

161—3.37(216) Investigative subpoenas.

3.37(1) *Application of rule.* This rule applies to subpoenas served before a notice of contested case hearing pursuant to rule 161—4.2(17A).

3.37(2) *Prior to notice of hearing.* Subpoenas may be issued by the executive director or designee before a notice of a contested case hearing. Only the agency has the right to demand issuance of a subpoena.

3.37(3) *Timing before subpoena is issued.* Where a person fails to provide requested information pursuant to the initial information request or subsequent information requests, a subpoena may be issued. A subpoena may be issued not less than seven days after the initial information request or subsequent information requests have been delivered to the person having possession, custody, or control of the requested materials.

3.37(4) *Contents of subpoena.* Every subpoena shall state the name of the agency and the purpose for which the subpoena is issued. The subpoena shall be directed to a specific person; the person's attorney; or an officer, partner, or managing agent of any entity that is not a natural person. The subpoena for the unknown person having possession, custody, or control of the requested material or real evidence may be directed to the "custodian of records." The subpoena shall command the person to whom it is directed to produce designated books, papers, or other real evidence in the possession, custody, or control of that person at a specified time and place.

3.37(5) *Method and proof of service.* Personal service will be accomplished pursuant to Iowa Rule of Civil Procedure 1.1701(3). Proof of service is by acknowledgment of receipt by the person served or by the affidavit of the person who served the subpoena. Failure to file proof of service does not affect the validity of service.

3.37(6) *Objections to subpoena.*

a. An individual who intends not to comply with any part of a subpoena shall promptly petition the executive director to revoke or modify the subpoena. The petition shall separately identify each portion of the subpoena and provide the grounds upon which the petitioner does not intend to comply. A copy of the subpoena shall be attached to the petition. The agency shall mail the final determination of the petition by the executive director or designee to the petitioner.

b. The grounds for subpoena modification or revocation are met if the subpoena is:

- (1) Not within the statutory authority of the agency;
- (2) Not reasonably specific;
- (3) Unduly burdensome; or
- (4) Not reasonably relevant to matters under investigation.

c. A petition to revoke or modify a subpoena should be captioned "Motion to Quash" or "Petition to Modify/Revoke Subpoena" and include the agency case number.

3.37(7) *Failure to comply.* If an individual fails to comply with a subpoena, the executive director or designee may authorize the filing of a petition for enforcement in the district court.

3.37(8) *Open public records law.* The status of a record as a confidential public record under Iowa Code chapter 22 does not affect the authority of the agency to subpoena and compel the production of that record.

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