Regulatory Analysis

Notice of Intended Action to be published: 871—Chapter 26
"Contested Case Proceedings"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A and 96
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 96

Public Hearing

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

December 16, 2025 9:30 a.m.	Microsoft Teams Join the meeting now Meeting ID: 232 096 499 091 63 Passcode: 6qG2wz2v Dial: 1.469.998.6043 Find a local number Phone conference ID:884 907 590#

Public Comment

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

Jeffrey Koncsol
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1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.725.5400
Email: jeffrey.koncsol@iwd.iowa.gov

Purpose and Summary

The purpose of these proposed rules is to provide procedures for contested case proceedings brought pursuant to Iowa Code chapter 96.

Analysis of Impact

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

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

There are no costs associated with this proposed rulemaking.

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

The general public and stakeholders 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 quantitative impact.

- **Qualitative description of impact:**

The general public and stakeholders will receive streamlined information.

3. **Costs to the State:**

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

There are no implementation and enforcement costs.

- **Anticipated effect on State revenues:**

There is no anticipated effect on State revenues.

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

These changes remove the Department's cost of maintaining a fax line to receive the limited number of appeals sent in annually via that method. These changes also simplify the discovery process for all parties and clarify the ability for claimant appellants to be represented by non-attorney representatives, thereby potentially resulting in a more efficient and cost-effective appeals process. Failure to effect these changes would result in higher costs to the State as well as a potential negative impact to both appellants and the State during the appeal process.

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:**

Not applicable.

- **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?

This rulemaking does not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 871—Chapter 26 and adopt the following **new** chapter in lieu thereof:

CHAPTER 26
CONTESTED CASE PROCEEDINGS

871—26.1(17A,96) Applicability. The rules in this chapter govern the procedures for contested case proceedings brought pursuant to Iowa Code chapter 96.

871—26.2(17A,96) Definitions. Terms defined in the Iowa employment security law and the Iowa administrative procedure Act and that are used in these rules shall have the same meaning as provided

by such laws. In addition, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Contested case" means a proceeding defined in Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case in Iowa Code section 17A.10A. It specifically includes any appeal from a determination of a representative of the department or any appeal or request for a hearing by an employer or employing unit from an experience rating, charge determination or other decision affecting its liability. Except as provided in subrule 26.16(4), a final decision of the employment appeal board of the department of inspections, appeals, and licensing shall constitute final agency action. A presiding officer's decision shall be the final decision of the department if there is no appeal therefrom to the employment appeal board of the department of inspections, appeals, and licensing or if the appeal is made directly to the district court in lieu of filing an appeal with the employment appeal board of the department of inspections, appeals, and licensing.

"Presiding officer" means an administrative law judge employed by the department of inspections, appeals, and licensing.

871—26.3(17A,96) Appeal of unemployment benefits contested case.

26.3(1) An unemployment benefits contested case must be filed by a party within ten calendar days from the date noted on the initial determination. The appeal must be in writing and delivered by mail, by email, online, or in person to the department of inspections, appeals, and licensing's unemployment insurance appeals bureau at Department of Inspections, Appeals, and Licensing, Unemployment Insurance Appeals Bureau, 6200 Park Avenue, Suite 100, East Entrance, Des Moines, Iowa 50321-1270. An online appeal is filed by completing and submitting an online appeal form available in the IowaWorks digital portal.

26.3(2) The appeal should state the following:

a. The name, address and social security number of the claimant;

b. A reference to the decision from which the appeal is taken; and

c. The grounds upon which the appeal is based.

26.3(3) Notwithstanding the provisions of subrule 26.3(1), a contributory employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 30 calendar days from the mailing date of the quarterly statement of benefit charges.

26.3(4) Also notwithstanding the provisions of subrule 26.3(1), a reimbursable employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 15 calendar days from the mailing date of the quarterly billing of benefit charges.

871—26.4(17A,96) Appeal of employer liability contested case.

26.4(1) An appeal from a decision of the tax bureau of the department concerning employer status and liability, assessments, contribution (tax) rate, successorship, workers' status, and all questions regarding coverage of a worker or group of workers must be filed by a party no later than 30 calendar days from the mailing date printed on the notice. The appeal must be in writing and delivered by mail, by email, or in person to Tax Bureau, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

26.4(2) The appeal should state the following:

a. The name, address, and Iowa employer account number of the employer;

b. The name and official position of the person filing the appeal;

c. The decision that is being appealed; and

d. The grounds upon which the appeal is based.

871—26.5(17A,96) Notice of hearing.

26.5(1) Notices of hearing shall be sent to all parties at their last-known address at least ten days in advance of the hearing date by first-class mail, email, or other electronic means. Notices of hearing shall contain the information required by Iowa Code section 17A.12(2) and any additional information required by statute or rule.

26.5(2) Unless otherwise precluded, the parties in a contested case may waive any provision of this chapter pursuant to Iowa Code section 17A.10.

26.5(3) A hearing will be promptly scheduled and conducted by telephone unless a party requests that it be held in person. In-person hearings will be located at the Wallace State Office Building or at a site designated by UIAB. The party requesting an in-person hearing will ordinarily be required to travel the greater distance if all parties are not located near the same hearing site. A request for an in-person hearing may be denied if factors such as the distance between the parties, the number of parties or the health of any party make it impractical or impossible to conduct a fair hearing in person. An in-person hearing may be scheduled at the discretion of the presiding officer to whom the contested case is assigned or by the manager or chief administrative law judge of the appeals bureau. At the discretion of the presiding officer, witnesses or representatives may be allowed to participate via telephone in an in-person hearing.

26.5(4) Whenever it appears that other parties should be joined to dispose of all issues in a contested case, the presiding officer may so order and may grant such continuance to hold such additional proceedings upon notice to all parties.

26.5(5) Any number of appeals involving similar issues of law or fact may be consolidated for hearing so long as no substantial rights of any party would be prejudiced by so doing.

871—26.6(17A,96) Recusal. A presiding officer shall withdraw from participation in the hearing or the making of any decision in a contested case in accordance with provisions outlined in rule 481—10.9(17A).

871—26.7(17A,96) Withdrawals, dismissals, and continuance.

26.7(1) An appeal may be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of a presiding officer. Requests for withdrawal may be made in writing or orally, provided the oral request is recorded by a presiding officer. An appeal may be dismissed upon the request of a party or in the agency's discretion when the issue or issues on appeal have been resolved in the appellant's favor.

26.7(2) A hearing may be postponed by the presiding officer for reasons stated in 481—subrule 10.17(3), either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement should be made not less than three days prior to the scheduled hearing and may be in writing or oral, provided the oral request is recorded by the presiding officer. A party shall not be granted more than one postponement except in the case of extreme emergency.

26.7(3) For good cause shown, the presiding officer may reopen the record, and with notice to all parties, schedule another hearing.

"Good cause," for purposes of this rule, is defined as an emergency circumstance that is beyond the control of the party and that prevents the party from being able to participate in the hearing. Examples of good cause include but are not limited to death, sudden illness, or accident involving the party or the party's immediate family (spouse, partner, children, parents, siblings) or other circumstances evidencing an emergency situation that was beyond the party's control and was not reasonably foreseeable.

Examples of circumstances that do not constitute good cause include but are not limited to a lost or misplaced notice of hearing, confusion as to the date and time for the hearing, failure to follow the directions on the notice of hearing, oversleeping, or other acts demonstrating a lack of due care by the party.

26.7(4) If necessary, the presiding officer may hear, ex parte, additional information regarding the request for reopening. The granting or denial of such a request may be used as grounds for appeal to the employment appeal board of the department of inspections, appeals, and licensing upon the issuance of the presiding officer's final decision in the case.

26.7(5) If good cause for reopening has not been shown, the presiding officer may make a decision based upon whatever evidence is properly in the record or, in appropriate cases, may enter default as set forth in rule 871—26.13(17A,96).

871—26.8(17A,96) Discovery.

26.8(1) Discovery procedures applicable to civil actions are available to all parties in interest in contested cases.

26.8(2) Unless otherwise limited by a protective order, discovery is not limited. Upon application by any adversely affected party or upon the presiding officer's own motion, the presiding officer may limit discovery in the following situations:

a. The discovery sought is unduly repetitious, or the information sought can be obtained by another method that is more convenient, less burdensome, or less expensive; or

b. The party seeking discovery has had prior ample opportunity to obtain the information; or

c. The discovery is unduly burdensome or expensive when viewed in the context of the factual issues to be resolved, the limited resources of the parties, and the parties' interest in prompt resolution of the contested case.

26.8(3) A party may obtain discovery regarding any matter, not privileged, relevant to the subject matter involved in the contested case, including the existence, description, nature, custody, condition and location of any tangible items and the identity and location of persons having knowledge of discoverable matters. Information may be discovered, even if inadmissible itself, if it appears reasonably calculated to lead to the discovery of admissible evidence. The names of a party's witnesses, their expected testimony, and exhibits to be offered into evidence may be obtained by discovery.

26.8(4) A party who responded to a request for discovery with a response that was complete and accurate when made need not supplement the response to include information obtained later. However, a party must promptly supplement its response to requests for the identity and location of persons having knowledge of discoverable matters and the identity of each person expected to be called to testify at the hearing, and the party must produce copies of exhibits expected to be offered into evidence at the hearing as such decisions are made. A party must also promptly amend any response if it obtains information showing that its prior response was incorrect when made or, though correct when made, is no longer correct.

26.8(5) No motion relating to discovery, including motions for imposition of sanctions, will be considered unless the moving party states that it made a good-faith but unsuccessful effort to resolve the issues raised in the motion with the opposing party without intervention by the presiding officer.

26.8(6) Upon motion by a party or the person from whom discovery is sought or by any person who may be adversely affected thereby, and for good cause shown, the presiding officer before whom the contested case is pending may make any order that justice requires to protect a party or person from oppression or undue burden or expense. Such order may deny the request for discovery or limit terms, conditions, manner, and scope thereof.

26.8(7) A party may, in accordance with subrule 26.8(5), ask the presiding officer for an order compelling discovery if the other party fails within a reasonable time to make a complete, good-faith response. After notice to both parties and hearing on the motion, the presiding officer shall enter an order that denies or compels discovery. This order may be combined with a protective order pursuant to subrule 26.8(6).

26.8(8) Upon written request by any party or upon the presiding officer's own motion, the presiding officer may impose sanctions for the failure to respond to discovery requests; however, sanctions shall not be imposed without prior specific notice from the presiding officer of the

contemplated sanction, opportunity to be heard, and, if necessary, further opportunity to cure its failure. The sanctions may include the following:

a. Postponing and rescheduling the hearing if requested by the party demonstrably prejudiced by the failure.

b. Excluding testimony of witnesses not identified in response to a specific request for such information.

c. Excluding from the record those exhibits not identified in response to a specific request for such information.

d. Excluding the party from participating in the contested case proceedings.

e. Dismissing the party's appeal.

26.8(9) Requests for discovery shall be served on the opposing party by ordinary mail or email. Responses must be served on the party requesting the discovery within ten days after the discovery request is sent unless the presiding officer grants an extension of time to comply. Requests for discovery must be made at least ten days before a scheduled contested case hearing. A party's inattention to preparation is not good cause to postpone the hearing.

871—26.9(17A,96) Ex parte communications. Ex parte communication is subject to rule 481—10.23(17A).

871—26.10(17A,96) Motions. Motion practice is subject to rule 481—10.15(10A,17A) with the following exceptions:

1. Written responses to motions may be filed within five days after the motion is served.
2. Motions pertaining to the hearing must be filed and served at least five days prior to the hearing date.

871—26.11(17A,96) Prehearing conference. Prehearing conferences are subject to rule 481—10.16(10A,17A), with the exception that requests for a prehearing conference must be filed within three days prior to hearing.

871—26.12(17A,96) Subpoenas for witnesses and documents. Subpoenas are subject to rule 481—10.14(10A,17A) and Iowa Code section 17A.13, with the exception that subpoena requests must be filed within three days prior to hearing.

871—26.13(17A,96) Conduct of hearings. The conduct of hearings is governed by rule 481—10.20(17A), with the exception of the additional following subrules:

26.13(1) The presiding officer shall begin each hearing with a brief statement identifying the parties and issues, outlining the history of the case, advising the parties of their appeal rights and announcing what matters, if any, will be officially noticed. Any party may inspect and use any portion of the administrative file necessary for the presentation of its case. The administrative file may include information from the claimant's files maintained in the agency's computer system.

26.13(2) Each party shall be afforded an opportunity for an opening statement and final arguments.

26.13(3) The hearing shall be confined to evidence relevant to the issue or issues stated on the notice of hearing.

26.13(4) If, during the course of a hearing, it appears to the presiding officer that an issue not set forth in the notice of hearing may affect the presiding officer's decision, the presiding officer shall so notify the parties and announce willingness to continue taking testimony on the underlying factual matters if the parties agree to waive on record further notice and make no objection to continuing. If any party objects, the presiding officer shall postpone or continue the hearing and cause new notices of hearing, containing all relevant issues, to be sent to the parties. Notwithstanding, voluntary quits and discharges generally shall be construed to constitute the single issue of separation from employment so that evidence of either or both types of separation may be received in a single hearing.

26.13(5) If factual issues generally relevant to a party's eligibility or liability for benefits but unrelated to the underlying facts in controversy in the present contested case are exposed, the presiding officer may remand the issue to the appropriate section of the department for investigation and preliminary determination.

26.13(6) If a party fails to appear for the hearing, the presiding officer may proceed with the hearing or decide the appealing party is in default and dismiss the appeal as provided in Iowa Code section 17A.12(3). If no decision has been issued, the absent party may make a written request to reopen the record for good cause as defined in subrule 26.7(3). The presiding officer may reopen the record for additional material, relevant and nonrepetitious evidence not submitted at the case hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party responds to the notice of hearing after the record has been closed and any party that has participated is no longer on the telephone line or present, the presiding officer shall not take the evidence of the late party and the party may file a written request to reopen the record.

c. Once a decision has been entered, the absent party may file an appeal to the employment appeal board to request a new hearing.

26.13(7) Whenever necessary, the presiding officer may require the attendance at a hearing of department employees having knowledge of the facts in controversy or having technical knowledge concerning the issues raised in appeal.

a. If the primary issue is the claimant's ability to work, availability for work or work search, the department may be named as respondent. The presiding officer may call department personnel having knowledge of the facts in controversy as witnesses.

b. If the issue on appeal is an offer of or recall to work or a job referral by a local workforce development center, both the employer making the offer or recall and the workforce development center representative making the referral may be witnesses at the hearing.

c. If the issue on appeal is the claimant's refusal of employment because of wages, the presiding officer may take the testimony of the workforce development representative having knowledge of prevailing wages in the vicinity. The presiding officer may also obtain testimony and evidence of the hours and other conditions of work for similar jobs in the area.

26.13(8) At the discretion of the presiding officer, witnesses may be excluded from the hearing room or telephone hearing until called to testify. The presiding officer shall admonish such witnesses not to discuss the case among themselves until after the record has been closed. All witnesses shall be subject to examination by the presiding officer and by all parties.

26.13(9) The presiding officer may expel or refuse admittance to any party, witness or other person whose conduct at the hearing is disorderly.

26.13(10) If the parties agree that no dispute of material facts exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant material evidence either by stipulation or otherwise as agreed by the parties, without the necessity of a formal evidentiary hearing.

26.13(11) Any party may appear in any proceeding. Any partnership, cooperation, or association may be represented by any of its members or officers or a duly authorized representative of an interested party. Any party may appear by, or be represented by, an attorney-at-law or a duly authorized representative of an interested party.

26.13(12) If a party not attending the hearing will be represented by another person, such person must submit to the presiding officer written proof of the representation, signed by the party such person claims to represent, at least three days before the hearing.

871—26.14(17A,96) Evidence. Rules of evidence are followed in accordance with Iowa Code section 17A.14.

871—26.15(17A,96) Recording costs.

26.15(1) The presiding officer shall electronically record all evidentiary hearings, prehearing conferences and hearings on motions, all of which constitute a part of the record of the contested case. A party may, at its own expense, also record any hearing electronically or by certified shorthand reporter.

26.15(2) Upon request of a party, the department shall provide a copy of the whole or a part of the record at a cost, unless there is further appeal, in which event the record shall be provided to all parties at no cost.

871—26.16(17A,96) Decisions.

26.16(1) The presiding officer shall issue a written, signed decision as soon as practicable after the closing of the record in a contested case. Each decision shall:

a. Set forth the issues, the appeal rights, a concise history of the case, the findings of essential facts, the reasons for the decision and the actual disposition of the case;

b. Be based on the kind and quality of evidence upon which reasonably prudent persons customarily rely for the conduct of their serious affairs, even if none of such evidence would be admissible in a jury trial in the Iowa district court; and

c. Be sent by first-class mail, email, or other electronic transmission to each of the parties in interest and their representatives.

26.16(2) Copies of all presiding officer decisions shall be kept on file for public inspection at the administrative office of the department of workforce development, filed according to hearing (appeal) number and indexed by the social security number of the claimant.

26.16(3) A presiding officer's decision allowing benefits shall result in the prompt payment of all benefits due. An appeal shall not stay the payment of benefits. A presiding officer's decision reversing an allowance of benefits shall include a statement of overpayment of benefits erroneously paid.

26.16(4) A presiding officer's decision constitutes final agency action in an employer liability contested case.

a. Any party in interest may file with the presiding officer a written application for rehearing within 20 days after the issuance of the decision. A request for rehearing is deemed denied unless the presiding officer grants the rehearing request within 20 days after its filing.

b. Any party in interest may file a petition for judicial review in the Iowa district court within 30 days after the issuance of the decision or within 30 days after the denial of the request for rehearing.

26.16(5) In a claimant benefit contested case, final agency action shall be a presiding officer's decision, if no aggrieved party appealed the decision to the employment appeal board within 15 days, or the decision of the employment appeal board, if the aggrieved party appealed the decision to that tribunal.

a. Once final agency action has been established, any party who is aggrieved or adversely affected by the agency action has 30 days to file a petition for judicial review with the district court.

b. Any party in interest may file with the presiding officer a written application for rehearing within 20 days after the date that the decision becomes final as a result of the failure to appeal the decision to the employment board. Applications for rehearing filed before this date will be forwarded to the employment appeal board as appeals to that tribunal. A request for rehearing is deemed denied unless the presiding officer grants the rehearing request within 20 days after its filing.

c. Any party in interest may file a petition for judicial review within 30 days after the denial of the request for rehearing.

These rules are intended to implement Iowa Code chapters 17A and 96.