RA 26-406

EMPLOYMENT APPEAL BOARD[486]

Regulatory Analysis

Notice of Intended Action to be published: 486—Chapter 4
"Rules of Procedure for OSHA Appeals"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 10A.601(4) and 10A.601(6)

State or federal law(s) implemented by the rulemaking: Iowa Code section 10A.601 and chapter 88

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

December 29, 2026	Via videoconference:
1 p.m.	meet.google.com/meet/weg-dcji-dtb

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis, which must be received by the Employment Appeal Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Rick Autry
Employment Appeal Board
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Email: rick.autry@eab.iowa.gov

Purpose and Summary

This proposed rulemaking provides a procedural framework for employers to challenge an Iowa Occupational Safety and Health Administration (OSHA) citation or the amount of a fine or for employees or employers to seek modification of an abatement requirement. The Board's procedural rules by law should "conform to rules of procedure adopted under the federal law by federal authorities insofar as the federal rules of procedure do not conflict with state law," according to Iowa Code section 88.8(3)"d." Those federal rules have changed over the years, and the proposed changes take that into account, as well as the State law and practice. The two major changes are the implementation of electronic procedure and a new simplified proceedings section for smaller cases.

References to 486—Chapter 18 are to that chapter as published in **RA 26-236**, IAB 8/19/26.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

There is no additional expected cost to the State or individuals.

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

Parties appearing before the Board in Iowa OSHA-related proceedings that are, principally, contests of citations and petitions for modification of abatement 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:**

There is no expected economic impact created by this proposed rulemaking.

- **Qualitative description of impact:**

There is no expected economic impact created by this proposed rulemaking.

3. **Costs to the State:**

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

There is no expected economic impact created by this proposed rulemaking.

- **Anticipated effect on State revenues:**

There is no significant effect on State revenues created by this proposed rulemaking.

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

Not applicable.

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

Not applicable.

6. **Alternative methods considered by the agency:**

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

No alternative methods were considered.

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

Not applicable.

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?

The only expected impact on small business is positive. The use of electronic filing will generally reduce costs and speed up the process. The addition of simplified proceedings, which requires the consent of the employer, will make it economically feasible for smaller employers facing smaller citations to contest those citations in a low-cost way. As it is, the cost of the contest might exceed the fine and thus discourage legitimate contests. The State also benefits from not devoting to smaller cases resources that are out of proportion to the amount at issue.

Text of Proposed Rulemaking

ITEM 1. Rescind 486—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
RULES OF PROCEDURE FOR OSHA APPEALS

DIVISION I
GENERAL PROVISIONS

486—4.1(10A,88) Definitions as used herein.

"Act" means the Iowa occupational safety and health Act, Iowa Code chapter 88.

"Administrative law judge" means an administrative hearing officer with the appeals and fair hearings division of the department of inspections, appeals, and licensing (DIAL).

"Affected employee" means an employee of a cited employer who is exposed to the alleged hazard described in the citation as a result of assigned duties.

"Authorized employee representative" means a labor organization that has a collective bargaining relationship with the cited employer and that represents affected employees.

"Citation" means a written communication issued by the commissioner of labor to an employer pursuant to Iowa Code section 88.7.

"Commissioner of labor" means the commissioner of labor or duly authorized representative.

"Day" means a calendar day.

"Notification of proposed penalty" means a written communication issued by the commissioner of labor to an employer pursuant to Iowa Code section 88.8.

"Proceeding" means any proceeding before the administrative law judge or the appeal board.

"Representative" means any person, including an authorized employee representative, authorized by a party or intervenor to represent that party or intervenor in a proceeding.

"Working day" means all days except Saturdays, Sundays, and state and federal holidays.

486—4.2(10A,88) Scope of rules—applicability of Iowa rules of civil procedure.

4.2(1) These rules govern all proceedings before the appeal board.

4.2(2) In the absence of a specific provision, procedures must be in accordance with the Iowa rules of civil procedure.

486—4.3 Reserved.

486—4.4(10A,88) Computation of time.

4.4(1) In computing any period of time prescribed or allowed in these rules, the day on which the designated period begins is not included. The last day of the period so computed is included unless it is a Saturday or Sunday or a state or federal holiday, in which event the period runs until the end of the next day that is not a Saturday or Sunday or a state or federal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays and Sundays and state and federal holidays are excluded in the computation.

4.4(2) Where service of a pleading or document is by mail pursuant to rule 486—4.7(10A,88), three days is added to the time allowed by these rules for the filing of a responsive pleading.

486—4.5(10A,88) Extensions of time. Requests for extensions of time for the filing of any pleading or document must be received in advance of the date on which the pleading or document is due to be filed.

486—4.6(10A,88) Record address.

4.6(1) Every pleading or document filed by any party or intervenor must contain the name, current address, telephone number, and email address of the party or intervenor's representative or, if there is no representative, the party or intervenor's own name, current address, telephone number, and email address. Any change in such information must be communicated promptly in writing to the administrative law judge, or the appeal board if no administrative law judge has been assigned, and to

all other parties and intervenors. A party or intervenor who fails to furnish such information is deemed to have waived the party's or intervenor's right to notice and service under these rules.

4.6(2) All persons who file case documents electronically in the appeal board's electronic document management system (EDMS) pursuant to 486—Chapter 18 are responsible for both maintaining a valid email address associated with the registered account and regularly monitoring that email address.

486—4.7(10A,88) Service and notice.

4.7(1) At the time of filing pleadings or other documents, the filer shall serve a copy on every other party or intervenor.

4.7(2) Service upon a party or intervenor who has appeared through a representative must be made only upon such representative.

4.7(3) Unless otherwise ordered, service may be accomplished by the following methods:

a. EDMS filing. For electronically filed documents, service is accomplished on registered filers by filing in the EDMS system and on nonregistered parties or nonregistered intervenors by the simultaneous service of the document any of the methods set out in paragraph 4.7(3)*"b," "c,"* or *"d."*

b. Email. Service is accomplished upon sending the item to the recipient's email address provided pursuant to subrule 4.6(1).

c. U.S. mail. Service is accomplished upon depositing the item in the U.S. mail with first-class or higher class postage pre-paid addressed to the recipient's record address provided pursuant to subrule 4.6(1).

d. Commercial or other personal delivery. Service is accomplished upon delivery of the item to the recipient's record address provided pursuant to subrule 4.6(1).

e. Non-e-filed documents. Documents required to be served upon other counsel or parties but that are not filed in EDMS may be served by any of the methods set out in paragraph 4.7(3)*"b," "c,"* or *"d"* or any means agreed to by all parties in writing.

f. Following transmittal to administrative law judge. After the case is transmitted to the administrative hearings division within DIAL, the contested case proceeding will be conducted pursuant to 481—Chapter 10 and any other administrative rule applicable to the specific type of proceeding. Such regulations will govern the process before the administrative law judge, including the filing and service of documents.

4.7(4) Proof of service on other parties and intervenors is accomplished by a written statement setting forth the date and manner of service. Such statements must be filed with the pleading or document.

4.7(5) Where service is accomplished by posting, proof of posting must be filed not later than the first working day following the posting.

4.7(6) Service and notice to employees represented by an authorized employee representative is deemed accomplished by serving the representative in the manner prescribed in subrule 4.7(3).

4.7(7) Posting.

a. In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of docketing of the notice of contest, post, where the citation is required to be posted by the labor services division rules, a copy of the notice of contest and a notice informing affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form is deemed to comply with this subrule:

(Name of Employer)

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act. The citation has been contested and will be the subject of a hearing before an administrative law judge designated by the employment appeal board. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the employment appeal board in its rules of procedure. Notice of intent to participate should be sent at the earliest

opportunity to: Employment Appeal Board, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321. All papers relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near the workplace).

b. Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the commissioner of labor for abatement of the violation has been contested and will be the subject of an administrative hearing.

4.7(8) The authorized employee representative, if any, must be served with the notice set forth in subrule 4.7(7) and with a copy of the notice of contest.

4.7(9) A copy of the notice of the hearing to be held before the administrative law judge must be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

4.7(10) A copy of the notice of the hearing to be held before the administrative law judge or the appeal board must be served by the employer on the authorized employee representative of affected employees in the manner prescribed in subrule 4.7(3), if the employer has not been informed that the authorized employee representative has entered an appearance as of the date that the notice is received by the employer.

4.7(11) Where a notice of contest with respect to the reasonableness of the abatement period is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the statement filed in conformance with rule 486—4.37(10A,88) of this division, serve a copy thereof on such authorized employee representative in the manner prescribed in subrule 4.7(3) and shall file proof of such service.

4.7(12) Where a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support thereof must be provided to the employer for posting in the manner prescribed in subrule 4.7(7).

4.7(13) An authorized employee representative who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

4.7(14) Where posting is required by this rule, such posting must be maintained until the commencement of the hearing or until earlier disposition.

4.7(15) When settlement agreements are filed with the appeal board, they must be posted for ten days at or near the place where the citation is required to be posted.

4.7(16) If any party or intervenor fails to comply with the notice requirements of these rules, the appeal board may issue appropriate orders.

486—4.8(10A,88) Filing.

4.8(1) *Filing documents.* Appeals and all other pleadings filed with the appeal board must be electronically filed pursuant to 486—Chapter 18 unless a self-represented party or intervenor establishes that complying with this paragraph will place an undue burden upon that party or intervenor under subrule 4.8(2). Documents may be filed with the appeal board via email if the documents are covered by a protective order, have been placed "under seal," or are being submitted for in camera review.

4.8(2) *Undue burden.* Self-represented parties or intervenors may submit a written statement to the appeal board requesting an exemption from the mandatory e-filing requirement on the grounds that it would be an undue burden to comply with the requirement. If the appeal board grants an exemption, exempt self-represented parties or intervenors must file documents by postage-prepaid first class or higher class U.S. mail, commercial delivery service, personal delivery, or facsimile transmission. Documents may not be filed with the appeal board via email except for documents that are covered by a protective order, have been placed "under seal," or are being submitted for in camera review.

4.8(3) *Following transmittal to administrative law judge.* After the case is transmitted to the division of administrative hearings, the contested case proceeding will be conducted pursuant to 481—Chapter 10 and any other administrative rule applicable to the specific type of proceeding. Such regulations will govern the filing process before the administrative law judge, including the filing and service of documents.

486—4.9(10A,88) Consolidation. Cases may be consolidated on the motion of any party or intervenor or on the appeal board's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

This rule is intended to implement Iowa Code section 10A.601 and chapter 88.

486—4.10(10A,88) Severance. Upon its own motion, or upon motion of any party or intervenor, the appeal board may, for good cause, order any proceeding severed with respect to some or all issues or parties.

486—4.11(10A,88) Protection of trade secrets and other confidential information.

4.11(1) Upon application by any person, in a proceeding where trade secrets or other matters may be divulged, the confidentiality of which is protected by Iowa Code section 88.12, the appeal board or the administrative law judge shall issue such orders as may be appropriate to protect the confidentiality of such matters.

4.11(2) Interlocutory appeal to the appeal board from an adverse ruling by the administrative law judge under this rule is as of right.

486—4.12 to **4.19** Reserved.

DIVISION II
PARTIES AND REPRESENTATIVES

486—4.20(10A,88) Party status.

4.20(1) Affected employees and authorized employee representatives may elect to participate as parties at any time before the commencement of the hearing. For good cause shown, the appeal board may allow such election at a later time. More information can be found in rule 486—4.21(10A,88).

4.20(2) Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may elect party status at any time before the commencement of the hearing. More information can be found in rule 486—4.21(10A,88).

This rule is intended to implement Iowa Code sections 88.8(3) and 10A.601.

486—4.21(10A,88) Intervention—appearance by nonparties.

4.21(1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing.

4.21(2) The petition must set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unnecessarily delay the proceeding.

4.21(3) The appeal board or the administrative law judge may grant a petition for intervention to such an extent and upon such terms as the appeal board or the administrative law judge determines.

486—4.22(10A,88) Representatives of parties and intervenors.

4.22(1) Any party or intervenor may appear in person or through an attorney or any non-attorney representative. A representative must file an appearance in accordance with rule 486—4.23(10A,88). In the absence of an appearance by a representative, a party or intervenor is deemed to appear for

itself. A corporation or unincorporated association may be represented by an authorized officer or agent.

4.22(2) A representative of a party or intervenor is deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

4.22(3) Affected employees who are represented by an authorized employee representative may appear only through such authorized employee representative.

4.22(4) A representative need not be an attorney at law.

486—4.23(10A,88) Appearance and withdrawal of counsel.

4.23(1) *Entry of appearance.*

a. General. A representative of a party or intervenor may enter an appearance by signing the first document filed on behalf of the represented person or may subsequently file an entry of appearance.

b. Appearance in first document or pleading. If the first document filed on behalf of a party or intervenor is signed by a representative, the representative will be recognized as representing that party. No separate entry of appearance by the representative is necessary.

c. Subsequent appearance. Where a representative has not previously appeared on behalf of a party or intervenor, the representative may file an entry of appearance.

4.23(2) *Withdrawal of counsel.* Any counsel or representatives of record desiring to withdraw an appearance must file a motion requesting leave to withdraw. Prior notice of the motion must be given by the counsel or representative to the represented person. Current contact information for the represented person must be included with the motion. The motion of counsel to withdraw may be denied where it is necessary to avoid undue delay or prejudice to the rights of a party or intervenor.

486—4.24 to **4.29** Reserved.

DIVISION III
PLEADINGS AND MOTIONS

486—4.30(10A,88) Form.

4.30(1) A pleading is required to contain a caption that identifies the parties and includes the appeal board's docket number, if assigned, and to contain a clear and plain statement of the relief that is sought, together with the grounds therefor.

4.30(2) Pleadings must be signed by the person filing or by the person's representative. Such signing constitutes a representation that the signer has read the document or pleading; that to the best of the signer's knowledge, information and belief the statements made therein are true; and that it is not interposed for delay.

4.30(3) The appeal board may refuse for filing any pleading or document that does not comply with the requirements of subrules 4.30(1) and 4.30(2).

486—4.31(10A,88) Caption—titles of cases.

4.31(1) Cases initiated by a notice of contest are to be titled:

Commissioner of Labor, Complainant v.

(Name of Contestant), Respondent.

4.31(2) Cases initiated by a petition for modification of the abatement period are to be titled:

(Name of Employer), Petitioner v.

Commissioner of Labor, Respondent.

4.31(3) The titles listed in subrules 4.31(1) and 4.31(2) should appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

4.31(4) The first page of any pleading or document (other than exhibits) should show, at the upper right of the page, opposite the caption, the docket number, if known, assigned to the case.

486—4.32(10A,88) Notices of contest. The commissioner of labor shall, within seven days of receipt of a notice of contest, transmit the original to the appeal board, together with copies of all relevant documents.

486—4.33(10A,88) Employer contests.

4.33(1) *Complaint.*

a. The commissioner of labor shall file a complaint with the appeal board no later than 21 days after receipt of notice of contest.

b. The complaint must set forth all alleged violations and proposed penalties that are contested and must state with particularity:

(1) The basis for jurisdiction;

(2) The time, location, place, and circumstances of each alleged violation; and

(3) The considerations upon which the period for abatement and the proposed penalty on each such alleged violation are based.

c. Where the commissioner of labor seeks in the complaint to amend the citation or proposed penalty, the commissioner of labor shall set forth the reasons for amendment and shall state with particularity the change sought.

4.33(2) *Hearing before administrative law judge and appeal to appeal board.*

a. Once a complaint is filed with the appeal board, then the appeal board will assign its docket number to the case. The appeal board will then file a transmittal form with a copy of the complaint attached with the administrative hearings division within DIAL. After the matter is transmitted, future filings must be made in the administrative electronic document management system (AEDMS) in the administrative hearings division within DIAL.

b. After the case is transmitted to the administrative hearings division within DIAL, it will be assigned a case number. The administrative hearings division within DIAL will assign the proceeding to an administrative law judge to serve as a presiding officer. The administrative law judge will issue a notice for a prehearing conference or a notice of hearing.

c. The contested case proceeding will be conducted pursuant to 481—Chapter 10 and any other administrative rule, including this rule, applicable to the specific type of proceeding. Simplified proceedings are governed by division VIII of this chapter.

4.33(3) *Answer.*

a. Within 21 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the administrative hearings division within DIAL.

b. The answer must contain a short and plain statement denying those allegations in the complaint that the party intends to contest. Any allegation not denied is deemed admitted.

c. The answer must include all affirmative defenses being asserted. Such affirmative defenses include but are not limited to "infeasibility," "unpreventable employee misconduct," and "greater hazard." Failure to raise an affirmative defense in the answer may bar the asserting party from raising the defense at a later stage in the proceeding.

d. A motion filed in lieu of an answer must be filed no later than 21 days after service of the complaint.

486—4.34 Reserved.

486—4.35(10A,88) Failure to file. Failure to file any pleading pursuant to these rules when due may constitute a withdrawal of the citation or the notice of contest. The presiding officer may, after opportunity to present excuses for failure to file, enter an order defaulting the party and disposing of the case without regard to the merits of the alleged violation.

This rule is intended to implement Iowa Code section 10A.601 and chapter 88.

486—4.36(10A,88) Petitions for modification of abatement period.

4.36(1) An employer may file a petition for modification of abatement period with the commissioner of labor when such employer has made a good faith effort to comply with the abatement requirements of a citation, but abatement has not been completed because of factors beyond the employer's reasonable control.

4.36(2) Filing with the commissioner of labor.

a. A petition for modification of abatement period must be filed with the commissioner of labor no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition must be accompanied by the employer's statement of exceptional circumstances explaining the delay.

b. The employer must post a copy of the petition for modification of abatement period, along with a notice informing affected employees of their right to intervene and of the availability of all pleadings for inspection and copying at reasonable times. The employer shall also serve the petition and notice upon any authorized employee representative. The following is sufficient to comply with the notice requirement:

(Name of employer)

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act and has requested more time to correct one or more violations. Affected employees are entitled to participate as parties under terms and conditions established by the employment appeal board in its rules of procedure. Affected employees or their representatives desiring to participate must file a written objection to the employer's petition with the commissioner of labor. Failure to file such objection within ten working days of the first posting of the accompanying petition and this notice constitutes a waiver of any further right to object to the petition or to participate in any proceeding relating thereto. Objections must be sent to: Commissioner of Labor, Labor Services Division, 1000 East Grand Avenue, Des Moines, Iowa 50319. All papers relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near workplace).

4.36(3) A petition for modification of abatement period must be in writing and include the following information:

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement period necessary in order to achieve compliance.

c. The reason such additional time is necessary in order to achieve compliance.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. Certification by the employer that it has complied with paragraph 4.36(2)*"b."*

4.36(4) The commissioner of labor has the authority to approve a petition for modification of abatement period filed in accordance with subrules 4.36(2) and 4.36(3), but the commissioner of labor may not exercise approval power until the expiration of 15 working days from the date the petition and notice were first posted pursuant to paragraph 4.36(3)*"e"* and subrule 4.36(5). Uncontested approved petitions are deemed final orders of the appeal board.

4.36(5) The employer shall post a copy of the petition and a notice of employee rights complying with paragraph 4.36(3)*"e"* before filing a petition with the commissioner of labor. Such posting must be in a conspicuous place where all affected employees will have notice thereof or near each location where the violation occurred. The petition and notice of employee rights must remain posted for a period of ten working days. Where affected employees are represented by an authorized representative, the representative must be served with a copy of the petition.

4.36(6) Affected employees or their representatives may file an objection in writing to the petition with the commissioner of labor. Failure to file an objection within ten working days of the date of posting of the petition or of service upon an authorized representative constitutes a waiver of any further right to object to the petition.

4.36(7) Where an objection is filed by an affected employee or authorized employee representative, a copy of that objection must be provided to the employer for posting along with the documents specified in subrule 4.36(5). An authorized employee representative who files an objection shall serve any other authorized employee representative whose members are affected employees.

4.36(8) Where any petition is objected to by affected employees or by the commissioner of labor, such petition must be processed as follows:

a. The petition, citation, and objections must be forwarded to the appeal board within 10 working days after the expiration of the 15-working-day period set out in subrule 4.36(4).

b. The appeal board shall docket and process such petition as an emergency proceeding under subrule 4.101(3).

c. An employer petitioning for modification of an abatement period has the burden of proving that it has made a good faith effort to comply with the abatement requirements of the citation and abatement has not been completed because of factors beyond the employer's reasonable control.

d. Where the petitioner is a corporation, it shall file a separate declaration listing all parents, subsidiaries, and affiliates of that corporation or stating that the corporation has no parents, subsidiaries, or affiliates, whichever is applicable, within ten working days after service of the docketing notice of the petition for modification of the abatement date.

e. Within ten days after receipt of the notice of docketing by the appeal board, each objecting party or intervenor may file a response to the petition or a statement of position regarding the petition with the appeal board.

486—4.37(10A,88) Employee contests.

4.37(1) Where an affected employee or authorized employee representative files a notice of contest with respect to the abatement period, the commissioner of labor shall, within ten days from receipt of the notice of contest, file a clear and concise statement of the reasons the abatement period prescribed is not unreasonable.

4.37(2) Not later than ten days after receipt of the commissioner of labor's statement, the contestant shall file a response.

4.37(3) Pursuant to Iowa Code section 88.8(3), the employee's notice of contest must be filed within 15 days of the issuance of the citation.

4.37(4) All contests under this rule are expedited under subrule 4.101(3).

486—4.38 to **4.59** Reserved.

DIVISION IV
RESERVED

DIVISION V
HEARINGS

486—4.60(10A,88) Notice of hearing. Notice of the time, place, and nature of a hearing must be given to the parties and intervenors at least 30 days in advance of such hearing, except as otherwise provided in rule 486—4.101(10A,88).

486—4.61(10A,88) Postponement of hearing.

4.61(1) *Motion to postpone.* A hearing may be postponed by an administrative law judge on the administrative law judge's own motion or for good cause shown upon the motion of a party. A motion for postponement must state the position of the other parties, either by a joint motion or by a representative of the moving party. The filing of a motion for postponement does not automatically postpone a hearing.

4.61(2) *Grounds for postponement.* A motion for postponement grounded on conflicting engagements of counsel or employment of new counsel must be promptly filed.

4.61(3) *When motion must be received.* A motion to postpone a hearing must be received at least ten days prior to the hearing. A motion for postponement received less than ten days prior to the hearing will generally be denied unless good cause is shown for late filing.

4.61(4) *Postponement in excess of 60 days.* No postponement in excess of 60 days may be granted without the concurrence of the chief administrative law judge.

486—4.62(10A,88) Failure to appear.

4.62(1) Subject to the provisions of subrule 4.62(2), the failure of a party to appear at a hearing is deemed to be a waiver of all rights, except the rights to be served with a copy of the decision of the appeal board or to appeal the decision.

4.62(2) The appeal board, or the presiding officer, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled. Requests for reinstatement must be made, in the absence of extraordinary circumstances, within seven days after the scheduled hearing date.

486—4.63(10A,88) Payment of witness fees and mileage—fees of persons taking depositions. Witnesses summoned before the appeal board must be paid the same fees and mileage that are paid witnesses in the district courts of the state of Iowa, and witnesses whose depositions are taken and the persons taking the same are entitled to the same fees as are paid for like services in the district courts of the state of Iowa. Fees and mileage must be paid by the party at whose instance the witness appears.

486—4.64(10A,88) Reporter's fees. Reporter's fees are borne by the party or intervenor requesting a court reporter unless the appeal board provides for a court reporter. Transcript costs are borne by the person requesting a transcript.

486—4.65(10A,88) Transcript of testimony.

4.65(1) Hearings must be electronically recorded. A record of testimony taken at the hearing must be filed in the appeal board office.

4.65(2) The appeal board's recording or transcript of the hearing is available to any interested person for examination at reasonable times without cost. Upon receipt of a copy of a petition filed in a district court of the state of Iowa praying that an order of the appeal board be modified or set aside pursuant to Iowa Code section 88.9, the appeal board shall either:

a. Have the electronic recording transcribed, certify the transcript, and file it with the court, if no court reporter recorded the hearing, or

b. Contract with the court reporter to transcribe the reporter's notes; in which case the reporter shall certify the transcript and deliver the transcript to the appeal board for filing with the court.

486—4.66 Reserved.

486—4.67(10A,88) Ex parte communication and disqualification. In all contested case matters before the appeal board, rule 7—2506.23(17A) will govern issues related to ex parte communication, and rule 7—2506.9(17A) will govern disqualification of appeal board members.

486—4.68(10A,88) Examination of witnesses. Witnesses must be examined orally under oath. Opposing parties have the right to cross-examine any witness whose testimony is introduced by an adverse party or by the administrative law judge.

486—4.69 to **4.71** Reserved.

486—4.72(10A,88) Rules of evidence. Hearings before the appeal board or administrative law judge shall be in accordance with these rules and insofar as practicable shall be governed by the rules of evidence applicable in the Iowa district courts. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for their serious affairs, and it may be based upon such evidence even if it would not be admissible in a jury trial.

486—4.73(10A,88) Burden of proof.

4.73(1) In proceedings commenced by notice of contest, the commissioner of labor has the burden of proof.

4.73(2) In proceedings commenced by a petition for modification of the abatement period, the petitioner has the burden of proof.

486—4.74(10A,88) Objections.

4.74(1) Any objections with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the administrative law judge, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and must be included in the record. Such objection is not waived merely by further participation in the hearing.

4.74(2) Whenever evidence is excluded from the record, the person offering such evidence may make an offer of proof, which must be included in the record of the proceeding.

4.74(3) Once the presiding officer rules definitively on the record, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

486—4.75 Reserved.

486—4.76(10A,88) Filing of briefs and proposed findings with the appeal board or the administrative law judge—oral argument at the hearing. Any party or intervenor is entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which will be recorded as part of the hearing. Any party or intervenor is entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the presiding officer. The presiding officer may fix a reasonable period of time for such filing.

486—4.77 to **4.89** Reserved.

DIVISION VI
POSTHEARING PROCEDURES

486—4.90(10A,88) Decisions of appeal board or administrative law judge.

4.90(1) When the appeal board presides at the reception of the evidence in a contested case, the decision of the appeal board is a final decision.

4.90(2) When the appeal board did not preside at the reception of the evidence in a contested case, the administrative law judge shall make a proposed decision. The proposed decision of the presiding officer may be reviewed by the appeal board in accordance with rules 7—2506.27(17A) and 7—2506.28(17A). Appeals and appeal briefs must be filed in the appeal board's EDMS under the original docket number.

4.90(3) Employers shall post a copy of the decision and proposed or final order for 30 days for the information of affected employees.

486—4.91 Reserved.

486—4.92(10A,88) Stay or rehearing of final order. Applications for stay are governed by rule 7—2506.29(17A), and applications for rehearing are governed by rule 7—2506.28(17A).

486—4.93 to **4.99** Reserved.

DIVISION VII
MISCELLANEOUS PROVISIONS

486—4.100(10A,88) Settlement.

4.100(1) Settlement is encouraged at any stage of the proceedings where such settlement is consistent with the provisions and objectives of the Act.

4.100(2) Where parties to settlement agree upon a proposal, it must be served upon represented and unrepresented affected employees in the manner set forth in 486—4.7(10A,88). Proof of such service must accompany the proposed settlement agreement when submitted to the appeal board.

4.100(3) Parties and intervenors have ten days from the date of service to object to a settlement agreement.

4.100(4) Settlement agreements must be filed with the appeal board to permit final disposition of the contested case.

486—4.101(10A,88) Emergency proceeding.

4.101(1) Upon the application of any party or intervenor, or upon its own motion, and for good cause shown, the appeal board may order an emergency proceeding. The party or intervenor shall include in its motion the hazards to which the employees are exposed, the probable injuries which could occur from such exposure, and the number of employees exposed to each hazard.

4.101(2) When such proceeding is ordered, the appeal board shall notify all parties and intervenors.

4.101(3) The appeal board in an emergency proceeding shall make necessary orders with respect to time for filing of pleadings and other documents and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

486—4.102(10A,88) Standards of conduct. All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the state of Iowa. The appeal board or administrative law judge may take appropriate action to enforce the standards of conduct, including but not limited to excluding persons from the hearing.

486—4.103(10A,88) Ex parte communication.

4.103(1) There shall be no ex parte communication, with respect to the merits of any case not concluded, between the appeal board, including any members, officer, employee, or agent of the appeal board who is employed in the decisional process, and any of the parties or intervenors.

4.103(2) In the event such ex parte communication occurs, the appeal board may make such orders or take such action as fairness requires. Upon notice and hearing, the appeal board may take disciplinary action as is appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

486—4.104(10A,88) Restrictions as to participation by investigative or prosecuting officers. In any proceeding noticed pursuant to the rules in this chapter, the commissioner of labor shall not participate or advise with respect to the appeal board's decision except as permitted by these rules.

486—4.105 Reserved.

486—4.106(10A,88) Restrictions with respect to former employees.

4.106(1) No former employee of the appeal board or the commissioner of labor (including a member of the appeal board or the commissioner of labor) may appear before the appeal board as an attorney or other representative for any party in any proceeding or other matter, formal or

informal, in which that former employee participated personally and substantially during the period of employment.

4.106(2) No former employee of the appeal board or the commissioner of labor (including a member of the appeal board or the commissioner of labor) may appear before the appeal board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, for which that former employee was personally responsible during the period of employment unless two years have elapsed since the termination of such employment.

486—4.107 and **4.108** Reserved.

486—4.109(10A,88) Penalties.

4.109(1) All penalties assessed by the appeal board are civil.

4.109(2) The appeal board has no jurisdiction under Iowa Code section 88.14(5), 88.14(6), 88.14(7) and 88.14(8) and will conduct no proceeding thereunder.

486—4.110 to **4.199** Reserved.

DIVISION VIII
SIMPLIFIED PROCEEDINGS

486—4.200(10A,88) Purpose.

4.200(1) The purpose of this division is to provide simplified procedures for resolving contests under the Act so that parties before the appeal board may reduce the time and expense of litigation while being ensured due process and a hearing that meets the requirements of the Iowa administrative procedure Act. These procedural rules will be applied to accomplish this purpose.

4.200(2) Procedures under this subrule are simplified in a number of ways. The major differences between these procedures and those provided elsewhere in this chapter are as follows.

a. Complaints and answers are not required.

b. Pleadings generally are not required. Early discussions among the parties and the presiding officer are required to narrow and define the disputes between the parties.

c. The commissioner of labor is required to provide the employer with certain informational documents early in the proceeding.

d. Discovery is not permitted except as ordered by the administrative law judge.

e. Interlocutory appeals are not permitted.

f. Hearings are less formal. The administrative law judge may allow the parties to argue their case orally at the conclusion of the hearing and may allow or require post-hearing briefs or statements of position. The administrative law judge may render a decision from the bench.

486—4.201(10A,88) Application. The rules in this division will govern proceedings before an administrative law judge in a case chosen for simplified proceedings under rule 486—4.203(10A,88).

486—4.202(10A,88) Eligibility for simplified proceedings.

4.202(1) Cases selected for simplified proceedings will be those that do not involve complex issues of law or fact. Cases appropriate for simplified proceedings will generally include those with one or more of the following characteristics:

a. Relatively few citation items.

b. An aggregate proposed penalty of not more than $20,000.

c. No allegation of willfulness or a repeat violation.

d. Not involving a fatality.

e. A hearing that is expected to take less than two days.

f. A small employer whether self-represented or represented by counsel.

4.202(2) Those cases with an aggregate proposed penalty of more than $20,000 but not more than $30,000, if otherwise appropriate, may be selected for simplified proceedings at the discretion of the chief administrative law judge of the administrative hearings division within DIAL.

486—4.203(10A,88) Commencing simplified proceedings.

4.203(1) *Selection.* Upon receipt of a transmittal of a case under this chapter, the chief administrative law judge of the administrative hearings division within DIAL may, at the chief administrative law judge's discretion, assign an appropriate case for simplified proceedings.

4.203(2) *Party request.* Within 21 days of the transmittal, any party may request that the case be assigned for simplified proceedings. The request must be in writing. For example, "I request simplified proceedings" will suffice. The request must be filed in the AEDMS.

4.203(3) *Judge's ruling on request.* The chief administrative law judge or the administrative law judge assigned to the case may grant a party's request and assign a case for simplified proceedings. Such request should be acted upon within 14 days of its receipt.

4.203(4) *Time for filing of answer.* If a party has requested simplified proceedings or the administrative law judge has assigned the case for simplified proceedings, the time for filing the answer will not run. If a request for simplified proceedings is denied, the period for filing an answer will begin to run upon issuance of the notice denying simplified proceedings.

486—4.204(10A,88) Discontinuance of simplified proceedings.

4.204(1) *Procedure.* If it becomes apparent at any time that a case is not appropriate for simplified proceedings, the administrative law judge assigned to the case may, upon motion by any party or upon the administrative law judge's own motion, discontinue simplified proceedings and order the case to continue under conventional rules. Before discontinuing simplified proceedings, the administrative law judge will consult with the chief administrative law judge.

4.204(2) *Party motion.* At any time during the simplified proceedings, any party may request that simplified proceedings be discontinued and that the matter continue under conventional procedures. A motion to discontinue must explain why the case is inappropriate for simplified proceedings. Responses to such motions must be filed within seven days. Joint motions to return a case to conventional proceedings must be granted by the administrative law judge and do not require a showing of good cause, except that the administrative law judge may deny such a motion that is filed less than 30 days before a scheduled hearing date.

4.204(3) *Ruling.* If simplified proceedings are discontinued, the administrative law judge may issue such orders as are necessary for an orderly continuation under conventional rules.

486—4.205(10A,88) Filing of pleadings.

4.205(1) *Complaint and answer.* Once a case is designated for simplified proceedings, the complaint and answer requirements are suspended. If the commissioner of labor has filed a complaint, a response to a petition for modification of abatement, or a response to an employee contest, and if simplified proceedings have been ordered, no response to these documents will be required.

4.205(2) *Motions.* Limited, if any, motion practice is contemplated in simplified proceedings.

486—4.206(10A,88) Disclosure of information.

4.206(1) *Disclosure to employer.*

a. Within 21 days after a case is designated for simplified proceedings, the commissioner of labor shall provide the employer, free of charge, copies of the narrative and the worksheet or the equivalents.

b. Within 30 days after a case is designated for simplified proceedings, the commissioner of labor shall provide the employer with reproductions of any photographs or videotapes that the commissioner of labor anticipates using at the hearing.

c. Within 30 days after a case is designated for simplified proceedings, the appeal board shall provide to the employer any exculpatory evidence in the commissioner of labor's possession.

d. The administrative law judge should act expeditiously on any claim by the employer that the commissioner of labor improperly withheld or redacted any portion of the documents, photographs, or videotapes on the grounds of confidentiality or privilege.

4.206(2) *Disclosure to the commissioner of labor.* When the employer raises an affirmative defense, the administrative law judge shall order the employer to disclose to the commissioner of labor such documents relevant to the affirmative defense as the administrative law judge deems appropriate.

486—4.207(10A,88) Prehearing conference.

4.207(1) *When held.* As early as practicable after the employer has received the documents set forth in paragraph 4.206(1)*"a,"* the administrative law judge may conduct a prehearing conference, which the administrative law judge may hold in person or by telephone or electronic means.

4.207(2) *Content.* At the prehearing conference, the parties may discuss the following: settlement of the case, the narrowing of issues, an agreed statement of issues and facts, all defenses, witnesses and exhibits, motions, and any other pertinent matter. Except under extraordinary circumstances, any affirmative defenses not raised at the prehearing conference may not be raised later. At the conclusion of the conference, the administrative law judge will issue an order that may set forth any agreements reached by the parties and that may specify the issues to be addressed by the parties at the hearing.

486—4.208(10A,88) Discovery. Discovery, including requests for admissions, will only be allowed under the conditions and time limits set by the administrative law judge.

486—4.209(10A,88) Hearing.

4.209(1) *Procedures.* As soon as practicable after the conclusion of the prehearing conference, the administrative law judge will hold a hearing on any issue that remains in dispute. The hearing will be in accordance with 481—Chapter 10.

4.209(2) *Agreements.* At the beginning of the hearing, the administrative law judge will enter into the record all agreements reached by the parties as well as defenses raised during the prehearing conference. The parties and the administrative law judge then will attempt to resolve or narrow the remaining issues. The administrative law judge will enter into the record any further agreements reached by the parties.

4.209(3) *Evidence.* Except as to matters that are protected by evidentiary privilege, the admission of evidence is independent of the rules of evidence. The administrative law judge will receive oral, physical, or documentary evidence that is not irrelevant, unduly repetitious, or unreliable. Testimony will be given under oath or affirmation.

4.209(4) *Oral and written argument.* Each party may present an oral argument at the close of the hearing. The administrative law judge may allow or require posthearing briefs or statements of position upon the request of either party or on the administrative law judge's own motion.

4.209(5) *Administrative law judge's decision.*

a. Bench decision. The administrative law judge may render a decision from the bench. In rendering a decision from the bench, the administrative law judge shall state the issues in the case and make clear both the administrative law judge's findings of fact and conclusions of law on the record. The administrative law judge shall reduce the bench decision in the matter to writing and serve it on the parties as soon as practicable but no later than 45 days after the hearing. If additional time is needed, approval of the chief administrative law judge is required. The written decision must include, as an appendix, the bench decision as set forth in the transcript.

b. Written decision. If the administrative law judge does not render a decision from the bench, the administrative law judge will issue a written decision within 60 days of the close of the record. The record will ordinarily be deemed closed upon the latter of the filing of the hearing transcript or the completion of any permitted posthearing briefing. If additional time is needed, approval of the chief administrative law judge is required.

486—4.210(10A,88) Review of administrative law judge's decision. The proposed decision of the administrative law judge may be reviewed by the appeal board in accordance with rules 7—2506.27(17A) and 7—2506.28(17A). Appeals and appeal briefs must be filed in the appeal board's EDMS system under the original docket number.

These rules are intended to implement Iowa Code section 88.8(3).