Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 561—Chapter 7
"Rules of Practice in Contested Cases"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.22
State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.12

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Please contact Kelli Book at kelli.book@dnr.iowa.gov for sign-in information.

September 24, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Des Moines, Iowa 50321
Email: tamara.mcintosh@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 7 contains the Department's rules of practice in contested cases. This chapter is necessary to guarantee due process and ensure a consistent and transparent hearing process. This chapter is narrowly tailored to that end. However, the Department has edited the chapter consistent with Executive Order 10 and has made strategic updates to account for electronic filing and other modern digital processes.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

This chapter is procedural in nature and required by law. It sets forth rules of practice for contested cases. Litigation inherently has costs and these rules do not directly impose any specific expenses, such as a filing fee. Rather, the rules of practice ensure consistency and predictability and guarantee due process.

- Classes of persons that will benefit from the proposed rulemaking:

Parties involved in a contested case proceeding will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

This chapter is procedural in nature and required by law. It sets forth rules of practice for contested cases. Litigation inherently has costs and these rules do not directly impose any specific expenses, such as a filing fee. Rather, the rules of practice ensure consistency and predictability and guarantee due process.

- Qualitative description of impact:

This chapter is procedural in nature and required by law. It sets forth rules of practice for contested cases. Litigation inherently has costs and these rules do not directly impose any specific expenses, such as a filing fee. Rather, the rules of practice ensure consistency and predictability and guarantee due process.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Litigation inherently has costs and these rules do not directly impose any specific expenses, such as a filing fee. Rather, the rules of practice ensure consistency and predictability, and guarantee due process.

- Anticipated effect on state revenues:

None. Litigation inherently has costs and these rules do not directly impose any specific expenses, such as a filing fee. Rather, the rules of practice ensure consistency and predictability and guarantee due process. The Department does not pay more to participate in a contested case; those costs are absorbed into the program's operational budget.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Not applicable. This chapter is procedural in nature and required by law. It sets forth rules of practice for contested cases.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Not applicable. This chapter is procedural in nature and required by law. It sets forth rules of practice for contested cases.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Not applicable. This chapter is procedural in nature and required by law. It sets forth rules of practice for contested cases.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Not applicable. This chapter is procedural in nature and required by law. It sets forth rules of practice for contested cases.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Not applicable. This rule is procedural in nature and required by law. It sets forth rules of practice for contested cases. Litigation inherently has costs and these rules do not directly impose any specific

expenses, such as a filing fee. Rather, the rules of practice ensure consistency and predictability, and guarantee due process.

Text of Proposed Rulemaking

ITEM 1. Rescind 561—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
RULES OF PRACTICE IN CONTESTED CASES

561—7.1(17A,455A) Scope and applicability. This chapter applies to contested case proceedings conducted by the department of natural resources, as defined in rule 561—7.2(17A,455A). Nothing in this chapter shall be construed to grant a right to a contested case proceeding when the Iowa Code does not specifically provide for a contested case, except that vendor appeal contested case proceedings may be conducted according to the provisions of 561—Chapter 8.

561—7.2(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.

"Presiding officer" means an administrative law judge employed by the department of inspections, appeals, and licensing or the agency, as provided in rule 561—7.7(17A,455A).

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the agency did not preside.

561—7.3(17A,455A) Time requirements.

7.3(1) *Time.* Time shall be computed as provided in Iowa Code section 4.1(34).

7.3(2) *Change.* Except for good cause stated in the record, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments before extending or shortening the time to take any action. When by these rules, or by notice given under them, an act is required or allowed to be done within a specified period of time, the presiding officer may, at any time, exercise discretion and may 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.

7.3(3) *Mail.* Any documents filed with the department by mail pursuant to these rules shall be deemed filed on the date of postmark.

561—7.4(17A,455A) Appeal of agency action (requests to initiate contested case proceedings).

7.4(1) *Time.*

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.

7.4(2) *Content.* Each appeal shall contain:

a. The name and address of the appellant,

b. A description of the specific portion or portions of the agency action that are being appealed, and

c. A short and plain statement of the reasons the specific agency action is being appealed.

561—7.5(17A,455A) Commencement of contested case—notice of hearing.

7.5(1) *Transmittal of appeal.* Except as provided in subrule 7.5(2), the department shall transmit the appeal and request for a contested case proceeding to the department of inspections, appeals, and licensing, or shall otherwise transmit the appeal to the presiding officer, when it determines that the appeal was timely filed and the requester is entitled to a contested case proceeding. When the appeal is from an administrative order, the order shall be transmitted with the appeal.

7.5(2) *Petition from the department.* After 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 subrule 7.12(1).

7.5(3) *Notice of hearing issued.* 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:

a. The department receives a notice of appeal from a person other than the department, or

b. A petition from the department is filed, as provided in subrule 7.5(2).

7.5(4) *Delivery of notice of hearing.* Delivery of the notice of hearing may occur by personal service or publication as provided in the Iowa Rules of Civil Procedure; by certified mail, return receipt requested; or as otherwise required by statute.

7.5(5) *Contents of notice of hearing.* The notice of hearing shall contain the following information:

a. Identification of the parties, including the name, address and telephone number of the person who will act as advocate for the agency or the state and identification of all the parties' counsel where known;

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. If the agency or other party is unable to state the matters in detail at the time the notice is served, then initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

f. Reference to the procedural rules governing informal settlement;

g. Identification of the presiding officer, if known, or if not known, then a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, or administrative law judge from the department of inspections, appeals, and licensing);

h. The time within which a petition or answer must be filed; and

i. In those cases where the department files the petition pursuant to the provisions of subrule 7.5(2), 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 these rules, judgment may be entered for the relief requested in the petition.

7.5(6) *Time for response to notice of hearing.* A person served with a notice of hearing shall file a petition or answer as required by subrule 7.12(1) or 7.12(2) within 20 days of receipt of the notice of hearing. Failure to file shall, upon motion, result in the presiding officer's entering a default against the person failing to file.

561—7.6(17A,455A) Informal settlement negotiations.

7.6(1) *Informal settlement encouraged.* Unless precluded by statute, informal settlement of controversies is encouraged when those controversies may culminate in contested case proceedings

according to the provisions of Iowa Code chapter 17A and these rules. However, this rule shall not be construed to require any party other than the department to utilize informal procedures or to settle the controversy pursuant to informal procedures.

7.6(2) *Opportunity to pursue informal settlement.* A party to a contested case may request an opportunity to pursue informal settlement. The request shall be in writing and shall be delivered to the director with a copy to the legal services bureau chief. Upon receipt of the request, further proceedings shall be delayed and no contested case hearing date shall be set, except in the case of emergency orders as provided in rule 561—7.18(17A,455A). Informal settlement negotiations may include verbal or written communications between or among parties. At the request of any party, the appeal shall be transmitted to the department of inspections, appeals, and licensing. Settlement negotiations may continue following transmittal.

561—7.7(17A,455A) Presiding officer. Except as otherwise provided in this rule, an administrative law judge employed by the department of inspections, appeals, and licensing shall preside at contested case hearings.

7.7(1) 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 thereof. Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections, appeals, and licensing must file a written request within 10 days after service of a notice of hearing that identifies or describes the presiding officer as the agency head or members of the agency. The agency may deny the request only upon a finding that one or more of the following reasons apply:

a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding (i.e., there is no conflict of interest because the agency would not act as both party and adjudicator in the contested case proceeding).

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

7.7(2) The agency shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

7.7(3) In a hazardous waste facility site licensing proceeding pursuant to Iowa Code section 455B.446, 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.

561—7.8(17A,455A) Disqualification of presiding officer.

7.8(1) *Grounds for disqualification.*

a. 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.

b. 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.

c. 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 agency if that person would be substantially affected by the outcome of the case.

d. A presiding officer shall not be biased for or against any party.

7.8(2) *Affidavit asserting disqualification.*

a. 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 that individual should participate shall be made by the agency before further participation by that individual.

b. Any party to a contested case proceeding may file an affidavit alleging a violation of subrule 7.8(1), 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—7.9(17A,455A) Separation of functions and ex parte communications.

7.9(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.

7.9(2) *Communications initiated by administrative law judge or agency member.*

a. Except as provided in paragraphs 7.9(2)*"b"* and *"c,"* or unless required for the disposition of ex parte 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 to the extent permitted or allowed by Iowa Code chapter 21, "Official Meetings Open to Public (Open Meetings)."

b. The presiding officer having jurisdiction of a case may communicate in connection with issues of fact or law in the case, upon notice and opportunity for all parties to participate. Where members of the agency are acting as the presiding officer(s), they may communicate in connection with issues of fact or law in the case, upon notice and opportunity for all parties to participate and to the extent permitted by Iowa Code chapter 21, "Official Meetings Open to Public (Open Meetings)." 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.

7.9(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 paragraph 7.9(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. The presiding officer or members of the agency shall refuse to discuss issues of fact or law with parties unless notice and opportunity for hearing has been given to all parties. A copy of any written ex parte communication or summary of oral ex parte communication received from a party, which directly or indirectly relates to any issue of fact or law in the case, shall be transmitted by the presiding officer to the other parties, and the presiding officer shall include the written communication or summary in the record.

d. Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

e. 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.

f. The presiding officer may render a proposed or final decision imposing appropriate sanctions, including default, for violations of rule 561—7.9(17A,455A); make a decision against the offending party; or censure, suspend or revoke the privilege to practice before the agency.

561—7.10(17A,455A) Consolidation and severance.

7.10(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

a. The matters at issue involve common parties or common questions of fact or law;

b. Consolidation would expedite and simplify consideration of the issues involved; and

c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

7.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceeding or a portion thereof severed.

561—7.11(17A,455A) Intervention.

7.11(1) *Motion to intervene.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervener, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 20 days of receipt of the motion to intervene unless the time period is extended or shortened by the presiding officer.

7.11(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless

otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless the result would be inequitable or unjust, an intervener shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely interveners for continuances that would delay the proceeding will ordinarily be denied.

7.11(3) *Grounds for intervention.* The movant shall demonstrate that:

a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;

b. The movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and

c. The interests of the movant are not adequately represented by existing parties.

7.11(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceeding. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervener or otherwise condition the intervener's participation in the proceeding.

561—7.12(17A,455A) Pleadings. Pleadings are the parties' written statements of their respective claims or defenses. Pleadings do not include motions. The only allowable pleadings shall be the petition and the answer.

7.12(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 a party other than the department shall be filed within 20 days of receipt of the notice of hearing, unless the presiding officer allows additional time.

c. Content. The petition shall include all of the following items, in separately numbered paragraphs:

(1) The basis for the agency's jurisdiction over the matter;

(2) A detailed discussion of the relief demanded and the supporting facts, including any supporting documentation relied upon for relief;

(3) The particular provisions of the statutes and rules involved;

(4) The name(s) of the party or parties on whose behalf the petition is filed; and

(5) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

7.12(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 state on whose behalf it is filed and shall 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 it may contain as many defenses, legal or equitable, as the pleader may claim, which defenses may be inconsistent. The answer also shall state the name, address and telephone number of the person filing the answer and the person's 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 that 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 by this subrule to file an answer fails to file an answer within 20 days of receipt of the notice of hearing or petition, a default shall, upon motion, be entered by the presiding officer.

7.12(3) *Amendment.* Any notice of hearing, petition, or other charging document (document asserting a party's position) may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and 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.

7.12(4) *Form.* All pleadings shall adhere to the form as provided by the department of inspections, appeals, and licensing and be signed by the person filing the pleading.

7.12(5) *Filing and service of pleadings.* The original of all pleadings shall be filed with the presiding officer, and a copy of all pleadings shall be contemporaneously served upon the other parties. Filing and service of pleadings shall be by e-file, first-class mail, or personal service. No return of service shall be required.

7.12(6) *Docketing.* Upon receipt of a pleading, the presiding officer shall docket the pleading in a docket kept for that purpose and shall assign a number to the case that shall be placed on all subsequent pleadings filed in the case.

561—7.13(17A,455A) Defaults.

7.13(1) *Defaults defined.* A party shall be in default when the party:

a. Fails to file a pleading within the time prescribed for filing of the pleading;

b. Withdraws a pleading without permission to replead;

c. Fails to comply with any order of the presiding officer; or

d. Fails to appear for a contested case proceeding after proper service of notice. If a party fails to appear and participate in a contested case proceeding after proper service of notice, then the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision on the merits in the absence of the party. If a decision on the merits is rendered, the sole remedy to set aside the judgment is a motion to vacate made consistent with the provisions of subrule 7.17(7).

7.13(2) *How entered.* If a party is in default, the presiding officer on motion of the adverse party shall enter the default against the party.

7.13(3) *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 before the presiding officer, 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 set aside or that the default decision is to take effect immediately.

7.13(4) *Setting aside default.*

a. For good cause shown, the presiding officer may set aside a default or order thereon due to mistake, inadvertence, surprise, excusable neglect or unavoidable casualty. The exclusive remedy for an order based on default shall be a timely motion to set aside the default.

b. A motion to set aside a default must be filed promptly after the discovery of the grounds, but in no case shall the motion be filed more than ten days after receipt of the order. Default decisions shall become final agency action unless a motion to set aside the default is timely filed.

(1) Contents of motion. A motion to set aside a default shall state all facts relied upon by the moving party and shall establish that good cause existed for that party's default status. If the party is in default due to failure to appear for a contested case proceeding, then 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.

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

(3) When granted. The burden of proof to show good cause to set aside the default due to mistake, inadvertence, surprise, excusable neglect or unavoidable casualty is on the moving party. 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 timely filed response to the motion.

7.13(5) *Appeal of denial of motion to set aside default.*

a. If a timely motion to set aside a default is denied, it may be followed by an appeal to the agency having jurisdiction of the matter. The issues on appeal are 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 unavoidable 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.

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

7.14(1) *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, then as soon as practicable the parties shall jointly submit to the presiding officer a schedule detailing the method and timetable for submission of the record, briefs, and oral argument. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to paragraph 7.14(2)*"e."*

7.14(2) *Motions.*

a. Form of motion. No technical form for motions is required. However, prehearing motions must be in writing, must state the grounds for relief, and must state the relief sought.

b. Time for response to motions. Any party may file a written response to a motion within 10 days after service of the motion, unless the time period is extended or shortened by rules of the agency or the presiding officer. Failure to respond within the required time period may be deemed a waiver of objection to the granting of the motion.

c. Oral argument on motions. The presiding officer may schedule oral argument on any motion.

d. Time for filing. Motions pertaining to the hearing, except motions for summary judgment, must be filed and served 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 the presiding officer.

e. 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 either at least 30 days prior to the scheduled hearing date, or during another 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 7.17(6) and appeal pursuant to subrule 7.17(5).

7.14(3) *Discovery.*

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

b. Motions relating to discovery. Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues with the opposing

party. 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 motion unless the time is shortened as provided in subrule 7.3(2). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

c. Evidence obtained in discovery. Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

d. 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, the party 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.

e. 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 that the party expects to introduce into evidence. Amendments and additions to these materials may be made no later than ten days prior to the date of the hearing. However, following a prehearing conference held in accordance with subrule 7.14(5), witnesses, documents or exhibits may be added 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.

7.14(4) *Subpoenas.*

a. Issuance. A subpoena shall be issued to a party upon request to the presiding officer. Such a request may be oral or in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Service and expenses. 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.

c. Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

7.14(5) *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 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) Rescheduling the time and place of the hearing set forth in the notice of hearing to a date that will allow the parties and witnesses to prepare for and participate in the hearing;

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

d. 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 the order 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.

7.14(6) *Continuance.* Unless otherwise provided, applications for continuance shall be made to the presiding officer. Applications for continuance may be made orally or in writing, unless otherwise specified by the presiding officer. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

7.14(7) *Prehearing telephone proceedings.* The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate.

7.14(8) *Emergency orders.* Prehearing procedures for emergency orders are set forth in rule 561—7.18(17A,455A).

561—7.15(17A,455A) Hearing procedures.

7.15(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;

c. Enter the notice of hearing into the record;

d. Receive testimony and exhibits presented by the parties;

e. In the presiding officer's discretion, interrogate witnesses;

f. Rule on objections and motions;

g. Close the hearing;

h. Issue an order containing findings of fact and conclusions of law.

Additionally, the presiding officer may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

7.15(2) *Order of proceedings.* The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

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

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

7.15(3) *Failure to appear.* If a party fails to appear after proper service of notice of hearing, the presiding officer may adjourn, may enter a default against the absent party, 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.

7.15(4) *Representation at hearings.* Parties have the right to participate in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may, at its own expense, be represented by an attorney.

7.15(5) *Appearance pro se.* If a party other than the department appears on the party's own behalf without counsel, 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.

7.15(6) *Attendance and participation of the public.* Every hearing before an agency of the department or an administrative law judge shall be open to the public.

7.15(7) *Introduction of evidence.* Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

7.15(8) *Fees.* Each party bears all costs and expenses, including fees, for its own witnesses.

7.15(9) *Objections.* All objections shall be timely made and stated on the record.

7.15(10) *Decorum.* The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly. Contemptuous conduct is grounds for removal from the hearing.

7.15(11) *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 reporters shall bear the costs thereof.

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 mechanized records of oral proceedings may be obtained from the presiding officer at the requester's expense.

7.15(12) *Telephone hearings.* Hearings may be conducted via telephone upon order of the presiding officer and with the consent of all parties.

561—7.16(17A,455A) Evidence.

7.16(1) *Ruling on evidence.* The presiding officer shall rule on admissibility of evidence.

7.16(2) *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.

7.16(3) *Issues restricted.* Evidence in the proceeding shall be confined to the issues that have been expressed in the appealed action, the appeal, the petition and the answer.

7.16(4) *Stipulation.* Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

7.16(5) *Privilege.* The rules of privilege recognized by law shall be given effect.

7.16(6) *Examination of exhibits.* The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

7.16(7) *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.

7.16(8) *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.

7.16(9) *Sequestration of witnesses.* Witnesses may be sequestered during the hearing.

7.16(10) *Objections to evidence.* Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

7.16(11) *Offer of proof.* Whenever evidence is deemed inadmissible, the party offering the evidence may make an offer of proof that 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.

7.16(12) *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 a decision is announced.

7.16(13) *Evaluation of evidence.* The agency's experience, technical competence, and specialized knowledge may be utilized in evaluating the evidence.

561—7.17(17A,455A) Posthearing procedures and orders.

7.17(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, a proposed order or decision complying with subrule 7.17(3), and a supporting brief. Each party may, within the same period, file with the presiding officer a brief concerning any relevant matters at the hearing. Copies of these documents shall be served upon each of the other parties. Within 20 days thereafter, each party may file a brief that takes specific exception to matters contained in an opposing brief or that contains alternative findings of fact, conclusions of law, and proposed order. The briefing schedule, including waiver of briefs, shall be determined at the close of the hearing.

7.17(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 paragraph 7.17(5)*"a."*

7.17(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 presiding 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 subrule 7.17(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 e-file, personal service, or by certified mail, return receipt requested.

7.17(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.

7.17(5) *Appeal and review.* Any adversely affected party may appeal a proposed decision. Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the agency (the director or the appropriate commission, as required by law). The agency having jurisdiction shall review the proposed decision.

a. Time allowed.

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

(2) Agency decision to review. The agency may initiate review of a proposed decision on its own motion at the next meeting of the relevant commission 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.

b. Notice. Appeal is taken and perfected by filing with the director a timely notice of appeal 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. The notice shall set forth, with particularity, the conclusions of law or findings of fact appealed. It shall be the appellant's responsibility to immediately serve the notice of appeal upon all parties of record other than the appellant.

c. Request for transcript. A request for a transcript or a copy of the electronic recording of a hearing on a matter appealed shall be made at the time of the filing of a notice of appeal.

d. Scheduling. The director shall issue a schedule for consideration of the appeal.

e. Briefs and arguments. Unless otherwise ordered, within 20 days of receipt of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The agency may resolve the appeal on the briefs or provide an opportunity for oral argument. The agency may shorten or extend the briefing period as appropriate.

f. Agency review. On appeal from or review of the proposed decision, the agency has all the power that it would have in initially making the final decision except as it may limit the issues. If the agency limits the issues, notice of this limitation shall be provided in writing 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. When reviewing a proposed decision upon intra-agency appeal, the agency having jurisdiction shall have the powers of and shall comply with the provisions of this chapter that apply to presiding officers, unless otherwise provided by law.

7.17(6) *Applications for rehearing.*

a. By whom filed. Any party to a contested case 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 for rehearing shall be filed with the director within 20 days after the receipt of the final decision.

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

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

7.17(7) *Motion to vacate.*

a. By whom filed. A motion to vacate may be filed by any party to a contested case.

b. Form of motion. A motion to vacate shall be in writing, shall state on whose behalf it is filed, and shall state the specific grounds for relief.

c. Time of filing. A motion to vacate must be filed within 30 days after receipt of the final decision.

d. Notice to other parties. A copy of the motion to vacate shall be immediately mailed by the moving party to all parties of record not joining therein.

e. Granting of motion to vacate. A motion to vacate may be granted if the presiding officer finds that any of the following grounds exist:

(1) The moving party experienced unavoidable casualty or misfortune preventing the moving party from participating during the contested case process; or

(2) The moving party has material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the contested case hearing, and was not discovered within the time for making an application for rehearing under subrule 7.17(6).

7.17(8) *Stays of agency action.*

a. When available.

(1) Any person appealing an action of the department, other than an emergency action taken pursuant to the provisions of rule 561—7.18(17A,455A), may petition the presiding officer for a stay of the department's action or a part thereof pending its review. The petition for stay shall state the reasons justifying a stay. Whenever possible, an appellant should seek a stay upon the filing of an appeal. An appellant who fails to promptly file for a stay does so at that party's risk.

(2) Any party adversely affected by a final decision or order, other than an emergency order that is governed by rule 561—7.18(17A,455A), may petition the agency for a stay of the final decision or order pending judicial review. The petition for stay shall be filed with the director within ten days of receipt of the final decision or 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—7.18(17A,455A) Emergency proceedings.

7.18(1) *Necessity of emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety or welfare, and consistent with the Iowa Constitution and other provisions of law, the agency may issue a written emergency administrative order in compliance with Iowa Code section 17A.18A 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 administrative 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 that 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 administrative order may continue to engage in alternative 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.

7.18(2) *Contents of order.* An emergency administrative 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.

7.18(3) *Delivery of emergency order.* To the degree practicable, the department shall select the procedure for delivery of an emergency administrative order that best ensures prompt, reliable delivery. An emergency order shall be delivered immediately to the person or 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.

7.18(4) *Oral notice.* Unless the emergency order is delivered by personal delivery on the same day that the order is issued, the agency shall make reasonable immediate efforts to contact by telephone the person or persons who are required to comply with the order.

7.18(5) *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 of an emergency order, 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) Whether the requester will suffer irreparable injury if a stay is not granted,

(2) Whether the requester is likely to prevail on the merits when the appeal of the order is heard,

(3) Where lies the public interest, and

(4) Whether the rule or statute upon which the order is founded is clearly invalid.

c. The hearing procedures in a decision to grant or deny a stay shall conform with rule 561—7.15(17A,455A).

7.18(6) *Decision on merits.* Where 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 this chapter.

561—7.19(17A,455A) License suspension or revocation and other licensee disciplinary proceedings.

7.19(1) *Notice.* Except as provided in rule 561—7.18(17A,455A) or in subrule 7.19(3), prior to the suspension or revocation of a license, the department shall give notice of its intent and shall provide an opportunity to be heard at an evidentiary hearing conducted according to the provisions of this chapter. However, according to the provisions of Iowa Code section 455B.219, an evidentiary hearing, and not just the opportunity therefor, must occur prior to revocation or suspension of a license for water treatment.

7.19(2) *Content of notice.* The notice shall inform the licensee of the department's intent to suspend or revoke the license and shall include:

a. A description of the facts or conduct warranting the suspension or revocation;

b. A statement of jurisdiction and the provision of law that warrants the intended action; and

c. A statement that the licensee may show at a hearing that the licensee meets all lawful requirements to retain the license.

7.19(3) *Delivery of notice.* Delivery of notice in license revocation or suspension proceedings shall be by personal service or by restricted certified mail.

7.19(4) *Time to request hearing.* A person entitled to request a hearing according to the provisions of this rule may invoke the right within 30 days of receipt of the notice.

7.19(5) *Setting hearing.* Upon receipt of a request for a hearing or upon receipt of a notice of intent to revoke or suspend a license according to the provisions of Iowa Code section 455B.291, the presiding officer shall prepare a notice of hearing. The contested case hearing procedures in this chapter shall apply.

7.19(6) *Filing of petition and answer.* Within 10 days of receipt of the notice of hearing, the department shall file a petition that complies with the provisions of paragraph 7.12(1)*"c."* An answer complying with the provisions of paragraphs 7.12(2)*"c"* and *"d"* may be filed within 10 days of receipt of the petition.

7.19(7) *Emergency suspension.* A license may be suspended without the department providing to the licensee a prior opportunity to be heard if the agency having jurisdiction:

a. Finds that the public health, safety or welfare imperatively requires emergency action,

b. Incorporates a finding to that effect in its order,

c. Complies with the provisions of rule 561—7.18(17A,455A), and

d. Promptly thereafter provides the licensee an opportunity to be heard.

7.19(8) *Effective date of suspension or revocation.* Except as provided in Iowa Code section 455B.219 and subrule 7.19(7), suspension or revocation pursuant to this rule shall be effective upon:

a. Failure of the licensee to request a hearing within 30 days of receipt of notice of intent to revoke or suspend; or

b. Upon the issuance of an order suspending or revoking the license after hearing.

561—7.20(17A,455A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. The waiver shall be by written stipulation representing an informed, mutual consent. However, the agency, in its discretion, may refuse to give effect to such waiver when it deems the waiver to be inconsistent with the public interest.

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