

CHAPTER 2  
CONTESTED CASE PRACTICE AND PROCEDURE

[Prior to 7/27/88, 21—1.8(159) and 21—1.9(159)]

**21—2.1(17A,159) Purpose—general administrative practices.**

**2.1(1)** The purpose of the Iowa department of agriculture and land stewardship is to promote and protect the agricultural industry of the state of Iowa. To achieve these purposes, the department provides regulatory control over agricultural products, as well as providing marketing, laboratory and informational services. Through these means, the department seeks to develop and implement policies which inspire public confidence in the long-term future of agriculture as a viable economic activity as well as a way of life, and to encourage a relationship between people and the land and water that recognizes land and water as resources to be managed in a manner that avoids irreparable harm.

**2.1(2)** The protection of the agricultural industry, including both producers and other elements of the industry, is accomplished by licensing, issuance of permits, inspection, and sampling, as well as the withholding, suspension, or revocation of licenses and permits when necessary and appropriate.

**2.1(3)** Where any application is denied and the denial shall result in a dispute, the matter will be disposed of in accordance with the procedural rules adopted and promulgated by the secretary.

**2.1(4)** Inspectors of the department will make such inspections and samplings as are authorized by the regulations of the department. Reports will be made to the division concerned and appropriate action will be taken. Quarantine power and the right to condemn livestock will be exercised in accordance with the laws and the rules of the department. Where indemnity programs are in effect, application shall be made to the appropriate bureau or division director, or the secretary of agriculture, and shall be acted upon in accordance with the rules of the department.

**2.1(5)** Any of the cooperative services furnished by the department will be made available to eligible individuals and associations upon formal request by them to the appropriate division director or the secretary.

**2.1(6)** All applications for employment in the department should be addressed to the personnel assistant within the administrative division of the department under the direction of the secretary.

**2.1(7)** Any other information concerning the regulation, licensing, promotion, or assistance of any activity by the department can be obtained by contacting the appropriate division director, bureau, or the information specialist. The mailing address is the Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, East 9th and Grand Avenue, Des Moines, Iowa 50319.

**21—2.2(17A,159) Administrative rules of practice and procedure.**

**2.2(1) Definitions.** The following words and terms used in these rules shall have the meaning hereinafter ascribed to them:

- a. “*Department*” means the department of agriculture and land stewardship of the state of Iowa.
- b. “*Secretary*” means the secretary of agriculture of the state of Iowa.
- c. “*Administrative law judge*” means the secretary or any other person designated by the secretary as administrative law judge.

**2.2(2) Licensing.** No application to the department of agriculture and land stewardship for a license or permit shall be granted if the person, firm, or corporation applying is indebted to the department of agriculture and land stewardship for any license, permit, penalty, or services previously rendered, or failure to properly pay any sum owing the department, or the violation of any law in the state of Iowa or any rules or regulations having the effect of law which shall constitute good cause for suspension, denial, or revocation of any license or permit.

**2.2(3) Filing of appeal.** Except as specifically provided in the Code of Iowa or elsewhere in the rules, a person who wishes to appeal an action or proposed action of the department which adversely affects the person shall file a written appeal with the department within 30 calendar days of the action or notice of the intended action. A written notice of appeal shall be considered filed on the date of the

postmark if the notice is mailed. The failure to file timely shall be deemed a waiver of the right to appeal.

**2.2(4) *Delivery of notice.*** Delivery of notice in a hearing in a contested case may be by ordinary mail as well as personal service or by certified mail, return receipt requested.

**2.2(5) *Conduct of formal hearing.***

*a.* The order of presentation of proof in the conduct of a hearing on a contested case or on proposals to adopt, amend, or repeal any agency rule shall be somewhat flexible; generally the following procedure will be adhered to:

(1) Each party shall, if desired, be allowed a short opening statement concerning the allegations asserted.

(2) A representative of the department or division which asserts the claim or makes the charge should examine witnesses first.

(3) The opposing party and witnesses should then be heard.

(4) The giving of testimony by each respective party and witnesses shall be subject to appropriate cross-examination.

(5) The administrative law judge may call or recall a witness as the exigencies of the case dictate.

(6) Each party shall be allowed sufficient time to make a closing argument, at which time the representative of the department or division shall make a recommendation to the administrative law judge on the proposed decision.

*b.* There will be no time limitation for either party. The hearing is not considered complete until both sides of the controversy have completed their arguments.

*c.* Motions of technical grounds to dismiss claims, charges, and proceedings before the completion of the hearing which are superfluous will not be entertained by the administrative law judge.

*d.* The rules of evidence as applied in civil cases in the state courts of Iowa may be followed; however, the strict rules of evidence or technical procedure shall not apply so as to exclude any relevant facts which may be helpful to the basis of the decision by the administrative law judge.

**2.2(6) *Final decision.*** A proposed decision of the administrative law judge of a contested case proceeding shall become final without further proceedings unless there is an appeal filed or review requested by any party within 20 days after the issuance of the proposed decision; an appeal to the agency shall be deemed to have been denied unless the agency grants the appeal within 20 days after its filing.

**2.2(7) *Prohibited communications.***

*a. Communications prohibited.* An individual assigned to render a proposed or final decision, or to make findings of fact and conclusions of law in a contested case shall not communicate directly or indirectly in connection with any issue of law or fact in that contested case with any person or party or their representative; nor shall parties or their representative in a contested case communicate directly or indirectly in connection with any issue of law or fact in that contested case with individuals assigned to render a proposed or final decision, or to make findings of fact and conclusions of law in that contested case unless required for the disposition of ex parte matters specifically authorized by statute; or unless each party or their representative is given five days notice prior to the communication which notice should include the subject matter of the communication, the time and place or means of such communication;

(1) After such adequate notice is given and with all parties present, each party shall have full opportunity to make or receive any communications.

(2) Any parties who have notice and opportunity to participate in any such communication may make an informed and specific waiver of any provision relating to such communication except as to adequate notice and opportunity to participate.

(3) Any party may demand that a record be made and kept of any such communications.

*b. Requirement to submit prohibited communications.*

(1) Any communication made between a party and an individual assigned to render a proposed or final decision, or to make findings of fact or conclusions of law in a contested case under circumstances

and procedures which do not substantially comply with those set forth in 2.2(7) “a” is prohibited communications.

(2) The recipient of a prohibited communication is required to submit the communication if written or a summary of the communication if oral for inclusion in the record of the contested case proceeding.

*c. Prohibited communication penalty.* The penalty for making a prohibited communication may be censure, suspension, or revocation of the privilege to practice before the agency in the case of a party or their representative and censure, suspension, or dismissal in the case of agency personnel.

**2.2(8) Procedures for informal settlement.**

*a.* Any person involved in a controversy that may culminate in a contested case proceeding may seek an informal settlement with the department through the local inspector, supervisor, or appropriate division head, or the secretary.

*b.* The form of application for such informal settlement shall be a letter stating the person or persons involved, the inspector or other members of the department involved in making the alleged violations, the date and nature of the alleged violations, and the proposed informal settlement being attempted; an informal settlement may also be attempted in person with an inspector.

*c.* In all cases the settlement to be effective shall be set out in writing stating the details of settlement, the dates and times essential to the settlement, and the performance agreed to, or the activity prohibited by the parties, and shall be delivered to the parties to be charged therewith by personal service or by certified mail, return receipt requested.

*d.* No informal settlement shall be final unless approved by the division head and the secretary of the department, or unless within 20 days after the settlement is entered into, no notice of its disapproval has been received by the other party by the department.

*e.* No informal settlement shall be allowed under these procedures where precluded by a statute or other rule of the department or where such informal settlement would result in a clear violation of a statute or rule of the department, or where a contested case proceeding has commenced unless such informal disposition is specifically provided for in Iowa Code section 17.12(5).

*f.* No party is required to utilize these informal procedures nor to settle the controversy pursuant to these informal procedures.

*g.* Any final informal settlement may be appealed to the secretary within a reasonable time thereafter.

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