

761—615.38(17A,321) Hearing and appeal process.

615.38(1) *Applicability.* This rule applies to:

- a. License denials, cancellations and suspensions under Iowa Code sections 321.177 to 321.215 and 321A.4 to 321A.11 except suspensions under Iowa Code sections 321.213A and 321.213B.
- b. License suspensions and revocations under Iowa Code sections 321.218 and 321J.21.
- c. License revocations under Iowa Code sections 321.193 and 321.205.
- d. Disqualifications from operating a commercial motor vehicle under Iowa Code section 321.208.
- e. License bars under Iowa Code section 321.556.

615.38(2) *Submission of request or appeal.*

a. A person subject to a sanction listed in subrule 615.38(1) may contest the action by following the provisions of 761—Chapter 13 as supplemented by this rule.

b. A request for an informal settlement, a request for a contested case hearing, or an appeal of a presiding officer's decision shall be submitted to the director of the motor vehicle division at the address in rule 761—615.3(17A).

c. The request or appeal shall include the person's name, date of birth, driver's license or permit number, complete address and telephone number, and the name, address and telephone number of the person's attorney, if any.

615.38(3) *Informal settlement or hearing.*

a. The person may request an informal settlement. Following an unsuccessful informal settlement procedure, or instead of that procedure, the person may request a contested case hearing.

b. Notwithstanding paragraph 615.38(3)“a,” a request received from a person who has participated in a driver improvement interview on the same matter shall be deemed a request for a contested case hearing.

c. A request for an informal settlement or a request for a contested case hearing shall be deemed timely submitted if it is delivered to the director of the motor vehicle division or postmarked within the time period specified in the department's notice of the sanction.

(1) Unless a longer time period is specified in the notice or another time period is specified by statute or rule, the time period shall be 20 days after the notice is served.

(2) If the department fails to specify a time period in the notice, the request may be submitted at any time.

615.38(4) *Appeal.* An appeal of a presiding officer's decision shall be submitted in accordance with 761—13.7(17A).

615.38(5) *Stay of sanction.*

a. When the department receives a properly submitted, timely request for an informal settlement, request for a contested case hearing or appeal of a presiding officer's proposed decision regarding a sanction listed in subrule 615.38(1), it shall, after a review of its records to determine eligibility, stay (stop) the sanction pending the outcome of the settlement, hearing or appeal unless prohibited by statute or rule or unless otherwise specified by the requester/appellant.

(1) If the stay is granted, the department shall issue and send to the person a notice granting the stay. The stay is effective on the date of issuance. The notice allows the person to drive while the sanction is stayed if the license is valid and no other sanction is in effect.

(2) A person whose stay authorizes driving privileges shall carry the notice of stay at all times while driving.

b. Of the sanctions listed in subrule 615.38(1), the department shall not stay the following, and the person's driving privileges do not continue:

- (1) A suspension for incapability.
- (2) A denial.
- (3) A disqualification from operating a commercial motor vehicle.
- (4) A suspension under Iowa Code section 321.180B.

(5) A suspension or revocation under Iowa Code section 321.218 or 321J.21.

This rule is intended to implement Iowa Code chapter 17A and sections 321.177 to 321.215, 321.218, 321.556, 321A.4 to 321A.11, and 321J.21.

[**ARC 4119C**, IAB 11/7/18, effective 12/12/18; **ARC 5496C**, IAB 3/10/21, effective 4/14/21; Editorial change: IAC Supplement 12/28/22]