

CHAPTER 7
RULES OF PRACTICE IN CONTESTED CASES

561—7.1(17A,455A) Definitions. When used in this chapter:

“*Agency*” means the commission or the director, as appropriate, having statutory jurisdiction over a particular contested case.

“*Commission*” means the natural resource commission or the environmental protection commission, as designated in Iowa Code chapter 455A as having appellate jurisdiction over a particular matter.

“*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 of natural resources.

“*Director*” means the director of the department or an authorized representative.

“*Party*” means a person named and admitted as a party.

561—7.2(17A,455A) Scope and applicability. This chapter shall govern procedure in contested cases as defined in Iowa Code subsection 17A.2(2) and shall include any matter defined as a “no factual dispute contested case” according to the provisions of Iowa Code section 17A.10A. Contested cases generally include, but are not limited to, appeals of administrative orders issued by the director and appeals of license or permit conditions, license or permit denials or suspensions.

561—7.3(17A,455A) Waiver of procedures. The parties to a contested case may, by written stipulation representing an informed, mutual consent, waive any provision of this chapter relating to contested case proceedings.

561—7.4(17A,455A) Informal procedure prior to hearing.

7.4(1) Any person who desires to pursue informal settlement of any contested case may request a meeting with appropriate staff. The request shall be in writing and shall be delivered to the director with a copy to the Bureau Chief, Legal Services Bureau, Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319. Upon receipt of the request, all formal contested case procedures are stayed, except in the case of emergency orders as provided in rule 561—7.17(17A,455A). If informal settlement is unsuccessful, formal contested case procedures may be instituted in accordance with rule 561—7.5(17A,455A).

7.4(2) Prehearing procedures for emergency orders are set forth in rule 561—7.18(17A,455A).

561—7.5(17A,455A) Commencement of cases. A contested case commences when a notice of hearing is delivered to a party. A notice of hearing will be prepared and issued by the presiding officer when the department receives a notice of appeal from a person other than the department, or a petition from the department, as provided in this rule.

7.5(1) Notice of appeal. Any person appealing an action of the department shall file a written notice of appeal within 30 days of receipt of notice of the department’s action, unless a shorter time period is specified by the particular rules or statutes governing the subject matter. The notice of appeal shall state the name and address of the appellant, identify the specific portion or portions of the action of the department that is being appealed, and include a short and plain statement of the reasons the specific action is being appealed.

7.5(2) Petition from the department. When the department seeks to suspend or revoke a permit or license, institute licensee disciplinary proceedings, or otherwise commence a contested case, it shall file a petition as described in 7.8(1).

561—7.6(17A,455A) Notice of hearing.

7.6(1) Content. The notice of hearing shall contain:

- a. The names of the parties,
 - b. A statement of the time, place and nature of the hearing,
 - c. A statement of the legal authority and jurisdiction under which the hearing is to be held,
 - d. A reference to the particular section of the statutes and rules involved,
 - e. A short and plain statement of the matters asserted, and
 - f. The time within which a petition or answer must be filed.
- g. In those cases where the department files the petition, the notice shall include a copy of the petition and a statement that in the event an answer is not timely filed in accordance with 7.8(2), judgment may be entered for the relief requested in the petition.

7.6(2) Delivery. Delivery of the notice of hearing shall be by certified mail, return receipt requested, personal service, or as otherwise required by statute.

561—7.7(17A,455A) Time for response. A person served with a notice of hearing shall file a petition or answer as required by 7.8(17A,455A) within 20 days of service of the notice of hearing. Failure to file may, upon motion, result in the presiding officer's entering a default against the person failing to file.

561—7.8(17A,455A) Pleadings. Pleadings are the parties' written statements of their respective claims or defenses. They do not include motions. The only allowable pleadings shall be the petition and the answer.

7.8(1) Petition.

a. *Who must file.* In all cases where an action of the department is appealed, the party aggrieved by the action shall file the petition. In those cases where the department seeks to suspend or revoke a license or permit, the department shall file the petition.

b. *Time for filing.* Any petition required to be filed by the party other than the department shall be filed within 20 days of delivery of the notice of hearing, unless the presiding officer allows additional time.

c. *Content.* The petition shall state in separate numbered paragraphs the following: the basis for the agency's jurisdiction over the matter, a detailed discussion of the relief demanded, and the facts, including supporting documentation relied upon for relief, the particular provisions of the statutes and rules involved, on whose behalf it is filed, and the name, address and telephone number of the petitioner and the petitioner's attorney, if any.

7.8(2) Answer:

a. *Who must file.* In all cases where an action of the department is appealed, the department shall file the answer. In those cases where the department seeks to suspend or revoke a license or permit, the holder of the license or permit shall file the answer.

b. *Time for filing.* The answer shall be filed within 20 days of receipt of the petition.

c. *Content of answer.* The answer shall show on whose behalf it is filed, and specifically admit or deny each allegation or paragraph of the petition. It shall state any facts deemed to show a defense. It may raise points of law appearing on the face of the petition, and may contain as many defenses, legal or equitable, as the pleader may claim, which defenses may be inconsistent. It shall state the name, address and telephone number of the person filing the answer and the attorney, if any.

d. *Matters admitted and defenses waived.* Any allegation in the petition not denied in the answer shall be deemed admitted. Any defense not raised in the answer which could have been raised at that time on the basis of facts then known shall be deemed waived, except for subject matter jurisdiction.

e. *Failure to answer.* If the party required to file an answer by this subrule fails to file an answer within 20 days of receipt of the notice of hearing or petition, a default may, upon motion, be entered by the presiding officer.

(2) Further appeal stayed. The time for further appeal of a decision for which a motion to vacate has been filed is stayed pending a decision on the motion to vacate.

(3) When granted. 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 10 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.

(4) Contents of decision. A default decision shall contain the presiding officer's reasons for the decision. A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues. Unless the defaulting party has appeared, the relief shall not exceed the demand for relief. 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.

7.9(5) Appeal of denial of motion to set aside default.

a. The exclusive remedy for an order based on default shall be a timely motion to set aside default and if denied, followed by an appeal to the agency having jurisdiction of the matter. The appeal is limited to the grounds for denial of the motion to set aside default. Review is limited to whether the denial of the motion was arbitrary or capricious and whether there is a showing of good cause to set aside default due to mistake, inadvertence, surprise, excusable neglect or avoidable casualty.

b. Upon a finding by the agency of good cause, the default shall be set aside. The hearing shall be completed, with proper notice, before appeal on the subject matter of the case shall be permitted.

7.9(6) Good cause. "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.

561—7.10(17A,455A) Prehearing procedures.

7.10(1) Motions.

a. *General.* All motions, except those made orally on the record during a hearing, shall be in writing and shall state with particularity the grounds therefor and the relief or order sought, and shall be filed with the presiding officer and contemporaneously served upon all parties.

b. *Response to motions.* Any party may file a response to any written motion within ten days after service of the motion, except as otherwise provided by the presiding officer. Failure to file a response within the designated period may be deemed a waiver of objection to the granting of motion.

c. *Disposition.* The presiding officer shall rule on a motion after the designated time for response has expired. A motion involving separate grounds or parts shall be disposed of by separate ruling on each and shall not be sustained or overruled generally.

d. *Motions for summary judgment.* Motions for summary judgment shall comply with the requirements of Iowa Rules of Civil Procedure 1.981 through 1.983, and shall be subject to disposition according to the requirements of those rules 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 30 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. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to subrule 7.15(6) and appeal pursuant to subrule 7.15(5).

7.10(2) Discovery.

a. *In general.* The discovery procedures available to parties in civil actions are available to parties.

b. *Departmental records in general.*

(1) The records of the department are available for public inspection, as required by Iowa Code chapter 22 and as provided in 561—Chapter 2.

(2) Except as provided in 7.10(2)“c,” identifiable departmental records that are not available for public inspection but that are discoverable and relevant to disputed material facts shall, upon request, promptly be made available to a party. However, these records may be protected from further disclosure by order of the presiding officer.

c. Prior statements or reports of witnesses. When a party relies on a witness who has made prior statements or reports with respect to the subject matter of the witness’s testimony, it shall, upon request, make the statements or reports available to a party for use on cross-examination unless the statement is confidential under 561—Chapter 2. If the statement or report is confidential under 561—Chapter 2, it may be made available, but it may be made subject to a protective order.

d. Disclosure of evidence and witnesses. At a prehearing conference or within some reasonable time set by the presiding officer prior to the hearing, each party shall make available, upon request, to the other parties the names of expert and other witnesses the party expects to call, together with a brief narrative summary of their expected testimony and a list of all documents and exhibits which the party expects to introduce into evidence. Thereafter, witnesses, documents or exhibits may be added and narrative summaries of expected testimony amended upon motion by a party. However, witnesses, documents or exhibits may be added following a prehearing conference held in accordance with sub-rule 7.10(4) only if the moving party can show that they were not readily identifiable with reasonable diligence prior to the prehearing conference and that the addition is necessary to prevent manifest injustice.

7.10(3) Subpoenas. Subpoenas shall be issued to a party on request after commencement. Requests shall be made to the presiding officer.

7.10(4) Prehearing conference.

a. Matters considered. After filing of the pleadings, the presiding officer may, and shall upon the request of one of the parties, direct the parties to appear at a specified time and place before the presiding officer for a prehearing conference to consider, so far as is applicable to the particular hearing:

- (1) The possibility or desirability of waiving any provisions of this chapter or of Iowa Code chapter 17A by written stipulation representing an informed mutual consent;
- (2) The necessity or desirability of amending pleadings;
- (3) Agreeing to the admission of facts, documents or records not controverted, to avoid unnecessary introduction of evidence;
- (4) Limiting the number of witnesses;
- (5) Settling on facts of which the presiding officer is to be asked to take official notice;
- (6) Stating and simplifying the factual and legal issues to be decided in the contested case;
- (7) The procedure at the hearing;
- (8) Other matters which may aid, expedite or simplify the disposition of the proceeding.

b. Stipulations. Since stipulations are encouraged, it is expected and anticipated that the parties proceeding to a hearing will stipulate to evidence to the fullest extent to which complete or qualified agreement can be reached, including all material facts that are not or should not fairly be in dispute.

c. Privilege. Facts disclosed in the course of the prehearing conference are privileged and, except by agreement, shall not be used for or against participating parties either before the hearing, during the hearing, or elsewhere unless fully substantiated by other evidence.

d. Order or statement of agreement. Any action taken at the prehearing conference shall be recorded in an appropriate order, unless the parties enter upon a written stipulation as to the matters or agree to the statement thereof made on the record by the presiding officer.

e. Objections. When an order is issued at the termination of the prehearing conference, a reasonable time shall be allowed to the parties to present objections on the ground that it does not fully or correctly embody the agreement at the conference. Thereafter, the terms of the order or modification shall determine the subsequent course of the proceedings relative to matters it includes, unless modified to prevent manifest injustice.

7.10(5) Intervention.

a. Petition. A person who may be aggrieved or adversely affected by the disposition of a case may file a petition for leave to intervene in that case. The petition shall set forth the grounds for the proposed intervention, the position and interest of the petitioner, and the likely impact intervention would have on the expeditious progress of the case. Any person already a party in the case may file an answer to a petition to intervene, making specific reference to the factors set forth in 7.10(5)“a” and 7.10(5)“c” within ten days of receipt of the petition.

b. Filing and service. A petition for leave to intervene shall be filed and contemporaneously served upon all parties in the case before the prehearing conference, or in the absence of a prehearing conference, no later than 20 days prior to the date for which the contested case hearing is scheduled. Any petition filed after this time shall include, in addition to the information required in 7.10(5)“a,” a statement of good cause for failure to file in a timely manner. An untimely petition for leave to intervene shall be granted only upon finding that circumstances justified the untimely filing; and the intervenor shall be bound by any agreements, arrangements, and other matters previously made in the case.

c. Disposition. Leave to intervene shall be granted only if the petitioner demonstrates both that common questions of law or fact exist and that intervention would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties. In evaluating the merits of the petition for leave to intervene, the presiding officer shall consider the extent to which the interests of the petitioner will be adversely affected by a final order and the extent to which the interests of the petitioner are not being adequately represented by the original parties.

7.10(6) Consolidation and severance.

a. Consolidation. The presiding officer may, with or without motion, consolidate any or all matters at issue in two or more cases where there exist common parties or common questions of law or fact, and where consolidation would expedite or simplify consideration of the issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

b. Severance. The presiding officer may, with or without motion, for good cause shown, order any case severed with respect to any or all parties or issues.

561—7.11(17A,455A) Time.

7.11(1) Computation. In computing any period of time prescribed or allowed by this chapter or by an applicable statute, the day of the act, event or default from which the designated period begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday; otherwise Saturdays, Sundays and legal holidays shall be included in computing the period.

7.11(2) Extension. When by this chapter, or by notice given under it, an act is required or allowed to be done within a specified time, the presiding officer may, at any time, exercise discretion; and

a. With or without motion or notice, for good cause, order the period extended if a request is made before the expiration of the period originally prescribed or as extended by a previous order, or

b. Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.

7.11(3) Mail. Any documents which may be filed with the department by mail pursuant to these rules shall be deemed filed on the date of postmark.

561—7.12(17A,455A) Presiding officer.

7.12(1) Qualification. Except as otherwise provided in this subrule, an administrative law judge shall preside at contested case hearings.

a. On motion of a party or on its own motion, the agency may order that the hearing be conducted before the agency or one or more members of a multimember agency appointed pursuant to Iowa Code section 17A.11(1).

b. In a hazardous waste facility site licensing proceeding pursuant to Iowa Code section 455B.477, the hearing shall be before the environmental protection commission, with at least a quorum present, and with an administrative law judge present to assist the commission in ensuring that the requirements of Iowa Code chapter 17A are met.

c. In the case of an appeal to or review on motion of the agency of a proposed decision of the administrative law judge or appeal board, the agency shall preside.

7.12(2) Disqualification.

a. Grounds for disqualification.

(1) A presiding officer shall not participate in the making of a proposed or final decision if the individual has investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case or another pending factually related controversy that may culminate in a case involving the same parties.

(2) A presiding officer shall not be subject to the authority, direction or discretion of any person who has investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case or a pending factually related case or controversy involving the same parties.

(3) A member of an agency having jurisdiction of a case shall not participate in the making of a final decision or order if the member is employed by, receives directly or indirectly personal income from, or has other substantial connection with a person subject to permit or enforcement action pending before the commission if that person would be substantially affected by the outcome of the case.

(4) A presiding officer shall not be biased for or against any party.

b. Affidavit asserting disqualification.

(1) A party may file an affidavit asserting disqualification of a presiding officer under this subrule at any time, except that an affidavit against a member of the commission on appeal or review of the proposed decision shall be filed prior to any hearing on appeal or review of the proposed decision. A determination as to whether the individual challenged should participate shall be made by the agency before further participation by the individual challenged.

(2) Any party to a contested case proceeding may file an affidavit alleging a violation of rule 561—7.13(17A,455A), and the agency shall determine the matter as part of the record in the contested case. When an agency makes such a determination with respect to any agency member, that determination shall be subject to de novo judicial review in any appeal of the contested case decision.

561—7.13(17A,455A) Separation of functions and ex parte communications.

7.13(1) Separation of functions. A staff attorney for the department shall perform the investigative and prosecuting functions for the department. Additional employees of the department may be designated by the director to perform these functions as necessary during the course of the case. No person performing these functions shall participate or advise in any decision arising out of that case except as witness or counsel in public proceedings.

7.13(2) Communications initiated by administrative law judge or agency member.

a. Except as provided in 7.13(2)“b” and “c,” or unless required for the disposition of ex party matters specifically authorized by statute, following issuance of the notice of hearing, the presiding officer and members of the agency having jurisdiction of the case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that case with any person or party or representative of any party, or any other person with a direct or indirect interest in such case. 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.

b. The presiding officer or members of the agency having jurisdiction of the case may so communicate upon notice and opportunity for all parties to participate. Notice of the time and place of the discussion and the issues of fact or law to be discussed shall be delivered by first-class mail to the parties. The discussion shall not extend to issues of fact or law not specified in the notice unless all parties participate in the discussion. The time of the discussion shall not be sooner than ten days after receipt of the notice.

c. The presiding officer or members of the agency having jurisdiction of the case may communicate with members of the department and may have the aid and advice of persons other than those with a personal interest in, or those engaged in personally investigating, 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. All employees of the department other than those performing the investigative and prosecuting functions in the case shall be available to advise the agency and presiding officer on any of those employees' functions relating to the case and any appeal, provided communications with those employees meet the above specifications.

7.13(3) *Communications initiated by parties.*

a. Unless required for the disposition of ex parte matters specifically authorized by statute, parties, including the department, or their representatives in a case, and persons with a direct or indirect interest in such a case, shall not communicate directly or indirectly in connection with any issue of fact or law in that case with the presiding officer or members of the agency having jurisdiction of the case, except upon notice and opportunity for all parties to participate, as provided in 7.13(2) "b."

b. 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.

c. 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, and the portions of the record pertaining to the ex parte communication shall be sealed by protective order. If the presiding officer determines that disqualification is not warranted, the record shall be supplemented as stated above, and such documents shall be served on all parties by the presiding officer. 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.

d. The presiding officer may require the recipient of a prohibited communication to submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceedings.

e. The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule, including default; make a decision against the offending party; or censure, suspend or revoke the privilege to practice before the agency.

7.13(4) *Communications involving uncontested scheduling of procedural matters.* Communications with the presiding officer involving uncontested scheduling of procedural matters do not require notice and opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and parties shall notify other parties when seeking to continue hearings or other deadlines pursuant to 7.11(2).

561—7.14(17A,455A) Hearing procedures.

7.14(1) Conduct of proceedings. A hearing shall be conducted by a presiding officer who shall:

- a. Open the record and receive appearances;
- b. Administer oaths and issue subpoenas;
- c. Enter the notice of hearing into the record;
- d. Receive testimony and exhibits presented by the parties;
- e. In the administrative law judge's discretion, interrogate witnesses;
- f. Rule on objections and motions;
- g. Close the hearing;
- h. Issue an order containing findings of fact, conclusions of law.

7.14(2) Counsel. Any party may be represented by counsel or other representative at the party's own expense.

7.14(3) Appearance pro se. If a party other than the department appears on the party's own behalf without counsel or other representative, the presiding officer shall explain to the party the rules of practice and procedure and generally conduct the hearing in a less formal manner than that used when a party is represented by counsel or other representative. It should be the purpose of the presiding officer to assist to the extent necessary any party who appears without a representative to allow the party to fairly present evidence, testimony and arguments on the issues.

7.14(4) Attendance and participation of the public. Every hearing before an agency of the department or an administrative law judge or appeal board shall be open to the public.

7.14(5) Recording of hearing.

a. *Method of recording.* Oral proceedings in connection with a hearing in a case shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand shall bear the costs.

b. *Transcription.* Oral proceedings in connection with a hearing in a case or any portion of the oral proceedings shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

c. *Tapes.* Copies of tapes of oral proceedings may be obtained from the presiding officer at the requester's expense.

d. *Retention time.* The recording or stenographic notes of oral proceedings or the transcription shall be filed and maintained by the department for at least five years from the date of the decision.

7.14(6) Fees. Each party bears all costs and expenses, including fees, for its own witnesses.

7.14(7) Failure to appear. If a party fails to appear after proper service of notice of hearing, the presiding officer may adjourn or may proceed with the hearing, and make a proposed decision in the absence of the party. Adjournment may be granted by the presiding officer on the presiding officer's own motion in the interest of justice.

7.14(8) Evidence.

a. *Admissibility in general.* Evidence that is relevant and material shall be admitted unless it is unduly repetitious. Relevant and material evidence may be admitted even though inadmissible in a jury trial. Evidence not provided to a party upon request, upon issuance of a subpoena, through discovery, prehearing procedures, or during informal procedures shall not be admissible by the party who failed to provide the evidence at the hearing unless it is necessary to avoid a manifest injustice.

b. *Privilege.* The rules of privilege recognized by law shall be given effect.

c. *Objections.* If a party objects to admission or rejection of any evidence or the limitation of the scope of any examination or cross-examination, the party shall state briefly the grounds for the objections. The objection, the ruling on it, and the reasons for the ruling shall be noted in the record.

d. Offer of proof. Whenever evidence is deemed inadmissible, the party offering the evidence may make an offer of proof which shall be noted in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. If the evidence excluded consists of a document or exhibits, it shall be inserted in the record. In the event that the agency decides that the presiding officer's ruling in excluding the evidence was erroneous and prejudicial, the hearing may be reopened to permit the taking of the evidence or, where appropriate, the agency may evaluate the evidence and proceed to a final decision.

e. Verification. Subject to subrule 7.14(8), paragraphs "a" to "d," when a hearing will be expedited, and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified form. With the approval of the presiding officer, a witness may insert into the record, as testimony, statements of fact or opinion prepared by the witness or written answers to interrogatories, or may submit as an exhibit the prepared statement of the witness provided that the statements or answers must not include legal arguments. Before any statement or answer is read or admitted into evidence, the witness shall deliver to the presiding officer and opposing party a copy of it. The admissibility of the evidence contained in the statement shall be subject to the same rules as if the testimony were produced in the usual manner and the witness shall be subject to oral cross-examination on the contents of the statements. Approval for this procedure may be denied when it appears to the presiding officer that the memory or demeanor of the witness is of importance.

f. Documentary evidence. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

g. Examination and cross-examination. Witnesses at the hearing shall be examined orally, under oath. Witnesses at the hearing, or persons whose testimony has been submitted in written form, shall be subject to cross-examination by any parties as necessary for a full and true disclosure of facts. The presiding officer may limit the examination or cross-examination or both when necessary for orderly presentation of evidence.

h. Official notice. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed, and their source, including any staff memoranda or data. The parties may contest these facts before decision is announced.

i. Evaluation of evidence. The agency's experience, technical competence, and specialized knowledge may be utilized in evaluating the evidence.

7.14(9) Conduct at hearings. All persons shall conduct themselves in a courteous and dignified manner. Attorney's conduct is subject to the requirements of Disciplinary Rule DR 7-106 and Ethical Considerations EC 7-19 to EC 7-39. Contemptuous conduct is grounds for removal from the hearings.

561—7.15(17A,455A) Posthearing procedures and orders.

7.15(1) Filing by parties of briefs and proposed findings. Within 30 days after the last evidence is taken, each party may file with the presiding officer proposed findings of fact, conclusions of law, and a proposed order or decision complying with 7.15(2), and a brief in support of them. A copy of the document shall be served upon each other party. Each party may, within the same period, file with the presiding officer a brief concerning any relevant matters at the hearing. Within 20 days thereafter, each party may file a brief which takes specific exception to matters contained in an opposing brief or which contains alternative findings of fact, conclusion of law and proposed order. Briefing schedule, including waiver of briefs, shall be determined at the close of the hearing.

7.15(2) Final decision or order.

a. When the agency presides at the reception of evidence, the decision of the agency is a final decision.

b. When the agency does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision or order of the presiding officer becomes the final decision or order of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided in 7.15(5) "a."

7.15(3) Decisions and orders.

a. By whom prepared. The presiding officer who presided at the reception of evidence shall prepare a proposed or final decision or order in each case. Findings of fact shall be prepared by the officer presiding at the reception of the evidence in a case unless the officer becomes unavailable. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

b. Content of decision or order. The proposed or final decision or order shall:

(1) Be in writing or stated in the record.

(2) Include findings of fact. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If a party submitted proposed findings of fact in accordance with 7.15(1), the decision or order shall include a ruling upon each proposed finding. The decision shall include an explanation as to why the relevant evidence in the record supports each material finding of fact.

(3) Include conclusions of law, supported by cited authority or reasoned opinion.

c. Delivery. A copy of the proposed decision or order shall be delivered to the parties either by personal service or by certified mail, return receipt requested.

7.15(4) The record.

a. Content of record. The record shall include:

(1) All pleadings, motions and intermediate rulings;

(2) All evidence received or considered and all other submissions;

(3) A statement of all matters officially noticed;

(4) All questions and offers of proof and objections and rulings thereon;

(5) All proposed findings and exceptions;

(6) The decision, opinion or report by the presiding officer.

b. By whom prepared. The presiding officer shall prepare the record for each case.

7.15(5) Appeal and review. Any party may appeal a proposed decision to the agency having jurisdiction of the case. An agency may review any proposed decision in a case under its jurisdiction.

a. Time allowed.

(1) Appeal by party. An appeal by a party to the agency having jurisdiction of the proceeding shall be taken within 30 days after receipt of the proposed decision or order.

(2) Agency decision to review. Any agency may decide on its own to review a proposed decision, notwithstanding the absence of a timely appeal by a party. A decision to review shall be made at the next regular meeting of the commission or by the director within 30 days following the issuance of the proposed decision or order of the presiding officer.

b. Notice. Appeal is taken and perfected by filing with the director a notice signed by the appellant or the appellant's attorney. It shall specify the parties taking the appeal and the final decision or order or part thereof appealed from. The notice shall set forth, with particularity, the conclusions of law or findings of fact appealed from. A request for a transcript or a copy of the tapes of a hearing on a matter appealed shall be made no later than at the time of the filing of a notice of appeal. The director shall mail or deliver a copy of the notice to the attorneys for all parties of record other than appellant, or to any party who has no attorney of record, at the party's last-known address. No failure of the director to mail or deliver any notice shall affect the validity of the appeal.

c. Date of appeal or review. The director shall schedule appeal or review for a date after the end of the briefing period provided in 7.15(5)“e,” and shall notify the parties of the date.

d. Agency review. On appeal from or review of the proposed decision, the agency has all the power which it would have in initially making the final decision except as it may limit the issues on notice to the parties. The agency may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or the agency may reverse or modify any conclusion of law that the agency finds to be in error.

e. Presentations by parties on appeal. Within 20 days of the date the appeal is perfected or the agency decides to review the proposed decision or order, each party may file exceptions and present briefs to the agency. Within 20 days thereafter, each party may file a brief which takes specific exception to matters contained in an opposing brief. Request for opportunity to present oral arguments shall be filed at least 10 days prior to the date set for consideration of the case. In cases where a regular agency meeting does not occur within the time limitation for final decisions or orders, the agency may shorten or extend the briefing period, provided that the briefing periods shall be at least 20 days before the date of consideration and not longer than would cause the date of consideration to occur later than the next regular meeting of the agency following any meeting that occurs sooner than the 20-day minimum briefing period.

f. Final argument. The final argument and the conclusion of the hearing is deemed to have occurred at the end of the briefing period, or when oral arguments have been permitted, at the end of the presentation.

7.15(6) Applications for rehearing.

a. By whom filed. Any party may file an application for rehearing.

b. Content of application. The application shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought.

c. Time of filing. The application shall be filed with the director within 20 days after the receipt of any final decision.

d. Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

e. Disposition. Any application shall be deemed denied unless the agency grants the application within 20 days after its filing.

7.15(7) Stays of agency actions.

a. When available.

(1) Any party appealing the issuance of an order, other than an emergency order which is governed by 7.17(17A,455A), may petition the presiding officer for a stay of the order pending its review. The petition for stay shall be filed with the notice of appeal (see 7.5(1) of these rules), and shall state the reasons justifying a stay.

(2) Any party adversely affected by a final decision and order may petition the agency which issued the decision for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the director within ten days of receipt of the final decision and order, and shall state the reasons justifying a stay.

b. When granted. The presiding officer or agency, as appropriate, shall consider the factors listed in Iowa Code section 17A.19(5)“c” when considering whether to grant a stay.

c. Vacation. A stay may be vacated by the issuing authority upon application of the department or any other party.

561—7.16(17A,455A) 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 dispute or 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 7.10(1)“d.”

561—7.17(17A,455A) License suspension or revocation and other licensee disciplinary proceedings.

7.17(1) Notice. Except as provided in 7.17(6), prior to the suspension or revocation of a license, the department shall give notice of the intended action and an opportunity to be heard at an evidentiary hearing conducted according to the provisions of this chapter.

7.17(2) Content of notice. The notice shall inform the licensee of the department’s intent to suspend or revoke the license or otherwise discipline the licensee and shall include facts or conduct which warrant the intended action, a statement of the legal authority and jurisdiction under which the hearing is to be held, and a statement that the licensee may show at a hearing that the licensee meets all lawful requirements to retain the license or otherwise not be subject to disciplinary action.

7.17(3) Delivery of notice. Delivery of notice in licensee proceedings may be by personal service or by restricted certified mail.

7.17(4) Mandatory hearings. Where required by statute (e.g., Iowa Code section 455B.217), a hearing shall be held prior to revocation or suspension of a license. The petition shall be filed at the same time the notice is filed. The presiding officer shall prepare the notice of hearing upon receipt of the notice of intended action and petition and the procedure shall follow that of this chapter.

7.17(5) Requested hearing. In the case of revocation or suspension of licenses other than those within 7.17(4), the department shall give notice as required in 7.17(1) and 7.17(2), which shall include a statement that the person notified has the right to a hearing in accordance with this chapter and that the person entitled to a hearing may invoke the right within 30 days of receipt of the notice. Upon receipt of the request for a hearing, the presiding officer shall prepare a notice of hearing. Within 10 days of receiving notice of hearing, the department shall file a petition and the procedure shall follow that of this chapter.

7.17(6) Emergency suspension. A license may be suspended without providing to the licensee notice and opportunity to be heard if the agency having jurisdiction finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order. The order shall be served in the same manner provided in 7.17(3). If a license is summarily suspended in accordance with this paragraph, the department shall promptly thereafter give notice and an opportunity to be heard and determine the matter.

7.17(7) Effective date of suspension or revocation. Suspension or revocation pursuant to this rule shall be effective upon failure of the permittee to request a hearing within the time required in 7.17(5) or upon the issuance of an order suspending or revoking the permit after hearing.

561—7.18(17A,455A) Special procedure for emergency orders. The procedures prescribed in this rule are available in those cases involving an emergency order issued by the department.

7.18(1) Issuance of emergency order. An emergency order shall be delivered immediately to persons who are required to comply with the order by utilizing one or more of the following procedures:

- a. Personal delivery;
- b. Certified mail, return receipt requested, to the last address on file with the agency;
- c. Certified mail to the last address on file with the agency;
- d. First-class mail to the last address on file with the agency; or

e. 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 agency orders be sent by fax and the person has provided a fax number for that purpose.

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

7.18(2) *Oral notice.* Unless the emergency order is delivered by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

7.18(3) *Stay of order.* A person named in an emergency order may request a stay of the order by contacting the director by telephone or by delivery of a written request for stay to the department.

a. Upon receipt of a request for stay, the director shall schedule a hearing to take place within five days of receipt of the request or a longer time as agreed upon by the appellant. The person requesting the stay shall be notified of the time and place of the hearing.

b. The scope of the hearing on a request for stay shall be limited to, and the decision whether to grant a stay shall be based upon, the following factors:

- (1) Will the requester suffer irreparable injury if a stay is not granted,
- (2) Is the requester likely to prevail on the merits when the appeal of the order is heard,
- (3) Where lies the public interest, and
- (4) Is the rule or statute upon which the order is founded clearly invalid.

c. The decision to grant or deny a stay shall conform with 7.15(2).

7.18(4) *Decision on merits.* When agreed to by the parties, the appeal of an emergency order may be decided based upon the evidence presented at the hearing for stay. Otherwise, a hearing on the merits shall proceed in accordance with rules 561—7.7(17A,455A) to 561—7.15(17A,455A).

561—7.19(17A,455A) Emergency action.

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

a. Whether there has been a sufficient factual investigation to ensure that the agency 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 public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect public health, safety and welfare; and

e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

7.19(2) *Contents of order.* An emergency adjudicative order shall contain the following:

a. Findings of fact,

b. Conclusions of law, and

c. Policy reasons for the decision if it is an exercise of the agency's discretion.

These rules are intended to implement Iowa Code section 17A.3 and chapter 455A.

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