

TRANSPORTATION DEPARTMENT[761]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 13
“Contested Cases”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A and section 10A.801

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

July 8, 2024
9 to 9:30 a.m.

[Microsoft Teams Link](#)
Or dial: 515.817.6093
Conference ID: 447 468 064#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Transportation no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Phone: 515.239.1358
Email: tracy.george@iowadot.us

Purpose and Summary

This proposed chapter provides the minimum procedural requirements for Department involvement in contested cases and informal settlements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

All persons and parties entitled to, requesting, or involved in a contested case or informal settlement will bear the costs. While such persons and parties may incur costs during these proceedings, the costs are primarily caused by the underlying nature and course of the proceeding. This chapter is intended to lessen the costs and time required to participate in these proceedings by providing clarity and consistency on the proceedings.

- Classes of persons that will benefit from the proposed rulemaking:

Persons and entities that participate in Department contested cases and other proceedings will benefit from additional clarity on the process to request and participate in an informal settlement, contested case, or appeal of a presiding officer's decision.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Chapter 13 explains the process that those affected by this chapter will use and is intended to ensure that these proceedings are fairly and efficiently conducted. There may be costs incurred by the public to participate in these proceedings; however, the costs are caused by the nature and course of the issue that required the proceeding. The processes established in Chapter 13 are intended to minimize the time spent and expenses incurred by the public; the Department; the Attorney General's Office; and the Department of Inspections, Appeals, and Licensing.

Additionally, since many of the Department decisions that are disputed by a public individual or entity are monetary in nature, the disputing party may realize a positive quantitative impact by having the monetary impact reduced as a result of the informal settlement, contested case proceeding, appeal, or judicial review.

- Qualitative description of impact:

This chapter explains the process to those who wish to participate in contested cases or informal hearings and ensures they are aware of the process.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to implement and enforce this chapter beyond the costs required to comply with the underlying statute. The costs to the Department are the costs for providing written notices and decisions and the staff time needed to respond to a contested case request or informal settlement, prepare for a contested case or informal settlement, participate in a contested case, respond to an appeal to a contested case, and prepare a written decision to the appeal.

The costs to the Attorney General's Office are the staff time to prepare for a contested case and an appeal to a contested case, participation in a contested case and possible appeal, and possible judicial review.

The costs to the Department of Inspections, Appeals, and Licensing are the staff time involved in the contested case and the preparation of a written decision.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The major purpose of this chapter is to explain the process, which benefits all involved and aids in the reduction of costs to the public and others affected by contestable Department action.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less costly methods or less intrusive methods for achieving the purpose of this chapter. This chapter is required within Iowa Code chapter 17A.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternatives were seriously considered by the Department.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The chapter is necessary. The Department needs to have its own rules concerning contested case procedures.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is minimal or no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13
CONTESTED CASES

761—13.1(17A) Definitions. The definitions in Iowa Code section 17A.2 are hereby adopted. In addition:

“*Department*” means the Iowa department of transportation.

“*Director*” means the director of transportation or the director’s designee.

761—13.2(17A) Applicability.

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

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

761—13.3(17A) Submission of request for informal settlement or hearing.

13.3(1) A person who is aggrieved by an action of the department and who is entitled to a 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(2) A request for an informal settlement or a contested case hearing shall be submitted in writing to the director of the bureau or division of the department that administers the matter at issue.

13.3(3) The request shall include complete names, mailing addresses to be used for communications with the department, and telephone numbers for all persons involved and any attorneys representing them.

13.3(4) 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 bureau or division of the department within the time period specified. Timely submission of a request shall be jurisdictional.

761—13.4(17A) Informal settlement.

13.4(1) An informal settlement may be handled by telephone.

13.4(2) If an informal settlement cannot be reached within a reasonable period of time, the department will 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—13.5(17A) Contested case.

13.5(1) Procedures.

a. The department may initiate a contested case proceeding. Prior to initiating the contested case proceeding, the department, unless disallowed by statute, may attempt to settle the matter informally.

b. After a contested case hearing, a written decision will be issued by the presiding officer.

13.5(2) Hearing.

a. The department may be represented by legal assistants, paralegals, or designated attorney general staff at contested case hearings. Any such person is under the supervision of the attorney general transportation section chief.

b. The department may designate staff not under the supervision of the attorney general’s office to appear at contested case hearings as witnesses. Staff so designated may appear to testify about matters including but not limited to clarifying the record, providing additional information, providing justification for the department’s action, or answering questions of the appellants and presiding officer.

c. The department may submit certified copies of records admitted pursuant to Iowa Code section 321.10 in lieu of either legal representation or participation by a department employee.

13.5(3) Appeal of contested case decision.

a. A decision by a presiding officer shall become the final decision of the department and is 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 subrule.

b. No additional evidence is to be presented on appeal that is decided on the basis of the record made before the presiding officer in the contested case hearing.

c. The appeal is to include a statement of the specific issues presented for review and the precise ruling or relief requested.

d. An appeal of a presiding officer's decision is to be submitted in writing to the director of the bureau or division that administers the matter being contested. The appeal is deemed timely submitted if it is postmarked or delivered to the director of the appropriate bureau or division of the department within 20 days after the date of the presiding officer's decision unless otherwise provided in rule or statute.

e. The director of the administering bureau or division will forward the appeal to the director.

f. Failure to timely appeal a presiding officer's decision is considered a failure to exhaust administrative remedies.

g. The director may make a decision affirming, modifying or reversing the presiding officer's decision, or may remand the case to the presiding officer.

h. The decision of the director is the final decision of the department and constitutes final agency action for purposes of judicial review. No further steps are necessary to exhaust administrative remedies.

761—13.6(17A) Motion for review. The director 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, paragraphs 13.5(3) "g" and "h" apply.

761—13.7(17A) Rehearings. An application for rehearing of a final decision under Iowa Code section 17A.16 shall be filed with the director.

761—13.8(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.

761—13.9(17A) Communications.

13.9(1) Each party to a contested case is to 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.

13.9(2) Mailed notices, communications and decisions regarding the contested case are to be sent by first class or certified mail to the latest address that each party has provided to the department.

13.9(3) Notwithstanding subrule 13.9(2), the department of inspections, appeals, and licensing may communicate with the party or the party's attorney by email and may file and serve documents through the division of administrative hearings' administrative electronic management system.

761—13.10(17A) Default.

13.10(1) A party may move for default against another party that has requested the contested case proceeding and that has failed to appear after proper service is served.

13.10(2) Notwithstanding subrule 13.10(1), no default may be entered against the department for failure to appear; rather, the presiding officer may either continue the matter or proceed with the hearing and render a decision in the absence of the department.

13.10(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—13.5(17A). A motion to vacate is to state all facts relied upon by the moving party that establish that good cause existed for that party's failure to appear or participate.

13.10(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.

13.10(5) Timely filed motions to vacate are to be granted only for good cause shown. The burden of proof is on the moving party. Adverse parties have ten days to respond to a motion to vacate.

13.10(6) "Good cause," for the purpose of this rule, means surprise, excusable neglect or unavoidable casualty.

13.10(7) A decision denying a motion to vacate is subject to further appeal in accordance with rule 761—13.5(17A).

13.10(8) A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party in accordance with subrule 13.5(3).

13.10(9) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer is to issue another notice of hearing and the contested case will proceed accordingly.

761—13.11(17A) Additional procedures when the department is not a party.

13.11(1) Jurisdiction. When the department is obligated by statute to administer a controversy to which it is not a party, the following additional procedures apply.

13.11(2) Request.

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

b. An acceptable request will contain a statement of facts alleged and the relief sought by the requestor, the name and address of the persons involved and any attorneys representing them, the requestor's telephone number, and the mailing address to be used for all communications to the requestor from the department.

13.11(3) Informal settlement.

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

b. A controversy may be settled informally by the persons involved.

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

13.11(4) Contested case. 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 will send a written notice to the persons involved specifying that if the department is not notified of a settlement within 20 days after the notice is mailed, the department will initiate a contested case proceeding.

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