

CHAPTER 115
PROPERTY ASSESSMENT APPEAL BOARD

[Prior to 11/2/22, see Revenue Department[701] Ch 126]

Chapter rescission date pursuant to Iowa Code section 17A.7: 4/10/29

701—115.1(421,441) Applicability and definitions.

115.1(1) *Applicability and scope.* The rules in this chapter govern the proceedings for appeals filed under Iowa Code section 441.37A before the property assessment appeal board. In cases filed under Iowa Code section 427.1(40), Iowa Code section 441.42, or other applicable provision, the board may use these rules and issue other necessary orders consistent with law.

115.1(2) *Definitions.* For the purpose of these rules, the following definitions apply:

“*Appellant*” means the party filing the appeal with the board.

“*Appellee*” means the party responding to the appeal.

“*Board*” means the property assessment appeal board created by Iowa Code section 421.1A.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) or 17A.10A.

“*Custodian*” means the board or a person lawfully delegated authority by the board to act for the board in implementing Iowa Code chapter 22.

“*Decision*” means the board’s findings of fact, conclusions of law, decision, and order in a contested case.

“*Electronic filing*” means the electronic transmission of a document to the electronic filing system together with the production and transmission of a notice of electronic filing.

“*Electronic filing system*” means the system established by the board for the filing of papers and service of the same to opposing parties.

“*Electronic record*” means a record, file, or document created, generated, sent, communicated, received, or stored by electronic means.

“*Electronic service*” means the electronic transmission of a notification to the registered users who are entitled to receive notice of the filing.

“*Local board of review*” means the board of review as defined by Iowa Code section 441.31.

“*Nonelectronic filing*” means a process by which a paper document or other nonelectronic item is filed with the board.

“*Notice of electronic filing*” means an email notification generated by the electronic filing system when a document is electronically filed.

“*Party*” means each person or entity named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*PDF*” means an electronic document filed in a portable document format that is readable by the free Adobe® Acrobat® Reader.

“*Public access terminal*” means a computer located at the board’s office where the public may view, print, and electronically file documents.

“*Registered user*” means an individual who can electronically file documents and electronically view and download files through the use of a username and password.

“*Signature*” means a registered user’s username and password accompanied by one of the following:

1. “Digitized signature” means an embeddable image of a person’s handwritten signature;
2. “Electronic signature” means an electronic symbol (“/s/” or “/registered user’s name/”) executed or adopted by a person with the intent to sign; or
3. “Nonelectronic signature” means a handwritten signature applied to an original document.

“*Written consideration*” means the board’s consideration of an appeal without a hearing.

115.1(3) *Waiver of procedures.* A party may seek waiver from a rule adopted by the board following Iowa Code section 17A.9A.

115.1(4) *Time requirements.* Time is computed as provided in Iowa Code section 4.1(34). For good cause, the board may extend or shorten the time to take any action, except as precluded by statute. Except

for good cause stated in the record, before extending or shortening the time to take any action, the board will afford all parties an opportunity to be heard or file written arguments.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.2(421,441) Appeal and answer.

115.2(1) *Appeal and jurisdiction.* The deadline for filing an appeal is as stated in Iowa Code section 441.37A. The appeal may be filed through the board's electronic filing system, delivered in person, mailed by first-class mail, or delivered to an established courier service for immediate delivery. An appeal filed using the electronic filing system must be filed by 11:59 p.m. on the last day for filing.

115.2(2) *Form of appeal.* The appeal should include:

- a. The appellant's name, mailing address, email address, and telephone number;
- b. The address of the property being appealed and its parcel number;
- c. The grounds for appeal;
- d. A short and plain statement of the claim;
- e. The relief sought; and
- f. If the party is represented by an attorney or designated representative, the attorney or designated representative's name, mailing address, email address, and telephone number.

115.2(3) *Amendment of appeal.* The appellant may amend the appeal once as a matter of course within 20 days after it is filed to add or modify the grounds for appeal. Otherwise, the appellant may only amend the appeal by leave of the board or by written consent of the adverse party.

115.2(4) *Scope of review.*

a. *Grounds for appeal.* The board considers grounds for appeal as listed in Iowa Code sections 441.37(1)"a"(1)(a) through (e) and 441.37(2)"a" in the manner described in Iowa Code section 441.37A(1)"b." The board may order the appellant to clarify the grounds on which the appellant seeks relief.

b. *Burden of proof.* The burden of proof is as stated in Iowa Code section 441.21(3).

115.2(5) *Notice to local board of review.* The board will serve, through the electronic filing system, a copy of the appellant's appeal to the local board of review.

115.2(6) *Answer by local board of review.* Using the form provided by the board or a conforming document, the local board of review's attorney or representative shall file an answer within 30 days after service of the notice of appeal, unless the time period is shortened or extended by the board. The answer should include:

- a. The subject property's current assessed value;
- b. A statement regarding the timeliness of the protest to the local board of review and the timeliness of the appeal to the board;
- c. How the local board of review will participate in the hearing; and
- d. The local board of review's attorney or designated representative's name, mailing address, email address, and telephone number.

115.2(7) *Docketing.* Appeals are assigned docket numbers. The board will maintain electronic records of the appeal name, the docket number, and all filings made in the appeal.

115.2(8) *Consolidation and severance.*

a. *Consolidation.* The board may consolidate any or all matters at issue in two or more appeals where:

- (1) The matters at issue involve common parties or common questions of fact or law;
- (2) Consolidation would expedite and simplify consideration of the issues involved; and
- (3) Consolidation would not adversely affect the rights of any of the parties to those appeals.

b. *Severance.* The board may, for good cause shown, order any appeals or portions thereof severed.

115.2(9) *Appearances.* Any party may appear and be heard on its own behalf, or by its attorney or designated representative. Attorneys and designated representatives both shall file a notice of appearance with the board for each appeal. A designated representative who is not an attorney shall also file a power of attorney. When acting as a designated representative on behalf of a party, the designated representative acknowledges the representative has read and will abide by the board's rules.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.3(421,441) Nonelectronic service and filing of documents.

115.3(1) *Applicability.* This rule applies to all nonelectronic filings made with the board by parties not voluntarily using the electronic filing system. Electronic filing and service of documents using the board's electronic filing system are governed by rule 701—115.4(421,441).

115.3(2) *Service and filing of paper documents.* All motions, pleadings, briefs, and other papers shall be served upon each of the parties of record contemporaneously with their filing with the board.

a. Service on parties. All documents are deemed served at the time they are delivered in person to the opposing party; delivered to an established courier service for immediate delivery; mailed by first-class mail, so long as there is proof of mailing; or emailed to the opposing party per mutual agreement.

b. Filing with the board. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board; delivered to an established courier service for immediate delivery; or mailed by first-class mail, so long as there is proof of mailing. A registered user of the board's electronic filing system may electronically file documents with the board pursuant to rule 701—115.4(421,441).

c. Proof of mailing. Proof of mailing includes: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Property Assessment Appeal Board and to the names and addresses of the parties listed below by depositing the same in a (United States post office mailbox with correct postage properly affixed).

(Date) (Signature)

115.3(3) *Board-generated documents.* The board will mail copies of all board-generated documents to any party not served by the board's electronic filing system.

115.3(4) *Conversion of filed paper documents.* The board will convert all filed paper documents to an electronic record in the electronic filing system.

115.3(5) *Form of paper documents.* Each document delivered to the board should be printed on one side and have no tabs, staples, or permanent clips. It may be organized with paper clips, clamps, or another type of temporary fastener or be contained in a file folder.

115.3(6) *Return of copies by mail.* If a party requests a paper document be returned by mail, the party must provide a postage-paid, self-addressed envelope large enough to accommodate the returned document. [ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.4(421,441) Electronic filing system.**115.4(1) *Electronic filing and applicability.***

a. Electronic filing. The board will maintain an electronic filing system, which is the preferred method for filing documents with the board.

b. Applicability. This rule applies to electronic filing and service of documents using the board's electronic filing system. Nonelectronic filing and service are governed by rule 701—115.3(421,441).

(1) The board may order the conversion of any appeal to an electronic file. Upon such an order, all future filings must be made using the board's electronic filing system in compliance with this rule, unless a filing is subject to the exception in paragraph 115.4(1) "c."

(2) In all other cases, a party or parties to a proceeding may voluntarily choose to use the electronic filing system in compliance with this rule.

c. Exceptions. Any item not capable of electronic filing shall be filed in a nonelectronic format pursuant to rule 701—115.3(421,441).

115.4(2) *Registration.*

a. Registration required. Every individual filing, viewing, or downloading appeal documents must register as a registered user of the electronic filing system.

b. How to register. An individual must complete the registration process online at efile-paab.iowa.gov, consent to the user agreement, and obtain a username and password for the electronic filing system.

c. Changing passwords. Once registered, the user may change the user's password. If the registered user believes the security of an existing password has been compromised, the registered user should change the password immediately. The board may require password changes periodically.

d. Changes in a registered user's contact information. If a registered user's email address, mailing address, or telephone number changes, the registered user should promptly change the information in the electronic filing system. The registered user should promptly notify any nonregistered party of changes in contact information in every active proceeding in which the registered user is a party.

e. Duties of a registered user. Each registered user will ensure the user's email account information is current, the account is monitored regularly, and email notices sent to the account are timely opened.

f. Canceling registration. Withdrawal from participation in the electronic filing system cancels the registered user's profile but does not authorize nonelectronic filing of documents and is not a withdrawal from a proceeding.

g. Use of username and password. A registered user is responsible for all documents filed with the registered user's username and password unless proven by clear and convincing evidence that the registered user did not make or authorize the filing.

h. Username and password security. If a username or password is lost, misappropriated, misused, or compromised, the registered user will notify the board promptly.

i. Denial of access. The board may refuse to allow an individual to electronically file or download information in the electronic filing system due to misuse, fraud or other good cause.

115.4(3) Signatures.

a. Registered user. A username and password accompanied by a digitized, electronic, or nonelectronic signature serve as the registered user's signature on all electronically filed documents.

b. Documents requiring oaths, affirmations or verifications. Any document filed requiring a signature under oath or affirmation or with verification may be signed electronically or nonelectronically but shall be filed electronically.

c. Format. Any filing requiring a signature must be signed, with either a nonelectronic signature, an electronic signature, or a digitized signature.

d. Multiple signatures. By filing a document containing multiple signatures, the registered user confirms the content of the document is acceptable to all persons signing the document and all such persons consent to having their signatures appear on the document.

115.4(4) Format and redaction of electronic documents. Except proposed orders, all electronically filed documents must be filed as a PDF. Before filing any document, the registered user shall ensure the document is certified as confidential or that the confidential information is omitted or redacted.

115.4(5) Exhibits and other attachments. Any attachments to a filing, such as an exhibit, shall be uploaded and electronically attached to the filing. Each exhibit should be filed as a separate PDF. Exhibits should be labeled as required by paragraph 115.7(3)"d."

115.4(6) Filing and service using electronic filing.

a. What constitutes filing. The electronic transmission of a document to the electronic filing system following the procedures specified in these rules, together with the production and transmission of a notice of electronic filing, constitutes the filing of the document.

b. Electronic file stamp. Electronic documents are officially filed when affixed with an electronic file stamp. Filings so endorsed shall have the same force and effect as documents time-stamped in a nonelectronic manner.

c. Email or fax. Emailing or faxing a document to the board will not generate a notice of electronic filing and does not constitute electronic filing of the document unless otherwise authorized by the board.

d. Public access terminal. A public access terminal is available at the reception desk on the first floor of the Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319.

e. Service of filings. When a document is electronically filed, the electronic filing system will produce and transmit a notice of electronic filing to all parties who are registered users. The notice of electronic filing shall constitute service of the filing on registered users. No other service is required on registered users unless ordered by the board. The filing party is responsible for ensuring service, pursuant to paragraph 115.3(2)"a," on any party that is not a registered user. Notices of electronic filing will continue to be sent to registered users appearing or intervening in a proceeding until the users have filed a withdrawal of appearance.

f. Proof of service of nonelectronic filings. Parties filing a document nonelectronically pursuant to paragraph 115.3(2)“c” and rule 701—115.3(421,441) shall electronically file a notice of nonelectronic filing along with proof of service.

g. Electronic filing and service of board-generated documents. All board-generated documents issued in an appeal governed by this chapter will be electronically filed and served. The board will only mail paper copies of documents as provided in subrule 115.3(3).

115.4(7) Filing by the board on behalf of a party.

a. Board staff may file a motion on behalf of a party to an appeal pursuant to this subrule.

b. When a party contacts board staff via telephone or other means and indicates the party’s desire to file a motion specified in paragraph 115.4(7)“c,” board staff may file the motion in the electronic filing system on behalf of the party. The motion will be consistent with the instructions and information provided by the party and shall only be filed with the permission of the party. Board staff will not file any motions on behalf of a party if any opposing party requires nonelectronic service under subrule 115.3(2).

c. Only the following motions may be filed by board staff on behalf of a party:

- (1) Motion to participate in a hearing in person, by telephone, or by video;
- (2) Motion for hearing;
- (3) Motion for continuance;
- (4) Motion to withdraw appeal.

d. Upon filing of the motion, board staff will provide a courtesy copy of the filing to the party.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.5(421,441) Motions and settlements.

115.5(1) Authority of board to issue procedural orders. The board may issue preliminary orders regarding procedural matters.

115.5(2) Motions. No technical form for motions is required. All prehearing motions should be in writing, filed with the board and contain the reasons and grounds supporting the motion. The board will act upon such motions as justice may require. Motions based on matters that do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no later than ten days from the date the motion is filed unless the time period is extended or shortened by the board. The board may schedule oral argument on any motion.

a. Filing of motions. Motions pertaining to the hearing, except motions discussed in paragraph 115.5(2)“b,” must be filed and served at least ten days before the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by the board.

b. Motions for summary judgment and motions to dismiss for lack of jurisdiction.

(1) Motions for summary judgment and motions to dismiss for lack of jurisdiction should comply with the requirements of Iowa Rule of Civil Procedure 1.981. Notwithstanding the time for filing motions in Iowa Rule of Civil Procedure 1.981, motions should be filed within ten days of issuance of a notice of hearing or written consideration. Responses should follow the provisions of Iowa Rule of Civil Procedure 1.981. Motions will be disposed of according to the requirements of that rule unless such requirements are inconsistent with this chapter or any other provision of law governing in contested cases.

(2) Reserved.

c. Motions to withdraw. An appellant may withdraw the appeal. A withdrawal of an appeal must be in writing and signed by the appellant or the appellant’s designated representative. Unless otherwise provided, withdrawal shall be with prejudice and the appellant shall not be able to refile the appeal. Within 20 days of the board’s granting of a withdrawal of appeal, the appellant may make a motion to reopen the file and rescind the withdrawal based upon fraud, duress, undue influence, or mutual mistake.

d. Motions for refund. If the board reduces an assessment following a contested case hearing, the appellant shall be notified in the board’s final agency action of the appellant’s right to elect to be refunded for taxes already paid by filing a motion with the board. Such a motion shall be filed within ten days of the board’s final agency action. If the appellant does not timely file a motion for refund, any change in taxes resulting from the assessment reduction shall be credited toward future tax payments.

115.5(3) Settlements. Parties to an appeal may propose to settle all or some of the issues in the appeal at any time before the issuance of a final decision. A settlement of an appeal shall be jointly signed by the

parties, or their designated representatives, and filed with the board. The settlement filed with the board shall indicate whether the assessment modification will result in a tax refund or a credit toward future tax payments. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.6(421,441) Hearing scheduling and discovery plan.

115.6(1) *When required.* For appeals involving properties assessed at \$3 million or more, the parties shall file a hearing scheduling and discovery plan within 60 days of the notice provided in subrule 115.2(5). In any other appeal, the parties may jointly file a hearing scheduling and discovery plan or the board may, on its own motion or the motion of any party, require parties to file a hearing scheduling and discovery plan. The dates established in a hearing scheduling and discovery plan under this rule shall supersede any dates set forth in this chapter.

115.6(2) *Prehearing conference.* A party may request a prehearing conference to resolve any disputed issue pertaining to the plan.

115.6(3) *Modification.* The parties may jointly agree to modify the plan. If one party seeks to modify the plan, the party must show good cause for the modification.

115.6(4) *Failure to comply.* A party that does not comply with a plan must show good cause for not complying and that the other party is not substantially prejudiced by the noncompliance. Failing to comply with a plan may result in sanctions, including but not limited to the exclusion of evidence or dismissal of the appeal.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.7(421,441) Discovery and evidence.

115.7(1) *Discovery procedure.* The scope of discovery described in Iowa Rule of Civil Procedure 1.503 applies to board appeals. When considering relevancy, the board shall consider the provisions of Iowa Code chapter 441, 701—Chapter 102, and other applicable law. The following discovery procedures in the Iowa Rules of Civil Procedure are available to the parties in an appeal: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; entry upon land for inspection and other purposes; and requests for admission. The time frames for discovery in the Iowa Rules of Civil Procedure govern, unless lengthened or shortened by the board.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions apply to any depositions taken in an appeal. Any party taking a deposition in an appeal is responsible for any deposition costs. Deposition costs include but are not limited to reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Subject to the limitations in paragraph 115.7(1)“*h*,” Iowa Rule of Civil Procedure 1.509 applies to any interrogatories propounded.

c. Subject to the limitations in paragraph 115.7(1)“*h*,” Iowa Rule of Civil Procedure 1.512 applies to any requests for production of documents, electronically stored information, and things; and entry upon land for inspection and other purposes.

d. Iowa Rule of Civil Procedure 1.510 applies to any requests for admission. Iowa Rule of Civil Procedure 1.511, regarding the effect of an admission, applies.

e. The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to appeals before the board.

f. Iowa Rule of Civil Procedure 1.508 applies to discovery of any experts identified by a party.

g. Discovery shall be served on all parties but should not be filed with the board. Parties should file a notice with the board when a notice of deposition or a discovery request or response is served on another party. The notice filed with the board should include the date, the manner of service, and the names and addresses of the persons served. Other discovery materials should not be filed unless ordered by the board.

h. In addition to the limits on discovery requests in Iowa Rules of Civil Procedure 1.509 and 1.512, the following limits apply to appeals of property assessed for less than \$1 million:

(1) A party shall not serve on any other party more than 15 interrogatories, including all discrete subparts.

(2) A party shall not serve on any other party more than ten requests for production of documents, electronically stored information, and things.

A party to the appeal may file a motion with the board requesting leave to serve additional discovery requests. The motion must include the proposed interrogatories or requests for production of documents and the reasons establishing good cause for their use.

115.7(2) *Discovery motions.* Before filing any motion related to discovery, parties must make a good-faith effort to resolve discovery disputes without the involvement of the board. Any motion related to discovery should state the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties may respond within ten days of the filing of the motion unless the time is shortened by order of the board. The board may rule on the basis of the written motion and any response or may have a hearing or other proceedings on the motion.

115.7(3) *Evidence.*

a. Admissibility. The board will rule on admissibility of evidence and may take official notice of facts in accordance with applicable legal requirements. Evidence obtained in discovery may be used in the appeal if that evidence would otherwise be admissible.

b. Stipulations. Stipulation of facts by the parties is encouraged. The board may make a decision based on stipulated facts.

c. Scope of admissible evidence. Admission of evidence is governed by Iowa Code section 17A.14. Upon an objection pursuant to paragraph 115.7(3)“e,” evidence may be excluded. Hearsay evidence is admissible.

d. Exhibits, exhibit and witness lists, and briefs. The party seeking admission of an exhibit must provide an opposing party with an opportunity to examine the exhibit before the ruling on its admissibility. Copies of documents to be used as evidence, exhibit lists, and a list of witnesses intended to be called at hearing shall be served on the opposing party at least 21 calendar days before the hearing, unless the time period is extended or shortened by the board or the parties have filed a hearing scheduling and discovery plan under rule 701—115.6(421,441). Upon an objection pursuant to paragraph 115.7(3)“e,” late-filed exhibits may be excluded. Rebuttal evidence need not be exchanged or served on the opposing party before the hearing. All exhibits and briefs admitted into evidence will be appropriately marked and be made part of the record. The appellant should mark each exhibit with consecutive numbers. The appellee should mark each exhibit with consecutive letters.

The local board of review must file the following exhibits:

(1) The appealed property’s property record card after implementation of the final decision of the board of review, including the cost report showing the property listing, costs, and multipliers.

(2) The final decision of the local board of review.

(3) The appellant’s petition to the local board of review.

e. Objections. Any party may object to specific evidence or request limits on the scope of examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds for the objection. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The board may rule on the objection at the time it is made or may reserve a ruling until the written decision.

f. Offers of proof. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the board, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

g. Judicial notice of property record cards. Without additional notice, the board may take judicial notice of the property record card or cost report of the subject property if electronically available to the public through the assessor’s website. At its discretion, the board may take judicial notice of property record cards or cost reports of comparable properties identified by the parties as provided under Iowa Code section 17A.14(4) if electronically available to the public through the assessor’s website. Where such

information is not publicly available or the public information lacks the formulas and methods used to determine the actual value, including all listing data, costs, and multipliers, the board may order a party to file the full property record card. If the board takes judicial notice or orders the filing of any property record card or cost report, such card or report shall become part of the appeal record.

115.7(4) Subpoenas.

a. Issuance.

(1) Pursuant to Iowa Code section 17A.13(1), a subpoena shall be issued to a party on request unless otherwise excluded pursuant to this subrule. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 14 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

(3) The board will refuse to issue a subpoena when there is reasonable ground to believe the subpoena is requested for the purpose of harassment; may seek irrelevant information as provided under Iowa Code section 441.21, 701—Chapter 102, or other applicable law; or is untimely. If the board refuses to issue a subpoena, the board shall provide a written statement of the ground for refusal. A party to whom a refusal is issued may obtain a prompt hearing before the board regarding the refusal by filing with the board and serving on all parties a written request for hearing.

b. Motion to quash or modify. Upon motion, the board may quash or modify a subpoena for any lawful reason in accordance with the Iowa Rules of Civil Procedure or pursuant to this subrule.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.8(421,441) Hearings before the board.

115.8(1) Prehearing conference. An informal conference of parties may be ordered at the discretion of the board or at the request of any party for any appropriate purpose. Any agreement reached at the conference shall be made a part of the record in the manner directed by the board.

115.8(2) Notice of hearing. The notice of hearing will contain information required by Iowa Code section 17A.12.

115.8(3) Waiver of 30-day notice. The parties may jointly waive the 30-day written notice requirement for a hearing in Iowa Code section 441.37A by submitting a mutually agreed upon hearing date approved by the board.

115.8(4) Continuance. A motion to continue the hearing or written consideration shall be in writing and, except in the case of unanticipated emergencies, filed not later than seven days before the hearing or written consideration. The motion should state the specific reason for the request and indicate whether the opposing party was contacted and agrees to a continuance. An emergency oral continuance may be obtained from the board. In determining whether to grant a continuance, the board may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors, including the existence of a hearing scheduling and discovery plan.

115.8(5) Hearing procedures. Hearings and any preliminary proceedings may be conducted in person, by telephone, or by video, or the appeal may proceed as a written consideration.

a. Representation. Parties have the right to participate or to be represented in all hearings. Any party may be represented by an attorney or by a designated representative. A partnership, corporation, or association may be represented by any member, officer, director, or duly authorized agent.

b. Participation in hearing. Parties have the right to introduce evidence relevant to the grounds on appeal. Subject to terms and conditions prescribed by the board, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true

disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument. The hearing will proceed as provided by Iowa Code sections 17A.12 and 17A.14.

115.8(6) *Dismissal.* If a party fails to appear, the appeal may be dismissed under Iowa Code section 441.37A(2)“a.”

115.8(7) *Hearing recordings.* Any party may request a copy of the hearing recording and pay a fee associated with preparing the copy. Any party may provide a certified court reporter at the party’s own expense.

115.8(8) *Ex parte communications with board members.* Ex parte communications are prohibited in appeals before the board following the provisions of Iowa Code section 17A.17.

115.8(9) *Disqualification of board member.* A board member or members must, on their own motion or on a motion from a party in the proceeding, withdraw from participating in an appeal if there are circumstances that warrant disqualification under Iowa Code sections 17A.11(2) through 17A.11(4) and 17A.17(8).

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.9(421,441) Posthearing motions.

115.9(1) *Motion to reopen records.* On its own motion or on the motion of a party, the board may reopen the record for the reception of further evidence. A motion to reopen the record may be made any time before the issuance of a final decision. A motion to reopen the record filed after issuance of the final decision will not be considered. In ruling on a motion to reopen the record from a party filed before issuance of the final decision, the board may consider:

- a. Whether the information sought to be admitted is material;
- b. The timeliness of the motion;
- c. Whether the information sought to be admitted was available as of the date for hearing or written consideration and whether there is good cause for failing to present it;
- d. The prejudice on the other party; and
- e. Any and all other factors deemed relevant by the board.

115.9(2) *Rehearing and reconsideration.*

a. *Application for rehearing or reconsideration.* Any party may file an application for rehearing or reconsideration of the final decision under Iowa Code section 17A.16. The board’s consideration of the application shall be limited to the admitted exhibits and testimony offered at the hearing. No new evidence will be accepted or considered.

b. *Contents of application.* Applications for rehearing or reconsideration shall comply with Iowa Code section 17A.16. If a claim of error of fact is asserted, the application should clearly specify the factual error and cite to admitted exhibits or testimony in support of the claim. If a claim of error of law is asserted, the application should clearly specify the legal error and cite statutes, case law, administrative rules, or other sources of law in support of the claim.

c. *Notice to other parties.* The applicant shall serve a copy of the application on all parties to the contested case in accordance with rules 701—115.3(421,441) and 701—115.4(421,441). If the application does not contain a certificate of service, the board shall serve copies on all parties.

d. *Resistance to applications for rehearing or reconsideration.* A resistance to an application for rehearing or reconsideration must be filed within ten days of the date the application was filed with the board, unless otherwise ordered by the board.

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

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.10(17A,441) Judicial review.

115.10(1) *Appeals of board decisions.*

a. A party may seek judicial review of a decision rendered by the board under Iowa Code sections 441.37B and 17A.19.

b. The party or parties seeking judicial review shall bear the costs of preparing the transcription of the board hearing, if a transcription is required by the reviewing court.

115.10(2) *Stays of agency actions.* The board may grant a stay during the pendency of judicial review under Iowa Code section 17A.19(5). In determining whether to grant a stay, the board shall consider the factors listed in Iowa Code section 17A.19(5)“c.” A stay may be vacated by the board upon application of any other party.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.11(22,421) Records access.

115.11(1) *Location of record.* A request for access to a record should be directed to the custodian.

115.11(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. Monday through Friday excluding holidays.

115.11(3) *Request for access.* Requests for access to open records may be made in writing, in person, by email, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, email, and telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

115.11(4) *Response to requests.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing. The custodian of a record may deny access by members of the public to the record only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), that it is a confidential record, or that its disclosure is prohibited by a court or board order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the applicable provisions of law. Open records are routinely disclosed without the consent of the parties.

115.11(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from board files. Examination and copying of board records shall be supervised by the custodian. Records shall be protected from damage and disorganization.

115.11(6) *Copying.* A reasonable number of copies of an open record may be made in the board's office. If photocopying equipment is not available, the custodian shall permit examination of the record and shall arrange to have copies promptly made elsewhere.

115.11(7) *Fees.*

a. When charged. The board may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the board are available from the custodian. Copies of records may be made by or for members of the public on board photocopy machines or from electronic storage systems at cost as determined and made available by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual board expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one hour. The custodian shall provide the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a board clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

115.11(8) *Retention of board records.* The board will follow the records retention schedule for administrative case files established by the state records commission.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code sections 421.1, 421.1A, 421.2, 441.37A, 441.38 and 441.49 and chapters 17A and 22 and 2017 Iowa Acts, House File 478.

[Filed ARC 2108C (Notice ARC 2047C, IAB 6/24/15), IAB 8/19/15, effective 9/23/15]

[Filed ARC 2545C (Notice ARC 2464C, IAB 3/16/16), IAB 5/25/16, effective 6/29/16]

[Filed ARC 3430C (Notice ARC 3285C, IAB 8/30/17), IAB 10/25/17, effective 11/29/17]

[Editorial change: IAC Supplement 11/2/22]

[Filed ARC 6858C (Notice ARC 6601C, IAB 10/19/22), IAB 2/8/23, effective 3/15/23]

[Filed ARC 7713C (Notice ARC 7490C, IAB 1/10/24), IAB 3/6/24, effective 4/10/24]