

CHAPTER 31  
AGENCY PROCEDURE FOR RULE MAKING

**495—31.1(17A) Applicability.** Except to the extent otherwise expressly provided by statute, all rules adopted by the Iowa Public Employees' Retirement System are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

**495—31.2(17A,ExecOrd80) Advice on possible rules before notice of proposed rule adoption.**

**31.2(1)** IPERS shall designate the benefits advisory committee (BAC), and investment board as applicable, as the stakeholder rule-making group, pursuant to the rules for creation, public notice, procedures, public input, and results as outlined in Executive Order Number 80. The stakeholder group shall review and comment on any proposed rule changes before the rules are considered to be pending, as defined in subrule 31.3(2).

**31.2(2)** In addition to seeking information by other methods, the agency may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)“a,” solicit comments from the public by any reasonable means on a subject matter of possible rule making by the agency. Notwithstanding the foregoing, except as otherwise provided by law, the agency may use its own experience, specialized knowledge, and judgment in the adoption of a law.

[ARC 2981C, IAB 3/15/17, effective 4/19/17; ARC 3684C, IAB 3/14/18, effective 4/18/18]

**495—31.3(17A) Public rule-making docket.**

**31.3(1)** *Docket maintained.* The agency shall maintain a current public rule-making docket.

**31.3(2)** *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 of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)“a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the effective date of the rule. 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 the 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 and any agency determinations with respect thereto;
- h. Any known timetable for agency decisions or other action in the proceeding;
- i. The date of the rule's adoption;
- j. The dates of the rule's filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

**31.3(3)** *Rule-making Internet site.* The agency will maintain a page on its Internet site, and its rules filings will appear on the state of Iowa's Iowa administrative rules Internet site, pursuant to the requirements of Iowa Code section 17A.6A.

[ARC 2981C, IAB 3/15/17, effective 4/19/17]

**495—31.4(17A) Notice of proposed rule making.**

**31.4(1)** *Contents.*

a. At least 35 days before the adoption of a rule, the agency shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- (1) A brief explanation of the purpose of and the reason for the proposed rule;
- (2) A brief explanation of the principal reasons for the agency's failure to provide for a waiver in a rule and the reasons for overruling considerations urged against the rule;
- (3) The specific legal authority for the proposed rule;
- (4) Except to the extent impracticable, the text of the proposed rule;
- (5) Where, when, and how persons may present their views on the proposed rule;
- (6) Where, when, and how persons may request an oral proceeding on the proposed rule if the notice does not already provide for one; and
- (7) A fiscal impact statement as described under rule 495—31.7(17A,25B).

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the agency 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 agency for the resolution of each of those issues.

*b.* If requested by an interested person, the agency shall issue a concise statement of the principal reasons for and against the rule adopted, pursuant to Iowa Code section 17A.4(2).

**31.4(2) *Incorporation by reference.*** A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 31.12(2).

**31.4(3) *Copies of notices.*** The agency shall submit a copy of the notice to the chairpersons and ranking members of the appropriate standing committees of the general assembly as required by Iowa Code section 17A.4(1) "a."

[ARC 2981C, IAB 3/15/17, effective 4/19/17]

#### **495—31.5(17A) Public participation.**

**31.5(1) *Written comments.*** For at least 20 days after publication of a Notice of Intended Action, persons may submit arguments, data, and views, in writing, on the subject matter of the published notice. Such written submissions should identify each proposed rule to which they relate and should be submitted to the person and address designated in the Notice of Intended Action.

**31.5(2) *Oral proceedings.*** The agency may, at any time, schedule an oral proceeding on a Notice of Intended Action. The agency shall schedule an oral proceeding 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 agency 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 additional information:

*a.* 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.

*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.

*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.

#### **31.5(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 this chapter.

*b. Scheduling and notice.* An oral proceeding on a Notice of Intended Action may be held at IPERS, 7401 Register Drive, Des Moines, Iowa, 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 applicable Notice of Intended Action by ARC number and citation to the Iowa Administrative Bulletin.

*c. Presiding officer.* The agency, through an employee of the agency, who is familiar with the substance of the rules proposed in the Notice of Intended Action, shall preside at the oral proceeding. The presiding officer shall record the oral proceeding and archive the recorded record at IPERS.

*d. Conduct of proceeding.* At an oral proceeding on a Notice of Intended Action, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the subject matter of the rules proposed in the Notice of Intended Action. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the agency 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 electronic means.

(1) At the beginning of an oral proceeding, the presiding officer shall give a brief synopsis of the subject matter of the rules proposed in the Notice of Intended Action, a statement of the statutory authority for each proposed rule, and the reasons for the agency's decision to propose each rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of an 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 a meeting.

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

(6) An 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.

**31.5(4) Additional information.** In addition to receiving written comments and oral presentations according to the provisions of this rule, the agency may obtain information concerning its proposed rules through any other lawful means deemed appropriate under the circumstances.

**31.5(5) Accessibility.** The agency shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person designated in the Notice of Intended Action at the telephone number or address provided in the Notice of Intended Action in advance of the proceeding to arrange access or other needed services.

[ARC 2981C, IAB 3/15/17, effective 4/19/17]

#### **495—31.6(17A) Regulatory analysis.**

**31.6(1) Definition of small business.** A "small business" is defined in Iowa Code section 17A.4A(8)"a."

**31.6(2) Mailing list.** Small businesses or organizations of small businesses may be registered on the agency's small business impact list by making a written application addressed to IPERS, 7401 Register Dr., P.O. Box 9117, Des Moines, Iowa 50306-9117. 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 a 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 qualify as a small business shall indicate that fact; and
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The agency 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 agency may periodically send a letter to each registered small business 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.

**31.6(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 agency 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. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the agency 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.

**31.6(4) *Qualified requesters for regulatory analysis—economic impact.*** The agency 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.

**31.6(5) *Qualified requesters for regulatory analysis—business impact.*** The agency 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.

**31.6(6) *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).

**31.6(7) *Contents of request.*** A request for a regulatory analysis is made when it is mailed or delivered to the agency. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

**31.6(8) *Contents of concise summary.*** The contents of the concise summary shall conform to the requirements of Iowa Code sections 17A.4A(2), 17A.4A(5) and 17A.4A(6).

**31.6(9) *Publication of a concise summary.*** The agency shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

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

**31.6(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, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) "b." [ARC 2981C, IAB 3/15/17, effective 4/19/17]

**495—31.7(17A,25B) Fiscal impact statement.**

**31.7(1)** A proposed rule that mandates additional combined expenditures exceeding \$100,000 or combined expenditures of at least \$500,000 within five years by all affected political subdivisions, the agency itself, 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 rule. A fiscal impact statement shall satisfy the requirements of Iowa Code section 25B.6.

**31.7(2)** If the agency determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the agency shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

**495—31.8(17A) Time and manner of rule adoption.**

**31.8(1)** *Time of adoption.* The agency 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 agency 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.

**31.8(2)** *Consideration of public comment.* Before the adoption of a rule, the agency shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

**31.8(3)** *Reliance on agency expertise.* Except as otherwise provided by law, the agency may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

**495—31.9(17A) Variance between adopted rule and published notice of proposed rule adoption.**

**31.9(1)** The agency shall not adopt a rule that differs from the rule proposed in a 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 and 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.

**31.9(2)** In determining whether a Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the agency shall consider the following factors:

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

**31.9(3)** The agency shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of an adopted rule that differs from the proposed rule contained in the Notice of Intended Action upon which the adopted rule is based, unless the agency finds that the differences 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.

**31.9(4)** Concurrent rule-making proceedings. Nothing in this rule sets aside the discretion of the agency to initiate, concurrently, several different rule-making proceedings on the same subject each with its appropriate Notice of Intended Action.

**495—31.10(17A) Exemptions from public rule-making procedures.**

**31.10(1)** *Omission of notice and comment.* To the extent the agency 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 or set of rules, the agency may adopt that rule or set of rules without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to adoption. The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**31.10(2)** *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each category:

- a. Rules that implement nondiscretionary federal law;
- b. Rules that implement nondiscretionary state law;
- c. Rules implementing contribution rates recommended by IPERS;
- d. Minor changes such as grammar, punctuation, spelling and other scrivener's errors that are otherwise nonsubstantive and serve only to make a correction; and
- e. Any other categories added to this list by rule making where such an exemption is justified.

**31.10(3)** *Public proceedings on rules adopted without them.* The agency may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule adopted in reliance upon subrule 31.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 31.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. A rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the agency may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 31.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

**495—31.11(17A) Concise statement of reasons.**

**31.11(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 agency shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the person designated in the Notice of Intended Action at the address designated in the Notice of Intended Action. 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.

**31.11(2)** *Contents.* The concise statement of reasons shall contain:

- a. The reasons for adopting the particular 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 such change; and
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the agency's reasons for overruling the arguments made against the rule.

**31.11(3)** *Time of issuance.* After a proper request, the agency 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.

**495—31.12(17A) Contents, style, and form of rules.**

**31.12(1) Contents.** Each rule making by the agency shall contain the text of each rule and, in addition:

- a.* The date the agency 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.4A(1)“b,” or the agency 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.* Effective July 1, 1999, if the agency has not included the subject matter of the proposed rule in a separate rule listing categories of rules for which no waiver provision will be included, 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 waivers or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4A(1)“b,” or the agency in its discretion decides to include such reasons; and
- g.* The effective date of the rule.

**31.12(2) Incorporation by reference.** The agency may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated material in full, all or any part of a code, standard, rule, or other matter if the agency finds that the incorporation of its text in the agency proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the agency proposed or adopted rule shall fully and precisely identify the incorporated material by location, title, citation, date, and edition, if any; and may state that the proposed or adopted rule includes any later amendments or editions of the proposed material that are binding on the agency by state or federal law or regulation. The agency may incorporate such material by reference in a proposed or adopted rule if copies are readily available to the public at the agency’s headquarters. The agency shall retain permanently a copy of materials that are incorporated by reference in a rule. Copies of incorporated material may be obtained at cost from the agency.

**31.12(3) References 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 agency 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 agency. The agency will provide a copy of that full text at actual cost upon request and shall ensure that copies of the full text are available for review at the state law library and may make the standards available electronically.

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

**31.12(4) Style and form.** In preparing its rules, the agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

**495—31.13(17A) Agency rule-making record.**

**31.13(1) Requirement.** The agency shall maintain for each separate rule making an index listing and summarizing the rules being proposed, adopted, amended or repealed. In addition, the agency shall maintain a rule-making record as described in subrule 31.13(2) for each separate rule making that it proposes, adopts, or terminates under the provisions of Iowa Code chapter 17A and this chapter. These

indices and rule-making records, including materials incorporated by reference, are available for public inspection at IPERS' headquarters.

**31.13(2) Contents of rule-making record.** The agency shall maintain a file containing the indices from each separate rule making that it proposes, adopts, or terminates under the provisions of Iowa Code chapter 17A and this chapter. This file shall also include information showing the date of publication in the Iowa Administrative Bulletin and ARC number where each applicable rule making was published. Each separate rule-making record shall contain:

*a.* Copies of all publications in the Iowa Administrative Bulletin with respect to a rule making and any file-stamped copies of agency submissions to the administrative rules coordinator concerning the rule making;

*b.* All written petitions for declaratory orders, all requests for rule makings, all submissions by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, 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 in connection with the formulation, proposal, or adoption of a rule or the proceeding upon which a rule is based, except to the extent the agency 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 agency shall identify in the record the particular materials deleted and state the reasons for that deletion;

*c.* Any official transcript of oral presentations made in the rule-making proceedings 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;

*d.* A copy of any regulatory analysis or fiscal impact statement prepared for the rule-making proceedings;

*e.* A copy of the rule and any concise statement of reasons prepared for the rule;

*f.* All petitions for amendment, repeal or suspension of the rule;

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

*h.* A copy of any objection to a rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any agency response to such objection;

*i.* A copy of any significant criticism of the rule, including a summary of any petitions for waiver of a rule; and

*j.* A copy of any executive order concerning the rule.

**31.13(3) Effect of record.** Except as otherwise required by a provision of law, the agency rule-making record required by this rule need not constitute the exclusive basis for agency action on a rule.

**31.13(4) Maintenance of record.** The agency shall maintain the rule-making record for a period of not less than five years from the date the rules to which it pertains became effective.

**495—31.14(17A) Filing of rules.** The agency shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of 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 were 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 note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.



**495—31.15(17A) Effectiveness of rules prior to publication.**

**31.15(1) *Grounds.*** The agency 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 agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**31.15(2) *Special notice.*** When the agency 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 agency 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 agency 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 agency 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 this subrule.

**495—31.16(17A) General statements of policy.**

**31.16(1) *Compilation, indexing, public inspection.*** The agency 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(11)“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(11)“f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

**31.16(2) *Enforcement of requirements.*** A general statement of policy subject to the requirements of this subrule shall not be relied on by the agency to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 31.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

**495—31.17(17A) Review by agency of rules.**

**31.17(1) *Periodic comprehensive reviews.*** Beginning July 1, 2012, over each five-year period of time, the agency shall conduct an ongoing and comprehensive review of all of its rules, to identify and eliminate all rules of the agency that are outdated, redundant, or inconsistent or incompatible with the federal tax law requirements for a qualified plan, statute or its own rules or that of other agencies, pursuant to Iowa Code section 17A.7(2).

**31.17(2) *Petition for adoption, amendment or repeal of rules.***

*a.* Any interested person may petition the agency requesting the adoption, amendment, or repeal of a rule. The agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition, pursuant to Iowa Code section 17A.7(1).

*b.* Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the agency to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the agency shall conduct a formal review of a specified rule to determine whether a new rule should be adopted or the rule should

be amended or repealed. The agency 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.

**31.17(3) Report responsive to request for review.** In conducting the formal review, the agency shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the agency'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 petitions for waiver of the rule received by the agency or granted by the agency. 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 agency's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

[ARC 2981C, IAB 3/15/17, effective 4/19/17]

These rules are intended to implement Iowa Code chapter 17A and Executive Order Number 80 of 2012.

[Filed 12/17/03, Notice 11/12/03—published 1/7/04, effective 2/11/04]

[Filed ARC 2981C (Notice ARC 2892C, IAB 1/18/17), IAB 3/15/17, effective 4/19/17]

[Filed ARC 3684C (Notice ARC 3537C, IAB 1/3/18), IAB 3/14/18, effective 4/18/18]