

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 10A.104(5) and 10A.801(7), the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 10, “Contested Case Hearings,” Iowa Administrative Code.

The proposed amendment to rule 481—10.14(10A,17A) clarifies the methods by which an agency subpoena may be requested from an administrative law judge, the information to be provided to the administrative law judge in the request for a subpoena, and the method by which the subpoena shall be transmitted to the requestor. Additionally, the proposed amendment increases the time period from three days to seven calendar days in which a request for a subpoena must be received by the Division of Administrative Hearings prior to a scheduled hearing.

The Department does not believe that the proposed amendment imposes any financial hardship on any regulated entity, body, or individual. Rather, adoption of the proposed amendment simply clarifies the process to be used when an agency subpoena is requested as part of a contested case hearing.

Any interested person may make written suggestions or comments on the proposed amendment on or before June 7, 2011. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or E-mailed to [david.werning@dia.iowa.gov](mailto:david.werning@dia.iowa.gov).

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

This amendment is intended to implement Iowa Code sections 10A.104(6) and 17A.13.

The following amendment is proposed.

Amend subrules 10.14(1) and 10.14(2) as follows:

**10.14(1) Issuance.**

a. Pursuant to Iowa Code subsection 17A.13(1), the division shall issue an agency subpoena shall be issued to a party on request unless subrule 10.14(1), paragraph “d,” applies otherwise excluded pursuant to this rule. A request may be either oral or for a subpoena shall be in writing. The request may be made in person, or by mail, fax, or electronic mail. The request shall include the names of the parties, the case number, the name and address of the requested witness, and a description or list of any documents or other items requested. A written request to for a subpoena shall be received by the division for a subpoena must be received at least three seven calendar days before the scheduled hearing. The request shall include the name, address and telephone number of the requesting party.

b. The division shall provide the subpoena to the requesting party by regular mail, fax, or electronic mail or allow for pick up during the department’s regular business hours. Parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

c. When authorized by law, an administrative law judge (ALJ) may issue a subpoena on the ALJ’s own motion.

d. When there is reasonable ground to believe a subpoena is requested for the purpose of harassment, or that the subpoena is irrelevant requests irrelevant evidence or is untimely, the administrative law judge ALJ may refuse to issue the subpoena, or. The ALJ may require the requesting party to provide a statement of testimony expected to be elicited from the subpoenaed witness and a showing of relevancy. If the ALJ refuses to issue a subpoena, the ALJ shall provide, upon request, a written statement of the ground for refusal. A party to whom a refusal is issued may obtain a prompt hearing regarding the refusal by filing a written request with the division.

**10.14(2)** *Motion to quash or modify.*

- a.* A subpoena may be quashed or modified upon motion for any lawful ground in accordance with the Iowa Rules of Civil Procedure.
- b.* A motion to quash or modify a subpoena shall be served on all parties of record.
- c.* The motion shall may be set for argument ~~promptly~~ at the discretion of the ALJ.