

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 10A.801, the Department of Inspections and Appeals hereby adopts a new Chapter 9, “Contested Cases,” and amends Chapter 10, “Contested Case Hearings,” Chapter 30, “Food and Consumer Safety,” Chapter 50, “Health Care Facilities Administration,” Chapter 57, “Residential Care Facilities,” Chapter 58, “Nursing Facilities,” Chapter 62, “Residential Care Facilities for Persons with Mental Illness (RCF/PMI),” Chapter 63, “Residential Care Facilities for the Intellectually Disabled,” Chapter 64, “Intermediate Care Facilities for the Intellectually Disabled,” Chapter 65, “Intermediate Care Facilities for Persons with Mental Illness (ICF/PMC),” Chapter 67, “General Provisions for Elder Group Homes, Assisted Living Programs, and Adult Day Services,” Chapter 90, “Public Assistance Debt Recovery Unit,” Chapter 100, “Administration,” Chapter 105, “Registered Amusement Devices,” and Chapter 106, “Card Game Tournaments by Veterans Organizations,” Iowa Administrative Code.

These amendments make a number of technical corrections to the procedure governing administrative hearings conducted by the Administrative Hearings Division. The amendments update the title of Chapter 10 to better describe the nature of the rules within, and they move the rules pertaining to contested cases of the Department of Inspections and Appeals to their own chapter to provide greater clarity and update cross references accordingly. They update the procedures related to prehearing conferences to simplify the rule and provide greater flexibility to the parties and the administrative law judge to use the conferences in a manner that efficiently advances the administration of justice. The amendments also update the rule related to providing recordings of hearings to account for technological changes and eliminate an obsolete rule implementing a statutory provision that has been repealed. Finally, the amendments update references to statutory provisions and cross references to rules to reflect the accurate citations.

No waiver provision is included in these rules because the statute governs the procedure to be used in contested case proceedings, which includes other safeguards for the administrative law judge to ensure the parties are provided a fair, impartial, and individualized hearing.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 25, 2017, as **ARC 3407C**. No comments were received by the Department during the public comment period. These amendments are identical to those published under Notice of Intended Action.

The Department does not believe that these amendments impose any financial hardship on any regulated entity, body, or individual.

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

These amendments are intended to implement Iowa Code sections 10A.801 and 17A.12.

These amendments shall become effective January 24, 2018.

The following amendments are adopted.

ITEM 1. Adopt the following **new** 481—Chapter 9:

**CHAPTER 9
CONTESTED CASES**

481—9.1(10A,17A) Applicability. This chapter applies to contested case proceedings conducted under the authority of the department of inspections and appeals in which the director of the department of inspections and appeals is the final decision-making authority.

481—9.2(10A,17A) Initiation of a contested case proceeding. If the department decides to initiate a contested case proceeding upon request or its own initiative, the department shall transmit the proceeding to the administrative hearings division, which shall issue a notice of hearing and assign the proceeding to an administrative law judge to serve as the presiding officer. All contested case proceedings shall be

conducted pursuant to 481—Chapter 10 and any other administrative rule applicable to the specific type of proceeding.

481—9.3(10A,17A) Director review.

9.3(1) A request for review of a proposed decision shall be made within 15 days of issuance of the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude judicial review unless the department reviews on its own motion as follows. The department may review a proposed decision upon its own motion within 15 days of issuance of the proposed decision.

9.3(2) A review shall be based on the record and limited to issues raised in the hearing. The issues shall be specified in the party's request for review.

9.3(3) Each party shall have opportunity to file exceptions and present briefs. The director or a designee of the director may set a deadline for submission of briefs. When the director or the director's designee consents, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. All parties shall be notified of the scheduled time and place in advance.

9.3(4) The director or the director's designee shall not take any further evidence with respect to issues of fact heard in the hearing except as set forth below. Application may be filed for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the director or the director's designee that the additional evidence is material and that there were good reasons for failure to present it in the hearing, the director or the director's designee may order the additional evidence taken upon conditions determined by the director or the director's designee.

9.3(5) Final decisions shall be issued by the director or the director's designee.

481—9.4(10A,17A) Rehearing. Requests for rehearing shall be made to the director of the department within 20 days of issuance of a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available or an obvious mistake is corrected or when the decision failed to include adequate findings or conclusions on all issues. A request for rehearing is not necessary to exhaust administrative remedies.

481—9.5(10A,17A) Judicial review. Judicial review of department final decisions may be sought in accordance with Iowa Code section 17A.19.

These rules are intended to implement Iowa Code chapters 10A and 17A.

ITEM 2. Amend **481—Chapter 10**, title, as follows:
CONTESTED CASE HEARINGS RULES OF PROCEDURE AND PRACTICE BEFORE THE
ADMINISTRATIVE HEARINGS DIVISION

ITEM 3. Amend rule **481—10.1(10A)**, definition of "Party," as follows:
"Party" means a party as defined in Iowa Code subsection ~~17A.2(5)~~ 17A.2(8).

ITEM 4. Amend rule 481—10.2(10A,17A) as follows:

481—10.2(10A,17A) Time requirements. Time shall be computed as provided in Iowa Code subsection ~~4.1(22)~~ 4.1(34). For good cause, the administrative law judge may extend or shorten the time to take any action, except as provided otherwise by rule or law.

This rule is intended to implement Iowa Code sections ~~40A.202(1)~~ 10A.801(7) and 17A.22.

ITEM 5. Amend rule **481—10.3(10A)**, implementation sentence, as follows:
This rule is intended to implement Iowa Code section ~~40A.202(1)~~ 10A.801(7).

ITEM 6. Amend rule **481—10.4(10A)**, implementation sentence, as follows:
This rule is intended to implement Iowa Code section ~~40A.202(1)~~ 10A.801(7).

ITEM 7. Amend rule **481—10.6(10A)**, implementation sentence, as follows:
This rule is intended to implement Iowa Code section ~~40A.202(2)~~ 10A.801(7).

ITEM 8. Amend rule **481—10.10(10A,17A)**, implementation sentence, as follows:
This rule is intended to implement Iowa Code sections ~~10A.202(1)~~ 10A.801(7) and 17A.22.

ITEM 9. Amend subrule 10.11(1) as follows:

10.11(1) *Petition.* When an action of the agency is appealed and pleadings are required under ~~subrule 10.10(1)~~ this rule, the aggrieved party shall file the petition.

a. Any required petition shall be filed within 20 days of delivery of the notice of hearing, unless otherwise ordered.

b. The petition shall state in separately numbered paragraphs the following:

- (1) The relief demanded and the facts and law relied upon for relief;
- (2) The particular provisions of the statutes and rules involved;
- (3) On whose behalf the petition is filed; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

ITEM 10. Amend rule **481—10.11(10A,17A)**, implementation sentence, as follows:
This rule is intended to implement Iowa Code sections ~~10A.202(1)~~ 10A.801(7) and 17A.12(6)“*a.*”

ITEM 11. Rescind rule 481—10.16(17A) and adopt the following new rule in lieu thereof:

481—10.16(10A,17A) Prehearing conference.

10.16(1) *Set by division.* The division may commence a contested case proceeding by issuing a notice of hearing that sets a prehearing conference to provide parties an opportunity to be heard on the selection of a date and time for the hearing on the merits and any other matters set forth in the notice or raised by the parties.

10.16(2) *Requested by party.* Any party may request a prehearing conference by filing and serving a written motion at least ten days prior to the date of the hearing. The motion must state any matters that the party seeks to address at the prehearing conference. If the administrative law judge grants the motion, the administrative law judge shall issue an order providing notice of the date and time of the prehearing conference to all parties.

10.16(3) *Ordered by administrative law judge.* The administrative law judge may order a prehearing conference if the administrative law judge determines on the administrative law judge's own motion that a prehearing conference should be held.

10.16(4) *Default.* If a party fails to appear or participate in a prehearing conference after proper service of notice, the administrative law judge may enter a default decision or proceed with the prehearing conference in the absence of the party.

This rule is intended to implement Iowa Code sections 10A.801(7) and 17A.12.

ITEM 12. Amend rule **481—10.17(10A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~10A.202(1)~~ 10A.801(7).

ITEM 13. Amend rule **481—10.18(10A,17A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~10A.202(1)~~ 10A.801(7) and 17A.22.

ITEM 14. Amend rule **481—10.19(10A,17A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~10A.202(1)~~ 10A.801(7) and 17A.22.

ITEM 15. Amend subrule 10.24(2) as follows:

10.24(2) *Review of proposed decisions.* Request for review of a proposed decision shall be made to the agency in which the contested case originated in the manner and within the time specified by that agency's rules. In contested cases in which the director of ~~DIA~~ the department of inspections and appeals has final decision-making authority, request for review shall be made as provided in rule ~~481—10.25(10A,17A)~~ 481—9.3(10A,17A).

ITEM 16. Rescind and reserve rule **481—10.25(10A,17A)**.

ITEM 17. Rescind and reserve rule **481—10.27(10A)**.

ITEM 18. Amend rule 481—10.28(10A) as follows:

481—10.28(10A) Recording costs. The ~~department~~ division may provide a copy of the ~~tape-recorded audio recording of the hearing~~ or a printed transcript of the hearing when a record of the hearing is requested. The cost of providing the recording or preparing the tape or transcript shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters shall bear the cost, unless otherwise provided by law.

ITEM 19. Amend rule 481—30.11(10A,137C,137D,137F) as follows:

481—30.11(10A,137C,137D,137F) Formal hearing. All decisions of the food and consumer safety bureau may be contested by an adversely affected party. A request for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by ~~481—Chapter 10, “Contested Case Hearings.”~~ 481—Chapter 9, “Contested Cases.”

For contractors, license holders shall have the opportunity for a hearing before the local board of health. If the hearing is conducted before the local board of health, the license holder may appeal to the department and shall follow the process for review in rule ~~481—10.25(10A,17A)~~ 481—9.3(10A,17A).

This rule is intended to implement Iowa Code section 10A.104 and Iowa Code chapters 137C, 137D, and 137F.

ITEM 20. Amend rule 481—50.6(10A), introductory paragraph, as follows:

481—50.6(10A) Formal hearing. All decisions of the division may be contested. Appeals and hearings are controlled by ~~481—Chapter 10, “Contested Case Hearings.”~~ 481—Chapter 9, “Contested Cases.”

ITEM 21. Amend paragraph **57.14(6)“d”** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9. The hearing shall be public unless the resident or the resident’s legal representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of evidence rests on the party requesting the transfer or discharge.

ITEM 22. Amend paragraph **58.40(7)“d”** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9. The hearing shall be public unless the resident or resident’s legal representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of the evidence rests on the party requesting the transfer or discharge.

ITEM 23. Amend paragraph **62.14(6)“d”** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9. The hearing shall be public unless the resident or representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of evidence rests on the party requesting the transfer or discharge.

ITEM 24. Amend paragraph **63.34(7)“d”** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9. The hearing shall be public unless the resident or representative requests in writing that the hearing be closed. In a determination as

to whether a transfer or discharge is authorized, the burden of proof by a preponderance of the evidence rests on the party requesting the transfer or discharge.

ITEM 25. Amend paragraph **64.36(7)“d”** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9. The hearing shall be public unless the resident or representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of the evidence rests on the party requesting the transfer or discharge.

ITEM 26. Amend paragraph **65.16(6)“d”** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9. The hearing shall be public unless the resident or representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of evidence rests on the party requesting the transfer or discharge.

ITEM 27. Amend subrule 67.14(5) as follows:

67.14(5) Contested case hearings. Contested case hearings shall be conducted by the department’s administrative hearings division pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9.

ITEM 28. Amend subrule 67.15(2) as follows:

67.15(2) Hearings. Hearings shall be conducted by the administrative hearings division of the department of inspections and appeals pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9.

ITEM 29. Amend subrule 67.16(2) as follows:

67.16(2) Appeal of conditional certificate. A written request for hearing must be received by the department within 30 days after the mailing or service of notice. The conditional certificate shall not be suspended pending the hearing. Hearings shall be conducted by the administrative hearings division of the department of inspections and appeals pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9.

ITEM 30. Amend rule ~~481—67.18(17A,231B,231C,231D)~~ as follows:

481—67.18(17A,231B,231C,231D) Judicial review. Judicial review shall be conducted pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9.

ITEM 31. Amend rule ~~481—90.7(10A)~~ as follows:

481—90.7(10A) Appeal rights. If a notice of debt or other notice of adverse action is received by the debtor and the debtor wishes to contest the debt, an appeal is submitted to the recovery unit or to DHS. If an appeal is submitted, the recovery process is suspended until conclusion of the appeal process outlined in ~~481—Chapter 10~~ 481—Chapter 9 and ~~441—Chapter 7~~.

ITEM 32. Amend rule ~~481—100.12(10A,17A,99B)~~, introductory paragraph, as follows:

481—100.12(10A,17A,99B) Appeal rights. Any decision of the department may be appealed in accordance with procedures set out in ~~Iowa Administrative Code 481—Chapter 10~~ 481—Chapter 9. When an appeal is received, the status of the license is governed by the following standards:

ITEM 33. Amend rule ~~481—105.8(10A,99B)~~, introductory paragraph, as follows:

481—105.8(10A,99B) Appeal rights. Decisions to refuse to issue a registration or to revoke a registration by the department may be appealed in accordance with the procedures set out in ~~481—Chapter 10~~ 481—Chapter 9. The refusal to issue a registration or the notice of revocation shall

be in writing and state the specific grounds for the action. When an appeal is received, the status of the registration is governed by the following standards:

ITEM 34. Amend subrule 106.13(3) as follows:

106.13(3) If the licensee or applicant requests a hearing, the hearing shall be held in accordance with procedures in ~~481—Chapter 10~~ 481—Chapter 9.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/20/17.