

CHAPTER 11  
WAIVERS FROM ADMINISTRATIVE RULES

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 11]

**17—11.1(17A,231,ExecOrd11) Definitions.** For purposes of this chapter:

“*Department*” means the department on aging.

“*Director*” means the director of the department on aging.

“*Waiver*” means action by the department which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person or program on the basis of the particular circumstances of that person or program.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 5955C, IAB 10/6/21, effective 11/10/21]

**17—11.2(17A,231,ExecOrd11) Scope of chapter.** This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the department in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule. Specific waiver provisions are provided in 17—Chapters 4, 6 and 9.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—11.3(17A,231,ExecOrd11) Applicability of chapter.** The department may only grant a waiver from a rule if the department has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The department may not waive requirements created or duties imposed by statute.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—11.4(17A,231,ExecOrd11) Criteria for waiver.** In response to a petition completed pursuant to rule 17—11.6(17A,231,ExecOrd11), the department may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the department finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 5955C, IAB 10/6/21, effective 11/10/21]

**17—11.5(17A,231,ExecOrd11) Filing of petition.** A petition for a waiver must be submitted in writing to the Director, Iowa Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025, as follows:

**11.5(1) Certificate application.** If the petition relates to a certificate application, the petition shall be made in accordance with the filing requirements for the certificate in question and submitted to the department.

**11.5(2) Contested cases.** If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case, and submitted to the department.

**11.5(3) Other.** If the petition does not relate to a certificate application or contested case, the petition may be submitted to the department.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—11.6(17A,231,ExecOrd11) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person or entity for which a waiver is being requested.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in 17—11.4(17A,231,ExecOrd11). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the department and the petitioner relating to the regulated activity or certificate affected by the proposed waiver, including a description of each affected certificate held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or certificate within the last five years.
6. Any information known to the requester regarding the department's treatment of similar cases.
7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.
8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—11.7(17A,231,ExecOrd11) Additional information.** Prior to issuing an order granting or denying a waiver, the department may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the department may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the department's appropriate staff person, or a committee of the department.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—11.8(17A,231,ExecOrd11) Notice.** The department shall acknowledge a petition upon its receipt in the department's office. The department shall ensure that notice of the pending petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the department may give notice to other persons. To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the department attesting that notice has been provided.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—11.9(17A,231,ExecOrd11) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the department so provides by rule or order or is required to do so by statute.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—11.10(17A,231,ExecOrd11) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

**11.10(1) *Department discretion.*** The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the department, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the department based on the unique, individual circumstances set out in the petition.

**11.10(2) *Burden of persuasion.*** The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the department should exercise its discretion to grant a waiver from a department rule.

**11.10(3) *Narrowly tailored.*** A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

**11.10(4) *Administrative deadlines.*** When the rule from which a waiver is sought establishes administrative deadlines, the department shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

**11.10(5) *Conditions.*** The department may place any condition on a waiver that the department finds desirable to protect the public health, safety, and welfare.

**11.10(6) *Time period of waiver.*** A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the department, a waiver may be renewed if the department finds that grounds for a waiver continue to exist.

**11.10(7) *Time for ruling.*** The department shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the department shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**11.10(8) *When deemed denied.*** Failure of the department to grant or deny a petition within the required time period shall be deemed a denial of that petition by the department. However, the department shall remain responsible for issuing an order denying a waiver.

**11.10(9) *Service of order.*** Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—11.11(17A,22,231,ExecOrd11) *Public availability.*** All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information that the department is authorized or required to keep confidential. The department may accordingly redact confidential information from petitions or orders prior to public inspection.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—11.12(17A,22,231,ExecOrd11) *Summary reports.*** Semiannually, the department shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the department's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—11.13(17A,231,ExecOrd11) *Cancellation of a waiver.*** A waiver issued by the department pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the department issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or

misrepresented material facts relevant to the propriety or desirability of the waiver; or

2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

3. The subject of the waiver order has failed to comply with all conditions contained in the order.  
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—11.14(17A,231,ExecOrd11) Violations.** Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—11.15(17A,231,ExecOrd11) Defense.** After the department issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—11.16(17A,231,ExecOrd11) Judicial review.** Judicial review of a department's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A. Any appeal to district court shall be taken within 30 days from the date of issuance of the decision by the department pursuant to Iowa Code section 17A.19.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—11.17(17A,231,ExecOrd11) Severability.** Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

These rules are intended to implement Iowa Code chapters 17A, 22, 231 and 249H and Executive Order Number 11.

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CHAPTER 13  
RULES AND PRACTICES IN CONTESTED CASES

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 13]

**17—13.1(17A) Scope and applicability.** This chapter applies to contested case proceedings conducted by the department on aging.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.2(17A) Definitions.** Except where otherwise specifically defined by law:

“*Commission*” means the commission on aging as established in Iowa Code chapter 231.

“*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.

“*Department*” means the department on aging.

“*Director*” means the director of the department.

“*Issuance*” means the date of mailing 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 or department named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means the commission, the commission’s designee or an administrative law judge.

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

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.3(17A) Time requirements.**

**13.3(1)** Time shall be computed as provided in Iowa Code subsection 4.1(34).

**13.3(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.4(17A) Requests for contested case proceeding.** Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the department action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.5(17A) Notice of hearing.**

**13.5(1) Delivery.** Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed 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.

**13.5(2) Contents.** The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the department or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the department or the state and of parties' counsel, where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;
- h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

#### **17—13.6(17A) Presiding officer.**

**13.6(1)** Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer.

**13.6(2)** The department on aging may deny the request only upon a finding that one or more of the following apply:

- a. Neither the department nor any officer of the department under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c. An administrative law judge is unavailable to hear the case within a reasonable time.
- d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- g. The request was not timely filed.
- h. The request is not consistent with a specified statute.

**13.6(3)** The department shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

**13.6(4)** Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the department. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

**13.6(5)** Unless otherwise provided by law, agency heads and members of multimembered agency heads, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.7(17A) Waiver of procedures.** Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision 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.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.8(17A) Telephone proceedings.** The presiding officer may resolve preliminary procedural motions by telephone conference 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, will be considered when location is chosen.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

### **17—13.9(17A) Disqualification.**

**13.9(1)** A presiding officer or other person shall 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 that:
  - (1) Is a party to the case, or an officer, director or trustee of a party;
  - (2) Is a lawyer in the case;
  - (3) Is known to have an interest that could be substantially affected by the outcome of the case; or
  - (4) Is 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.

**13.9(2)** The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is 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 which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 13.9(3) and 13.23(9).

**13.9(3)** In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

**13.9(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 13.9(1), the party shall file a motion supported by an affidavit pursuant to 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.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 17—13.25(17A) and seek a stay under rule 17—13.29(17A).

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.10(17A) Consolidation—severance.**

**13.10(1) Consolidation.** The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

- a. The matters at issue 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.

**13.10(2) Severance.** The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.11(17A) Pleadings.**

**13.11(1) Pleadings** may be required by rule, by the notice of hearing, or by order of the presiding officer.

**13.11(2) Petition.**

a. Any petition required in a contested case proceeding shall 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 shall 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 and telephone number of the petitioner and the petitioner's attorney, if any.

**13.11(3) Answer.** An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim. An answer shall state the name, address 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. Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

**13.11(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.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.12(17A) Service and filing of pleadings and other papers.**

**13.12(1) When service required.** 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 shall 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, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

**13.12(2) Service—how made.** Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a 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.

**13.12(3) Filing—when required.** After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with Department on Aging, Jessie M. Parker

Building, 510 E. 12th Street, Suite 2, Des Moines, Iowa 50319. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the department.

**13.12(4) Filing—when made.** Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the department, 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.

**13.12(5) Proof of mailing.** Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.13(17A) Discovery.**

**13.13(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 shall be as provided in the Iowa Rules of Civil Procedure.

**13.13(2)** Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 13.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

**13.13(3)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.14(17A) Subpoenas.**

**13.14(1) Issuance.**

*a.* An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

*b.* Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

**13.14(2) Motion to quash or modify.** The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.15(17A) Motions.**

**13.15(1)** No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

**13.15(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 required time period in ruling on a motion.

**13.15(3)** The presiding officer may schedule oral argument on any motion.

**13.15(4)** Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the department or an order of the presiding officer.

**13.15(5)** Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to 17—13.28(17A) and appeal pursuant to 17—13.27(17A).

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

#### **17—13.16(17A) Prehearing conference.**

**13.16(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 shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the department to all parties.

For good cause the presiding officer may permit variances from this rule.

**13.16(2)** Each party shall bring to the prehearing conference:

*a.* A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

*b.* A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

*c.* 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 must be served on all parties.

**13.16(3)** In addition to the requirements of subrule 13.16(2), the parties at a prehearing conference may:

- a.* Enter into stipulations of law or fact;
- b.* Enter into stipulations on the admissibility of exhibits;
- c.* Identify matters which the parties intend to request be officially noticed;
- d.* Enter into stipulations for waiver of any provision of law; and
- e.* Consider any additional matters which will expedite the hearing.

**13.16(4)** Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.17(17A) Continuances.** Unless otherwise provided, applications for continuances shall be made to the presiding officer.

**13.17(1)** A written application for a continuance shall:

- 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.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The department may waive notice of such requests for a particular case or an entire class of cases.

**13.17(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 requirements;
- 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 require documentation of any grounds for continuance.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.18(17A) Withdrawals.** A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with department rules. Unless otherwise provided, a withdrawal shall be with prejudice.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.19(17A) Intervention.**

**13.19(1) Motion.** A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached 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.

**13.19(2) When filed.** Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

**13.19(3) Grounds for intervention.** The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

**13.19(4) Effect of intervention.** 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. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may

be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.  
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.20(17A) Hearing procedures.**

**13.20(1)** The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

**13.20(2)** All objections shall be timely made and stated on the record.

**13.20(3)** Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or 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.

**13.20(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.

**13.20(5)** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**13.20(6)** Witnesses may be sequestered during the hearing.

**13.20(7)** The presiding officer shall conduct the hearing in the following manner:

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

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

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

*d.* Each witness shall 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.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.21(17A) Evidence.**

**13.21(1)** The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

**13.21(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**13.21(3)** Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

**13.21(4)** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**13.21(5)** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall 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 shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**13.21(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 shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.22(17A) Default.**

**13.22(1)** If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

**13.22(2)** Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

**13.22(3)** Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 17—13.27(17A). A motion to vacate must state all facts relied upon by the moving party which establishes that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

**13.22(4)** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

**13.22(5)** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

**13.22(6)** "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

**13.22(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 17—13.25(17A).

**13.22(8)** If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

**13.22(9)** A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

**13.22(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 17—13.29(17A).

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.23(17A) Ex parte communication.**

**13.23(1)** Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This

does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the department or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 13.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

**13.23(2)** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

**13.23(3)** Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

**13.23(4)** To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 17—13.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

**13.23(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.

**13.23(6)** The director 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 under any provision of law and they comply with subrule 13.23(1).

**13.23(7)** Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 17—13.17(17A).

**13.23(8)** Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order (or disclosed). If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

**13.23(9)** Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

**13.23(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 department. Violation of ex parte communication prohibitions by department personnel shall be reported to the commission on aging for

possible sanctions including censure, suspension, dismissal, or other disciplinary action.  
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.24(17A) Recording costs.** Upon request, the department shall 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 shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.  
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.25(17A) Interlocutory appeals.** Upon written request of a party or on its own motion, the commission may review an interlocutory order of the presiding officer. In determining whether to do so, the commission shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the commission at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.26(17A) Final decision.**

**13.26(1)** When the commission presides over the reception of evidence at the hearing, its decision is a final decision.

**13.26(2)** When the commission does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the commission without further proceedings unless there is an appeal to, or review on motion of, the department within the time provided in rule 17—13.27(17A).

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.27(17A) Appeals and review.**

**13.27(1) Appeal by party.** Any adversely affected party may appeal a proposed decision to the commission within 30 days after issuance of the proposed decision.

**13.27(2) Review.** The commission may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

**13.27(3) Notice of appeal.** An appeal of a proposed decision is initiated by filing a timely notice of appeal with the department. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall 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;
- e. The grounds for relief.

**13.27(4) Requests to present additional evidence.** A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The commission may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

**13.27(5) Scheduling.** The department shall issue a schedule for consideration of the appeal.

**13.27(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 shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The commission may resolve the appeal on the briefs or provide an opportunity for oral argument. The commission may shorten or extend the briefing period as appropriate.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

#### **17—13.28(17A) Applications for rehearing.**

**13.28(1) *By whom filed.*** Any party to a contested case proceeding may file an application for rehearing from a final order.

**13.28(2) *Content of application.*** The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the department decision on the existing record and whether, on the basis of the grounds enumerated in subrule 13.27(4), the applicant requests an opportunity to submit additional evidence.

**13.28(3) *Time of filing.*** The application shall be filed with the department within 20 days after issuance of the final decision.

**13.28(4) *Notice to other parties.*** A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the department shall serve copies on all parties.

**13.28(5) *Disposition.*** Any application for a rehearing shall be deemed denied unless the department grants the application within 20 days after its filing.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

#### **17—13.29(17A) Stays of department actions.**

##### **13.29(1) *When available.***

*a.* Any party to a contested case proceeding may petition the department for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the department. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The commission may rule on the stay or authorize the presiding officer to do so.

*b.* Any party to a contested case proceeding may petition the department for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

**13.29(2) *When granted.*** In determining whether to grant a stay, the presiding officer or commission shall consider the factors listed in Iowa Code section 17A.19(5) “*c.*”

**13.29(3) *Vacation.*** A stay may be vacated by the issuing authority upon application of the department or any other party.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.30(17A) No factual dispute contested cases.** If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

#### **17—13.31(17A) Emergency adjudicative proceedings.**

**13.31(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 department may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

**13.31(2) Issuance of order.**

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the department;
- (3) Certified mail to the last address on file with the department;
- (4) First-class mail to the last address on file with the department; or
- (5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that department orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

**13.31(3) Oral notice.** Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

**13.31(4) Completion of proceedings.** After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which department proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further department proceedings to a later date will be granted only in compelling circumstances upon application in writing.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—13.32(17A) Informal settlement.**

**13.32(1)** A party to a controversy that may culminate in contested case proceedings may attempt informal settlement of the controversy by complying with the procedures set forth in this subrule. No party to a controversy shall be required to settle the controversy by submitting to informal settlement procedures.

a. Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, which may include a stipulated statement of facts.

b. When signed by the parties to a controversy, a proposed settlement shall represent final

disposition of the matter in place of contested case proceedings.

*c.* Where there are more than two parties to a controversy before the department, a separate settlement between one party and the department is permissible.

*d.* A proposed settlement which is not accepted or signed by the parties shall not be admitted as evidence in the record of a contested case proceeding.

**13.32(2)** A party to a contested case proceeding may attempt informal settlement by complying with the procedures set forth in this subrule. No party shall be required to settle the contested case proceeding by submitting to informal settlement procedures.

*a.* Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, which may include a stipulated statement of facts.

*b.* When signed by the parties to the contested case proceeding and the presiding officer, a proposed settlement shall represent final disposition of the proceeding.

*c.* Where there are more than two parties to a contested case proceeding involving the department, a separate settlement between one party and the department is permissible.

*d.* A proposed settlement which is not accepted or signed by the parties and the presiding officer shall not be admitted as evidence in the record of a contested case proceeding. Evidence of conduct or statements made in settlement negotiations likewise are not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

These rules are intended to implement Iowa Code chapters 17A and 231.

[Filed 12/28/07, Notice 9/12/07—published 1/30/08, effective 3/5/08]

[Filed Emergency ARC 8489B, IAB 1/27/10, effective 1/7/10]

CHAPTER 17  
PETITION FOR RULE MAKING

[Prior to 5/20/87, see Aging, Commission on the[20] Ch 10]

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 17]

Insert the petition for rule making segment of the Uniform Rules on Agency Procedure which is printed in the first volume of Iowa Administrative Code, with the following amendments:

**17—17.1(17A) Petition for rule making.** In lieu of the words “designate office”, insert “the Director, Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025”.

In lieu of the words “AGENCY NAME”, the heading on the petition should read:

BEFORE THE DEPARTMENT ON AGING

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—17.3(17A) Inquiries.** Inquiries concerning the status of a petition for rule making may be made to the Director, Iowa Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

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

[Filed 5/20/82, Notice 3/17/82—published 6/9/82, effective 7/14/82]

[Filed 5/1/87, Notice 2/25/87—published 5/20/87, effective 6/24/87]

[Filed 3/26/04, Notice 2/4/04—published 4/14/04, effective 5/19/04]

[Filed Emergency ARC 8489B, IAB 1/27/10, effective 1/7/10]

<sup>1</sup> Effective date of Chapter 17 delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 18  
DECLARATORY ORDERS

[Prior to 5/20/87, see Aging, Commission on the[20] Ch 10]  
[Prior to 1/27/10, see Elder Affairs Department[321] Ch 18]

**17—18.1(17A) Petition for declaratory order.** Any person may file a petition with the department on aging for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department on aging at the Iowa Department on Aging, Attn: Director, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025. A petition is deemed filed when it is received by that office. The department on aging shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE DEPARTMENT ON AGING

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|                                                                                                      |   |                                   |
|------------------------------------------------------------------------------------------------------|---|-----------------------------------|
| Petition by (Name of Petitioner) for a<br>Declaratory Order on (Cite provisions<br>of law involved). | } | PETITION FOR<br>DECLARATORY ORDER |
|------------------------------------------------------------------------------------------------------|---|-----------------------------------|

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The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.
6. A statement indicating 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 governmental entity.
7. The names and addresses of other persons, or a description of any class 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 provided for by 17—18.7(17A).
9. The petitioner’s state identification number, if applicable.

The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed.

Application requests for an informal review of department policy, law or rules in relation to specific facts shall be in writing and may be submitted electronically or by mail. The request must recite all pertinent facts and questions. The department response to a request for informal review shall not be considered a declaratory order as specified in Iowa Code chapter 17A. The department may, at its discretion, choose to issue a declaratory order in response to a request for informal review.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—18.2(17A) Notice of petition.** Within 15 days after receipt of a petition for a declaratory order, the department on aging shall give notice of the petition to all persons not served by the petitioner pursuant to 17—18.6(17A) to whom notice is required by any provision of law. The department on aging may also give notice to any other persons.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—18.3(17A) Intervention.**

**18.3(1)** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order (after time for notice under 17—18.2(17A) and before 30-day time for department action under 17—18.8(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

**18.3(2)** Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department on aging.

**18.3(3)** A petition for intervention shall be filed at the department on aging. Such a petition is deemed filed when it is received by that office. The department on aging will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE DEPARTMENT ON AGING

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|                                                                                                                        |   |                              |
|------------------------------------------------------------------------------------------------------------------------|---|------------------------------|
| Petition by (Name of Petitioner) for a<br>Declaratory Order on (Cite provisions<br>of law cited in original petition). | } | PETITION FOR<br>INTERVENTION |
|------------------------------------------------------------------------------------------------------------------------|---|------------------------------|

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The petition for intervention must provide the following information:

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. A statement indicating 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 governmental entity.
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.

The petition must be dated and signed by the intervenor or the intervenor’s representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor’s representative, and a statement indicating the person to whom communications should be directed.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—18.4(17A) Briefs.** The petitioner or any intervenor may file a brief in support of the position urged. The department on aging may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—18.5(17A) Inquiries.** Inquiries concerning the status of a declaratory order proceeding may be made to the Director, Department on Aging, Jessie M. Parker Building, 510 East 12th Street, Des Moines, Iowa 50319-9025.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—18.6(17A) Service and filing of petitions and other papers.**

**18.6(1)** *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record 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, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

**18.6(2) Filing—when required.** All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Director, Department on Aging, Jessie M. Parker Building, 510 East 12th Street, Des Moines, Iowa 50319-9025. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department on aging.

**18.6(3) Method of service, time of filing, and proof of mailing.** Method of service, time of filing, and proof of mailing shall be as provided by rule 17—13.12(17A).

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—18.7(17A) Consideration.** Upon request by petitioner, the department on aging must schedule a brief and informal meeting between the original petitioner, all intervenors, and the department on aging, a member of the department on aging, or a member of the staff of the department on aging, to discuss the questions raised. The department on aging may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department on aging by any person.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—18.8(17A) Action on petition.**

**18.8(1)** Within the time allowed by Iowa Code section 17A.9(3) after receipt of a petition for a declaratory order, the department on aging or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

**18.8(2)** The date of issuance of an order or of a refusal to issue an order is as defined in rule 17—13.2(17A).

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—18.9(17A) Refusal to issue order.**

**18.9(1)** The department on aging shall not issue a declaratory order where prohibited by Iowa Code section 17A.9 and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department on aging to issue an order.
3. The department on aging does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding, that may definitively resolve them.
5. 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.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a department decision already made.
9. The petition requests a declaratory order that 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.
10. The petitioner requests the department on aging to determine whether a statute is

unconstitutional on its face.

**18.9(2)** A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

**18.9(3)** Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—18.10(17A) Contents of declaratory order—effective date.** In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—18.11(17A) Copies of orders.** A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—18.12(17A) Effect of a declaratory order.** 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 department on aging, the petitioner, and any intervenors who consent 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 department on aging. The issuance of a declaratory order constitutes final department action on the petition.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

These rules are intended to implement Iowa Code chapters 17 and 231.

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[Filed Emergency ARC 8489B, IAB 1/27/10, effective 1/7/10]

<sup>1</sup> Effective date of Chapter 18 delayed 70 days by the Administrative Rules Review Committee.