenced only upon written order of the board. The board may commence a rule-making proceeding by order upon its own motion or upon the filing of a petition for rule making by any interested person.

3.4(2) Board action on petition. Rescinded IAB 12/6/17, effective 1/10/18.

3.4(3) Notice of rule making. Upon the commencement by written order of a rule-making proceeding, the board shall cause the required notice of the proceeding to be published in the Iowa Administrative Bulletin.

3.4(4) Fiscal impact statement. Pursuant to Iowa Code section 25B.6, 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, shall be accompanied by a fiscal impact statement outlining the costs associated with the proposed rule. If the board determines at the time it adopts a rule that the earlier fiscal impact statement contains errors or that a fiscal impact statement should have been prepared but was not, the board will issue a corrected or delayed fiscal impact statement.

3.4(5) Written comments. Upon the commencement of a rule-making proceeding, any interested person may file written comments containing data, views, or arguments concerning the proposed

adoption, amendment, or repeal of a rule within 20 days after the publication of the notice of rule making in the Iowa Administrative Bulletin or as otherwise ordered by the board. Comments shall be filed electronically unless otherwise permitted by the board.

3.4(6) *Reply comments.* The board may, in its discretion, allow for the filing of reply comments by interested persons.

[ARC 3502C, IAB 12/6/17, effective 1/10/18]

199—3.5(17A,474) Written statements of position. Rescinded ARC 3502C, IAB 12/6/17, effective 1/10/18.

199—3.6(17A,474) Counterstatements of position. Rescinded ARC 3502C, IAB 12/6/17, effective 1/10/18.

199—3.7(17A,474) Requests for oral presentation. If an oral presentation is not scheduled by the board on its own motion, any interested person may file a request for an oral presentation.

3.7(1) *Filing.* Interested persons shall have 20 calendar days after the publication of the notice of rule making in the Iowa Administrative Bulletin to file a request for an oral presentation. The board may, in its discretion, extend the time period for making such requests.

3.7(2) *Action on proper request.* If the board determines that a request complies with Iowa Code section 17A.4, the board shall by written order schedule oral presentation on the rule making and shall cause a notice of the oral presentation to be published in the Iowa Administrative Bulletin. The notice shall state the date, time and place of the oral presentation and shall briefly describe the subject matter of the rule-making proceeding. The oral presentation on the rule making shall be not less than 20 calendar days after the publication of the notice. The board shall serve a similar notice on all parties by filing the notice in the board's electronic filing system.

3.7(3) *Action on improper request.* If the board determines that a request for oral presentation does not comply with Iowa Code section 17A.4, it may by written order deny such request stating the reasons therefor, or it may, in its discretion, grant the request and schedule an oral presentation.

[ARC 3502C, IAB 12/6/17, effective 1/10/18]

199—3.8(17A,474) Rule-making oral presentation.

3.8(1) *Written appearance.* Any interested person may participate in rule-making oral presentations in person or by counsel. A written appearance may be filed not less than five calendar days prior to oral presentation.

3.8(2) *Oral presentations.* Participants in rule-making oral presentations may submit exhibits and present oral statements of position which may include data, views, comments, or arguments concerning the proposed adoption, amendment, or repeal of the rule. Participants shall not be required to take an oath and shall not be subject to cross-examination. The board may, in its discretion, permit the questioning of participants by any interested person, but no participant shall be required to answer any question.

3.8(3) *Comments and limitations.* The board may, in its discretion, permit reply comments and request the filing of written comments subsequent to the adjournment of the rule-making oral presentation. The board may limit the time of any oral presentation and the length of any written presentation.

[ARC 3502C, IAB 12/6/17, effective 1/10/18]

199—3.9(17A,474) Rule-making decisions.

3.9(1) *Adoption, amendment, or repeal.* The board shall by written order adopt, amend, or repeal the rule pursuant to the rule-making proceeding, or dismiss the proceeding in accordance with Iowa Code section 17A.4. The written order shall include a preamble to the adopted rules explaining the principal reasons for the action taken and, if applicable, a brief explanation of any decision not to permit waiver of the adopted rules. The board may, by order, specify the effective date of the adoption, amendment, or repeal of the rule.

3.9(2) *Variance between adopted rule and proposed rule.* The board may adopt a rule that differs from the rule proposed in the Notice of Intended Action in the following situations:

- 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 the Notice;
- b.* The differences are a logical outgrowth of the contents of the Notice and the comments submitted in response thereto;
- c.* The Notice indicated that the outcome of the rule making could be the rule in question;
- d.* The differences are so insubstantial as to make additional notice and comment proceedings unnecessary; or
- e.* As otherwise permitted by law.

3.9(3) *Statements.* Upon the adoption, amendment, or repeal of a rule or termination of a rule-making proceeding, and if timely written request is filed by any interested person pursuant to Iowa Code section 17A.4(2), the board shall, within 35 days of the request, issue a formal written statement of the principal reasons for and against the adoption, amendment, or repeal of the rule, or termination of the rule-making proceeding, including the reasons why the board overruled the positions in opposition to the board's decision.

[ARC 3502C, IAB 12/6/17, effective 1/10/18]

199—3.10(17A,474) Regulatory analysis.

3.10(1) *Regulatory analysis.* The board shall issue a regulatory analysis of a proposed rule, or of a rule adopted without prior notice and opportunity for public participation, when required by Iowa Code section 17A.4A.

3.10(2) *Request for regulatory analysis.* A request for a regulatory analysis shall be in writing and shall specify the proposed rule or adopted rule for which the analysis is requested.

3.10(3) *Schedule extended.* Upon receipt of a timely written request for a regulatory analysis of a proposed rule, the time periods for filing written comments and for requesting an oral proceeding are extended to a date 20 days after publication of a concise summary of the regulatory analysis in the Iowa Administrative Bulletin. Any oral proceeding that may already have been scheduled will be rescheduled by the board to a date at least 20 days after publication of the summary.

[ARC 3502C, IAB 12/6/17, effective 1/10/18]

199—3.11(17A,474) Review of rules.

3.11(1) *Ongoing review.* Pursuant to Iowa Code section 17A.7(2), upon receipt from the administrative rules coordinator of a request for formal review of a specified rule, the board will determine whether the rule has been reviewed within the preceding five years. If such a review was conducted, the board will report that fact to the administrative rules coordinator. If no such review has been conducted, the board will consider whether the rule should be repealed or amended or a new rule adopted in its place. The board will prepare a written report summarizing its findings, supporting reasons, and proposed course of action. Copies of the report will be sent to the administrative rules review committee and the administrative rules coordinator, and will be made available for public inspection.

3.11(2) *Process.* To facilitate the requirement to review its rules every five years, the board shall review a portion of its chapters each fiscal year over each five-year period.

a. In fiscal year 2018 and every fifth year thereafter, the board shall review Chapters 1 through 9 of its rules.

b. In fiscal year 2019 and every fifth year thereafter, the board shall review Chapters 10 through 18 of its rules.

c. In fiscal year 2020 and every fifth year thereafter, the board shall review Chapters 19 through 27 of its rules.

d. In fiscal year 2021 and every fifth year thereafter, the board shall review Chapters 28 through 36 of its rules.

e. In fiscal year 2022 and every fifth year thereafter, the board shall review Chapters 37 through 45 of its rules.

f. If the board adopts additional chapters in its rules, such chapters shall be reviewed every fifth fiscal year from the fiscal year in which they are made effective.

[ARC 3502C, IAB 12/6/17, effective 1/10/18]

These rules are intended to implement Iowa Code section 476.2.

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