

**641—152.3(78GA, HF2565) Appeals.**

**152.3(1)** Any request for an appeal concerning denial or partial denial of an application for funding shall be submitted by an aggrieved party in writing to the department by certified mail, return receipt requested, within ten days of receipt of the notice of denial. The address is Department of Public Health, Tobacco Use Prevention and Control Division, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. The request for appeal must state the party's complete legal name, street address, telephone number, fax number, and the specific grounds upon which the party challenges the board's denial, including legal authority, if any. The request for appeal commences a contested case.

**152.3(2)** Upon receipt of an appeal, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by the department regarding transmission of contested cases.

**152.3(3)** The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 4.

**152.3(4)** When the hearing officer makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceeding ten days after it is received by the aggrieved party unless an appeal to the commission is taken as provided in subrule 152.3(5).

**152.3(5)** Any appeal to the commission for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the commission by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for appeal shall state the reasons for appeal.

**152.3(6)** Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the commission.

**152.3(7)** Review of a proposed decision shall be based on the record and limited to the issues raised in the hearing. The issues shall be specified in the notice of appeal of a proposed decision. The party requesting the review shall be responsible for transcribing any tape of the oral proceedings or arranging for a transcript of oral proceedings reported by a certified shorthand reporter.

**152.3(8)** Each party shall have the opportunity to file exceptions and present briefs. The administrator may set deadlines for the submission of exceptions or briefs. If oral argument will be held, the administrator shall notify all parties of the date, time and location at least ten days in advance.

**152.3(9)** The commission shall not receive any additional evidence, unless it grants an application to present additional evidence. Any such application must be filed by a party no less than five business days in advance of oral argument. Additional evidence shall be allowed only upon a showing that it is material to the outcome and that there were good reasons for failure to present it at hearing. If an application to present additional evidence is granted, the commission shall order the conditions under which it shall be presented.

**152.3(10)** The commission's final decision shall be in writing and it may incorporate all or part of the proposed decision.

**152.3(11)** The decision and order of the commission becomes the department's final agency action pursuant to Iowa Code chapter 17A upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested, or by personal service.