

CHAPTER 13
CONTESTED CASES

[Prior to 6/3/87, Transportation Department[820]—(01,B) Ch3]

761—13.1(17A) Definitions. The definitions in 761—Chapter 2 and in Iowa Code section 17A.2 are hereby adopted.

761—13.2(17A) Applicability.

13.2(1) This chapter of rules provides the minimum procedural requirements for department involvement in contested cases under Iowa Code chapter 17A.

13.2(2) Rules which apply to a particular type of contested case shall take precedence over this chapter of rules. If there are no other rules applicable to a particular type of contested case, it shall be conducted in accordance with this chapter of rules.

761—13.3(17A) Initiation of contested case.

13.3(1) The department may initiate a contested case proceeding to determine the legal rights, duties or privileges of a person as required by the constitution or a statute. Prior to initiating the contested case proceeding, the department, unless prohibited by statute, may attempt to settle the matter informally.

13.3(2) A person who is aggrieved by an action of the department and who is entitled to an evidentiary (contested case) hearing may:

- a. Unless prohibited by statute, request an informal settlement.
- b. Initiate a contested case by submitting a request for a contested case hearing.
- c. Use both procedures.

13.3(3) A person may also request that the department resolve a controversy in accordance with rule 761—13.20(17A).

761—13.4(17A) Submission of request for informal settlement or hearing.

13.4(1) A request to the department for an informal settlement or a request for a contested case hearing shall be submitted in writing to the director of the office or division of the department which administers the matter at issue.

13.4(2) The request shall include complete names, addresses and telephone numbers for all persons involved and any attorneys representing them. The request shall also specify the mailing address to be used for all communications from the department.

13.4(3) A statute or rule may provide for submission of requests within a specified time period. A request shall be considered timely submitted if it is postmarked or delivered to the appropriate office or division of the department within the time period specified. Timely submission of a request shall be jurisdictional.

761—13.5(17A) Informal settlement.

13.5(1) An informal settlement may be handled by telephone.

13.5(2) If an informal settlement cannot be reached within a reasonable period of time, the department shall notify the person in writing that there has been a failure to reach an informal settlement, that the department's action or decision is sustained, and that the person may request a contested case hearing.

761—13.6(17A) Contested case decision. After a contested case hearing, a written decision will be issued by the presiding officer.

761—13.7(17A) Appeal. A decision by a presiding officer shall become the final decision of the department and shall be binding on the department and the party whose legal rights, duties and privileges are being determined unless either appeals the decision as provided in this rule.

13.7(1) No additional evidence shall be presented on appeal which shall be decided on the basis of the record made before the presiding officer in the contested case hearing.

13.7(2) The appeal shall include a statement of the specific issues presented for review and the precise ruling or relief requested.

13.7(3) An appeal of a presiding officer's decision shall be submitted in writing to the director of the office or division which administers the matter being contested. The appeal shall be deemed timely submitted if it is delivered to the director of the appropriate office or division or properly addressed and postmarked within 20 days after the date of the presiding officer's decision.

13.7(4) The director of the administering office or division shall forward the appeal to the director of transportation.

13.7(5) Failure to timely appeal a presiding officer's decision shall be considered a failure to exhaust administrative remedies.

13.7(6) The director of transportation may make a decision affirming, modifying or reversing the presiding officer's decision, or may remand the case to the presiding officer.

13.7(7) The decision of the director of transportation shall be the final decision of the department and shall constitute final agency action for purposes of judicial review. No further steps are necessary to exhaust administrative remedies.

761—13.8(17A) Motion for review. The director of transportation may, on the director's own motion, review the presiding officer's decision. The motion for review is subject to the same time limits as an appeal from a presiding officer's decision. If there is a motion for review, subrules 13.7(6) and 13.7(7) apply.

761—13.9(17A) Rehearings. An application for rehearing of a final decision under Iowa Code section 17A.16 shall be filed with the director of transportation.

761—13.10(17A) Maintenance of records. The department shall retain for at least five years from the date of the final decision copies of the record made before the presiding officer, the decision received from the presiding officer, the decision issued by the director, and related correspondence.

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761—13.11(17A) Use of legal assistants or paralegals. The department may be represented by legal assistants or paralegals at contested case hearings.

These authorized legal assistants or paralegals shall be under the supervision of attorneys from the department's general counsel.

761—13.12(17A) Communications.

13.12(1) Each party to a contested case shall keep the department informed of the party's current address and telephone number, the name, address and telephone number of the party's attorney, if any, and the mailing address to be used for communications from the department.

13.12(2) Mailed notices, communications and decisions regarding the contested case shall be sent by first class or certified mail to the latest address which each party has provided to the department.

761—13.13(17A) Default.

13.13(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no continuance is granted, either enter a default decision or proceed with the hearing and render a decision in the absence of the party.

13.13(2) Any party may move for default against a party who has requested the contested case proceeding and who has failed to appear after proper service.

13.13(3) A default decision or a decision rendered on the merits after a party has failed to appear or participate in a contested case proceeding becomes final agency action unless, within 20 days after the date of the decision, either a motion to vacate is filed and served on the presiding officer and the other parties or an appeal of a decision on the merits is timely submitted in accordance with rule 761—13.7(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate.

13.13(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

13.13(5) Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate.

13.13(6) “Good cause” for the purpose of this rule means surprise, excusable neglect or unavoidable casualty.

13.13(7) A decision denying a motion to vacate is subject to further appeal in accordance with rule 761—13.7(17A).

13.13(8) A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party in accordance with rule 761—13.7(17A).

13.13(9) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

761—13.14 to 13.19 Reserved.

761—13.20(17A) Additional procedures when the department is not a party.

13.20(1) Jurisdiction. When the department is required by statute to administer a controversy to which it is not a party, the following additional procedures shall apply.

13.20(2) Request. A person who has an interest in a controversy and who is entitled to an evidentiary (contested case) hearing may submit a written request to the department to resolve the controversy.

a. The request shall state the facts alleged and the relief sought by the requester.

b. The request shall identify by name and address the persons involved and any attorneys representing them. The request shall also specify the requester’s telephone number and the mailing address to be used for all communications to the requester from the department.

13.20(3) Informal settlement.

a. The department shall contact the persons involved, either by telephone or letter, and shall offer to assist the parties to reach an informal settlement of the controversy.

b. A controversy may be settled informally by the persons involved at any time before the department initiates a contested case proceeding.

c. When a controversy is settled informally, the persons involved shall each notify the department by telephone and confirming letter that the controversy has been resolved.

13.20(4) Contested case.

a. When the department is notified by a person involved in the controversy that there has been a failure to reach an informal settlement, or when the department determines that no progress toward a settlement is being made, the department shall send a written notice to the persons involved.

b. The notice shall specify the following: If the department is not notified of a settlement within 20 days after the notice is mailed, the department shall initiate a contested case proceeding.

These rules are intended to implement Iowa Code chapter 17A and Iowa Code section 10A.801.

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