

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 10A.801(7), the Department of Inspections and Appeals hereby amends Chapter 10, "Contested Case Hearings," Iowa Administrative Code.

The adopted 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 adopted 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.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9514B** on May 18, 2011. One comment was received from the Iowa Health Care Association, which expressed concerns that the amendment might prohibit motions or other remedies in situations where there is a discovery dispute, where discovery breaks down, or where there is a need to extend discovery. The Department has assured the Association that the adopted amendment is not intended to limit remedies for the resolution of discovery disputes. As a result of these conversations, no changes were made to the Notice of Intended Action.

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

This amendment will become effective August 17, 2011.

The following amendment is adopted.

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 pickup 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.

[Filed 6/22/11, effective 8/17/11]

[Published 7/13/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/13/11.