

**ADMINISTRATIVE RULES COORDINATOR[7]**

**Adopted and Filed**

**Rulemaking related to uniform rules on agency procedure**

The Administrative Rules Coordinator (ARC) hereby adopts new Chapter 2500, “Uniform Rules on Agency Procedure Definitions,” Chapter 2501, “Agency Procedure for Rulemaking,” Chapter 2502, “Petitions for Rulemaking,” Chapter 2503, “Declaratory Orders,” Chapter 2504, “Rule Waivers,” Chapter 2505, “Fair Information Practices,” and Chapter 2506, “Contested Cases,” Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 17A.24.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 17A.24.

*Purpose and Summary*

This rulemaking updates the uniform rules on agency procedure.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on February 4, 2026, as **ARC 0037D**. This rulemaking was also adopted and filed emergency and published in the Iowa Administrative Bulletin as **ARC 0038D** on the same date.

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on March 4, 2026. A public hearing was held on the following dates:

- March 24, 2026

No one attended the public hearing. No public comments were received. Changes to the uniform rules have been made based upon agency feedback.

*Adoption of Rulemaking*

This rulemaking was adopted by the ARC on March 16, 2026.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the ARC for a waiver of the discretionary provisions, if any, pursuant to Chapter 2504 and Iowa Code section 17A.9A.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting.

The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on May 6, 2026, at which time the Adopted and Filed Emergency rulemaking is hereby rescinded.

The following rulemaking action is adopted:

ITEM 1. Rescind 7—Chapter 2500 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2500  
UNIFORM RULES ON AGENCY PROCEDURE DEFINITIONS

**7—2500.1(17A) Definitions.** As used in this chapter and 7—Chapters 2501 through 2506:

“Agency” means the same as defined in Iowa Code section 17A.2 and means the agency on which these rules are imposed pursuant to Iowa Code section 17A.24.

“Agency’s address” means the agency’s physical or mailing address as listed on the agency’s website.

“Agency’s email” means the agency’s general contact email as listed on the agency’s website.

“Agency’s telephone number” means the agency’s telephone number as listed on the agency’s website.

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

ITEM 2. Rescind 7—Chapter 2501 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2501  
AGENCY PROCEDURE FOR RULEMAKING

**7—2501.1(17A) Rulemaking procedure.** The agency will comply in all material respects with the rulemaking obligations established in Iowa Code chapter 17A, as may be amended from time to time by the general assembly, as well as any other guidance issued by the governor or general assembly. All future amendments to Iowa Code chapter 17A that impact the rulemaking process are incorporated herein by reference as of the effective date of any such change.

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

ITEM 3. Rescind 7—Chapter 2502 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2502  
PETITIONS FOR RULEMAKING

**7—2502.1(17A) Requesting rules be made.** Any person may file a petition for rulemaking with the agency by submitting an original petition for rulemaking to the agency at the agency’s address or to the agency’s email. The petition is considered filed when received at either address. The agency will provide the petitioner with a file-stamped copy of the petition upon request. The agency can only accept petitions that are typewritten or legibly handwritten in ink. Petitioners are also obligated to submit the petition so that it substantially conforms to the following:

[AGENCY NAME]	
Petition by [name of petitioner] for the [adoption, amendment, or rescission] of rules relating to [state subject matter].	PETITION FOR RULEMAKING

Petitioners are obligated to provide the following information in the petition:

1. A statement of the specific rulemaking request from the petitioner that includes the text or a summary of the proposed rule or requested change to a rule. If the petition requests to change or rescind a rule, the petitioner is also directed to identify the rule by number and the language that the petitioner requests be changed or removed.

2. A citation to any law the petitioner believes supports the petitioner's request for the agency's ability to make or change the requested rule.

3. A summary of the petitioner's arguments in support of the action urged in the petition.

4. A summary of any data supporting the action urged in the petition.

5. The names and addresses of other persons, or a description of any group of persons, known by petitioner to be affected by or interested in the proposed request for changing or removing the rule.

6. Any request for a meeting provided for by rule 7—2502.3(17A) if desired.

**2502.1(1)** The petitioner is obligated to ensure the petition includes:

a. The signature of petitioner or petitioner's representative;

b. The date of signature;

c. The name, mailing address, email, and telephone number of the petitioner and petitioner's representative; and

d. Contact information for the person (petitioner or petitioner's representative) to whom the agency should direct communications concerning the petition.

**2502.1(2)** The agency may deny a petition if it does not substantially conform to requirements above.

**7—2502.2(17A) Briefs.** The petitioner may attach a brief to the petition in support of the petition. The agency may also request briefing concerning the petition.

**7—2502.3(17A) Consideration by the agency.**

**2502.3(1)** Within 14 days after the filing of a petition, the agency will submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by the petitioner, the agency will schedule an informal meeting with the petitioner to discuss the petition. The agency may request that the petitioner submit additional information or argument in support of the petition. The agency may request and receive comments from any person regarding the petition.

**2502.3(2)** Within 60 days after the filing of the petition, or a longer period if agreed to by the petitioner, the agency will provide its decision in writing regarding the petitioner's request. The agency may deny the petition and notify petitioner of its decision and the specific reasons for the denial, or the agency may grant the petition and notify petitioner that it has started rulemaking proceedings based upon the petitioner's request. The petitioner is considered properly notified of the denial or granting of the petition on the date when the agency mails or delivers by electronic means the notification to petitioner.

**2502.3(3)** Denial of a petition because it does not substantially conform to the requirements does not prevent the petitioner from filing a new petition.

These rules are intended to implement Iowa Code section 17A.7(1).

ITEM 4. Rescind 7—Chapter 2503 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2503  
DECLARATORY ORDERS

**7—2503.1(17A) Petition for declaratory order.**

**2503.1(1)** Any person may file a petition with the agency requesting that the agency issue a declaratory order in accordance with Iowa Code section 17A.9. The petition can only be reviewed by the agency if the agency has the authority to consider the petition. Petitioners seeking a declaratory order are obligated to file the petition at the agency's address or agency's email. The petition is considered filed when received at either address. The agency will provide the petitioner with a file-stamped copy of the

petition upon request. The agency can only accept petitions that are typewritten or legibly handwritten in ink. Petitioners are also obligated to submit the petition so that it substantially conforms to the following:

[AGENCY NAME]

Petition by [name of petitioner] for a declaratory order on [cite provisions of law involved].	PETITION FOR DECLARATORY ORDER
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Petitioners are obligated to provide the following information in the petition:

1. A clear and concise statement of all facts the petitioner believes relevant to the order requested.
  2. A citation to and the language of the specific statutes, rules, policies, decisions, or orders the petitioner is affected by or has concerns about and any other relevant law.
  3. A concise statement of the questions petitioner wants answered.
  4. The petitioner's proposed answers to the questions, as well as any support for the proposed answers.
  5. The reasons the petitioner is requesting the declaratory order and an explanation of why the petitioner is interested in the outcome.
  6. A statement explaining whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any agency or court of law.
  7. The names and addresses of other persons, or a description of any group of persons, known by petitioner to be affected by or interested in the questions presented in the petition.
  8. Any request by petitioner for a meeting with the agency to discuss the petition.
- 2503.1(2)** The petitioner is obligated to ensure the petition includes:
- a. The signature of petitioner or petitioner's representative;
  - b. The date of signature;
  - c. The name, mailing address, email, and telephone number of the petitioner and petitioner's representative; and
  - d. Contact information for the person (petitioner or petitioner's representative) to whom the agency should direct communications concerning the petition.

**7—2503.2(17A) Notice of petition.** The petitioner is obligated to serve the petition on interested parties in accordance with rule 7—2503.5(17A). Within 15 days after receipt of a petition for a declaratory order, the agency will give notice of the petition to all persons not served by the petitioner to the extent required by applicable law. The agency may also give notice to any other persons.

**7—2503.3(17A) Intervention.**

**2503.3(1)** A person who qualifies under the law as an intervenor may intervene in a proceeding for a declaratory order by filing a petition for intervention within 30 days of the notice provided in accordance with rule 7—2503.2(17A).

**2503.3(2)** If a person files a petition for intervention before a proceeding for a declaratory order concludes, the agency has discretion to allow the person to intervene.

**2503.3(3)** An intervenor seeking to intervene in a petition for declaratory order is obligated to file the petition for intervention at the agency's address or agency's email. The petition for intervention is considered filed when received at either address. The agency will provide the intervenor with a file-stamped copy of the petition upon request. The agency can only accept petitions for intervention that are typewritten or legibly handwritten in ink. Intervenors are also obligated to submit the petition so that it substantially conforms with the following:

Petition by [name of original petitioner]  
for the [adoption, amendment, or rescission]  
of rules relating to [state subject matter].

PETITION FOR INTERVENTION

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. Whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any agency or court of law.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by or interested in the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

**2503.3(4)** The intervenor is obligated to ensure the petition for intervention includes:

- a. The signature of intervenor or intervenor's representative;
- b. The date of signature;
- c. The name, mailing address, email, and telephone number of the intervenor and intervenor's representative; and
- d. Contact information for the person (intervenor or intervenor's representative) to whom the agency should direct communications concerning the petition for intervention.

**7—2503.4(17A) Briefs.** A petitioner or intervenor may file a brief in support of the position urged. The agency may request a brief from a petitioner, an intervenor, or any other person concerning the questions raised.

**7—2503.5(17A) Filing and service of petitions and other papers.**

**2503.5(1)** *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order will be filed with the agency at the agency's address or agency's email.

**2503.5(2)** *When service required.* Except where otherwise provided by law, a person filing a petition for declaratory order, petition for intervention, brief, or other paper in a proceeding for a declaratory order is obligated to concurrently serve the document on each party to the proceeding and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented. If the petitioner lacks sufficient information to effectuate service, the petitioner will notify the agency, and the agency will thereafter attempt to effectuate service on the interested person.

**2503.5(3)** *Method of service, time of filing, and proof of mailing or electronic delivery.* Rule 7—2506.12(17A) governs the method of service, time of filing, and proof of mailing or electronic delivery.

**7—2503.6(17A) Consideration by the agency.**

**2503.6(1)** *Meeting with the agency.* A meeting that is requested under subrule 2503.1(1) may involve one or more members of the agency and one or more members of staff of the agency.

**2503.6(2)** *Public comments.* The agency may solicit comments from any person on the questions raised in the petition. Any person may submit comments to the agency on the questions raised in the petition.

**7—2503.7(17A) Action on petition.** The chief executive of the agency or that person’s designee will review the petition for declaratory order and take action on the petition in accordance with the statutory provisions and the timelines set forth in Iowa Code section 17A.9(5) and 17A.9(8).

**7—2503.8(17A) Refusal to issue order.**

**2503.8(1)** The agency will not issue a declaratory order if Iowa Code section 17A.9(1) does not allow it to. The agency may refuse to issue a declaratory order when:

- a. The petition does not substantially comply with the requirements of rule 7—2503.1(17A).
- b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected if the agency does not issue an order.
- c. The agency does not have jurisdiction over the questions presented in the petition.
- d. The questions presented by the petition are also presented in a current rulemaking, contested case, or other agency or judicial proceeding that may definitively resolve them.
- e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
- g. There is no need to issue an order because a change in circumstances has eliminated the need to answer the questions raised in the petition.
- h. Instead of being based upon facts calculated to aid in the planning of future conduct, the petition is based upon previous conduct or seeks to challenge an agency decision already made.
- i. The requested order would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
- j. The petitioner requests the agency to determine whether a statute is unconstitutional on its face.
- k. The petition seeks interpretation of a rule or statute that the agency does not have the authority to interpret.

**2503.8(2)** A refusal to issue a declaratory order will indicate the specific grounds for the refusal and constitutes final agency action on the petition.

**2503.8(3)** Refusal to issue a declaratory order under this rule does not prevent the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

**7—2503.9(17A) Copies of orders.** The agency will promptly mail to or email the original petitioner and all intervenors a copy of each order issued in response to a petition for a declaratory order.

**7—2503.10(17A) Effect of a declaratory order.**

**2503.10(1)** *Withdrawal.* The petitioner may voluntarily withdraw a petition by notifying the agency in writing at any time before the order is issued. The petitioner shall not withdraw a petition after the order is issued. A declaratory order, once issued, shall not be rescinded by the agency and cannot be withdrawn by the petitioner.

**2503.10(2)** *Binding effect.* A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the agency, the petitioner, and any intervenors (who consented to be bound) and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the agency. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code section 17A.9.

ITEM 5. Rescind 7—Chapter 2504 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2504  
RULE WAIVERS

**7—2504.1(17A) Application.**

**2504.1(1)** Any person may submit a petition to waive, in whole or in part, any rule in the agency’s jurisdiction by submitting the petition to the agency.

**2504.1(2)** The petitioner bears the burden of persuasion to show by clear and convincing evidence all the factors provided in Iowa Code section 17A.9A(2).

**2504.1(3)** A petitioner seeking to have a rule waived is obligated to file the petition for waiver at the agency’s address or agency’s email. The petition for waiver is considered filed when received at either address. The agency will provide the petitioner with a file-stamped copy of the petition upon request. The agency can only accept petitions for waiver that are typewritten or legibly handwritten in ink. Petitioners are also obligated to submit the petition so that it substantially conforms with the following:

BEFORE THE [INSERT NAME OF AGENCY]	
Petition by [name of petitioner] for the waiver of [rule citation] related to [state subject matter].	PETITION FOR WAIVER

1. The petitioner’s name, mailing address, email, and telephone number or, if applicable, petitioner’s representative.
2. A description and citation of the rule(s) that are the subject of the petition.
3. The specific waiver requested, including the scope and duration of the waiver.
4. All relevant facts and reasons the petitioner believes justify the waiver, including specific information satisfying the requirements of subrule 2504.1(2).
5. If applicable, the case number of any contested case related to the petition.
6. If applicable, a history of all previous contacts between the petitioner and the agency that may relate to or be affected by the rule(s) that are the subject of the petition.
7. If known, information about the agency’s treatment of other persons in similar circumstances.
8. If known, the name and contact information of any person who would be adversely affected or disadvantaged if the agency waives the rule.
9. If applicable, signed releases from any person with knowledge relevant to the petition.
10. An attestation that all information in the petition is true and accurate.
11. A dated signature by the petitioner or, if applicable, petitioner’s representative.

**7—2504.2(17A) Filing and service of petitions and other papers.**

**2504.2(1)** *Filing—when required.* All petitions for waiver, petitions for intervention, briefs, or other papers in a proceeding for a waiver will be filed with the agency at the agency’s address or agency’s email.

**2504.2(2)** *When service required.* Except where otherwise provided by law, a person filing a petition for waiver, petition for intervention, brief, or other paper in a proceeding for a waiver is obligated to concurrently serve the document on each party to the proceeding and on all other persons identified in the petition for waiver or petition for intervention as affected by or interested in the questions presented. If the petitioner lacks sufficient information to effectuate service, the petitioner will notify the agency and the agency will thereafter attempt to effectuate service on the interested person.

**2504.2(3)** *Method of service, time of filing, and proof of mailing or electronic delivery.* Rule 7—2506.12(17A) governs the method of service, time of filing, and proof of mailing or electronic delivery.

**7—2504.3(17A) Evaluation.**

**2504.3(1)** The agency may notify the petitioner of the receipt of the petition.

**2504.3(2)** The agency will evaluate the petition in accordance with Iowa Code section 17A.9A. The agency may request additional information from the petitioner or any person as part of its evaluation of the petition.

a. Additional information will be obtained by an evidentiary hearing consistent with Iowa Code chapter 17A if:

- (1) The petition was filed with a request for a contested case;
- (2) An evidentiary hearing is required by any law; or
- (3) The agency requests an evidentiary hearing.

b. If an evidentiary hearing is not required, the agency's request for additional information may be informal.

**7—2504.4(17A) Issuance.**

**2504.4(1)** The agency will issue a written decision granting or denying the petition.

**2504.4(2)** After issuing a decision, the agency will index, file, make publicly available, and transmit its decision as required by Iowa Code section 17A.9A(4).

**2504.4(3)** If the agency does not issue a decision on a petition for waiver within 180 days from the date of its receipt by the agency, the petition is deemed denied.

**2504.4(4)** If the agency grants a petition in whole or in part, the waiver granted will comply with the requirements of Iowa Code section 17A.9A(3), including content, duration, conditions, and renewability.

**7—2504.5(17A) Remedies.**

**2504.5(1)** With appropriate notice, the agency may withdraw, cancel, or modify any waiver granted under this rule if the agency issues a written order finding one or more of the following:

- a. The petitioner withheld or misrepresented material facts in the petition;
- b. The waiver no longer adequately protects the public health, safety, and welfare;
- c. The waiver may burden the substantial rights of any person; or
- d. The petitioner has not complied with any of the waiver conditions imposed by the agency.

**2504.5(2)** A petitioner aggrieved by any final order of the agency may seek judicial review in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 17A.9A.

ITEM 6. Rescind 7—Chapter 2505 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2505  
FAIR INFORMATION PRACTICES

**7—2505.1(17A,22) Definitions.** As used in this chapter:

*“Confidential record”* means a record that is not available for examination under applicable law.

*“Lawful custodian”* means the same as defined in Iowa Code section 22.1.

*“Personally identifiable information”* means information contained in a record that is about or pertains to an individual that identifies or that could be used to identify an individual.

*“Public records”* means the same as defined in Iowa Code section 22.1.

**7—2505.2(17A,22) Statement of policy.** The purpose of this chapter is to facilitate broad public access to public records. The chapter also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff are obligated to cooperate with members of the public in implementing the provisions of that chapter. To the extent an exemption to the release of a requested public record exists in the Iowa Code, whether based on confidentiality or otherwise, the Iowa Code provision governs. To the extent the Iowa Code does not exempt the release of such a record, the administrative rules govern.

**7—2505.3(17A,22) Requests for access to records.**

**2505.3(1)** *Location of record.* A request for access to public records should be directed to the agency's address, the agency's email, or the agency's office where the record is kept. Agency staff will promptly forward public records requests to the lawful custodian when such a request is misdirected.

**2505.3(2) Office hours.** The agency is obligated to provide access to the public records it maintains during its regular office hours. The agency will post the schedule of these office hours on the agency's website to facilitate access to public records.

**2505.3(3) Request for access.** Requests for access to public records maintained by the agency shall be made, whenever possible, by email. Otherwise, requests can be made in writing, in person, by telephone using the agency's telephone number, or through other electronic means made available by the agency. Requests should identify the particular public records sought by name or description in order to facilitate identification of relevant public records. Requests should include the name, address, email, and telephone number of the person requesting the information. A member of the public need not give a reason for requesting public records. For public records requests that involve searches of electronic stores of information, the agency may condition the search on the requester providing search terms for the search.

**2505.3(4) Response to requests.** Access to public records will be provided promptly upon request unless the size or nature of the request requires additional time to complete. If the size or nature of the request causes a delay in compliance, the lawful custodian will comply with the request as soon as feasible. Access to public records may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The lawful custodian will promptly give notice to the requester of the reason for any delay in access to public records and an estimate of the length of that delay and, upon request, will promptly provide that notice to the requester in writing.

The agency that maintains a record claimed to be a public record may deny access to the record only if a denial is appropriate under Iowa Code sections 22.8(4) and 22.10(4) or based on a reasonable belief that the record is a confidential record or that its disclosure is prohibited by a court order. In addition, access to confidential records is generally not allowed. However, access may be allowed pursuant to the provisions of rule 7—2505.4(17A,22), as well as other applicable provisions of law.

**2505.3(5) Security of record.** No person may, without permission from the lawful custodian, search or remove any public record from the agency's files. Examination and copying or transmission of agency public records will be supervised by the lawful custodian or that person's designee. Public records will be protected from damage and disorganization.

**2505.3(6) Copying.** Electronic copies of records will be provided in response to a public records request whenever possible. When physical paper copies are demanded by a requester, a reasonable number of such physical copies of a public record may be made in the agency's office. If photocopy equipment is not available in the office where a public record is kept, the lawful custodian will permit its examination in that office and arrange to have copies promptly made elsewhere.

**2505.3(7) Fees.**

*a. When charged.* The agency may charge fees in connection with the examination or copying of public records only if the fees are allowed under the law. To the extent permitted by applicable law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest. The determination of whether to waive fees is in the sole discretion of the agency.

*b. Fees and costs.* The agency may charge for the actual cost of producing public records. These charges may include the actual cost of making photocopies, the actual cost of media necessary to convey electronic copies of public records, and the actual costs of mailing public records. Pricing schedules for these actual costs will be prominently posted on the agency's website. The agency may also charge for the expense associated with supervising and searching for public records. These hourly charges will be based on the actual hourly rate of the person performing the task. The agency will ensure that the employee rate charged is as low as possible based on the circumstances. The agency may impose hourly charges only after the first three hours of labor, which will be provided at no cost to the requester. For any additional review by the agency to address questions of confidentiality, the agency may charge the requester the actual hourly rate of the attorney performing the review, although the first three hours of the attorney's time will be provided at no cost to the requester.

*c. Advance payment.* When the estimated total fee exceeds \$250, the agency may require an advance payment from the requester to cover all or a part of the estimated fee before proceeding with the work of gathering and reviewing potentially relevant records. If a requester has an unpaid balance from

a previous records request, the agency may require the requester to pay both the unpaid balance and the current estimate, regardless of value, before proceeding with the review of public records.

**7—2505.4(17A,22) Access to confidential records.** If the agency reasonably believes that a record is or may be confidential, the following procedures apply to requests for access to the record and are in addition to other rules specified for access to public records.

**2505.4(1) Support for claimed access.** The agency may require a person requesting access to a potentially confidential record to provide proof of identity as well as proof of the person’s authority to secure access to the record. The lawful custodian may also compel the requester to submit the request in writing and sign a certified statement or affidavit that the requester is entitled to access the record.

**2505.4(2) Notice to subject of record.** Before releasing a potentially confidential record, an agency may make reasonable efforts to notify the confidentiality claimant or any person whose information is in the records that may be subject to a claim of confidentiality. A “confidentiality claimant” is a person who has claimed confidentiality of a record or whose personally identifiable information is in a record.

**2505.4(3) Injunction—notice to the confidentiality claimant.** If practical and in the public interest, the lawful custodian may delay release for a reasonable period of time and notify the confidentiality claimant of the person’s right to seek an injunction under Iowa Code section 22.8. Any notice provided to the confidentiality claimant in this regard will identify the time allowed the confidentiality claimant to seek an injunction. Failure to file an injunction after notice constitutes waiver of the confidentiality claim.

**2505.4(4) Request denied—notice to the requester.** When the lawful custodian denies a request for access to a potentially confidential record, the lawful custodian will promptly notify the requester. Written notification of the denial will be provided upon request, and this notification will include the name and title or position of the lawful custodian, as well as the legal reason for the denial and a brief explanation.

**2505.4(5) Request granted.** When the lawful custodian grants a request for access to a potentially confidential record, the lawful custodian will notify the person granted access of any lawful limitations the custodian imposes on that person’s examination and copying of the record.

**2505.4(6) Redactions.** The lawful custodian may but is not compelled to redact confidential information from a document so that nonconfidential portions of the record can be provided to a requester. If the requester receives a redacted record and later requests access to the unredacted version of the record, the custodian may deny the request or notify the confidentiality claimant so the claimant may seek an injunction under subrule 2505.4(3).

**2505.4(7) Timing of decision.** The lawful custodian may decide whether a record is confidential at any time.

**7—2505.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination.** Requests to the agency to treat a record as confidential will be addressed in accordance with the following rules. The lawful custodian may treat a record as a confidential record and withhold it from examination only in accordance with applicable law.

**2505.5(1) Persons who may request.** Persons who believe they may be harmed by a potential disclosure of a record may request that the lawful custodian declare the record as confidential.

**2505.5(2) Request.** Any person may submit a request to treat a record as confidential. To be valid, the request will:

- a. Be in writing,
- b. Be filed with the lawful custodian,
- c. Explain the legal and factual reasons the record should be confidential,
- d. Include the requester’s contact information, and
- e. Be accompanied by a redacted copy of the record.

The lawful custodian may also require a signed statement or affidavit supporting the confidentiality claim. If the request for confidentiality is for a specific period of time, the requester is also obligated to identify the time frame.

**2505.5(3) Failure to request.** The lawful custodian may treat a record as confidential even if no person files a request to treat the record as confidential. However, the agency has discretion to determine whether voluntary submission of an unredacted record to the agency, such as in the context of a bidder submitting an unredacted bid in response to a procurement, constitutes waiver of any argument that the person may have had that the record is in fact confidential.

**7—2505.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.** Unless prohibited by law, a person may file a request with the lawful custodian to review, and have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. The requester must send the request and written statement of additions, dissents, or objections to the lawful custodian or to the agency at the agency’s address or agency’s email. The request must be dated and signed by requester and the requester’s representative, if any, and must include the current address, email, and telephone number of the requester and the requester’s representative, if any. A person who is a subject of such a record shall not alter the original record and shall not expand the official record of any agency proceeding, except as set forth in this rule. An agency’s need to preserve the original record as required by applicable law is a valid reason for denying a request to modify the agency’s records.

**7—2505.7(17A,22) Consent to disclosure by the subject of a confidential record.** To the extent permitted by law, a person who is the subject of a confidential record may have the portion of the record concerning that person disclosed to a third party. A request for such a disclosure must be in writing, identify the particular record or records to disclose, identify the person or class of persons to whom the record may be disclosed, and state when and where the disclosure should be made. The lawful custodian may require the requester and, where applicable, the person to whom the record is to be disclosed to provide proof of identity and may, when necessary, impose additional obligations for special classes of records. Except where legally prohibited, a request by a person’s attorney is presumed to be a request by the person to disclose records about that person to the attorney. The attorney making such request may be required to show proof of representation.

**7—2505.8(17A,22) Notice to suppliers of information.** When the agency requests a person to supply information about that person, the agency will notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided this information, which parts of the requested information are mandatory and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in a manner that the agency in its discretion deems appropriate to adequately notify the person in accordance with this rule.

These rules are intended to implement Iowa Code chapters 17A and 22.

ITEM 7. Rescind 7—Chapter 2506 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2506  
CONTESTED CASES

**7—2506.1(17A) Scope and applicability.** This chapter applies to contested case proceedings conducted by the agency, including vendor appeals.

**7—2506.2(17A) Definitions.** Except where otherwise specifically defined by law:

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“*Issuance*” means the date of mailing or electronic filing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“*Party*” means each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means the person designated pursuant to Iowa Code section 17A.11.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the agency did not preside.

**7—2506.3(17A) Time obligations.**

**2506.3(1)** Time is computed as provided in Iowa Code section 4.1(34).

**2506.3(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except when prohibited by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer will afford all parties an opportunity to be heard or to file written arguments.

**7—2506.4(17A) Electronic requests for contested case proceeding.**

**2506.4(1)** A person entitled to a contested case proceeding shall, whenever possible, electronically file written request for such a proceeding within the time specified by the governing rules or statutes or, if no rule or statute sets such a time, the time set by the agency.

**2506.4(2)** The request for a contested case proceeding must state the name, email, and address of the requester and identify the specific agency action disputed. Where the requester is represented by an attorney, the request must identify the law or precedent requiring or authorizing the holding of a contested case proceeding and include a short and plain statement of the issues of material fact in dispute.

**7—2506.5(17A) Notice of hearing.**

**2506.5(1)** *Delivery.* The agency will deliver notice of a hearing. Delivery shall, whenever possible, be effectuated through electronic means. Otherwise, delivery can be effectuated by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication as provided in the Iowa Rules of Civil Procedure.

**2506.5(2)** *Contents.* The notice of hearing must state:

- a. The time, place, and nature of the hearing;
- b. The legal authority and jurisdiction under which the hearing is to be held;
- c. The particular sections of the statutes and rules involved;
- d. Briefly and plainly, the matters asserted. If a party cannot state the matters in detail when the notice is served, the party may limit the initial notice to a statement of the issues involved but must supplement it with a more definite and detailed statement if requested by another party;
- e. All parties, including the name, address, and telephone number of the person who will advocate for each party;
- f. The procedural rules governing conduct of the contested case proceeding;
- g. The procedural rules governing informal settlement, which can occur at any time;
- h. The identity of the presiding officer, if known, or, if not, a description of who will serve as presiding officer; and
- i. The deadline to request under Iowa Code section 17A.11 and rule 7—2506.6(17A) that the presiding officer be an administrative law judge.

**7—2506.6(17A) Presiding officer.**

**2506.6(1)** Any party that wants an administrative law judge employed by the department of inspections, appeals, and licensing to serve as the presiding officer must file a request. The deadline for that request is 20 days after service of a notice of hearing that identifies someone other than an administrative law judge as the presiding officer.

**2506.6(2)** The agency or its designee may deny the request for any of the reasons set forth in Iowa Code section 17A.11(1) “a.”

**2506.6(3)** The agency or its designee is obligated to issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

**2506.6(4)** Except as otherwise prohibited by law, all final rulings by an administrative law judge acting as presiding officer are subject to appeal to the agency. A party is obligated to seek any available appeal to the agency in order to exhaust available administrative remedies.

**2506.6(5)** Except as otherwise set forth in law, heads of agencies and members of governmental agencies, when reviewing a proposed decision upon appeal to the agency, have the powers and duties of this chapter applicable to presiding officers.

**7—2506.7(17A) Waiver of procedures.** Unless otherwise prohibited by law, the parties in a contested case proceeding may waive any portion of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

**7—2506.8(17A) Telephone proceedings.** The presiding officer may resolve preliminary procedural motions by telephone or videoconference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, must be considered when a location is chosen.

**7—2506.9(17A) Disqualification.**

**2506.9(1)** A presiding officer or other person must withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a.* Has a personal bias or prejudice concerning a party or a representative of a party;
- b.* Has personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f.* Has a spouse or relative within the third degree of relationship who is:
  - (1) A party to the case or an officer, director or trustee of a party;
  - (2) An attorney in the case;
  - (3) Known to have an interest that could be substantially affected by the outcome of the case; or
  - (4) Likely to be a material witness in the case; or
- g.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

**2506.9(2)** The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term does not include general direction and supervision of assigned investigators, unsolicited receipt of information relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter that culminates in a contested case. If the presiding officer in the case has received factual information relevant to the merits of a contested case before being assigned as the presiding officer, the presiding officer is obligated to disclose that information to the parties to the extent required by Iowa Code section 17A.17(3) and subrules 2506.9(3) and 2506.23(9).

**2506.9(3)** A party that believes a presiding officer is disqualified must file a motion supported by an affidavit in accordance with Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

a. If a party during the course of the hearing becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification at that time but must establish the grounds introducing the evidence into the record.

b. If disqualification is required, the presiding officer or other person is obligated to withdraw. If withdrawal is not required, the presiding officer will enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 7—2506.25(17A) and seek a stay under rule 7—2506.29(17A).

**7—2506.10(17A) Consolidation—severance.**

**2506.10(1) Consolidation.** The presiding officer may consolidate matters at issue in two or more contested case proceedings if:

- a. The matters involve common parties or common questions of fact or law;
- b. Consolidation would expedite and simplify consideration of the issues involved; and
- c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

**2506.10(2) Severance.** The presiding officer may, for good cause shown, order any contested case or portion of a contested case severed.

**7—2506.11(17A) Pleadings.**

**2506.11(1) Filing requirements.** Filing requirements may be imposed by rule, by the notice of hearing, or by order of the presiding officer.

**2506.11(2) Petition.**

a. Any necessary petition in a contested case proceeding will be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer unless otherwise ordered.

b. A petition will state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address, email, and telephone number of the petitioner and the petitioner’s attorney, if any.

**2506.11(3) Answer.** A party against whom a petition is filed must file an answer within 20 days of service of the petition unless otherwise ordered. A party may instead move to dismiss or apply for a more definite and detailed statement when appropriate.

a. An answer must state on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It must state all facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

b. An answer must state the name, address, email, and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

c. Any allegation in the petition not denied in the answer is considered admitted. If a defense could have been raised in the answer but was not, the presiding officer may refuse to consider it if doing so would prejudice any party.

**2506.11(4) Amendment.** Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

**7—2506.12(17A) Electronic service and filing of pleadings and other papers.**

**2506.12(1) Filing and service electronically.** Every pleading, motion, document, or other paper that is filed or served shall be executed electronically whenever possible. Filing or service by a non-electronic method can only be upon a showing to the presiding officer of undue hardship to use email.

**2506.12(2) When service mandated.** Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding must be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency. Service must be

at the same time as filing. Except for the original notice of hearing and an application for rehearing, as described in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

**2506.12(3) Service—how made.** Service upon a party represented by an attorney will be made upon the attorney unless otherwise ordered. Service shall be made electronically or, to the extent permitted in subrule 2506.12(1), by mailing a hard copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

**2506.12(4) Filing—when mandated.** After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding must be filed with the agency at the agency's address or agency's email. All pleadings, motions, documents or other papers that need to be served upon a party must be filed with the agency at the same time they are served.

**2506.12(5) Filing—when made.** Except where otherwise provided by law, a document is deemed filed at the time it is submitted to the department of inspections, appeals, and licensing electronic filing system, submitted to a separate agency electronic filing system, delivered to the agency's address or agency's email, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

**2506.12(6) Copies by email.** Whenever possible, the parties shall provide opposing parties copies of all filings by email.

**2506.12(7) Proof of mailing.** In circumstances where non-electronic service is approved by the presiding officer, a proof of mailing is required, which includes either a legible United States Postal Service postmark on the envelope, a certificate of service, or a certification in substantially the following form:

I certify under penalty of perjury under the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the agency at the agency's address, and to the names and addresses of the parties listed below by depositing the same in (method of delivery).

(Date) (Signature)

#### **7—2506.13(17A) Discovery.**

**2506.13(1)** Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery are as set forth in the Iowa Rules of Civil Procedure. No new discovery under Iowa Rules of Civil Procedure 1.509, 1.510, and 1.512 may be served within 40 days of the scheduled hearing. All discovery must be completed no later than ten days before the scheduled hearing.

**2506.13(2)** Parties must not file motions relating to discovery unless they have first in good faith attempted to resolve the issue with the opposing party. A party filing a discovery motion must certify, under penalty of perjury, that it has made that good-faith attempt. Lack of such a certificate constitutes sufficient grounds for denying the motion.

**2506.13(3)** Unless shortened in accordance with subrule 2506.13(1), a discovery motion is ripe for ruling by the presiding officer ten days after the motion is filed. Opposing parties may file a response within that time. The presiding officer may order argument or rule on the parties' filings.

**2506.13(4)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

#### **7—2506.14(17A) Subpoenas.**

##### **2506.14(1) Issuance.**

*a.* A presiding officer must issue a subpoena upon a party's written request. Unless there is good cause, a party must request a witness subpoena at least three days before the scheduled hearing. The request will include the name, address, email, and telephone number of the requesting party.

*b.* Except as otherwise set forth by law, parties are responsible for serving their own subpoenas and for paying witness fees and mileage expenses. Subpoenas that do not include the required witness fees and mileage expenses are not valid.

**2506.14(2)** *Motion to quash or modify.* The presiding officer may quash or modify a subpoena in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena will be set for argument promptly.

**7—2506.15(17A) Motions.**

**2506.15(1)** Motions are not required to be in a particular form. However, prehearing motions are to be in writing, state the grounds for relief, and state the relief sought.

**2506.15(2)** Any party may file a written response to a motion within ten days after the motion is served unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the time period in ruling on a motion.

**2506.15(3)** The presiding officer may schedule oral argument on any motion.

**2506.15(4)** Unless there is good cause, motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days before the date of hearing. This time may be lengthened or shortened by rule of the agency or an order of the presiding officer.

**2506.15(5)** Motions for summary judgment.

*a.* Iowa Rules of Civil Procedure 1.981 through 1.983 govern motions for summary judgment, except where they conflict with this rule or legal requirements governing contested case proceedings.

*b.* Motions for summary judgment must be filed and served at least 45 days before the scheduled hearing date. Any party resisting the motion then has 15 days to file and serve a resistance. The time fixed for hearing or nonoral submission will be not less than 20 days after the filing of the motion. The presiding officer may by order change any of these deadlines. An order rendering summary judgment on all issues in a contested case is subject to rehearing pursuant to rule 7—2506.28(17A) and appeal pursuant to rule 7—2506.27(17A).

**7—2506.16(17A) Prehearing conference.**

**2506.16(1)** Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion will be filed not less than seven days before the hearing date. A prehearing conference will be scheduled not less than three business days before the hearing date. The presiding officer may change these deadlines for good cause.

**2506.16(2)** Witness and exhibit lists.

*a.* Each party will bring to the prehearing conference a final list of:

(1) The witnesses whom the party anticipates will testify at hearing. Unless there is good cause for the omission, the presiding officer may exclude the testimony of unlisted witnesses; and

(2) Exhibits that the party anticipates will be introduced at hearing. Unless there is good cause for the omission, the presiding officer may exclude unlisted, non-rebuttal exhibits.

*b.* Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments are to be served on all parties.

**2506.16(3)** The parties at a prehearing conference may:

*a.* Stipulate to law or fact;

*b.* Stipulate to the admissibility of exhibits;

*c.* Identify matters that the parties intend to request be officially noticed;

*d.* Consider any additional matters that will expedite the hearing.

**2506.16(4)** Prehearing conferences will be conducted by telephone unless otherwise ordered. Parties are obligated to exchange and receive witness and exhibit lists before the conference.

**7—2506.17(17A) Continuances.** Applications for continuances can be made to the presiding officer.

**2506.17(1)** A written application for a continuance will:

*a.* Be made at the earliest possible time and no less than seven days before the hearing, except in case of unanticipated emergencies;

*b.* State the specific reasons for the request; and

*c.* Be signed by the requesting party or the party's representative.

No application for continuance will be made or granted without notice to all parties, except in an emergency where notice is not feasible. The agency may waive notice of such requests for a particular case or an entire class of cases.

**2506.17(2)** In determining whether to grant a continuance, the presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time obligations;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

The presiding officer may order a party to furnish evidence of facts supporting or opposing the request.

**7—2506.18(17A) Withdrawals.** A party requesting a contested case proceeding may withdraw that request only in accordance with agency rules. Unless otherwise provided, a withdrawal will be with prejudice.

**7—2506.19(17A) Intervention.**

**2506.19(1)** *Motion.* A motion for leave to intervene in a contested case proceeding must state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. The proposed intervenor must attach a proposed answer or petition in intervention, as appropriate, to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

**2506.19(2)** *When filed.* A motion for leave to intervene must be filed as early as possible to avoid prejudice on existing parties or the conduct of the proceeding and, at any rate, before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Later motions must show good cause for being untimely. Unless inequitable or unjust, an intervenor is bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances that would delay the proceeding will ordinarily be denied.

**2506.19(3)** *Grounds for intervention.* The proposed intervenor must show that:

- a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;
- b. It is likely to be aggrieved or adversely affected by a final order in the proceeding; and
- c. Its interests are not adequately represented by existing parties.

**2506.19(4)** *Effect of intervention.* A person granted leave to intervene is a party to the proceeding. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. The order granting intervention may limit the issues the intervenor is allowed to raise or otherwise condition the intervenor's participation in the proceeding.

**7—2506.20(17A) Hearing procedures.**

**2506.20(1)** The presiding officer presides at the hearing and may rule on motions, impose obligations to submit briefs, issue a proposed decision, and issue orders and rulings to ensure the orderly conduct of the proceedings.

**2506.20(2)** All objections must be made timely and stated on the record.

**2506.20(3)** Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, limited-liability companies, and associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law. An attorney admitted pro hoc vice in

accordance with the Iowa rules of court to practice in an agency administrative action in accordance with Iowa Court Rule 31.14 is obligated to have an in-state attorney present at every interaction with the presiding officer.

**2506.20(4)** Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

**2506.20(5)** The presiding officer will maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**2506.20(6)** Witnesses may be sequestered during the hearing.

**2506.20(7)** The presiding officer must conduct the hearing in the following manner:

*a.* The presiding officer will give an opening statement briefly describing the nature of the proceedings;

*b.* The parties will be given an opportunity to present opening statements;

*c.* Parties will present their cases in the sequence determined by the presiding officer;

*d.* Each witness will be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

*e.* When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

#### **7—2506.21(17A) Evidence.**

**2506.21(1)** The presiding officer will rule on admissibility of evidence as provided in Iowa Code section 17A.14 and may, where appropriate, take official notice of facts in accordance with all applicable legal obligations.

**2506.21(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**2506.21(3)** Evidence in the proceeding will be confined to the issues identified at the prehearing conference or in the notice of hearing, as appropriate. A party may waive its right to prehearing notice. The presiding officer may, for good cause, expand the issues to be considered and admit evidence on those issues. In that case, a party that objects to the expansion is, upon timely request, entitled to a continuance sufficient to amend pleadings and to prepare on the additional issue.

**2506.21(4)** The presiding officer will not rule on the admissibility of an exhibit until opposing parties have had an opportunity to examine it. Parties should ordinarily furnish copies of exhibits to opposing parties before a hearing to prevent unnecessary delay during the hearing. All exhibits admitted into evidence will be appropriately marked and made part of the record.

**2506.21(5)** Any party may object to specific evidence or request limits on the scope of any examination or cross-examination. Each objection must be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling will be noted in the record. The presiding officer may rule on the objection when it is made or may reserve a ruling until the written decision.

**2506.21(6)** Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony will briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence is a document or exhibit, it will be marked as part of an offer of proof and inserted in the record.

#### **7—2506.22(17A) Default.**

**2506.22(1)** If a party does not appear or participate in a contested case proceeding after proper notice, the presiding officer may render a default or proceed with the hearing and render a decision in the absence of the party.

**2506.22(2)** Where appropriate, any party may move for default against a party who has requested the contested case proceeding and has not filed a necessary pleading or has not appeared after proper service.

**2506.22(3)** Default decisions and decisions rendered on the merits after a party has not appeared or participated are final agency actions from which a party may appeal under rule 7—2506.27(17A). A party against whom such a decision has been rendered may file a motion to vacate within 15 days, or other period specified by statute, after the date of notification or mailing of the decision. A motion to vacate must state all facts that establish good cause for that party's non-appearance or non-participation. Each such fact must be supported by at least one sworn affidavit of a person with personal knowledge, which affidavit must be attached to the motion.

**2506.22(4)** The time for further appeal of a decision is stayed while a timely motion to vacate is pending.

**2506.22(5)** A presiding officer may grant a motion to vacate only if it is timely and establishes good cause for the movant's non-appearance or non-participation. The burden of proof as to good cause is on the moving party. Opposed parties have ten days to respond to a motion to vacate. If the response includes a request to do so, an opposing party may conduct discovery into the issue of good cause and present evidence on that issue before the presiding officer decides the motion.

**2506.22(6)** "Good cause" for purposes of this rule has the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

**2506.22(7)** A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 7—2506.25(17A).

**2506.22(8)** If a motion to vacate is granted, and no timely interlocutory appeal has been taken, the presiding officer will issue another notice of hearing and the contested case will proceed accordingly.

**2506.22(9)** A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

**2506.22(10)** A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 7—2506.29(17A).

#### **7—2506.23(17A) Ex parte communication.**

**2506.23(1)** Improper communications. Except as specifically allowed by law, no party, representative of a party, or person with a direct or indirect interest in a case may communicate, directly or indirectly, with the presiding officer, or vice versa, regarding the case or a pending factually related case. These communications are allowed only if all parties have been notified of the intention to communicate and have an opportunity to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. However, the presiding officer may communicate with members of the agency and may seek the advice or help of persons regarding the matter. This can include persons with whom the presiding officer is prohibited from communicating in another case, as long as the presiding officer's communications with that person are not regarding that other case or a case factually related to it.

**2506.23(2)** Written, oral, or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

**2506.23(3)** These prohibitions start when the notice of hearing is issued and continue for as long as the case is pending.

**2506.23(4)** To avoid banned ex parte communications, notice is to be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications will be provided in compliance with rule 7—2506.12(17A) and may be supplemented by telephone, fax, email or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

**2506.23(5)** Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

**2506.23(6)** The administrator or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision and they comply with subrule 2506.23(1).

**2506.23(7)** Communications with the presiding officer involving uncontested scheduling or procedural matters do not need notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when possible and must notify other parties when seeking to continue hearings or other deadlines.

**2506.23(8)** Disclosure of banned communications. A presiding officer who receives a banned ex parte communication while a contested case is pending must first determine whether the communication is so prejudicial that the presiding officer should be disqualified. If so, the presiding officer will enter into the record, sealed by a protective order, a copy of any banned written communication, all written responses to the communication, a written summary of the substance of any banned oral or other communication, all responses made, and the identity of each person from whom the presiding officer received a banned ex parte communication. If the presiding officer determines that disqualification is not warranted, the presiding officer will enter these documents into the record and serve them upon all parties. Any party desiring to rebut the banned communication will be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

**2506.23(9)** Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer must disclose to all parties material factual information received through ex parte communication before the assignment began. The presiding officer does not need to disclose this information if it has already been, or shortly will be, disclosed under Iowa Code section 17A.13(2) or through discovery or if it is contained in an investigative report or similar document that has been or shortly will be given to the parties.

**2506.23(10)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication obligations by agency personnel will be reported to the chief executive of the agency or that person's designee for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

**7—2506.24(17A) Recording costs.** Upon reasonable request, the agency is obligated to provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record will be paid by the requesting party. A party that requests that a hearing be recorded by certified shorthand reporter rather than by electronic means is responsible for making such arrangements and paying associated costs unless otherwise provided by applicable law.

**7—2506.25(17A) Interlocutory appeals.** Upon written request of a party or on its own motion, the agency may review an interlocutory order. In determining whether to do so, the agency must weigh the extent to which the granting of the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. A request for interlocutory review must be filed by the earliest of 14 days after the challenged order is issued, the deadline for complying with the order, or the date of hearing.

**7—2506.26(17A) Final decision.**

**2506.26(1)** When the agency presides over receiving evidence at the hearing, its decision is a final decision.

**2506.26(2)** When the agency does not preside over receiving evidence, the presiding officer will issue a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal of the proposed decision to the agency, or review of the proposed decision on the agency's own motion, in accordance with rule 7—2506.27(17A).

**7—2506.27(17A) Appeals and review.**

**2506.27(1)** *Appeal by party.* Any adversely affected party may appeal a proposed decision to the agency within 30 days after the decision is issued.

**2506.27(2)** *Review.* The agency may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

**2506.27(3)** *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the agency. The notice of appeal is to be signed by the appealing party or a representative of that party and contain a certificate of service. The notice will specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought; and
- e. The grounds for relief.

**2506.27(4)** *Requests to present additional evidence.* A party may request to submit additional evidence. The request must be filed with the notice of appeal, if by an appealing party, or within 14 days of service of the notice of appeal, if by a non-appealing party. The agency will take additional evidence only if the party establishes that the evidence is material, that good cause existed for its not being presented at the hearing, and that the party has not waived the right to present the evidence. The agency may remand a case to the presiding officer to take additional evidence or may itself preside at the taking of additional evidence.

**2506.27(5)** *Scheduling.* The agency will issue a schedule for consideration of the appeal.

**2506.27(6)** *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs will include any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument will be filed with the briefs. The agency may resolve the appeal on the briefs or provide an opportunity for oral argument. The agency may shorten or extend the briefing period as appropriate.

**7—2506.28(17A) Applications for rehearing.**

**2506.28(1)** *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

**2506.28(2)** *Content of application.* The application for rehearing must identify on whose behalf it is filed, the portion of the decision the party wants reconsidered, the specific grounds for rehearing, whether the party wants to proceed on the record or to submit additional evidence, and the relief sought.

**2506.28(3)** *Time of filing.* The deadline to file an application for rehearing is 20 days after the final decision is issued.

**2506.28(4)** *Notice to other parties.* A copy of the application will be timely mailed or emailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the agency will serve copies on all parties.

**2506.28(5)** *Disposition.* A party need not respond to an application for rehearing unless the government entity requests a response. An application for a rehearing is deemed denied if it is not granted within 20 days of its filing or, if a response is filed, within 20 days of the filing of a response. An application for rehearing is optional; a party need not file an application to exhaust available administrative remedies. The filing of an application for rehearing shall toll the time period for appeal in rule 7—2506.27(17A).

**7—2506.29(17A) Stays of agency actions.**

**2506.29(1)** *When available.*

a. Any party may petition the agency to stay the effect of an order, or for other temporary remedies, pending review of the order by the agency. The petition must be filed with the notice of appeal and must state the reasons justifying a stay or other temporary remedy. The agency may rule on the stay or authorize the presiding officer to do so.

b. Any party may petition the agency for a stay, or other temporary remedies, pending judicial review of all or part of that proceeding. The petition must state the reasons justifying a stay or other temporary remedy.

**2506.29(2)** *When granted.* The presiding officer or agency will consider the factors listed in Iowa Code section 17A.19(5) “c” when deciding whether to grant the stay or other temporary remedy.

**2506.29(3)** *Vacation.* The presiding officer or agency may vacate a stay or other temporary remedy on the motion of the agency or any other party.

**7—2506.30(17A) Contested cases involving no factual dispute.** If the parties agree that no dispute of material fact exists, they may present all evidence, by stipulation or as otherwise agreed, without an evidentiary hearing. In such a situation, the parties should, as soon as practicable, jointly submit a proposed schedule for submitting the record and briefs and, if necessary, holding oral argument. If the parties cannot agree to a schedule, any party may file and serve a motion for summary judgment.

**7—2506.31(17A) Emergency adjudicative proceedings.**

**2506.31(1)** *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the agency may issue an emergency adjudicative order in compliance with Iowa Code section 17A.18A. The order must be in writing and may suspend a license in whole or in part, order that any continuing activity stop, order someone to act, or require other action within the jurisdiction of the agency. Before issuing an emergency adjudicative order, the agency must consider factors such as:

a. Whether there has been a sufficient factual investigation to ensure that it is proceeding on the basis of reliable information;

b. Whether the specific circumstances that pose immediate danger to public health, safety, or welfare have been identified and determined to be continuing;

c. Whether the person subject to the proposed emergency adjudicative order may continue to engage in other activities without posing immediate danger to public health, safety, or welfare;

d. Whether imposition of monitoring obligations or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and

e. Whether the specific action contemplated by the agency is necessary to avoid immediate danger.

**2506.31(2)** *Issuance of order.*

a. An emergency adjudicative order must contain findings of fact and conclusions of law to justify the determination of an immediate danger in the agency’s decision to take immediate action.

b. The emergency adjudicative order will be immediately delivered to persons obligated to comply with the order by one or more of:

(1) Personal delivery;

(2) First-class or certified mail to the last address on file with the agency; or

(3) Fax. Fax may be used as the sole method of delivery if the person to whom the order applies has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

c. To the practicable degree, the agency is obligated to select the procedure for providing written notice that best ensures prompt, reliable delivery.

**2506.31(3)** *Oral notice.* Unless the emergency adjudicative order is served by personal delivery on the same day that it is issued, the agency is obligated to make reasonable immediate efforts to contact the people to whom the order applies by telephone.

**2506.31(4)** *Completion of proceedings.*

a. After the issuance of an emergency adjudicative order, the agency will proceed as quickly as feasible to complete any proceedings that would be needed if the matter did not involve an immediate danger.

b. An emergency adjudicative order must include, or be accompanied by, a notice of the date by which agency proceedings are scheduled for completion. When an agency has issued an emergency adjudicative order, the agency or a presiding officer may continue contested case proceedings only in compelling circumstances upon application in writing.

7—2506.32 to 2506.100 Reserved.

**7—2506.101(17A) Definitions for vendor appeals of contested cases.** As used in this chapter, unless the context otherwise dictates:

“Agency” means the agency when purchasing goods or services through a competitive solicitation.

“Award” means the decision to select a vendor for a contract or purchase.

“Vendor” means any vendor who has submitted a bid or proposal in response to a competitive solicitation issued by an agency.

**7—2506.102(17A) Vendor appeal process.** Rules 7—2506.101(17A) through 7—2506.105(17A) govern appeals of the agency’s decisions regarding competitive solicitations for goods or services. These rules supplement standard contested case rules and control to the extent inconsistent with standard contested case rules. Not complying with these vendor appeal rules in any material respect will result in dismissal of the appeal and constitute a failure to exhaust administrative remedies.

**2506.102(1) Notice of intent to appeal.** A vendor who is aggrieved by the agency’s issuance of a notice of intent to award following a competitive solicitation may appeal that notice of intent to award. The deadline for the vendor to submit a notice of intent to appeal is five days following issuance of the notice of intent to award. Late notices of intent to appeal will not be accepted.

**2506.102(2) Initial disclosures.** When an agency receives the vendor’s notice of intent to appeal, the agency will respond by providing the public version of the winning vendor’s proposal as submitted by the vendor during the solicitation process. In addition, the agency will provide all evaluation committee materials, documentation, analysis, and results. If requested by the vendor, the agency will also send the public versions of losing bids or proposals as those public copies were submitted during the solicitation process. The vendor is not entitled to any additional discovery, materials, or information unless the proceedings advance past the first-tier review stage.

**2506.102(3) Notice of appeal.** Following receipt of the initial disclosures, the vendor may file a formal appeal within either the time frame identified in the solicitation document or, if no time frame is identified, five days from the award. If the vendor does not file a formal appeal in a timely manner, the appeal is waived. The vendor is obligated to plead with particularity; notice pleading is inadequate. At minimum, the formal appeal will include:

- a. The vendor’s contact information, including contact information for the individual filing the notice of appeal, the individual’s association with the appealing vendor, and a showing of the individual’s authority to appeal on behalf of the appealing vendor;
- b. Details of the award decision the vendor is challenging;
- c. Why and how the vendor is aggrieved by the decision;
- d. The legal and factual reasons for the vendor’s appeal, including references to the relevant grounds of appeal as set forth in Iowa Code section 17A.19(10); and
- e. The relief the vendor is seeking.

**2506.102(4) Appeal bond—notice of appeal, first-tier review.** At the same time the vendor submits the notice of appeal, the appealing vendor must submit to the agency an appeal bond to the extent required in the solicitation document. An agency has discretion to require a bond in an amount up to 5 percent of the value of the contract that is the subject of the appeal, including all extension years available under the contract awarded. If the vendor does not submit the appeal bond, the agency will dismiss the appeal. The vendor forfeits the appeal bond if its claims are determined to be unreasonable, frivolous, or for purposes of delaying the award, in which case the vendor will also be ordered to pay all costs of the appeal of the agency and any intervening party. Those costs include but are not limited to the costs of the process, hearing costs, expert witness fees, and attorney’s fees and costs. The appealing vendor may be disqualified from future competitive solicitations in accordance with applicable rules addressing vendor disqualification through debarment or suspension if the appeal is determined to be unreasonable, frivolous, or for the purpose of delay. Awarded costs may be extracted from the appeal bond.

**2506.102(5) Public records.**

a. To ensure fair evaluation of proposals and to make the vendor appeal process more efficient, solicitation-related information, such as proposals and evaluation materials, will remain confidential and will not be released to the public until the notice of intent to award is issued or any vendor appeals are fully and finally resolved, whichever comes later. Materials released in accordance with these vendor appeal rules or in a formal sealed bidding process controlled by Iowa Code section 72.3 are exceptions to this temporary prohibition on the release of confidential information.

b. By submitting materials for the bidding process, a vendor agrees that submitted documents and information can be shared with third parties, including competitors, in the event of an appeal. However, the agency will share confidential or proprietary information during an appeal process only in accordance with a protective order acceptable to the agency. Without a protective order, the agency will make available only to litigants copies of proposals from which confidential and proprietary information have been redacted, and then to non-litigants only after finalization of the award process or all vendor appeals, whichever comes later.

c. A vendor's notice of appeal is a public document available for public inspection. If the vendor believes the notice contains any confidential information, the vendor must, when it submits the notice of appeal, explain why the notice should remain confidential. The vendor must also submit a redacted version of the notice of appeal so that the public and other vendors submitting proposals in response to the solicitation can view nonconfidential portions of the notice of appeal.

**2506.102(6)** *Notice to winning vendor and intervention.* Once the agency receives the notice of appeal, the issuing officer for the solicitation will notify the winning vendor. The winning vendor may intervene in the appeal by submitting a notice of intervention no later than five days after receiving the notice.

**2506.102(7)** *Initial disclosures to intervenors.* The agency will send the intervening vendor the same public documents sent to the appellant.

**2506.102(8)** *Waiver.* To facilitate an orderly and timely resolution of vendor appeals, claims are waived in each of these instances:

a. A vendor did not raise during the solicitation process, such as through a question-and-answer period, an issue that could have been addressed during that process;

b. The issue is not raised in the original notice of appeal; and

c. An argument that could have been raised at an earlier stage of the appeal was not raised at that earlier stage.

#### **7—2506.103(17A) Vendor appeal stages.**

**2506.103(1)** *First-tier review.* Once the appeal is filed and any responses are received, the agency will review the case internally and issue a decision upholding, changing, or reversing the original award decision. The agency's decision is final unless the appealing vendor requests a second-tier review within the time frame identified in the solicitation document for seeking second-tier review or, if no time frame is so identified, five days from the issuance of the first-tier review. Failure to seek a second-tier review constitutes waiver of any right to seek a second-tier review and failure to exhaust administrative remedies.

**2506.103(2)** *Second-tier review.*

a. *Appeal hearing.* A vendor aggrieved by an agency's first-tier review may seek a second-tier review by filing a notice seeking second-tier review with the agency within five days of issuance of the first-tier review decision. The second-tier review request must comply with subrule 2506.102(3), except that it must refer to the first-tier review decision instead of the award decision. Upon receipt of a vendor's request for a second-tier review, the agency will schedule a hearing before an administrative law judge from the department of inspections, appeals, and licensing. The second-tier review hearing will be held within 60 days after the request for a second-tier review, subject to good cause exceptions as set forth in subrule 2506.3(2).

b. *Appeal security.* At the same time as it submits a second-tier review request, the appealing vendor must submit an additional appeal bond to the extent required in the solicitation document. An agency has discretion to require a second bond in an amount up to 10 percent of the value of the contract that is the subject of the appeal, including all extension years available under the contract awarded. If

the vendor does not satisfy the bond requirement, the agency will dismiss the second-tier review. The appeal bond will be forfeited if the vendor's claims are determined to be unreasonable, frivolous, or for purposes of delaying the award.

*c. Discovery.* Any party may seek reasonable discovery of information directly relevant to the issues that are the subject of the appeal. Overly broad or burdensome discovery requests are not allowed. Discovery issued to the agency is limited to events occurring at the agency that relate to the solicitation process. Issues not subject to discovery include the agency's existing relationships with other bidders. As a condition of requesting a second-tier review, the appellant is obligated to promptly respond to discovery requests made by any party defending the award. Any party defending the award may seek discovery from appellant of any matters that could affect the fairness of the solicitation process, including whether the appellant failed to disclose information relevant to the award process that would have resulted in its disqualification or that appellant engaged in previously unreported inappropriate contact that would have resulted in its disqualification. An appellant that would have been disqualified is not prejudiced by the award decision and lacks standing to challenge it. Confidential or proprietary information may be shared by the parties to the appeal in accordance with a protective order acceptable to the agency. All discovery requests will be made no later than five days after the request for a second-tier review is submitted. Parties must completely respond or object to discovery requests within 30 days of receipt. A party that objects to discovery requests must submit its objection to the requesting parties within ten days of receiving the discovery requests. Sanctions will be imposed for abuse of the discovery process, potentially including adverse inferences and dismissal of the appeal.

*d. Witnesses and exhibits.* At least ten days before the hearing, the parties will contact each other to discuss proposed witnesses and exhibits. Final witness and exhibit lists will be exchanged no later than seven days before the hearing.

*e. Second-tier hearing and decision.* The hearing will be transcribed by a court reporter arranged and paid for by the parties with the costs shared equally unless all parties to an appeal and the presiding officer agree to an alternative approach to record the proceeding. In the event the presiding officer orders post-hearing briefing, the following post-hearing schedule applies unless the parties agree to and the presiding officer orders a different schedule:

- (1) Any appellant post-hearing brief is due ten days after the presiding officer closes the record;
- (2) Any appellee or intervenor post-hearing brief is due ten days after receiving the appellant's brief, if any; and
- (3) Any appellant reply brief is due ten days after receiving the appellee or intervenor post-hearing brief.

Following the close of post-hearing briefing, the administrative law judge will issue a proposed decision, which will become the final agency decision unless a party seeks a third-tier review.

**2506.103(3)** *Third-tier review and decision.* A party aggrieved by an agency's second-tier review may seek a third-tier review by filing a notice seeking third-tier review with the agency. The deadline to file this notice is five days after the proposed decision on the second-tier review is issued. The third-tier review request must comply with subrule 2506.102(3), except that it must refer to the second-tier review decision instead of the award decision. The party appealing must submit the entire record from the second-tier review, including any transcripts or recordings, at its own cost. Any non-appealing party may file a response to the request. No additional briefing or argument is allowed at the third-tier review stage absent an agency's request. The agency will thereafter expeditiously issue the final agency decision, which will constitute final agency action on the matter.

#### **7—2506.104(17A) Standards and remedies for vendor appeals.**

**2506.104(1)** *Standard of review.* In all stages of the vendor appeal, the standard of review will be whether the solicitation process substantially complied with the legally binding procedures applicable to the award process at issue and, if not, whether there is prejudice to the nonprevailing vendor because:

- a.* The noncompliance demands a conclusion that the award process was not conducted fairly, openly, or objectively, and
- b.* Compliance with the legally binding procedure would have resulted in a different outcome.

For purposes of this rule, “legally binding procedure” means those procedures mandated by statute or administrative rule or expressly set forth in the text of the competitive solicitation. Agency guidance that is not in statute, administrative rule, or the text of the solicitation, including but not limited to training materials and procedural manuals, does not constitute legally binding procedure.

**2506.104(2)** *Burdens.* The appealing vendor bears the burden of proof and the burden of producing evidence in support of its allegations.

**2506.104(3)** *Standard of proof and prejudice to vendor.* The vendor must prove both noncompliance and prejudice by clear and convincing evidence.

**2506.104(4)** *Remedies available.* If the solicitation process is found to be unfair or noncompliant with legally binding procedures, the remedy will be narrowly tailored and specifically designed to remediate the specific noncompliance. Wholesale remedies invalidating or voiding solicitations will be avoided unless no other conceivable measure could remediate the noncompliance. Possible remedies may include but are not necessarily limited to remand to the agency with directions to remedy the specific noncompliance and reissue the award if the agency determines the contract is still necessary to meet the agency’s needs or objectives or, if remediation of the noncompliance is not possible, voiding the notice of intent to award with directions to the agency to proceed in the state’s best interests, which may include canceling the solicitation.

**2506.104(5)** *Authority over award decisions.* All final award decisions will be made by the agency. An administrative law judge’s authority is limited to affirming the agency’s action or remanding the issue to the agency for further consideration through a proposed decision. An administrative law judge lacks jurisdiction to compel the issuance of an award to a vendor other than a vendor awarded a contract by the agency.

**2506.104(6)** *Issues not for consideration.* The following types of challenges are not a basis for a vendor appeal. An attempted appeal that fits within one of the following categories will be dismissed:

*a.* Any claim related to existing contract administration. The administration of an existing contract is within the discretion of the agency. Disputes between a vendor and the agency are resolved in accordance with dispute-resolution clauses in a contract and not through a vendor appeal process.

*b.* Any claim of a subcontractor of an aggrieved vendor. Only vendors who submitted a bid or proposal in response to a solicitation have standing to appeal a notice of intent to award.

*c.* Any claim related to alternative procurement processes, such as purchase orders, statements of work, or other transactional documents executed under an existing contract, including such orders made under master agreements. Vendor appeals are allowed only in response to competitive solicitations and no other forms of state purchases.

*d.* Any claim related to suspensions or debarments of vendors.

#### **7—2506.105(17A) Stay of agency action.**

**2506.105(1)** *When a vendor can request a stay.* A vendor appealing a notice of intent to award may request a stay of the award process by filing a request for stay with the notice of appeal. In requesting the stay of agency action, the vendor is obligated to submit an additional bond equal to 120 percent of the value of the contract at issue, including any extension years available under the awarded contract. This bond is in addition to other appeal bonds as set forth in this chapter. If the appealing vendor does not submit a sufficient bond with its request for stay, its request for stay will be denied and the issue of stay of agency action will be considered waived. If no stay is sought or the issue is deemed waived, the agency will proceed with the contract award and contract execution consistent with the notice of intent to award. The vendor forfeits the appeal bond if its claims are determined to be unreasonable, frivolous, or for purposes of delaying the award, in which case the vendor will also be ordered to pay all costs of the appeal of the agency and any intervening party. Those costs include but are not limited to the costs of the process, hearing costs, expert witness fees, and attorney’s fees and costs. Awarded costs may be extracted from the appeal bond. If a stay is not granted and the ultimate award to the incoming awardee overturned in an administrative appeal or on judicial review, the contracted vendor will be entitled to payment for goods and services rendered under the contract and the agency may continue the contract with the awarded vendor until a replacement vendor is under contract.

**2506.105(2)** *When the stay is granted.* The agency will consider factors set forth in Iowa Code section 17A.19(5) “c” in deciding whether to grant the stay. The agency’s decision on whether to grant a stay will be made by the chief executive of the agency and will constitute final agency action on the request for stay for purposes of Iowa Code chapter 17A.

**2506.105(3)** *When the stay is vacated.* Any stay imposed on an award may be vacated upon application of the agency or another interested party upon a showing of good cause.

**7—2506.106(17A) Federal funds.**

**2506.106(1)** Rules 7—2506.101(17A) through 7—2506.105(17A) do not apply where they conflict with a governing federal regulation or would jeopardize the receipt of federal funds.

**2506.106(2)** If the attorney general determines that any portion of rules 7—2506.101(17A) through 7—2506.105(17A) would cause the federal government to deny funds or services that would otherwise be available to an agency of this state, that portion will be suspended for that agency but only to the extent necessary to prevent denial of the federal funds or services.

These rules are intended to implement Iowa code chapter 17A.

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