

INSURANCE DIVISION[191]

Notice of Intended Action

Proposing rule making related to contested case proceedings and providing an opportunity for public comment

The Insurance Division hereby proposes to amend Chapter 3, “Contested Cases,” and Chapter 4, “Agency Procedure for Rule Making, Waiver of Rules, and Declaratory Orders,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 505.8 and 507B.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 17A and 507B.

Purpose and Summary

The proposed amendments are a result of the Division’s review of rules. The amendments update Chapter 3 by removing unnecessary language, removing duplicative definitions, clarifying procedures, reflecting current practices, allowing for electronic processes, and more closely aligning some procedures to other agencies and the Iowa Rules of Civil Procedure.

Rule 191—3.11(17A), regarding pleadings for intervention, is proposed to be rescinded and reserved, and a new rule regarding pleadings for intervention in declaratory actions is proposed to be adopted.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

The Division’s general waiver provisions of 191—Chapter 4 apply to these rules.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received no later than 4 p.m. on August 25, 2020. Comments should be directed to:

Tracy Swalwell
Iowa Insurance Division
Two Ruan Center
601 Locust Street, Fourth Floor
Des Moines, Iowa 50309
Phone: 515.725.1249
Fax: 515.281.3059
Email: tracy.swalwell@iid.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held via conference call, with no in-person attendance, as follows:

August 25, 2020
11 a.m. to 12 noon

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Persons wishing to attend the conference call hearing should contact Tracy Swalwell. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Tracy Swalwell prior to the hearing to facilitate an orderly hearing. Persons may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Division and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 191—3.2(17A) as follows:

191—3.2(17A) Definitions. ~~Except~~ In addition to the definitions in rule 191—1.1(502,505), and except where otherwise specifically defined by law or the context otherwise requires, the following definitions apply:

“Commissioner” means the commissioner of insurance or the commissioner’s designee.

“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 ~~1998 Iowa Acts, chapter 1202, section 14~~ Iowa Code section 17A.10A.

“File,” “filed,” or “filing,” when used as a verb, means the actions set forth in subrules 3.12(3) and 3.12(4), except otherwise specifically defined by law. “Filing,” when used as a noun, means the documents filed.

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

“License” means the whole or a part of any permit, certificate, approval, registration, charter or similar form of permission required by statute.

“Licensee” means a person or entity to whom the division has issued a license.

“Party” means ~~each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party~~ the same as defined in Iowa Code section 17A.2.

“Person” means the same as defined in Iowa Code section 17A.2.

“Provision of law” means the same as defined in Iowa Code section 17A.2.

“Presiding officer” means the commissioner, the commissioner’s designee or an administrative law judge from the department of inspections and appeals.

“Proposed decision” means the administrative law judge’s or the commissioner’s designee’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the commissioner did not preside.

ITEM 2. Amend rules 191—3.4(17A) to 191—3.9(17A) as follows:

191—3.4(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 agency division action in question. The request shall be filed with the ~~insurance~~ division, at the address disclosed in rule 191—1.4(502,505).

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

191—3.5(17A,507B) Commencement of hearing; service; delivery; notice of hearing; answer.

3.5(1) Service and delivery of the notice of hearing.

a. Commencement of hearing. Delivery of the notice of hearing referred to in this rule constitutes commencement of the contested case proceeding.

b. Delivery of the notice of hearing. Delivery shall be accomplished ~~in the manner described below~~ by personal service as provided in the Iowa Rules of Civil Procedure or by certified mail, return receipt requested, at least 15 days before the hearing date unless the parties agree to a shorter time period, or unless otherwise provided by statute.

~~a. For nonlicensed persons, delivery may be accomplished by:~~

- ~~(1) Personal service as provided in the Iowa Rules of Civil Procedure; or~~
- ~~(2) Certified mail, return receipt requested; or~~
- ~~(3) First class mail; or~~
- ~~(4) Publication, as provided in the Iowa Rules of Civil Procedure.~~

~~b. For licensees, delivery shall be executed by:~~

- ~~(1) Personal service as provided in the Iowa Rules of Civil Procedure; or~~
- ~~(2) Restricted certified mail.~~

Proof of delivery by mail is the same as proof of mailing specified in subrule 3.12(5).

c. Consent to service upon the commissioner. Certain persons regulated by the division have an obligation to keep their contact information, including their mailing address, current. For such persons who have consented in writing to have the commissioner accept service of process on their behalf, delivery of the notice of hearing referred to in this rule is accomplished at the time the notice of hearing is signed by the commissioner, unless otherwise provided by law.

3.5(2) Notice of hearing. The notice of hearing shall be prepared in the form of an order and contain the following information in the notice of hearing or accompanying charging document:

a. to c. No change.

d. A short and plain statement of the matters asserted. If the insurance division 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 written application, a more definite and detailed statement shall be furnished;

e. to g. No change.

h. Identification of the presiding officer and address, if known. If not known, a general description of the type of person who generally will serve as presiding officer; and

i. Notification of the time period in which a party may request, under 1998 Iowa Acts, chapter 1202, section 15(1), and rule 191—3.6(17A), that the presiding officer be an administrative law judge;

j. Notification that failure to file an answer within 20 days of service may result in default; pursuant to rule 191—3.22(17A); and

k. Reference to the procedural rules governing discovery.

3.5(3) Answer. An answer shall be filed within 20 days of service of the notice of hearing unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement of the matters asserted or charging document when appropriate.

a. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the notice of hearing or accompanying charging document. The answer shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

b. No change.

c. Any allegation in the notice of hearing or accompanying charging document 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.

d. The answer shall be filed with the division pursuant to rule 191—3.12(17A).

3.5(4) Amendments. Any notice of hearing or other charging document may be amended before a responsive pleading has been filed. Amendments to a notice of hearing or charging document after a responsive pleading has been filed and amendments 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.

3.5(5) Timing of hearing. The hearing in a contested case proceeding shall be held within 90 days after the date of the notice of hearing, subject to the provisions of rule 3.17(17A) commencement of the contested case unless a continuance is granted by the presiding officer.

191—3.6(17A) Presiding officer.

3.6(1) If the presiding officer is not an administrative law judge, any party wishing 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 with the ~~insurance~~ division within 20 days after service of a notice of hearing identifying or describing the presiding officer as the commissioner or ~~members of the commissioner's staff~~ designee.

3.6(2) The commissioner may deny the request only upon a finding that one or more of the following apply:

a. to i. No change.

j. The contested case arises from matters asserted pursuant to Iowa Code ~~chapters~~ chapter 507A, 507B, 508B, 515G ~~and~~ or 521A.

3.6(3) and 3.6(4) No change.

3.6(5) Except as ~~provided~~ otherwise provided by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the commissioner. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

191—3.7(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 ~~insurance~~ division may exercise discretion to refuse to give effect to such a waiver when the waiver is ~~to be~~ inconsistent with the public interest.

191—3.8(17A) Telephone, video, or electronic proceedings.

3.8(1) The presiding officer may resolve preliminary procedural motions by telephone conference, videoconference or other electronic means in which all parties have been afforded notice and an opportunity to participate.

3.8(2) The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference, videoconference or other electronic means in which all parties have an opportunity to participate. Any party may call witnesses by telephone conference, videoconference or other electronic means, with 14 days' advance notice to all parties and the presiding officer. Failure of a party to make timely disclosure may result in the disallowance of testimony by telephone conference, videoconference or other electronic means.

191—3.9(17A) Disqualification.

3.9(1) No change.

3.9(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 ~~as amended by 1998 Iowa Acts, chapter 1202, section 19,~~ and subrules 3.9(3) and 3.23(9).

3.9(3) No change.

3.9(4) To request disqualification of a presiding officer, a party shall file a motion supported by an affidavit pursuant to ~~1998 Iowa Acts, chapter 1202, section 19(7)~~ Iowa Code section 17A.17(7). The motion shall be filed as soon as practical 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 shall establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party requesting disqualification may seek an interlocutory appeal under rule 191—3.25(17A) and seek a stay under rule 191—3.29(17A).

ITEM 3. Rescind and reserve rule **191—3.11(17A)**.

ITEM 4. Amend rules 191—3.12(17A) to 191—3.14(17A) as follows:

191—3.12(17A) Service and filing of pleadings and other papers.

3.12(1) Required service. Every pleading, motion, document, or other paper that is filed in a contested case proceeding and every ~~paper relating to~~ discovery request or response 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 ~~insurance~~ division, at no later than the time of filing, if filing is required. Except for 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.

3.12(2) Methods of service. Service upon a party represented by an attorney shall be made upon the attorney of record unless otherwise ordered. Service is made by delivering or mailing a copy to the attorney at the attorney’s last-known mailing address. Service upon an unrepresented party shall be made by delivering or mailing a copy to the party’s last-known mailing address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order. Service may also be made upon a party or attorney by email if the party or attorney consents in writing to be served in that manner in that case. The party or attorney may consent by providing an email address for service to the other party or by filing a document with the division by email as specified in subrule 3.12(4). The consent may be withdrawn by written notice served on all other parties or attorneys. Service by electronic means is complete upon transmission to the provided email address unless the party making service received an electronic rejection or delivery failure.

3.12(3) Required filing. After the notice of hearing, all pleadings, motions, ~~documents or other papers~~ and notices of discovery in a contested case proceeding shall be filed with the ~~presiding officer~~ division’s designated filing clerk. If a contested case is assigned to an administrative law judge with the department of inspections and appeals, filing shall be conducted in accordance with the rules of the department of inspections and appeals, unless ordered otherwise.

3.12(4) Methods of filing. Except where otherwise provided by law, a document is deemed filed at the time it is ~~delivered~~ hand-delivered to the ~~presiding officer~~ division at the address disclosed in

rule 191—1.4(502,505) during normal business hours, delivered to an established courier service for immediate delivery to that office during normal business hours, or mailed by first-class mail or state interoffice mail to that office; so long as there is proof of mailing, or emailed to the designated filing clerk at enforcement.filings@iid.iowa.gov.

3.12(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 Insurance Division at the address disclosed in 191—1.4(502,505) 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)

3.12(6) *Proof of emailing.* ~~The presiding officer, by order, may permit service or filing of particular documents by facsimile or electronic mail or similar electronic means unless such service or filing is precluded by a provision of law. When permitted, service by facsimile, electronic mail or similar electronic means is complete upon transmission. In the absence of such an order, facsimile or electronic transmission does not satisfy service or filing requirements, but may be used to supplement service or filing when rapid notice is needed.~~ Proof of emailing includes a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of emailing), I emailed copies of (describe document) addressed to the Insurance Division at the email address disclosed in 191—subrule 3.12(4) and to the names and email addresses of the parties listed below by transmitting the same from (sending email address).

(Date)

(Signature)

191—3.13(17A) Discovery.

3.13(1) *Discovery permitted.* Where statutory time limitations permit, discovery may be conducted as permitted by the Iowa Rules of Civil Procedure and these rules. 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. Discovery shall be conducted in an expedited manner to prevent unnecessary delays to the hearing.

3.13(2) *Scope of discovery.* Parties may obtain discovery regarding any matter, not privileged or confidential, which is relevant to the claim or defense of the party in the pending action seeking discovery or to the claim or defense of any other party. Discovery responses are subject to the confidentiality provisions of Iowa Code section 22.7, chapters under the jurisdiction of the commissioner, and rule 191—3.12(17A), in accordance with applicable law, including, but not limited to, Iowa Code sections 17A.13(2) and 522B.11(6), unless otherwise permitted by the presiding officer for good cause shown.

3.13(3) *Notice of discovery.* Discovery is only permitted after a party has filed, pursuant to rule 191—3.12(17A), a notice of discovery no later than 15 days after the filing of an answer unless extended by the presiding officer for good cause shown or by agreement of the parties. The notice of discovery shall be a general notice that the party is serving discovery. The notice should include a statement regarding the type of discovery being conducted and the due date but the actual discovery requests do not need to be filed.

3.13(4) *Discovery responses.* Parties must respond to discovery within 15 days of receipt unless the parties mutually agree there is good cause to lengthen the response period or by order of the presiding officer. Time periods for compliance with discovery may be lengthened or shortened by order of the presiding officer.

3.13(5) Discovery completion. All discovery must be completed no later than 30 days before the prehearing conference.

~~3.13(2)~~ 3.13(6) Discovery motions. Any motion relating to discovery shall ~~shall~~ must allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party in a timely manner. 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~~ any such motion unless the time is shortened as provided in subrule ~~3.13(4)~~ 3.13(4). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

191—3.14(17A,505) Subpoenas.

~~3.14(1)~~ 3.14(1) A subpoena shall be issued by the presiding officer at a party's 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 ten days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.~~

a. A request for a subpoena must be in writing and submitted to the presiding officer or designated filing clerk by mail, email, or in-person delivery in accordance with the filing requirements of rule 191—3.12(17A).

b. 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. The request shall also note the nature of the proceeding at which the witness is requested to testify (e.g., deposition, telephone hearing, or in-person hearing), the date and time of the proceeding, whether the witness is requested to appear in person or by telephone, the location of the proceeding, and the method of recording any deposition.

c. In the absence of good cause for permitting later action, a request for a subpoena must be received at least ten days before the scheduled proceeding.

~~3.14(2)~~ 3.14(2) 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. The requesting party is responsible for arranging service of a subpoena prior to the proceeding at which the testimony is commanded or the time at which the requested documents must be produced. The requesting party is responsible for any cost associated with serving a subpoena and for the payment of witness fees and mileage expenses. Subpoenaed witnesses shall be entitled to receive witness fees for attendance, paid pursuant to Iowa Code section 622.69, and mileage shall be paid for each mile actually traveled for a subpoenaed witness to participate in an in-person hearing or deposition pursuant to Iowa Code section 622.72. Witnesses called to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations and state the result thereof, may receive additional compensation, to be fixed by the presiding officer, with reference to the value of the time employed and the degree of learning or skill required, but such additional compensation shall not exceed the sum set forth in Iowa Code section 622.72.

3.14(3) No change.

ITEM 5. Amend subrule 3.15(4) as follows:

3.15(4) Motions pertaining to the hearing, except motions for summary judgment and requests for continuances, 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 an order of the presiding officer.

ITEM 6. Amend rule 191—3.16(17A) as follows:

191—3.16(17A) Prehearing conference.

3.16(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

14 days prior to the hearing date. A prehearing conference shall be scheduled not less than ~~three~~ seven business days prior to the hearing date.

The presiding officer shall give written notice of the prehearing conference to all parties.

3.16(2) Prehearing conferences ~~shall~~ may be conducted by telephone conference or videoconference or in person as stated in the notice of hearing, unless otherwise ordered by the presiding officer.

3.16(3) No change.

3.16(4) Witness or exhibit lists may be amended subsequent to the prehearing conference within time limits established by the presiding officer at the prehearing conference. If no time limits are established at the prehearing conference, subsequent amendments to a witness or exhibit list may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms and time limits. Any such amendments must be served on all parties.

3.16(5) No change.

ITEM 7. Amend rule 191—3.19(17A), parenthetical implementation statute, as follows:

191—3.19(17A,507B) Intervention.

ITEM 8. Amend paragraph **3.20(2)“d”** as follows:

d. Each witness shall be sworn or affirmed by the presiding officer, ~~or~~ the court reporter, or a person otherwise authorized by law, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law; and

ITEM 9. Amend rule 191—3.21(17A), parenthetical implementation statute, as follows:

191—3.21(17A,507B) Evidence.

ITEM 10. Amend rule 191—3.22(17A) as follows:

191—3.22(17A) Default.

3.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice as provided in subrule 3.5(1), 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.

3.22(2) No change.

3.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate ~~become~~ constitute final agency division action unless, one of the following occurs: (1) the presiding officer otherwise orders, (2) a motion to vacate the default decision is filed 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 3.27(17A) in accordance with rule 191—3.12(17A), or (3) an appeal to the commissioner of a proposed default decision is filed in accordance with rule 191—3.27(17A). A motion to vacate must be filed and served on all parties and state all facts relied upon by the moving party which establish 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.

3.22(4) No change.

3.22(5) ~~Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown.~~ A motion to vacate shall be granted only when it is timely filed, is properly substantiated, and demonstrates good cause for the party's failure to appear or participate. 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.

3.22(6) to 3.22(10) No change.

ITEM 11. Amend subrule 3.23(9) as follows:

3.23(9) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency division. Violation of ex parte communication prohibitions by agency division personnel shall be reported to the first deputy commissioner or designee for possible sanctions including censure, suspension, dismissal or other disciplinary action.

ITEM 12. Amend rule 191—3.26(17A) as follows:

191—3.26(17A) Final decision.

3.26(1) No change.

3.26(2) When the commissioner does not preside over the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency division when adopted by the commissioner or without further proceedings after the time provided in rule 191—3.27(17A) unless there is ~~an~~ a timely appeal to, ~~or review on motion of, the commissioner~~ within the time provided in rule 3.27(17A) the commissioner or motion by the division to review the proposed decision.

3.26(3) The presiding officer's decision shall specify in bold print either that the decision is final or that the decision shall become final without further proceedings after the time provided in rule 191—3.27(17A) unless there is an appeal to, or review on motion of, the commissioner within the time provided in rule 191—3.27(17A).

3.26(4) No change.

3.26(5) Parties shall be promptly notified of each proposed or final decision or order by delivery to them of a copy of such decision or order in the manner provided by Iowa Code section 17A.12(1) unless the party has consented to an alternative form of delivery.

ITEM 13. Amend rule 191—3.27(17A), catchwords, as follows:

191—3.27(17A) Appeals and review by the commissioner of proposed decisions.

ITEM 14. Amend subrule 3.27(2) as follows:

3.27(2) The ~~insurance~~ division may initiate review of a proposed decision on its own motion at any time within 30 days following issuance of such a decision.

ITEM 15. Amend subrule 3.28(2) as follows:

3.28(2) 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 agency division decision on the existing record and whether, on the basis of the grounds enumerated in subrule 3.27(5), the applicant requests an opportunity to submit additional evidence.

ITEM 16. Amend subrule 3.28(4) as follows:

3.28(4) A copy of the application shall be timely mailed by the ~~applicant~~ division to all parties of record not joining therein. ~~If if the application does not contain a certificate of service, the division shall serve copies on all parties demonstrating service on all parties.~~

ITEM 17. Amend rule 191—3.29(17A) as follows:

191—3.29(17A) Stay of agency division action.

3.29(1) Petition requirements for stay of agency division action:

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

b. No change.

3.29(2) In determining whether to grant a stay, the presiding officer or commissioner shall consider the factors listed in ~~1998 Iowa Acts, chapter 1202, section 23(5e)~~ Iowa Code section 17A.19(5).

3.29(3) Any petition for stay of division action shall be deemed denied unless the commissioner grants the application within 20 days after its filing.

~~3.29(3)~~ **3.29(4)** A stay may be vacated by the issuing authority upon application of the commissioner or any other party.

ITEM 18. Amend rule 191—3.31(17A) as follows:

191—3.31(17A) Emergency adjudicative proceedings.

3.31(1) 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 ~~insurance~~ division may issue a written order in compliance with ~~1998 Iowa Acts, chapter 1202, section 21,~~ Iowa Code section 17A.18A 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 division by emergency adjudicative order. Before issuing an emergency adjudicative order the division shall consider factors including, but not limited to, the following:

a. to f. No change.

3.31(2) 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 ~~insurance~~ division's decision to take immediate action.

a. 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:~~ the procedures specified in subrule 3.5(1).

~~(1) For nonlicensed persons, delivery may be executed by:~~

~~1. Personal service as provided in the Iowa Rules of Civil Procedure; or~~

~~2. Certified mail, return receipt requested; or~~

~~3. First class mail; or~~

~~4. Publication, as provided in the Iowa Rules of Civil Procedure; or~~

~~5. Facsimile or other electronic transmission. Facsimile or other electronic transmission may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by facsimile and has provided a fax number for that purpose.~~

~~(2) For licensees, delivery shall be executed by:~~

~~1. Personal service as provided in the Iowa Rules of Civil Procedure; or~~

~~2. Restricted certified mail.~~

b. If practical, the ~~insurance~~ division shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

3.31(3) Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the ~~insurance~~ division shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

3.31(4) After issuance of an emergency adjudicative order, the ~~insurance~~ division shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

3.31(5) A written emergency adjudicative order shall include notification of the date on which ~~insurance~~ division proceedings are scheduled for completion. After an emergency adjudicative order is issued, continuance of further division proceedings to a later date will be granted only in compelling circumstances, and upon written application.

3.31(6) No change.

ITEM 19. Amend rule 191—3.33(17A,502,505) as follows:

191—3.33(17A,502,505) Informal settlement.

3.33(1) A party to a controversy that may culminate or has culminated 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 or contested case by submitting to informal settlement procedures.

~~a. **3.33(2)** Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, which may include a stipulated statement including findings of facts.~~

~~b. **3.33(3)** When signed by the parties to a controversy and approved by the commissioner, a proposed settlement shall represent final disposition of the matter in place of contested case proceedings.~~

~~c. **3.33(4)** Where When there are is more than two parties to a controversy involving one party adverse to the insurance division, a separate settlement between one party and the division 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.~~

~~**3.33(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 insurance division, a separate settlement between one party and the division is permissible.~~

~~d. **3.33(5)** A proposed settlement which is not accepted or signed by the parties and the presiding officer commissioner 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.~~

ITEM 20. Rescind and reserve rule **191—3.34(17A,502,505)**.

ITEM 21. Amend rule **191—4.2(17A)**, definition of “Waiver,” as follows:

“*Waiver*” means action by the division that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “variance” as used in Iowa Code chapter 17A is included in this definition of “waiver” for purposes of this chapter.

ITEM 22. Adopt the following **new** subrule 4.7(9):

4.7(9) Petitions for rule making and the disposition of the petition shall be submitted to the administrative rules review committee pursuant to Iowa Code chapter 17A.

ITEM 23. Amend **191—Chapter 4**, division heading, as follows:

DIVISION II
WAIVER AND VARIANCE OF RULES

ITEM 24. Amend subrule 4.22(4) as follows:

4.22(4) Content of petition. A petition for waiver must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA INSURANCE COMMISSIONER

In the matter of: (Name of Person
Requesting Waiver or Variance)



REQUEST FOR WAIVER OF RULE
(Specify number of rule for which waiver
is requested)

ITEM 25. Rescind rule 191—4.39(17A) and adopt the following **new** rule in lieu thereof:

191—4.39(17A) Intervention.

4.39(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 rule 191—4.38(17A) and before 30-day time for division action under rule 191—4.44(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

4.39(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 division.

4.39(3) A petition must be typewritten or legibly handwritten in ink and shall state in separately numbered paragraphs the following:

- a.* Facts supporting the intervenor's standing and qualifications for intervention.
- b.* The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
- c.* Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
- d.* 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.
- e.* 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.
- f.* Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

4.39(4) 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.