

**NATURAL RESOURCES DEPARTMENT[561]**

**Adopted and Filed**

**Rule making related to appeals of administrative orders**

The Department of Natural Resources (Department) hereby amends Chapter 7, “Rules of Practice in Contested Cases,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 455A.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 455B.110.

*Purpose and Summary*

These amendments are necessary to align Department rules with 2019 Iowa Acts, Senate File 409, signed by Governor Reynolds on May 9, 2019. Senate File 409, in part, amends the process and timeline for individuals to appeal administrative orders issued by the Department. The legislation clarifies when the appeal period commences and extends the appeal period from 30 days to 60 days. This rule making is intended to implement that legislative change.

Additionally, the amendments address an existing anomaly in Department rules that requires the Environmental Protection Commission and the Natural Resource Commission to consider a proposed decision before the appeal period for that decision has concluded. This anomaly results in the Commissions considering proposed decisions that may still be appealed by the affected parties. This rule making does not alter the rights of any party, including the rights of Commissioners to adopt, reject or revise proposed decisions. It simply allows the Commissioners to consider a proposed decision after the conclusion of the appeal period.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 15, 2020, as **ARC 4861C**. A public hearing was held on February 5, 2020, at 1 p.m. in Conference Room 4E, Wallace State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on June 17, 2020.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

*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).

*Effective Date*

This rule making will become effective on August 19, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 7.4(1) as follows:

~~7.4(1) Time. 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 a particular statute or rule governing the subject matter or by the agency action in question. The written notice of appeal shall be filed with the director with a copy to the Bureau Chief, Legal Services Bureau, Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319.~~

a. Any order issued by the director of the department shall comply with the requirements established in Iowa Code section 455B.110 and may be appealed. The written notice of appeal of the order must be received by the director within 60 days of proper issuance of the order.

b. Any person appealing any other action by the department that is subject to appeal shall file a written notice of appeal within 60 days of the action, unless a shorter time period is specified by a particular statute or rule governing the subject matter of the action.

c. Unless otherwise stated in the order or notice provided, any written notice of appeal shall be filed with the director of the department, and a copy shall be sent to the legal services bureau chief.

ITEM 2. Amend subparagraph 7.17(5)“a”(2) as follows:

(2) Agency decision to review. The agency may initiate review of a proposed decision on its own motion ~~at any time within 30 days following the issuance of the proposed decision or at the next regular meeting of the relevant commission, whichever date last occurs after the appeal period in subparagraph 7.17(5)“a”(1) has concluded.~~ The agency shall preside in the case of review of a proposed decision of the administrative law judge or appeal board on motion of the agency.

[Filed 6/19/20, effective 8/19/20]

[Published 7/15/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/20.