

561—7.18(17A,455A) Emergency proceedings.

7.18(1) *Necessity of emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety or welfare, and consistent with the Iowa Constitution and other provisions of law, the agency may issue a written emergency administrative order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency. Before issuing an emergency administrative order, the agency shall consider factors including but not limited to the following:

- a. Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;
- b. Whether the specific circumstances that pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency administrative order may continue to engage in alternative activities without posing immediate danger to public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect public health, safety and welfare; and
- e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

7.18(2) *Contents of order.* An emergency administrative order shall contain the following:

- a. Findings of fact,
- b. Conclusions of law, and
- c. Policy reasons for the decision if it is an exercise of the agency's discretion.

7.18(3) *Delivery of emergency order.* To the degree practicable, the department shall select the procedure for delivery of an emergency administrative order that best ensures prompt, reliable delivery. An emergency order shall be delivered immediately to the person or persons who are required to comply with the order by utilizing one or more of the following procedures:

- a. Personal delivery;
- b. Certified mail, return receipt requested, to the last address on file with the agency;
- c. Certified mail to the last address on file with the agency;
- d. First-class mail to the last address on file with the agency; or
- e. Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and the person has provided a fax number for that purpose.

7.18(4) *Oral notice.* Unless the emergency order is delivered by personal delivery on the same day that the order is issued, the agency shall make reasonable immediate efforts to contact by telephone the person or persons who are required to comply with the order.

7.18(5) *Stay of order.* A person named in an emergency order may request a stay of the order by contacting the director by telephone or by delivery of a written request for stay to the department.

a. Upon receipt of a request for stay of an emergency order, the director shall schedule a hearing to take place within five days of receipt of the request or a longer time as agreed upon by the appellant. The person requesting the stay shall be notified of the time and place of the hearing.

b. The scope of the hearing on a request for stay shall be limited to, and the decision whether to grant a stay shall be based upon, the following factors:

- (1) Whether the requester will suffer irreparable injury if a stay is not granted,
- (2) Whether the requester is likely to prevail on the merits when the appeal of the order is heard,
- (3) Where lies the public interest, and
- (4) Whether the rule or statute upon which the order is founded is clearly invalid.

c. The hearing procedures in a decision to grant or deny a stay shall conform with rule 561—7.15(17A,455A).

7.18(6) *Decision on merits.* Where agreed to by the parties, the appeal of an emergency order may be decided based upon the evidence presented at the hearing for stay. Otherwise, a hearing on the merits shall proceed in accordance with this chapter.

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