

Purpose and Summary

Pursuant to Executive Order 10, the Authority proposes to rescind Chapter 7 and adopt a new chapter in lieu thereof. The new chapter eliminates language that is duplicative of statutory language, eliminates unnecessary and inconsistent language, removes unnecessarily restrictive terms and updates outdated language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Persons requesting contested case proceedings will bear the costs of the proposed rulemaking.

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

Persons requesting contested case proceedings may benefit from the improved clarity of the chapter.

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:**

Persons requesting contested case proceedings may incur costs to draft the request or other documents associated with the proceedings. The amount of the costs will vary depending on the complexity of the issues and the compensation of staff or service providers who draft the documents. Other costs that may be incurred include expenses related to service and filing of documents, discovery procedures, and recording costs.

- **Qualitative description of impact:**

The proposed rulemaking will provide clarity about the Authority's processes for contested cases.

3. **Costs to the State:**

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

The Authority incurs staff time to administer and oversee contested case proceedings.

- **Anticipated effect on state revenues:**

The proposed rulemaking has 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 proposed rulemaking does not impose any additional costs on persons requesting contested case proceedings compared to the existing Chapter 7.

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

The Authority has not identified any less costly methods or less intrusive methods that exist for addressing contested case proceedings.

6. Alternative methods considered by the agency:

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

agency:

The Authority did not consider any alternative methods.

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

rulemaking:

The Authority did not consider any alternative methods because the Authority did not identify a less costly or less intrusive method.

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?

The proposed rules do not have a substantial impact on small business. The rules do not establish compliance or reporting requirements. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 265—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7

CONTESTED CASES

265—7.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the authority.

265—7.2(17A) Definitions. Except where otherwise specifically defined by law:

“*Authority*” means the Iowa finance authority created in Iowa Code section 16.1A.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2 and includes any matter described as a no factual dispute contested case under Iowa Code section 17A.10A.

“*Director*” means the director of the authority or an authorized representative of the director.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“*Party*” means the same as defined in Iowa Code section 17A.2.

“*Presiding officer*” means the authority board or members of the authority board.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the entire authority board did not preside.

265—7.3(17A) Time.

7.3(1) Time shall be computed as provided in Iowa Code section 4.1(34).

7.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

265—7.4(17A) Requests for contested case proceeding.

7.4(1) Requests for contested case proceedings shall be filed with the authority in writing within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the authority action in question. If no such time is specified by the authority, the request shall be filed within 12 months of the authority action in question.

7.4(2) The request for a contested case proceeding should state the name and address of the requester, identify the specific authority action that is disputed, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding, and include a short and plain statement of the issues of material fact in dispute.

265—7.5(17A) Notice of hearing.

7.5(1) Delivery of the notice of hearing to the person requesting a contested case constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a.* The methods specified in Iowa Code section 17A.12;
- b.* First-class mail; or

c. Publication as provided in the Iowa Rules of Civil Procedure.

7.5(2) The notice of hearing shall contain the information specified by Iowa Code section 17A.12(2) and the following information:

a. Identification of all parties, including the name, address and telephone number of the person who will act as advocate for the authority or the state and of parties' counsel where known;

b. Reference to the procedural rules governing conduct of the contested case proceeding;

c. Reference to the procedural rules governing informal settlement;

d. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer; and

e. Notification of the time period in which a party may request that the presiding officer be an administrative law judge pursuant to Iowa Code section 17A.11 and rule 265—7.6(17A).

265—7.6(17A) Presiding officer.

7.6(1) In each contested case in which Iowa Code chapter 17A requires an evidentiary hearing, the chairperson of the authority will determine whether the hearing will be held before the authority board, one or more members of the authority board, or an administrative law judge. Parties requesting that the presiding officer assigned to render a proposed decision be an administrative law judge must file a written request within 20 days after service of a notice of hearing that identifies or describes the presiding officer as the authority board or members of the authority board.

7.6(2) The director may deny a request made pursuant to subrule 7.6(1) only upon a finding that any of the following apply:

a. Conditions specified in Iowa Code section 17A.11(1)“*a.*”

b. Neither the authority nor any officer of the authority under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

c. The request is not consistent with a specified statute.

7.6(3) The director shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 7.6(4), the parties shall be notified at least ten days prior to hearing if a qualified administrative law judge will not be available.

7.6(4) An administrative law judge assigned to act as presiding officer in any of the authority's cases shall have sufficient technical expertise identified by the authority.

7.6(5) Except as otherwise provided by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the authority board. A party must seek any available intra-authority appeal to exhaust adequate administrative remedies.

7.6(6) Unless otherwise provided by law, members of the authority board, when reviewing a proposed decision upon intra-authority appeal, shall have the powers of and comply with the provisions of this chapter that apply to presiding officers.

265—7.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may agree to waive any provision of this chapter. However, the authority in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

265—7.8(17A) Telephone or video proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings or interactive video proceedings,

including the hearing for the contested case proceeding, may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. The cost of the telephone hearing or an interactive video hearing may be assessed equally to each party.

265—7.9(17A) Disqualification.

7.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a.* Has a personal bias or prejudice concerning a party or a representative of a party;
- b.* Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f.* Has a spouse or relative within the third degree of relationship that:
 - (1) Is a party to the case, or an officer, director or trustee of a party;
 - (2) Is a lawyer in the case;

(3) Is known to have an interest that could be substantially affected by the outcome of the case; or

(4) Is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision-making in that case.

7.9(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information that is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other authority functions, including fact-gathering for purposes other than investigation of the matter that culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and subrules 7.9(3) and 7.23(9).

7.9(3) In a situation where a presiding officer or other person knows of information that might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

7.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 7.9(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the

hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

7.9(5) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 265—7.25(17A) and seek a stay under rule 265—7.29(17A).

265—7.10(17A) Consolidation—severance.

7.10(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

- a. The matters at issue involve common parties or common questions of fact or law;
- b. Consolidation would expedite and simplify consideration of the issues involved; and
- c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

7.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

265—7.11(17A) Pleadings.

7.11(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer. A petitioner in a contested case proceeding has 20 days from delivery of the notice of hearing or subsequent order of the presiding officer to file a petition unless otherwise ordered.

7.11(2) A petition shall include the following:

- a. The persons or entities on whose behalf the petition is filed;
- b. The particular provisions of statutes and rules involved;

- c. The relief demanded and the facts and law relied upon for such relief; and
- d. The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

7.11(3) Answers are to be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate. An answer shall include the following:

- a. The name, address and telephone number of the person filing the answer;
- b. The name of the person or entities on whose behalf it is filed;
- c. The name of any attorney representing the person or entity on whose behalf it is filed;
- d. Specific admission, denial, or other answer to all material allegations of the pleading to which it responds;
- e. Any facts deemed to show an affirmative defense;
- f. Any additional defenses the pleader may claim;

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer that could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

7.11(4) Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance.

265—7.12(17A) Service and filing of pleadings and other papers.

7.12(1) *Service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper

relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the authority, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

7.12(2) *Service method.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

7.12(3) *Filing timing.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding are to be filed with the authority at the address set forth in rule 265—1.3(16). All pleadings, motions, documents or other papers served upon a party pursuant to these rules shall be filed simultaneously with the authority.

7.12(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the authority at the address set forth in rule 265—1.3(16), delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

7.12(5) *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 (authority office and address) 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 or state interoffice mail).

(Date)

(Signature)

265—7.13(17A) Discovery.

7.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

7.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. The presiding officer shall rule on motions in regard to discovery. Opposing parties shall respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 7.13(1). The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

7.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

265—7.14(17A) Subpoenas.

7.14(1) A party may be issued a subpoena by the authority upon written request. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. Requests for a subpoena shall include the name, address, and telephone number of the requesting party. 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.

7.14(2) The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

265—7.15(17A) Motions.

7.15(1) Prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

7.15(2) Any party may file a written response to a motion within ten days after the motion is served unless the time period is extended or shortened by rules of the authority or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

7.15(3) The presiding officer may schedule oral argument on any motion.

7.15(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the authority or an order of the presiding officer.

7.15(5) Motions for summary judgment shall comply with and are disposed of pursuant to the Iowa Rules of Civil Procedure unless inconsistent with this rule or other laws governing contested cases. Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days from the date a copy of the motion was served unless otherwise ordered by the presiding officer. The time fixed for hearing or nonoral submission shall be at least 20 days after the filing of the motion unless a shorter time is ordered by the presiding officer. A summary judgment

order rendered on all issues in a contested case is subject to rehearing pursuant to rule 265—7.28(17A) and appeal pursuant to rule 265—7.27(17A).

265—7.16(17A) Prehearing conference.

7.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled at least three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by or on behalf of the authority to all parties. For good cause, the presiding officer may permit variances from this rule.

7.16(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits that the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

7.16(3) In addition to items specified by subrule 7.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters that the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters that will expedite the hearing.

7.16(4) Prehearing conferences shall be conducted by telephone or other electronic means unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a prehearing conference.

265—7.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

7.17(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless waived by the presiding officer. Applications for continuance shall not be made or granted without notice to all parties except when notice is not feasible. The authority may waive notice of such requests for a particular case or an entire class of cases.

7.17(2) In determining whether to grant a continuance, the presiding officer 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.

The presiding officer may require documentation of any grounds for continuance.

265—7.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing. A withdrawal is with prejudice unless otherwise provided.

265—7.19(17A) Intervention.

7.19(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

7.19(2) When filed. Motions for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. A statement of good cause for the failure to file in a timely manner shall be included in any later motion. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances that would delay the proceeding may be denied.

7.19(3) Grounds for intervention. A motion for leave to intervene shall demonstrate that:

a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;

b. The movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and

c. The interests of the movant are not adequately represented by existing parties.

7.19(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may condition the intervenor's participation in the proceeding.

265—7.20(17A) Hearing procedures.

7.20(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue other orders and rulings to ensure the orderly conduct of the proceedings.

7.20(2) All objections shall be timely made and stated on the record.

7.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

7.20(4) Subject to terms and conditions prescribed by the presiding officer, 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, submit briefs, and engage in oral argument.

7.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

7.20(6) Witnesses may be sequestered during the hearing.

7.20(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer gives an opening statement briefly describing the nature of the proceedings;

b. The parties are afforded the opportunity to present opening statements;

c. Parties present their cases in the sequence determined by the presiding officer;

d. Each witness is to be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

265—7.21(17A) Evidence.

7.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

7.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

7.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare for the additional issue.

7.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

7.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

7.21(6) 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 presiding officer, 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.

265—7.22(17A) Default.

7.22(1) A presiding officer may enter default in accordance with Iowa Code section 17A.12(3). Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

7.22(2) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final authority action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 265—7.27(17A). A motion to vacate must state all facts

relied upon by the moving party that establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

7.22(3) 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.

7.22(4) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

7.22(5) "Good cause," for purposes of this rule, shall have the same meaning as "good cause" for setting aside a default judgment in the Iowa Rules of Civil Procedure.

7.22(6) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 265—7.25(17A).

7.22(7) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed according to this chapter.

7.22(8) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues, but unless the defaulting party has appeared, it cannot exceed the relief demanded.

7.22(9) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 265—7.29(17A).

265—7.23(17A) Ex parte communication.

7.23(1) Iowa Code section 17A.17 governs ex parte communications in authority contested cases. This does not prohibit persons jointly assigned tasks related to the contested case from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 7.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

7.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue while the case is pending.

7.23(3) Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

7.23(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 265—7.12(17A) and may be supplemented by telephone, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call or other electronic means including all parties or their representatives.

7.23(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

7.23(6) The director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 7.23(1).

7.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 265—7.17(17A).

7.23(8) A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, the procedures indicated in Iowa Code section 17A.17(4) apply.

7.23(9) Presiding officers shall disclose pre-assignment ex parte communications in accordance with Iowa Code section 17A.17(3). Factual information contained in an

investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will be provided to the parties.

7.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule, including default, a decision against the offending party, censure, or suspension, or revocation of the privilege to practice before the authority. Violation of ex parte communication prohibitions by authority personnel shall be reported to the director for possible sanctions, including censure, suspension, dismissal, or other disciplinary action.

265—7.24(17A) Recording costs. Upon request, the authority shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of recording unless otherwise provided by law.

265—7.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the authority board may review an interlocutory order of the presiding officer. In determining whether to do so, the authority board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the authority board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order but no later than the time for compliance with the order or the date of hearing, whichever is first.

265—7.26(17A) Posthearing procedures and orders.

7.26(1) *Filing by parties of briefs and proposed findings.* The presiding officer may ask the parties to submit proposed findings and conclusions of law and a proposed order or

briefs. Copies of the submission shall be served on all parties. The submission schedule, including waiver or briefs, shall be determined at the close of the hearing.

7.26(2) *Final decision or order.*

a. When a quorum of the authority board presides over the reception of evidence at the hearing, its decision is a final decision. The decision shall be in writing and shall include findings of fact and conclusions of law in conformance with Iowa Code chapter 17A.

b. In a contested case in which the hearing is held before an administrative law judge or a panel of the authority board members constituting less than a quorum of the authority board, the presiding officer or panel shall render a proposed decision. The proposed decision shall be in writing and shall include findings of fact and conclusions of law in conformance with Iowa Code chapter 17A. The proposed decision becomes the final decision of the authority without further proceedings unless there is an appeal to, or review on motion of, the authority within 30 days.

7.26(3) *Decisions and orders.*

a. By whom prepared. The presiding officer who presided at the reception of evidence shall prepare a proposed or final decision or order in each case. Findings of fact shall be prepared by the presiding officer at the reception of the evidence in a case unless the officer becomes unavailable. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

b. Content of decision or order. Proposed or final decisions or orders are rendered in accordance with Iowa Code section 17A.16(1). Proposed decisions or orders include rulings

upon each proposed finding if a party submitted proposed findings of fact in accordance with subrule 7.26(1).

c. Delivery. A copy of the proposed decision or order shall be delivered to the parties either by personal service or by certified mail, return receipt requested.

265—7.27(17A) Appeals and review.

7.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the authority board within 30 days after issuance of the proposed decision.

7.27(2) *Review.* The authority board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

7.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the authority. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. If a member of the authority board or the authority initiates review of a proposed decision, the director shall mail a notice of review to all parties. The notice of appeal or the notice of review shall specify:

- a.* The parties initiating the appeal;
- b.* The proposed decision or order appealed from;
- c.* The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d.* The relief sought;
- e.* The grounds for relief.

7.27(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence

must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The authority board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

7.27(5) *Scheduling.* The authority shall issue a schedule for consideration of the appeal.

7.27(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The authority may resolve the appeal on the briefs or provide an opportunity for oral argument. The authority may shorten or extend the briefing period as appropriate.

265—7.28(17A) Applications for rehearing.

7.28(1) Any party to a contested case proceeding may file an application for rehearing from a final order.

7.28(2) The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the authority decision on the existing record and whether, on the basis of the grounds enumerated in subrule 7.27(4), the applicant requests an opportunity to submit additional evidence.

7.28(3) The application shall be filed with the authority within 20 days after issuance of the final decision.

7.28(4) A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the authority shall serve copies on all parties.

7.28(5) Any application for a rehearing shall be deemed denied unless the authority grants the application within 20 days after its filing.

265—7.29(17A) Stays of authority actions.

7.29(1) *When available.*

a. Any party to a contested case proceeding may petition the authority for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the authority. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The authority may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the authority for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

7.29(2) *When granted.* In determining whether to grant a stay, the presiding officer or authority shall consider the factors listed in Iowa Code section 17A.19(5).

7.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the authority or any other party.

265—7.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed to by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted by the parties to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment.

265—7.31(17A) Emergency adjudicative proceedings.

7.31(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, and welfare and, consistent with the Constitution and other provisions of law, the authority may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the authority by emergency adjudicative order. Before issuing an emergency adjudicative order, the authority shall consider factors, including but not limited to the following:

a. Whether there has been a sufficient factual investigation to ensure that the authority 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 adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the authority is necessary to avoid the immediate danger.

7.31(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the authority's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the authority;

(3) Certified mail to the last address on file with the authority;

(4) First-class mail to the last address on file with the authority; or

(5) 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 authority orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the authority shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

7.31(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the authority shall make reasonable immediate efforts to contact by telephone or electronic mail the persons who are required to comply with the order.

7.31(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the authority shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which the authority's proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further authority proceedings to a later date will be granted only in compelling circumstances upon application in writing.

265—7.32(17A,16) Informal procedure prior to hearing. Any person who desires to pursue informal settlement of any contested case may make a request for an informal

settlement to the director. When the authority is a party, all informal settlements shall be made by the director. All informal settlements are subject to ratification by the board. A request for informal settlement should be received by the director not less than 15 days before the authority board meeting at which the request is to be considered. The director shall schedule consideration of the request at the next regular authority board meeting occurring more than 30 days after the request for an informal settlement is made. Not more than ten days after the authority meeting at which the request is scheduled for consideration, the director will notify the petitioner in writing of the authority's disposition of the request. If the authority determines that a conference is appropriate, the party will be notified when, where, and with whom such a conference is to be held. The terms of any settlement agreed to by the parties shall be embodied in a written stipulation. Upon receipt of the request, all formal contested case procedures are stayed, except in the case of emergency orders as provided in rule 265—7.31(17A). If informal settlement is unsuccessful, formal contested case proceedings may be instituted in accordance with rule 265—7.5(17A).

These rules are intended to implement Iowa Code chapter 17A.