

**701—7.25(17A) Department procedure for rule making.**

**7.25(1) Applicability.** Except to the extent otherwise expressly provided by statute, all rules adopted by the department are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

**7.25(2) Advice on possible rules before notice of proposed rule adoption.** In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1) “a,” solicit comments from the public on a subject matter of possible rule making by the department by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

The department may send notices of proposed rule making 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.

**7.25(3) Public rule-making docket.** The department utilizes the public rule-making docket available to all agencies on the Iowa legislature’s website.

**7.25(4) Notice of proposed rule making.**

*a. Contents.* Except for rules filed through emergency rule making, 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 applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 7.25(12).

*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 shall 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 be required to reimburse the department for the actual costs incurred in providing copies.

**7.25(5) Public participation.**

*a. Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing or via 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 paragraph 7.3(1) “c” or by email to the address provided in 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 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.

(2) *Scheduling and notice.* An oral proceeding on a proposed rule may be held in person, virtually, or both. 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 data, views, comments, or arguments 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 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 department.

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

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

*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 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.

**7.25(6) Regulatory analysis.**

*a. Small business impact mailing list.* Small businesses or organizations of small businesses may be registered on the department's small business impact list by making a written application addressed to the department's administrative rules coordinator by ordinary mail or email to the address provided in paragraph 7.3(1)"b." The application for registration shall state:

- (1) The name of the small business or organization of small businesses;
- (2) The address of the small business or organization of small businesses;
- (3) The name of a person authorized to transact business for the applicant;
- (4) 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;
- (5) 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 department 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 department 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 shall 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.

*b. Time of distribution.* Within seven days after submission of a Notice of Intended Action to the legislative services agency's administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department 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(3), the department 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.

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

- (1) The legislative services agency's administrative rules coordinator, or
- (2) The administrative rules review committee.

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

- (1) The administrative rules review committee;
- (2) The legislative services agency's administrative rules coordinator;
- (3) At least 25 or more persons who sign the request provided that each represents a different small business, or
- (4) 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.

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

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

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

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

*i. 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 legislative services agency’s 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.

*j. 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 legislative services agency’s 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.”

**7.25(7) 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 which contract with political subdivisions to provide services, must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

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

**7.25(8) Time and manner of rule adoption.**

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

*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 rule-making proceeding or any written summary of the oral submissions and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

*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.

**7.25(9) Variance between adopted rule and published notice of proposed rule adoption.**

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

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

department finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to the petitioner, the legislative services agency's administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

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

**7.25(10) Exemptions from public rule-making procedures, emergency rule making.**

*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, 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. Category exempt.* Rule makings for nonsubstantive changes to a rule, such as rules for correcting grammar, spelling or punctuation in an existing or proposed rule, are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, and contrary to the public interest.

*c. Public proceedings on rules adopted without them.* The department 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 paragraph 7.25(10)“a.” Upon written petition by a governmental subdivision, the administrative rules review committee, a state agency, the legislative services agency's administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the department shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon paragraph 7.25(10)“a.” This petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of the petition. After a standard rule-making proceeding commenced pursuant to this subrule, the department may either readopt the rule it adopted without benefit of all usual procedures on the basis of paragraph 7.25(10)“a” or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

**7.25(11) 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 rule-making 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.

**7.25(12) 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 rule-making 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 repealed, 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, 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 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 rule shall state how and where copies of the incorporated matter may be obtained at cost from the department, and how and where copies may be obtained from the department or an agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. 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 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.

*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 will provide a copy of that full text (at actual cost) upon request and 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 department shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

**7.25(14) Filing of rules.** The department shall file each rule it adopts in the office of the legislative services agency'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 legislative services agency's administrative rules coordinator.

**7.25(15) Effectiveness of rules prior to publication, emergency rule making.**

*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 7.25(15) “b.”

**7.25(16) Review of rules by department.**

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

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

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

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