

701—3.3(99G,123,421,17A) Department procedure for rulemaking.

3.3(1) *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 rulemaking 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.

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

3.3(2) *Public rulemaking docket.* The department utilizes the public rulemaking docket available to all agencies on the Iowa legislature’s website.

3.3(3) *Notice of proposed rulemaking.*

a. Contents. Except for rules filed through emergency rulemaking, 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:

- (1) A brief explanation of the purpose of the proposed rule.
- (2) The specific legal authority for the proposed rule.
- (3) Except to the extent impracticable, the text of the proposed rule.
- (4) Where, when, and how persons may present their views on the proposed rules.
- (5) Where, when, and how persons may demand an oral proceeding on the proposed rule if the Notice does not already provide for one.

Where the 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.

b. Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements in subrule 3.3(11) applicable to the incorporation by reference of other materials in an adopted rule.

c. Registration for Notices of Intended Action. Any person may register on the department’s website to receive announcements related to rules from the department. Persons registered to receive announcements from the department will be notified of the publication of the department’s Notices of Intended Action and Adopted and Filed rules. Persons who desire to request a paper copy of any rule filing need to make a request to the department’s administrative rules coordinator, in writing or by email. The request must specify the rules requested and specify the number of copies. The requester will reimburse the department for the actual costs incurred in providing copies.

3.3(4) *Public participation.*

a. Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit arguments, proposed alternatives, data, and views, in writing or via email, on the proposed rule. These submissions should identify the proposed rule to which they relate and should be submitted to the person designated on the Notice of Intended Action, or to the attention of the department’s administrative rules coordinator, at the address provided in 701—paragraph 7.3(1)“c” or by email to the address provided in 701—paragraph 7.3(1)“b.”

b. 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 contain the following 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 the request.

c. Conduct of oral proceedings.

(1) Applicability. This subrule applies only to those oral rulemaking proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)“b” or this chapter.

(2) Scheduling and notice. An oral proceeding on a proposed rule may be held in person, virtually, or both, as decided by the department. The proceeding shall not be held earlier than 20 days after the related Notice of Intended Action is published in the Iowa Administrative Bulletin.

(3) Presiding officer. An employee of the department shall preside at the oral proceeding on a proposed rule.

(4) 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 arguments, proposed alternatives, data, and views concerning the proposed rule. Persons wishing to make oral presentations at such a 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 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. 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 both themselves and other individuals.

2. Persons making oral presentations are encouraged to avoid restating matters that 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 has 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 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 do not need 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 rulemaking proceeding, including any prior written submissions made by those participants in that proceeding. No participant is 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.

d. 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.

e. 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 person listed on the Notice of Intended Action or the department’s administrative rules coordinator in advance to arrange access or other needed services.

3.3(5) *Regulatory analysis.*

a. Submission. The department shall issue a regulatory analysis of a proposed rule prior to submitting a notice of intended action to the governor's administrative rules coordinator and the administrative code editor pursuant to Iowa Code section 17A.4(1).

b. Contents. An issued regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) "a."

c. Public participation. For at least 20 days after publication of the regulatory analysis, persons may submit arguments, proposed alternatives, data, and views, on the regulatory analysis. The regulatory analysis shall state the time when, the place where, and the manner in which interested persons may provide written comment or oral presentation.

3.3(6) Fiscal impact statement. A 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, or by agencies and entities that 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.

3.3(7) Time and manner of rule adoption.

a. Time of adoption. The department may only adopt a rule once 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, the department shall adopt a rule pursuant to the rulemaking proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

b. 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 rulemaking proceeding or any written summary of the oral submissions and any regulatory analysis or fiscal impact statement issued in that rulemaking proceeding.

c. 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.

3.3(8) Variance between adopted rule and published notice of proposed rule adoption.

a. Allowable variances. The department may only adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based if:

(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 or the comments submitted in response thereto; and

(3) The Notice of Intended Action provided fair warning that the outcome of that rulemaking proceeding could be the rule in question.

b. Fair warning. In determining whether the Notice of Intended Action provided fair warning that the outcome of that rulemaking proceeding could be the rule in question, the department shall consider the following factors:

(1) The extent to which persons who will be affected by the rule should have understood that the rulemaking proceeding on which it is based could affect their interests.

(2) 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.

(3) The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

c. Petition for rulemaking. The department shall commence a rulemaking proceeding within 60 days of its receipt of a petition for rulemaking seeking the amendment or rescission 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 rulemaking proceeding wholly unnecessary. A copy of any such finding and the petition to

which it responds shall be sent to the petitioner, the governor's administrative rules coordinator, and the administrative rules review committee within three days of its issuance.

d. Concurrent rulemaking proceedings. Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rulemaking proceedings on the same subject with several different published Notices of Intended Action.

3.3(9) Exemptions from public rulemaking procedures, emergency rulemaking.

a. Omission of notice and comment. To the extent the department 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, and with the prior approval of the administrative rules review committee and governor's administrative rules coordinator, or if a statute so provides, the department 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 department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

b. Public proceedings on rules adopted without them. The department may, at any time, commence a standard rulemaking proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon paragraph 3.3(9)"a." After a standard rulemaking proceeding commenced pursuant to this subrule, the department may take any other lawful action, including the amendment or rescission of the rule in question, with whatever further proceedings are appropriate.

3.3(10) Concise statement of reasons.

a. 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 by mail to the address listed in paragraph 7.3(1)"c" or by email to the person listed on the adopted rule filing or to the department's administrative rules coordinator at the address provided in paragraph 7.3(1)"b." 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 in accordance with rule 701—7.4(17A).

b. Contents. The concise statement of reasons shall contain:

- (1) The reasons for adopting the rule;
- (2) 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;
- (3) The principal reasons urged in the rulemaking proceeding for and against the rule, and the department's reasons for overruling the arguments made against the rule.

c. 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.

3.3(11) Contents, style, and form of rule.

a. Contents. Each rule adopted by the department shall contain the text of the rule and, in addition:

- (1) The date the department adopted the rule;
- (2) A brief explanation of the principal reasons for the rulemaking action if the reasons are required by Iowa Code section 17A.4(2) or the department in its discretion decides to include the reasons;
- (3) A reference to all rules rescinded, amended, or suspended by the rule;
- (4) A reference to the specific statutory or other authority authorizing adoption of the rule;
- (5) Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- (6) 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 the reasons are required by Iowa Code section 17A.4(2), or the department in its discretion decides to include the reasons; and
- (7) The effective date of the rule.

b. Incorporation by reference. The department 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 department finds that the incorporation of its text in the department

proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the department proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, as applicable. The department may incorporate such matter by reference in a proposed or adopted rule only if the department makes copies of it readily available to the public. The department shall retain permanently a copy of any materials incorporated by reference in a rule of the department. If the department adopts standards by reference to another publication, it shall post the publication containing the standards on the department's website.

c. 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 department 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 department. The department shall post the full text available for review on the department's website. At the request of the administrative code editor, the department shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

3.3(12) Filing of rules. The department shall file each rule it adopts in the office of the governor's 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 included with 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 code editor.

3.3(13) Effectiveness of rules prior to publication, emergency rulemaking.

a. 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.

b. 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," 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" shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of paragraph 3.3(13) "b."

3.3(14) Review of rules by department. Over each five-year period of time, the department shall perform a retrospective analysis pursuant to Iowa Code section 17A.7(2) that includes a comprehensive evaluation and rigorous cost-benefit analysis of each existing chapter of rules to determine whether the benefits the rules are intended to achieve are being realized, whether those benefits justify the costs

imposed by the rules, and whether there are less restrictive alternatives to accomplish those benefits. When the department's five-year review of its rules is completed, the department shall summarize the results and provide the written summary to the governor's administrative rules coordinator and the administrative rules review committee.

This rule is intended to implement Iowa Code chapter 17A and sections 123.10 and 421.14.
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