

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to GovConnectIowa and administration

The Revenue Department hereby amends Chapter 7, “Practice and Procedure Before the Department of Revenue,” Chapter 8, “Forms and Communications,” Chapter 38, “Administration,” Chapter 51, “Administration,” and Chapter 57, “Administration,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 17A and section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 17A and sections 421.9, 421.10, 421.14, 421.17, 421.60 and 422.68.

Purpose and Summary

These amendments accomplish a variety of objectives. Many of the amendments are related to the implementation of the Department’s modernized tax management system and e-services portal, GovConnectIowa. The new system and portal will be phased in beginning in November 2021. GovConnectIowa will offer taxpayers and taxpayer representatives the ability to submit many filings to the Department through the portal and will also allow the Department to issue many items to taxpayers and taxpayer representatives through the portal. Amendments have been made to reflect GovConnectIowa throughout Chapter 7. In addition, a new rule has been added in Chapter 8 to describe how taxpayers and taxpayer representatives will be able to opt out of paper mail if they have accounts in GovConnectIowa.

These amendments also clarify various aspects of the appeals process. Provisions on expedited procedures and demanding contested case procedures were moved from various subrules to their own new rule, 701—7.13(17A,421), to eliminate inconsistencies between rules; more closely align the procedure to Iowa Code section 421.60(2)“g”; and make it easier to find information on the topic. Provisions on dismissals of protests were moved from subrule 7.11(2) to new rule 701—7.12(17A,421) to better highlight the topic. Additional amendments more closely align the dismissal rules on untimely protests with the narrow statutory grounds for waiving the statute of limitations on filing appeals under Iowa Code section 421.60. Additional amendments align the grounds for reinstating protests following a failure to pursue with the grounds for default judgments described in Iowa Code section 17A.12. Many other rules in the chapter have been renumbered to place these two new rules in a logical location in relation to other information on appeals. The term “protester” has been updated to “taxpayer” and “protest” has been updated to “appeal” to improve consistency of terminology used in the rules and elsewhere in materials created by the Department.

Amendments have also been made to the rules on petitions for rule waiver and rule making to implement 2020 Iowa Acts, House File 2389. Other amendments have been made to the rule on rule making to incorporate provisions of the Uniform Rules on Agency Procedure for Rule Making directly into the text of the rule rather than relying on a cross-reference to the PDF of the document on the Legislature’s website. Some modifications were made from the Uniform Rules to reflect current practices and the existence of the Legislature’s website on administrative rules.

Other changes throughout Chapter 7 improve clarity and address issues that have been areas of uncertainty in the past. Amendments to Chapter 7 are also adopted in **ARC 5932C**, IAB 10/6/21.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 11, 2021, as **ARC 5849C**. No public comments were received. Since publication of the Notice, two typos have been corrected, the name of an Iowa Code chapter has been updated, and a pronoun in numbered paragraph 7.9(6)“b”(2)“9” has been clarified. No other changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on September 15, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on November 10, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend **701—Chapter 7**, title, as follows:

PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF REVENUE APPEALS, TAXPAYER REPRESENTATION, AND OTHER ADMINISTRATIVE PROCEDURES

ITEM 2. Amend rules 701—7.1(421,17A) to 701—7.4(17A) as follows:

701—7.1(421,17A) Applicability and scope of rules. These rules ~~pertain to practice and procedure~~ and are designed to implement the requirements of the Iowa administrative procedure Act and aid in the effective and efficient administration and enforcement of the tax laws of this state and other activities of the department. These rules shall govern the practice, procedure, and conduct of the informal proceedings, contested case proceedings, licensing, rule making, requests for waiver of rules, and declaratory orders involving taxation and other areas within the department’s jurisdiction, ~~which includes the following:~~

- ~~1. Sales and use tax—Iowa Code chapter 423;~~
- ~~2. Individual and fiduciary income tax—Iowa Code sections 422.4 to 422.31 and 422.110 to 422.112;~~
- ~~3. Franchise tax—Iowa Code sections 422.60 to 422.66;~~
- ~~4. Corporate income tax—Iowa Code sections 422.32 to 422.41 and 422.110 to 422.112;~~

5. ~~Withholding tax—Iowa Code sections 422.16 and 422.17;~~
6. ~~Estimated tax—Iowa Code sections 422.16, 422.17 and 422.85 to 422.92;~~
7. ~~Motor fuel tax—Iowa Code chapter 452A;~~
8. ~~Property tax—Iowa Code chapters 421, 425 to 428A and 433 to 441;~~
9. ~~Cigarette and tobacco tax—Iowa Code chapters 421B and 453A;~~
10. ~~Inheritance tax and qualified use inheritance tax—Iowa Code chapters 450 and 450B;~~
11. ~~Local option taxes—Iowa Code chapter 423B;~~
12. ~~Hotel and motel tax—Iowa Code chapter 423A;~~
13. ~~Drug excise tax—Iowa Code chapter 453B;~~
14. ~~Automobile rental excise tax—Iowa Code chapter 423C;~~
15. ~~Environmental protection charge—Iowa Code chapter 424;~~
16. ~~Replacement taxes—Iowa Code chapter 437A;~~
17. ~~Statewide property tax—Iowa Code chapter 437A;~~
18. ~~Equipment tax—Iowa Code chapter 423D;~~
19. ~~Other taxes and activities as may be assigned to the department from time to time; and~~
20. ~~The taxpayer's bill of rights—Iowa Code section 421.60.~~

As the purpose of these rules is to facilitate business and advance justice, any rule contained herein, pursuant to statutory authority, may be suspended or waived by the department to prevent undue hardship in any particular instance or to prevent surprise or injustice.

This rule is intended to implement Iowa Code chapter 17A.

701—7.2(421,17A) Definitions. These definitions apply to this chapter, unless the text otherwise states to the contrary otherwise:

“Act” means the Iowa administrative procedure Act.

“Affiliate or subsidiary of an entity dominant in its field of operation” means an entity which is at least 20 percent owned by an entity that is dominant in its field of operation, or by a partner, officer, director, majority stockholder or the equivalent, of an entity dominant in that field of operation.

“Agency” means each board, commission, department, officer, or other administrative office or unit of the state.

“Appeal” means a dispute of a notice of assessment, refund denial, or other department action which may culminate in a contested case proceeding. *“Protest”* has the same meaning as appeal.

“Appeals section” means the section of the department designated by the director to administer the informal stage of the appeals process and participate in contested case proceedings for appeals before the department.

“Clerk of the hearings section” means the clerk of the ~~hearings section of the department~~ legal services and appeals division or the clerk's designee.

“Contested case” means a proceeding, including licensing, in which the legal rights, duties or privileges of a party are required by constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing. This term also includes any matter defined as a no factual dispute contested case as provided in Iowa Code section 17A.10A.

“Declaratory order” means an order issued pursuant to Iowa Code section 17A.9.

“Department” means the Iowa department of revenue.

“Department of inspections and appeals” means the state department created by Iowa Code chapter 10A.

“Director” means the director of the department or the director's authorized representative.

“Division of administrative hearings” means the division of the department of inspections and appeals responsible for holding contested case proceedings pursuant to Iowa Code chapter 10A.

“Dominant in its field of operation” means having more than 20 full-time equivalent positions and more than \$1 million in annual gross revenues.

“Entity” means any taxpayer other than an individual or sole proprietorship.

“GovConnectIowa” means the e-services portal of the department.

“Informal stage” means the procedures of the appeals process described in rule 701—7.11(17A).

“*Intervene*” means to file with the department a petition requesting that the petitioner be allowed to intervene in the proceedings for a declaratory order currently under the department’s consideration.

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

~~“*Last-known address*” does not necessarily mean the taxpayer’s actual address but instead means the last address that the taxpayer makes known to the department by tax type means the last address associated with a taxpayer by tax type, as determined pursuant to rule 701—7.33(421). Thus, for instance, receipt by the department of a taxpayer’s change of address from a third person not authorized to act on behalf of the taxpayer (e.g., an employer who had filed a Form W-2 showing a new taxpayer address) is not notice to the department of a change of address of the taxpayer. However, the filing by the taxpayer of a tax return for a year subsequent to the year for which a notice is required would be notification to the department of a change of address, provided a reasonable amount of time is allowed to process such information and transfer it to the department’s central computer system. Taxpayers should be aware of their need to update their address with the department in order to receive refunds of tax and notices of assessments and denial of a claim for refund. When such a notice is sent to a “taxpayer’s last known address,” the notice is legally effective even if the taxpayer never receives it.~~

“*License*” means the whole or a part of any permit, certificate, approval, registration, charter, or similar form of permission required by statute.

“*Licensing*” means the department process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

“*Motion*” has the same meaning as the term is defined in Iowa R. Civ. P. 1.431.

“*Party*” means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, including intervenors.

“*Person*” means any individual; estate; trust; fiduciary; partnership, including limited liability partnership; corporation; ~~including limited liability corporation company~~; association; governmental subdivision; or public or private organization of any character or any other person covered by the Act other than an agency.

“*Petition*” means application for declaratory order, request to intervene in a declaratory order under consideration, or application for initiation of proceedings to adopt, amend or repeal a rule or document filed in licensing.

“*Pleadings*” means ~~protest~~ appeal, answer, reply or other similar document filed in a contested case proceeding, including contested cases involving no factual dispute.

“*Presiding officer*” means the person designated to preside over a proceeding involving the department. A presiding officer of a contested case involving the department will be either the director or a qualified administrative law judge appointed, pursuant to Iowa Code chapter 17A, by the division of administrative hearings established pursuant to Iowa Code section 10A.801. In cases in which the department is not a party, at the director’s discretion, the presiding officer may be the director or the director’s designee. The presiding officer of an administrative appeal is the director of the department.

“*Proceeding*” means informal, formal and contested case proceedings.

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

~~“*Protester*” means any person entitled to file a protest which may culminate in a contested case proceeding.~~

“*Provision of law*” means the whole or part of the Constitution of the United States of America or the Constitution of the State of Iowa, or of any federal or state statute, court rule, executive order of the governor, or rule of the department.

“*Review unit*” means the unit composed of the appeals section of the department employees designated by the director and any of the attorney general’s staff who have been assigned to review ~~protests~~ appeals filed by taxpayers.

“*Rule*” means a department statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of the

department. Notwithstanding any other statute, the term includes an executive order or directive of the governor which creates an agency or establishes a program or which transfers a program between agencies established by statute or rule. The term includes the amendment or repeal of an existing rule, but does not include the excluded items set forth in Iowa Code section 17A.2(11).

~~“Small business” means any entity including, but not limited to, an individual, partnership, corporation, joint venture, association, or cooperative. A small business is not an affiliate of an entity dominant in its field of operation. A small business has either 20 or fewer full-time equivalent positions or less than \$1 million in annual gross revenues in the preceding fiscal year. the same as defined in Iowa Code section 17A.4A(8) “a.”~~

~~“Taxpayer interview” means any in-person contact between an employee of the department and a taxpayer or a taxpayer’s representative which has been initiated by a department employee.~~

~~“Taxpayer’s representative” or “authorized taxpayer’s representative” means an individual authorized to practice before the department under ~~rule 701—7.6(17A)~~ Iowa Code section 421.59; an individual who has been named as an authorized representative on a fiduciary return of income form filed under Iowa Code section 422.14, or a tax return filed under Iowa Code chapter 450, “Inheritance Tax,” or chapter 450B, “Qualified Use Inheritance Tax”; or for proceedings before the department, any other individual the taxpayer designates who is named on a valid power of attorney if appearing on behalf of another.~~

Unless otherwise specifically stated, the terms used in these rules promulgated by the department shall have the meanings defined by the Act.

This rule is intended to implement Iowa Code chapter 17A.

701—7.3(17A) Business hours How to submit an appeal, petition or related documents; service. Appeals, petitions, and other documents governed by this chapter may be filed electronically, by mail, or in person, in accordance with the limits described below. The principal office of the department in the Hoover State Office Building in Des Moines, Iowa, shall generally be open between the hours of 8 a.m. and 4:30 p.m. each weekday, except Saturdays, Sundays, and legal holidays as prescribed in Iowa Code section 4.1(34), ~~for the purpose of receiving protests, pleadings, petitions, motions, or requests for public information or copies of official documents or for the opportunity to inspect public records.~~

~~**7.3(1) Ways to submit an appeal, petition, or related document.** All documents or papers required to be filed with the department by these rules shall be filed with the designated clerk of the hearings section in the principal office of the department in the Hoover State Office Building, Des Moines, Iowa 50319. Requests for public information or copies of official documents or for the opportunity to inspect public records shall be made in the director’s office at the department’s principal office. Unless otherwise specified in another rule in this chapter, a person may submit an appeal, petition, related document, or document filed during an appeal or pending petition:~~

~~*a.* By submitting through GovConnectIowa. As of November 15, 2021, GovConnectIowa is available for filing petitions for declaratory order, petitions for rule making, and petitions for rule waiver for all tax types, but is only available for filing appeals for the following tax types: sales, consumers/retailers use, E911, withholding, motor fuel, hotel/motel, local option sales, automobile rental, and water service excise, and tax credits and distributions associated with these tax types.~~

~~*b.* By email to idrhearings@iowa.gov.~~

~~*c.* By mail to Legal Services and Appeals Division, Iowa Department of Revenue, P.O. Box 14457, Des Moines, Iowa 50306-3457.~~

~~*d.* By hand delivery to the department’s customer service desk in the Hoover State Office Building, First Floor, 1305 East Walnut Street, Des Moines, Iowa 50319, during regular business hours.~~

~~**7.3(2) Filings with the department of inspections and appeals and service upon the department during contested case proceedings.** All documents or papers required or permitted to be filed with an administrative law judge appointed by the division of administrative hearings to be a presiding officer in a contested case shall be filed with the Department of Inspections and Appeals, Administrative Hearings Division, Third Floor, Wallace State Office Building, Des Moines, Iowa 50319 department of inspections~~

and appeals in accordance with rule 481—10.12(17A). All papers or documents required or permitted by this chapter to be filed with the department or the director and served upon the opposing party or other person in a contested case shall be served by ordinary mail unless another rule specifically refers to another method.

7.3(3) Service by the department. All notices required by this chapter to be served on parties or persons by the department or presiding officer that are not currently pending before an administrative law judge shall be served by ordinary mail unless the taxpayer has elected to receive communications exclusively through GovConnectIowa, pursuant to rule 701—8.6(421). For taxpayers registered in GovConnectIowa, posting the document in the taxpayer's GovConnectIowa account constitutes service or notice of the document. For taxpayer representatives registered in GovConnectIowa, posting the document in the taxpayer representative's GovConnectIowa account constitutes service or notice of the document. For nonregistered taxpayers or taxpayer representatives, documents will be served by ordinary mail. When this nonregistered mailing is required, however, the department may note on the docket the parties served and the method of service instead of filing a certificate of service. With respect to any notice, correspondence, or communication served electronically, response deadlines shall be calculated from the date the taxpayer is notified electronically of the correspondence or the item is mailed, whichever is earlier.

This rule is intended to implement Iowa Code chapter 17A.

~~701—7.4(17A) Computation of time, filing of documents~~ Time requirements for filings. In computing any period of time prescribed or allowed by these rules or by an applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Legal holidays are prescribed in

7.4(1) Computing time. Time shall be computed in accordance with Iowa Code section 4.1(34). For electronic submissions, in addition to the requirements described in Iowa Code section 4.1(34), local time for the state of Iowa applies.

~~7.4(1) 7.4(2) Date of filing.~~ All documents or papers required to be filed with the department shall be considered as timely filed if they are either received by the department's principal office or are postmarked for delivery to the department's principal office within time limits as prescribed by law or by rules or orders of the department. The date of filing for appeal requests, petitions, or other related documents shall be:

a. If sent electronically either through GovConnectIowa or as described on the department's website, determined by the date on which the electronic submission was completed.

b. If sent by regular mail, the date postmarked on the envelope sent to the department's principal office or, if the postmark is not available, on the date the appeal is stamped as received by the department.

c. If hand delivered, the date the appeal is stamped as received by the department.

~~7.4(2) In all cases where the time for the filing of a protest or the performance of any other act shall be fixed by law, the time so fixed by law shall prevail over the time fixed in these rules.~~

This rule is intended to implement Iowa Code chapter 17A.

ITEM 3. Rescind rule 701—7.5(17A) and adopt the following **new** rule in lieu thereof:

701—7.5(17A) Form and style of documents.

7.5(1) Requirements applicable to all filings under this chapter.

a. Signatures. Signatures must meet the requirements of 701—subrule 8.2(6). The signature shall constitute a certification that the signer has read the document; that, under penalty of perjury, the signer declares that to the best of the signer's knowledge and belief, the information contained in the document is true, correct, and complete; and that no statement contained in the document is misleading.

b. Citations. Citations may be italicized or underlined.

7.5(2) Paper. Any paper documents that are allowed or required to be submitted by this chapter must:

- a. Be clear and legible.
- b. Be on white paper.
- c. Be on the applicable department appeal, application for reinstatement, or petition form available on the department's forms website tax.iowa.gov/forms under the category "Applications and Other" or, if not on the department's form, include a proper caption on the first page.
- d. Include a signature.
- e. Include copies as herein provided or as specified in other applicable rules.

7.5(3) Email. Any documents allowed or required to be filed by email under this chapter must be:

- a. A document in PDF, Microsoft Word, Microsoft Excel, or image format that complies with subrules 7.5(1) and 7.5(2), or
- b. The body of an email that meets all of the requirements of subrules 7.5(1) and 7.5(2).

7.5(4) GovConnectIowa. Any documents allowed or required to be filed through GovConnectIowa under this chapter must be:

- a. A document in PDF, Microsoft Word, Microsoft Excel, or image format that complies with subrules 7.5(1) and 7.5(2) that is properly uploaded and properly submitted through GovConnectIowa.
- b. Completed and submitted on the applicable form provided on GovConnectIowa.

This rule is intended to implement Iowa Code chapters 17A and 554D and sections 421.17 and 421.27A.

ITEM 4. Amend rules 701—7.7(17A) to 701—7.10(17A) as follows:

~~**701—7.7 701—7.10(17A) Resolution of tax liability.** Unless a proper protest has been filed as provided hereinafter, persons interested in any tax liability, refund claim, licensing or any other tax matters shall discuss the resolution of such matters with appropriate personnel.~~

In the event that a proper protest appeal has been filed as provided hereinafter, ~~the appropriate other~~ department personnel, when authorized by the review unit appeals section, shall have the authority to discuss the resolution of any matter in the protest appeal either with the protester taxpayer or the protester's taxpayer's representative. The appropriate personnel shall report their activities in this regard to the review unit appeals section, and the unit section shall be authorized to approve or reject any recommendations made by the appropriate personnel to resolve a protest an appeal.

This rule is intended to implement Iowa Code chapter 17A.

~~**701—7.8 701—7.9(17A) Protest Appeals.** Any person wishing to contest an assessment, denial of refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding, shall file a protest an appeal, in writing, with the department within the time prescribed by the applicable statute or rule for filing notice of application to the director for a hearing. The protest appeal must either be delivered to the department by electronic means or by United States Postal Service or a common carrier, by ordinary, certified, or registered mail, directed to the attention of the clerk of the hearings section at P.O. Box 14457, Des Moines, Iowa 50306, or be personally delivered to the clerk of the hearings section or served on the clerk of the hearings section by personal service during business hours. For the purpose of mailing, a protest is considered filed on the date of the postmark. If a postmark date is not present on the mailed article, then the date of receipt of protest will be considered the date of mailing. Any document, including a protest, is considered filed on the date personal service or personal delivery to the office of the clerk of the hearings section for the department is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing filed as described in rule 701—7.3(17A).~~

~~**7.8(1) 7.9(1) Deadlines.** The period for appealing department action relating to refund claims is the same statutory period as that for contesting an assessment. Failure to timely file a written protest proper appeal will be construed as a waiver of opposition to the matter involved unless, on the director's own motion, pursuant to statutory authority, the powers of abatement or settlement are exercised. The review unit created within the department by the director to review protests as provided in rule 701—7.11(17A) may seek dismissal of protests appeals which are not in the proper form as provided by this rule. See subrule ~~7.11(2)~~ 7.12(2) for dismissals.~~

~~7.8(2)~~ 7.9(2) *Appealing refund claims that have not been reviewed within six months.* If the department has not granted or denied a filed refund claim within six months of the filing of the claim, the refund claimant may file a ~~protest~~ an appeal. Even though a ~~protest~~ an appeal is so filed, the department is entitled to examine and inspect the refund claimant's records to verify the refund claim.

~~7.8(3)~~ 7.9(3) *Paying assessment in order to appeal refund claim denial.* Notwithstanding the above, the taxpayer who fails to timely ~~protest~~ appeal an assessment may contest the assessment by paying the whole assessed tax, interest, and penalty, and by filing a refund claim within the time period provided by law for filing such claim. However, in the event that such assessment involves divisible taxes which are not timely ~~protested~~ appealed, namely, an assessment which is divisible into a tax on each transaction or event, the taxpayer may contest the assessment by paying a portion of the assessment and filing a refund claim within the time period provided by law. In this latter instance, the portion paid must represent any undisputed portion of the assessment and must also represent the liability on a transaction or event for which, if the taxpayer is successful in contesting the portion paid, the unpaid portion of the assessment would be canceled. *Flora v. United States*, 362 U.S. 145, 4 L.Ed. 2d 623, 80 S.Ct.630 (1960); *Higginbotham v. United States*, 556 F.2d 1173 (4th Cir. 1977); *Steele v. United States*, 280 F.2d 89 (8th Cir. 1960); *Stern v. United States*, 563 F. Supp. 484 (D. Nev. 1983); *Drake v. United States*, 355 F. Supp. 710 (E.D. Mo. 1973). Any such ~~protest~~ appeal filed is limited to the issues covered by the amounts paid for which a refund was requested and denied by the department. Thereafter, if the department does not grant or deny the refund within six months of the filing of the refund claim or if the department denies the refund, the taxpayer may file a ~~protest~~ an appeal as authorized by this rule.

~~7.8(4)~~ 7.9(4) *Divisible taxes.* All of the taxes administered and collected by the department can be divisible taxes, except individual income tax, fiduciary income tax, corporation income tax, franchise tax, and statewide property tax. The following noninclusive examples illustrate the application of the divisible tax concept.

EXAMPLE A. As a responsible party, X is assessed withholding income taxes, penalty, and interest on eight employees. X fails to timely ~~protest~~ appeal the assessment. X contends that X is not a responsible party. If X is a responsible party, X is required to make monthly deposits of the withholding taxes. In this situation, the withholding taxes are divisible. Therefore, X may pay an amount of tax, penalty, and interest attributable to one employee for one month and file a refund claim within the time period provided by law since, if X is successful on the refund claim, the remaining unpaid portion of the assessment would be canceled.

EXAMPLE B. Y is assessed sales tax, interest, and penalty for electricity purchased and used to power a piece of machinery in Y's manufacturing plant. Y fails to timely ~~protest~~ appeal the assessment. Y was billed monthly for electricity by the power company to which Y had given an exemption certificate. Y contends that the particular piece of machinery is used directly in processing tangible personal property for sale and that, therefore, all of the electricity is exempt from sales tax. In this situation, the sales tax is divisible. Therefore, Y may pay an amount of tax, penalty, and interest attributable to one month's electrical usage in that machinery and file a refund claim within the time period provided by law since, if Y is successful on the refund claim, the remaining unpaid portion of the assessment would be canceled.

~~7.8(5)~~ 7.9(5) *Who may be named in an appeal.* The ~~protest~~ appeal shall be brought in the name of the aggrieved taxpayer. The appeal may be filed by and in the name of the ~~interested or affected person~~ aggrieved taxpayer or by and in the ~~full descriptive name of the fiduciary~~ authorized representative described in Iowa Code section 421.59(2), Iowa Code chapter 633B, or subrule 7.6(6) legally entitled to institute a proceeding on behalf of the person, or by an intervenor in contested case proceedings. In the event of a ~~variance in~~ discrepancy between the name set forth in the ~~protest~~ appeal and the correct name, a statement of the reason for the discrepancy shall be set forth in the ~~protest~~ appeal.

~~7.8(6)~~ 7.9(6) *Form and content of the appeal.*

a. *Department forms.* Appeals may be filed using the form available on GovConnectIowa or the form available on the department's website, tax.iowa.gov/forms.

b. *Manually created appeals.* Persons who do not use GovConnectIowa or the form available on the department's website shall use the following format:

(1) The ~~protest~~ appeal shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____	*	
(state taxpayer's name and address and	*	PROTEST <u>APPEAL</u>
designate type of proceeding, e.g.,	*	Docket No. _____
income tax refund claim)	*	(filled in by Department)

~~7.8(7)~~ (2) The protest appeal shall substantially state in separate numbered paragraphs the following:

- ~~a.~~ 1. Proper allegations showing:
- (1) ● Date of department action, such as the ~~assessment~~ notice of assessment, refund denial, etc.;
 - (2) ● Whether the ~~protester taxpayer~~ failed to timely appeal the assessment and, if so, the date of payment and the date of filing of the refund claim;
 - (3) ● Whether the protest appeal involves the appeal of a refund claim after six months from the date of filing the refund claim because the department failed to deny the claim;
 - (4) ● Copies of the documented department action, such as the ~~assessment~~ notice of assessment, refund claim, and refund denial letter;
 - (5) ● Other items that the ~~protester taxpayer~~ wishes to bring to the attention of the department; and
 - (6) ● A request for attorney fees, if applicable.
- ~~b.~~ 2. The type of tax, the taxable period or periods involved, and the amount in controversy.
- ~~c.~~ 3. Each error alleged to have been committed, listed in a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.
- ~~d.~~ 4. Reference to any particular statute or statutes and any rule or rules involved, if known.
- ~~e.~~ 5. Description of records or documents that were not available or were not presented to department personnel prior to the filing of the protest appeal, if any. Copies of any records or documents that were not previously presented to the department shall be provided.
- ~~f.~~ 6. Any other matters deemed relevant and not covered in the above paragraphs.
- ~~g.~~ 7. The desire of the ~~protester taxpayer~~ to ~~waive informal or contested case proceedings if waiver is desired. Unless the protester so indicates a waiver, informal procedures will be initiated expedite proceedings. See rule 701—7.13(17A,421) for more details on expedited proceedings.~~
- ~~h.~~ 8. A statement setting forth the relief sought by the ~~protester taxpayer~~.
- ~~i.~~ 9. The signature of the ~~protester taxpayer~~ or that of the ~~protester's taxpayer's~~ representative, the addresses of the ~~protester and of the protester's representative, and the telephone number of the protester or the protester's representative. A copy of the power of attorney for the protester's representative shall be attached. If the appeal is signed by the taxpayer, include the address and telephone number of the taxpayer in the signature block. If it is signed by a taxpayer representative, include the address and telephone number of the taxpayer representative in the signature block. Appeals submitted by a taxpayer's representative must have a valid IDR power of attorney form or representative certification form, as applicable in accordance with rule 701—7.6(17A), on file with the department, or one should be included with the appeal.~~

~~7.8(8)~~ An original and two copies of the protest shall be filed with the clerk of the hearings section. Upon receipt of the protest, the clerk of the hearings section shall register receipt of the protest, docket the protest, and assign a number to the case. The assigned number shall be placed on all subsequent pleadings filed in the case.

~~7.8(9)~~ 7.9(7) Amendments. The ~~protester taxpayer~~ may amend the protest appeal at any time prior to the commencement of the evidentiary hearing before a responsive pleading is filed. Amendments to the appeal after a responsive pleading has been filed 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. The department may request that the ~~protester taxpayer~~ amend the ~~protest appeal~~ for purposes of clarification.

~~7.8(10)~~ Upon the filing of an answer or if a demand for contested case is made by the protester, the clerk of the hearings section will transfer the protest file to the division of administrative hearings within 30 days of the date of the filing of the answer or the demand for contested case, unless the director determines not to transfer the case. If a party objects to a determination under rule 701—7.17(17A), the transfer, if any, would be made after the director makes a ruling on the objection.

~~7.8(11)~~ 7.9(8) *Denial of renewal of vehicle registration or denial of issuance or renewal, or suspension, of a driver's license.*

a. A person who has had an application for renewal of vehicle registration denied, has been denied the issuance of a driver's license or the renewal of a driver's license, or has had a driver's license suspended may file a ~~protest~~ an appeal with the clerk of the ~~hearings section~~ if the denial of the issuance or renewal or the suspension is because the person owes delinquent taxes.

b. The issues raised in a ~~protest~~ an appeal by the person, which are limited to a mistake of fact, may include but are not limited to:

(1) to (3) No change.

This rule is intended to implement Iowa Code chapter 17A.

~~701—7.9~~ 701—7.8(17A) **Identifying details.**

~~7.9(1)~~ 7.8(1) Any person may file a motion to delete identifying details concerning the person from any document relating to any proceeding as defined in rule 701—7.2(421,17A) prior to disclosure to members of the public. Such a motion must be filed with the clerk of the ~~hearings section~~ if the motion is filed prior to the commencement of a contested case, which is before the notice for hearing is issued. If the motion is filed during a contested case proceeding pending before an administrative law judge and before the administrative law judge has entered a proposed decision on the case or has entered a closing order, the motion must be filed with and ruled upon by the administrative law judge. Otherwise, the motion must be filed with the clerk of the ~~hearings section~~ and ruled upon by the director. The motion shall be filed simultaneously with the presentation of the privacy or trade secret information under circumstances whereby the information may be disclosed to the public and before the issuance of any opinion, order or decision.

~~7.9(2)~~ 7.8(2) If the motion concerns information which is not a part of a contested case, the motion shall be in the form of a request to delete identifying details; if part of a contested case, the motion shall be in the form of a motion to delete identifying details. All motions to delete identifying details shall conform to subrule ~~7.17(5)~~ 7.19(5).

a. to f. No change.

This rule is intended to implement Iowa Code chapter 17A.

~~701—7.10~~ 701—7.7(17A) **Docket.** ~~The clerk of the hearings section shall maintain a docket of all proceedings, and each of the proceedings shall be assigned a number. Every matter coming within the purview of these rules this chapter shall be assigned a docket number which shall be the official identification number of the matter for the purposes of identification. Upon receipt of a protest, a petition for declaratory order or a petition to initiate rule-making proceedings, the proceeding will be docketed and assigned a number, and the parties notified thereof. The parties will be notified of the docket number. The number shall be placed by the parties on all papers documents thereafter filed in the proceeding. After the transfer of a case to the division of administrative hearings for contested case proceedings, that division may assign another docket number to the case and, in that event, the both docket number numbers shall be placed by the parties on all papers documents thereafter filed in the proceeding.~~

This rule is intended to implement Iowa Code chapter 17A.

ITEM 5. Amend rule 701—7.11(17A) as follows:

701—7.11(17A) Informal procedures and dismissals of protests stage of the appeals process.

~~7.11(1) Informal procedures.~~ Persons When an appeal is filed, the parties are encouraged to utilize the informal procedures provided herein so that described in this rule to reach a settlement may be reached resolution between the parties without the necessity of initiating contested case proceedings. Therefore, unless That resolution may be the granting of the appeal in full or in part, the denial of the appeal in full or in part, or an agreement to settle the matter. Unless, in accordance with rule 701—7.13(17A,421), the protester indicates a desire to waive the informal procedures in the protest taxpayer demands a contested case proceeding or an expedited hearing is agreed to or the department waives informal procedures upon notification to the protester taxpayer, such informal procedures will be initiated as herein provided upon the filing of a proper protest appeal.

~~a. 7.11(1) Appeals section review. Review unit.~~ A review unit is created within the department and When an appeal is filed, the review unit, subject to the control of the director or the division administrator of the legal services and appeals division, the unit will:

~~(1) a.~~ Review and evaluate the validity of all protests made by taxpayers from the department action the appeal.

~~(2) b.~~ Determine the correct amount of tax owing or refund due.

~~(3) c.~~ Determine the best method of resolving the dispute between the protester taxpayer and the department.

~~(4) d.~~ Take further action regarding the protest appeal, including any additions and deletions to the audit, as may be warranted by the circumstances to resolve the protest appeal, including a request for an informal conference.

~~(5) e.~~ Determine whether the protest appeal complies with rule 701—7.8(17A) 701—7.9(17A) and request any amendments to the protest appeal or additional information.

~~b. 7.11(2) Determinations, conferences.~~ The review unit may concede any items contained in the protest appeal which it determines should not be controverted by the department. If the protester taxpayer has not waived informal procedures, the review unit may request that the protester taxpayer and the protester's taxpayer's representative, if any, attend an informal conference with the review unit to explore the possibility of reaching a settlement without the necessity of initiating contested case proceedings or the possibility of narrowing the issues presented in the protest appeal if no settlement can be made. The review unit may request clarification of the issues from the protester taxpayer or further information from the protester taxpayer or third persons.

~~e. 7.11(3) Findings. Findings dealing with~~ A position letter addressing the issues raised in the protest appeal may be issued to the taxpayer or taxpayer's representative unless the issues may be more expeditiously determined in another manner or it is determined that findings are such a letter is unnecessary. The protester will be notified of the decision on the issues in controversy.

~~d. 7.11(4) Format of review.~~ Nothing herein will prevent the review unit and the protester taxpayer from mutually agreeing on the manner in which the protest appeal will be informally reviewed.

~~e. 7.11(5) Settlements. Settlements.~~ Only the director, the deputy director, or the division administrator of the legal services and appeals division may approve and sign settlements of appeals. If a settlement is reached during informal procedures, the clerk of the hearings section must be notified. A closing order stating that a settlement was reached by the parties and that the case is terminated shall be issued by the director and served upon provided to all parties.

~~7.11(2) Dismissal of protests.~~

~~a.~~ Whether informal procedures have been waived or not, the failure of the protester to timely file a protest or to pursue the protest may be grounds for dismissal of the protest by the director or the director's designee. If the protest is so dismissed, the protester may file an application for reinstatement of the protest for good cause as provided in paragraph 7.11(2)“e.” Such application must be filed within 30 days of the date of the dismissal notice. Thereafter, the procedure in paragraph 7.11(2)“e” should be followed. If informal procedures have not been waived, the failure of the protester to present evidence or information requested by the review unit shall constitute grounds for the director or the director's designee to dismiss the protest. For purposes of this subrule, an evasive or incomplete response will be treated as a failure to present evidence or information. The failure of the protester to file a protest in the

format required by rule 701—7.8(17A) may be grounds for dismissal of the protest by the director or the director's designee.

b.—If the department seeks to have the protest dismissed, the review unit shall file a motion to dismiss with the clerk of the hearings section and serve a copy of the motion on the protester. The protester may file a resistance to the motion within 20 days of the date of service of the motion. If no resistance is so filed, the director or the director's designee shall immediately enter an order dismissing the protest. If a resistance is filed, the review unit has 10 days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the protester and the clerk of the hearings section. If no such notice is issued by the review unit within the 10-day period, the protest file will be transferred to the division of administrative hearings, which shall issue a notice for a contested case proceeding on the motion as prescribed by rule 701—7.14(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the protest shall be dismissed. Thereafter, rule 701—7.17(17A) pertaining to contested case proceedings shall apply in such dismissal proceedings.

c.—If a motion to dismiss is filed and is unresisted, a protest so dismissed may be reinstated by the director or the director's designee for good cause as interpreted by the Iowa supreme court in the case of *Purethane, Inc. v. Iowa State Board of Tax Review*, 498 N.W.2d 706 (Iowa 1993) if an application for reinstatement is filed with the clerk of the hearings section within 30 days of the date the protest was dismissed. The application shall set forth all reasons and facts upon which the protester relies in seeking reinstatement of the protest. The review unit shall review the application and notify the protester whether the application is granted or denied. If the review unit denies the application to reinstate the protest, the protester has 30 days from the date the application for reinstatement was denied in which to request, in writing, a formal hearing on the reinstatement. When a written request for formal hearing is received, the protest file will be transferred to the division of administrative hearings, which shall issue a notice as prescribed in rule 701—7.14(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the protest shall be reinstated. Thereafter, rule 701—7.17(17A) pertaining to contested case proceedings shall apply in such reinstatement proceedings.

d.—Once contested case proceedings have been commenced, whether informal proceedings have been waived or not, it shall be grounds for a motion to dismiss that a protester has either failed to diligently pursue the protest or refuses to comply with requests for discovery set forth in rule 701—7.15(17A). Such a motion must be filed with the presiding officer.

e.—Notwithstanding other provisions of this subrule, if the director finds that a protest is not timely filed, including a failure within a reasonable time to file a protest in proper form after notice to the protester by the hearings section, the director, without the filing of a motion to dismiss, may dismiss the protest and shall notify the protester that the protest has been dismissed. With respect to a protest so dismissed, thereafter the provisions of paragraph 7.11(2)“c” shall apply.

This rule is intended to implement Iowa Code section 17A.10.

ITEM 6. Renumber rules 701—7.12(17A) to 701—7.20(17A) as 701—7.14(17A) to 701—7.22(17A).

ITEM 7. Adopt the following **new** rules 701—7.12(17A,421) and 701—7.13(17A,421):

701—7.12(17A,421) Dismissal of appeals.

7.12(1) Untimely appeals. Appeals that are not filed by the deadlines described in statute or rule shall be dismissed by the director or the department employee designated by the director. Such dismissals do not require the filing of a motion to dismiss as described in subrule 7.12(3). If the appeal is so dismissed, the taxpayer may file an application for reinstatement of the appeal as provided in paragraph 7.12(1)“b.” Such application must be filed within 30 days of the date of the dismissal notice. Thereafter, the procedure in subrule 7.12(4) should be followed.

a. *Grounds for reinstatement of an untimely appeal.* Grounds for reinstating an untimely appeal are limited to the following:

- (1) The department fails to do at least one of the following:

1. Mail the notice of assessment, refund denial, or other notice of department action as required by Iowa Code section 421.60(2)“c”(1) through 421.60(2)“c”(3); or

2. Personally deliver such notice as required by Iowa Code section 421.60(2)“c”(1) through 421.60(2)“c”(3).

For purposes of this rule, “last-known address” and “personal delivery” mean the same as described in rule 701—7.33(421).

(2) If the department fails to comply with the requirements of Iowa Code section 421.60(2)“b.”

b. Content of the application for reinstatement. The application shall set forth all reasons and facts upon which the taxpayer relies in seeking reinstatement of the appeal and the grounds that are relevant. Supporting documentation must be supplied. The review unit shall review the application and notify the taxpayer whether the application is granted or denied.

7.12(2) Failure to follow the required format. The failure of the taxpayer to file an appeal in the format required by rule 701—7.9(17A) may also be grounds for dismissal of the appeal by the director or the department employee designated by the director. Such dismissals do not require the filing of a motion to dismiss as described in subrule 7.12(3). The director or the department employee designated by the director shall notify the taxpayer of the format issue and provide the taxpayer with 30 days to correct the deficiencies. If the taxpayer fails to correct the format issues within 30 days, the protest may only be reinstated under the process and grounds described in subrule 7.12(3).

7.12(3) Failure to pursue the appeal at the informal stage. If the protest was filed timely and informal procedures were initiated, the failure of the taxpayer to present evidence or information requested by the review unit, including the failure to respond to a position letter or information request, shall constitute grounds for the director or the director’s designee to dismiss the appeal. For purposes of this subrule, an evasive or incomplete response will be treated as a failure to present evidence or information. Such dismissals require a motion to be filed by the review unit.

a. Procedures for motions to dismiss. If the department seeks to dismiss the appeal, the review unit shall file a motion to dismiss with the clerk and serve a copy of the motion on the taxpayer. The taxpayer may file a resistance to the motion within 20 days of the date of service of the motion. If no resistance is so filed, the director or the director’s designee shall immediately enter an order dismissing the appeal. If a resistance is filed, the review unit has ten days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the taxpayer and the clerk. If no such notice is received by the clerk within the ten-day period, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice for a contested case proceeding on the motion as prescribed by rule 701—7.16(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the appeal shall be dismissed. Thereafter, rule 701—7.19(17A) pertaining to contested case proceedings shall apply in such dismissal proceedings.

b. Grounds for reinstatement of dismissed appeals. If a motion to dismiss is filed and is unresisted, the appeal that was dismissed may be reinstated by the director or the director’s designee for good cause if an application for reinstatement is filed with the clerk within 30 days of the date the appeal was dismissed and following the conclusion of the procedure in subrule 7.12(4). For purposes of this rule, “good cause” shall mean the same as “good cause” in Iowa Rule of Civil Procedure 1.977.

c. Content and review of the application for reinstatement. The application shall set forth all reasons and facts upon which the taxpayer relies in seeking reinstatement of the appeal and the grounds that are relevant. Supporting documentation must be supplied. The director shall refer the application to the review unit for review and notify the taxpayer whether the application is granted or denied. Thereafter, the procedure in subrule 7.12(4) should be followed.

7.12(4) Denial of the application. If the review unit denies the application to reinstate the appeal, the taxpayer has 30 days from the date the application for reinstatement was denied in which to request, in writing, a formal hearing on the reinstatement. The taxpayer shall send the written request to the clerk. When a written request for formal hearing is received, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice as prescribed in rule 701—7.16(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the appeal shall be reinstated. Thereafter, rule 701—7.19(17A) pertaining to contested case proceedings shall apply

in such reinstatement proceedings. If the taxpayer does not respond to a denial of the application for reinstatement within 30 days of the denial, the appeals section may file a motion to dismiss the application for reinstatement for failure to pursue, in accordance with the procedures described in subrule 7.12(3) above.

7.12(5) Failure to file timely application for reinstatement. If an application for reinstatement is filed after the 30-day deadline, the application shall be dismissed by the director or the department employee designated by the director.

7.12(6) Dismissal of appeals during contested case proceedings. Once contested case proceedings have been commenced, whether informal proceedings have been waived or not, it shall be grounds for a motion to dismiss that a taxpayer has either failed to diligently pursue the appeal or has refused to comply with requests for discovery set forth in rule 701—7.17(17A). Such a motion must be filed with the presiding officer.

This rule is intended to implement Iowa Code sections 17A.12, 421.10, 421.60, and 422.28.

701—7.13(17A,421) Expedited hearings and demands to waive informal proceedings. Taxpayers that desire to demand a contested case prior to the conclusion of informal proceedings have two options described in detail below.

7.13(1) Expedited cases. If an appeal is filed that is not of precedential value and the parties desire a prompt resolution of the dispute, the department and the taxpayer may agree to have the case designated as an expedited case. A request for expedited proceedings may be made at any time prior to the commencement of a contested case.

a. Agreement. The department and the taxpayer shall execute an agreement to have the case treated as an expedited case. In this expedited case, discovery is waived. The provisions of the expedited case agreement shall constitute a waiver of the rights set forth in Iowa Code chapter 17A for contested case proceedings.

b. Procedures. Upon execution of the expedited case agreement, the department shall file its answer to the appeal with the clerk within 14 days. Within 30 days of the filing of the answer, the clerk shall transfer the appeal file, including a copy of the agreement for expedited proceedings, to the division of administrative hearings. The case shall be docketed for hearing as promptly as the presiding officer can reasonably hear the matter.

c. Finality of decision. A decision entered in an expedited case proceeding shall not be reviewed by the director or any other court and shall not be treated as a precedent for any other case.

d. Discontinuance of proceedings. Any time prior to a decision, the taxpayer or the department may request that expedited case proceedings be discontinued.

7.13(2) Waiver of informal proceedings. Pursuant to Iowa Code section 421.60(2) “g,” a taxpayer may make a written demand for a contested case proceeding after a period of six months from the filing of a proper appeal. Demands made prior to six months will be treated as premature and must be resubmitted six months or later from the filing of the appeal. Upon receipt of a timely written demand, the department shall file its answer within 30 days after receipt of the demand. If the department fails to file its answer within this 30-day period, interest shall be applied in the manner described in the introductory paragraph to rule 701—7.14(17A).

This rule is intended to implement Iowa Code sections 17A.12 and 421.60.

ITEM 8. Amend renumbered rules 701—7.14(17A) to 701—7.16(17A) as follows:

701—7.14(17A) Answer. ~~The~~ If the parties are unable to resolve the appeal informally, or if the parties waive informal proceedings as described in rule 701—7.13(17A,421), the department may, in lieu of findings, shall file an answer to the protest appeal. When findings are issued, the Subject to the limitations in rule 701—7.13(17A,421), the department will file an answer within 30 days of receipt of written notification demand for a contested case hearing from the protester stating disagreement with the findings taxpayer. The answer shall be filed with the clerk of the hearings section. In the case of an appeal of an assessment, failure to answer within the 30-day time period and after a demand for hearing has been made shall result in the suspension of interest from the time that the department was required to answer

until the date that the department files its answer. In the case of an appeal of a refund denial, failure to answer within the 30-day time period after a demand for hearing has been made shall result in the accrual of interest payable to the taxpayer at double the rate in effect under Iowa Code section 421.7 from the time the department was required to answer until the date that the department files its answer. Failure to file an answer within 30 days after the demand for contested case will not result in a default judgment for the taxpayer.

~~7.14(1)~~ 7.14(1) In the event that the protester does not so respond in writing to the findings issued on matters covered by paragraph 7.11(1) “e” within 30 days after being notified, the department may seek dismissal of the protest pursuant to subrule 7.11(2).

~~7.14(2)~~ 7.14(1) The answer of the department shall be drawn in a manner as provided by the Iowa Rules of Civil Procedure for answers filed in Iowa district courts.

~~7.14(3)~~ 7.14(2) Each paragraph contained in the answer shall be numbered or lettered to correspond, where possible, with the paragraphs of the protest appeal. ~~An original copy only of the~~ The answer shall be filed with the clerk of the hearings section for the department and shall be signed by the department’s counsel or representative.

~~7.14(4)~~ 7.14(3) The department shall ~~forthwith~~ promptly serve a copy of the answer upon the representative of record or, if there is no representative of record, then upon the protester and ~~shall file proof of service with the clerk of the hearings section at the time of filing of the answer~~ taxpayer when the answer is filed. The department may amend its answer at any time prior to the commencement of the evidentiary hearing.

~~7.14(5)~~ 7.14(4) The provisions of rule 701—7.12(17A) this rule shall be considered as a part of the informal procedures since a contested case proceeding, at the time of the filing of the answer, has not yet commenced. However, an answer shall be filed pursuant to this rule whether or not informal procedures have been waived by the ~~protester~~ taxpayer or the department.

~~7.14(6)~~ 7.14(5) Notwithstanding subrules 7.12(1) through 7.12(5), if a taxpayer makes a written demand for a contested case proceeding, as authorized by rule 701—7.14(17A), after a period of six months from the filing of a proper protest, the department shall file its answer within 30 days after receipt of the demand. If the department fails to file its answer within this 30-day period, interest shall be suspended, if the protest involves an assessment, from the time that the department was required to answer until the date that the department files its answer and, if the protest involves a refund, interest shall accrue on the refund at double the rate from the time the department was required to answer until the date that the department files its answer.

~~7.14(7)~~ 7.14(5) The department’s answer may contain a statement setting forth whether the case should be transferred to the division of administrative hearings or the director should retain the case for hearing.

~~7.14(8)~~ 7.14(6) The department’s answer should set forth the basis for retention of the case by the director as provided in subrule ~~7.17(1)~~ 7.19(1). If the answer fails to allege that the case should be retained by the director, the case should be transferred to the division of administrative hearings for contested case proceedings, unless the director determines on the director’s own motion that the case should be retained by the director.

7.14(7) Upon the filing of an answer, the clerk will transfer the appeal file to the division of administrative hearings within 30 days of the date of the filing of the answer, unless the director determines not to transfer the case. If a party objects to a determination under rule 701—7.19(17A), the transfer, if any, would be made after the director makes a ruling on the objection.

This rule is intended to implement Iowa Code chapter 17A and section 421.60.

701—7.15(17A) Subpoenas. Prior to the commencement of a contested case, the department shall have the authority to subpoena books, papers, and records and shall have all other subpoena powers conferred upon it by law. Subpoenas in this case shall be issued by the director or the director’s designee. Once a contested case is commenced, subpoenas must be issued by the presiding officer.

This rule is intended to implement Iowa Code ~~section~~ sections 17A.13, 421.9, 421.17, and 422.70.

701—7.16(17A) Commencement of contested case proceedings. A demand or request by the ~~protester taxpayer~~ for the commencement of contested case proceedings must be in writing and filed with the clerk ~~of the hearings section by electronic means, email to the address provided in paragraph 7.3(1)“b,” by mail via the United States Postal Service or common carrier by ordinary, certified, or registered mail in care of the clerk of the hearings section, to the address listed in paragraph 7.3(1)“c,” or by personal service on the office of the clerk of the hearings section during business hours.~~ to the department’s customer service desk as described in paragraph 7.3(1)“d.” The demand ~~or request is considered filed on the date of the postmark~~ must be made no sooner than six months or more after the filing of the protest. If the demand or request does not indicate a postmark date, then the date of receipt or the date personal service is made is considered the date of filing. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

7.16(1) When requesting a contested case hearing with the department of inspections and appeals, the department shall complete a transmittal form consistent with rule 481—10.4(10A).

~~7.16(1)~~ **7.16(2)** At the request of a party or the presiding officer made prior to the issuance of the hearing notice, the presiding officer shall hold a telephone conference with the parties for the purpose of selecting a mutually agreeable hearing date, which date shall be the hearing date contained in the hearing notice. The notice shall be issued within one week after the mutually agreeable hearing date is selected.

~~7.16(2)~~ **7.16(3)** Contested case proceedings will be commenced by the presiding officer by delivery of notice by ordinary mail directed to the parties after a demand or request is made (a) by the ~~protester taxpayer~~ and the filing of the answer, if one is required, which demand or request may include a date to be set for the hearing, or (b) upon filing of the answer, if a request or demand for contested case proceedings has not been made by the ~~protester taxpayer~~. The notice will be given by the presiding officer.

~~7.16(3)~~ **7.16(4)** The ~~presiding officer may grant a continuance of the hearing.~~ Any change in the date of the hearing shall be set by the presiding officer. ~~Either~~ Any party may apply to the presiding officer for a continuance or a specific date for the hearing. The presiding officer may grant or deny such requests. The notice shall include:

- a. A statement of the time (which shall allow for a reasonable time to conduct discovery), place and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is held;
- c. A reference to the particular sections of the statutes and rules involved; and
- d. A short and plain statement of the matters asserted, including the issues.

~~7.16(4)~~ **7.16(5)** After the delivery of the notice commencing the contested case proceedings, the parties may file further pleadings or amendments to pleadings as they desire in accordance with this chapter. However, any pleading or amendment thereto which is filed within ~~seven~~ 14 days prior to the date scheduled for the hearing or filed on the date of the hearing shall constitute good cause for the party adversely affected by the pleading or amendment to seek and obtain a continuance.

This rule is intended to implement Iowa Code section 17A.12.

ITEM 9. Amend renumbered rules 701—7.18(17A) and 701—7.19(17A) as follows:

701—7.18(17A) Prehearing conference.

7.18(1) No change.

7.18(2) Any action taken at the prehearing conference shall be recorded in an appropriate order, unless the parties enter ~~upon~~ into a written stipulation as to such matters or agree to a statement thereof made on the record by the presiding officer.

7.18(3) When an order is issued at the termination of the prehearing conference, a reasonable time shall be allowed for the parties to present objections on the grounds that the order does not fully or correctly embody the agreements made at such conference. Thereafter, the terms of the order or modification thereof shall determine the subsequent course of the proceedings relative to matters the order includes, unless modified to prevent manifest injustice.

7.18(4) If either party to the contested case proceeding fails to appear at the prehearing conference, ~~fails to request~~ without requesting a continuance, ~~or fails to submit~~ and without submitting evidence or

arguments which the party wishes to be considered in lieu of appearance, the opposing party may move for dismissal. The motion shall be made in accordance with subrule ~~7.17(5)~~ 7.19(5).

This rule is intended to implement Iowa Code section 17A.12.

701—7.19(17A) Contested case proceedings.

7.19(1) Evidentiary hearing. Unless the parties to a contested case proceeding have, by written stipulation representing an informed mutual consent, waived the provisions of the Act relating to such proceedings, contested case proceedings shall be initiated and culminate in an evidentiary hearing open to the public.

a. Evidentiary hearings in which the presiding officer is an administrative law judge employed by the division of administrative hearings shall be held at the location designated in the notice of evidentiary hearing. Generally, the location for evidentiary hearings in such cases will be at the principal office of the Department of Inspections and Appeals, Administrative Hearings Division, Third Floor, Wallace State Office Building, Des Moines, Iowa 50319.

b. If the director retains a contested case, the location for the evidentiary hearing will generally be at the main office of the department at the Hoover State Office Building, ~~Fourth~~ First Floor, Des Moines, Iowa ~~50309~~ 50319. However, the department retains the discretion to change the location of the evidentiary hearing if necessary. The location of the evidentiary hearing will be designated in the notice of hearing issued by the director.

7.19(2) Determination of presiding officer. If the director retains a contested case for evidentiary hearing and the department is a party, the initial presiding officer will be the director. If the department is not a party to the contested case retained by the director, the presiding officer may be the director or the director's designee. Upon determining that a case will be retained and not transferred to the division of administrative hearings, the director shall issue to the parties written notification of the determination which states the basis for retaining the case for evidentiary hearing.

a. The director may determine to retain a contested case for evidentiary hearing and decision upon the filing by the department of its answer under rule ~~701—7.12(17A)~~ 701—7.14(17A). If the answer failed to allege that the case should be retained by the director and the case was transferred to the division of administrative hearings for contested case proceedings, either party may, within a reasonable time after the issuance of the hearing notice provided in rule ~~701—7.14(17A)~~ 701—7.16(17A), make application to the director to recall and retain the case for hearing and decision. Any such application shall be served upon the assigned administrative law judge or presiding officer.

b. A ~~protester~~ taxpayer may file a written objection to the director's determination to retain the case for evidentiary hearing and may request that the contested case be heard by an administrative law judge or presiding officer and request a hearing on the objection. Such an objection must be filed with the clerk of the hearings section by email to the address provided in paragraph 7.3(1) "b," by mail via the United States Postal Service or common carrier by ordinary, certified, or registered mail in care of the clerk to the address listed in paragraph 7.3(1) "c," or by personal service to the department's customer service desk as described in paragraph 7.3(1) "d" within 20 days of the notice issued by the director of the director's determination to retain the case. The director may retain the case only upon a finding that one or more of the following apply:

(1) to (9) No change.

(10) The request is not consistent with a specified statute; ~~and~~ or

(11) Assignment of an administrative law judge will result in lengthening the time for issuance of a proposed decision, after the case is submitted, beyond a reasonable time as provided in subrule ~~7.17(8)~~ 7.19(8). In making this determination, the director shall consider whether the assigned administrative law judge has a current backlog of submitted cases for which decisions have not been issued for one year after submission.

c. The director shall issue a written ~~ruling~~ order specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed. If a party objects to the director's determination to retain a case for evidentiary hearing, transfer of the ~~protest~~ appeal file, if any, will be made after the director makes a final determination on the objection. If the ruling is contingent upon

the availability of a qualified administrative law judge, the parties shall be notified at least ten days prior to the hearing whether a qualified administrative law judge will be available.

d. If there is no factual conflict or credibility of evidence offered in issue, either party, after the contested case has been heard and a proposed decision is pending with a presiding officer other than the director for at least one year, may make application to the director to transfer the case to the director for decision. In addition, if ~~the aforementioned criteria exist~~ one or more criteria listed in paragraph 7.19(2) "b" exist, the director, on the director's own motion, may issue a notice to the parties of the director's intention to transfer the case to the director for decision. The opposing party may file, within 20 days after service of such application or notice by the director, a resistance setting forth in detail why the case should not be transferred. If the director approves the transfer of the case, the director shall issue a final contested case decision. The director or a party may request that the parties be allowed to submit proposed findings of fact and conclusions of law.

e. and *f.* No change.

7.19(3) Conduct of proceedings.

a. and *b.* No change.

c. Evidentiary proceedings shall be oral, ~~and~~ open to the public, and ~~shall be~~ recorded either by electronic means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the appropriate costs of reporting. The record of the oral proceedings or the transcription thereof shall be filed with and maintained by the department for at least five years from the date of the decision. An opportunity shall be afforded to the parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense. Unless otherwise directed by the presiding officer, evidence will be received in the following order: (1) ~~protester taxpayer~~, (2) intervenor (if applicable), (3) department, (4) rebuttal by ~~protester taxpayer~~, (5) oral argument by parties (if necessary).

d. If the ~~protester taxpayer~~ or the department appears without counsel or other representative who can reasonably be expected to be familiar with these rules, the presiding officer shall explain to the parties the rules of practice and procedure and generally conduct a hearing in a less formal manner than that used when the parties have ~~such representatives appearing upon the parties' behalf~~ counsel or representation. It should be the purpose of the presiding officer to assist any party appearing without such representative to the extent necessary to allow the party to fairly present evidence, testimony, and ~~arguments~~ argument on the issues. The presiding officer shall take whatever steps may be necessary and proper to ensure that all evidence having probative value is presented and that each party is accorded a fair hearing.

e. to *h.* No change.

7.19(4) Rules of evidence. In evaluating evidence, the department's experience, technical competence, and specialized knowledge may be utilized.

a. and *b.* No change.

c. *Subpoena.* When a subpoena is desired after the commencement of a contested case proceeding, the proper party shall indicate to the presiding officer the name of the case, the docket number, and the last-known mailing addresses of the witnesses to be called. If evidence other than oral testimony is required, each item to be produced must be adequately described. When properly prepared by the presiding officer, the subpoena will be returned to the requesting party for service. Service may be made in any manner allowed by law before the hearing date of the case which the witness is required to attend. No costs for serving a subpoena will be allowed if the subpoena is served by any person other than the sheriff. Subpoenas requested for discovery purposes shall be issued by the presiding officer.

d. *Admissibility of evidence.*

(1) Evidence having probative value.

1. Although the presiding officer is not bound to follow the technical common law rules of evidence, a finding shall be based upon the kind of evidence on which a reasonably prudent persons are accustomed to person would rely for the conduct of ~~their~~ the person's serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Therefore, the presiding officer may admit and give probative effect to evidence on which a reasonably prudent persons are accustomed to person would rely for the conduct of ~~their~~ the person's serious affairs. Irrelevant, immaterial, or

unduly repetitious evidence shall be excluded. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence not provided to a requesting party through discovery shall not be admissible at the hearing. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, substantially any part of the evidence may be required to be submitted in verified written form by the presiding officer.

2. Objections to evidentiary offers may be made at the hearing, and the presiding officer's ruling thereon shall be noted in the record.

(2) Evidence of a federal determination. Evidence of a federal determination such as a treasury department ruling, regulation or determination letter; a federal court decision; or an Internal Revenue Service assessment relating to issues raised in the proceeding shall be admissible, and the ~~protester~~ taxpayer shall be presumed to have conceded the accuracy of the federal determination unless the ~~protester~~ taxpayer specifically states wherein it is erroneous.

(3) Copies of evidence. A copy of any book, record, paper or document may be offered directly in evidence in lieu of the original, if the original is not readily available or if there is no objection. Upon request, the parties shall be given an opportunity to compare the copy with the original, if available.

(4) Stipulations. Approval of the presiding officer is not required for stipulations of the parties to be used in contested case proceedings. In the event the parties file a stipulation in the proceedings, the stipulation shall be binding on the parties and the presiding officer.

e. Exhibits Identification of exhibits.

(1) ~~Identification of exhibits.~~ Exhibits which are offered by ~~protesters~~ taxpayers and attached to a stipulation or entered in evidence shall be numbered serially, i.e., 1, 2, 3, etc.; whereas, exhibits offered by the department shall be lettered serially, i.e., A, B, C, etc.; and those offered jointly shall be numbered and lettered, i.e., 1-A, 2-B, 3-C, etc.

~~(2) Disposition of exhibits. After an order has become final, either party desiring the return, at the party's expense, of any exhibit belonging to the party shall make application in writing to the clerk of the hearings section within 30 days suggesting a practical manner of delivery; otherwise, exhibits may be disposed of as the clerk of the hearings section deems advisable.~~

f. Official notice. The presiding officer may take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the department. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions, or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data. The parties shall be afforded an opportunity to contest such facts prior to the issuance of the decision in the contested case proceeding unless the presiding officer determines as a part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

g. Evidence outside the record. Except as provided by these rules, the presiding officer shall not consider factual information or evidence in the determination of any proceeding unless the same shall have been offered and made a part of the record in the proceeding.

h. Presentation of evidence and testimony. In any hearing, each party ~~thereto~~ in attendance shall have the right to present evidence and testimony of witnesses and to cross-examine any witness who testifies on behalf of an adverse party. A person whose testimony has been submitted in written form shall, if available, also be subject to cross-examination by an adverse party. Opportunity shall be afforded each party for re-direct examination and re-cross-examination and to present evidence and testimony as rebuttal to evidence presented by another party, except that unduly repetitious evidence shall be excluded.

i. Offer of proof. An offer of proof may be made through the witness or by statement of counsel. The party objecting may cross-examine the witness without waiving any objection.

7.19(5) Motions.

a. Filing of motions after commencement of contested case proceedings. After commencement of contested case proceedings, appropriate motions may be filed with the presiding officer by any party ~~with the presiding officer~~ when facts requiring such motion come to the knowledge of the party. All motions shall state the relief sought and the grounds upon which the motions are based.

b. Service, rulings. Motions made prior to a hearing shall be in writing and a copy thereof served on all parties and attorneys of record. Such motions shall be ruled on by the presiding officer. The presiding officer shall rule on the motion by issuing an order. A copy of the order containing the ruling on the motion shall be mailed to the parties and authorized representatives. A motion may be made orally during the course of a hearing; however, the presiding officer may request that the motion be reduced to writing and filed with the presiding officer.

c. Consent of the opposing party, burden. To avoid a hearing on a motion, it is advisable to secure the consent of the opposing party prior to filing the motion. If consent of the opposing party to the motion is not obtained, a hearing on the motion may be scheduled and the parties notified. The burden will be on the party filing the motion to show good cause as to why the motion should be granted.

d. Affidavits. The party making the motion may affix thereto such affidavits as are deemed essential to the disposition of the motion, which shall be served with the motion and to which the opposing party may reply with counter affidavits.

e. Types of motions. ~~Types of motions.~~ Types of motions include, but are not limited to:

(1) Motion for continuance. Motions for continuance should be filed no later than ten days before the scheduled date of the contested case hearing unless the grounds for the motion are first known to the moving party within ten days of the hearing, in which case the motion shall be promptly filed and shall set forth why it could not be filed at least ten days prior to the hearing. Grounds for motion for continuance include, but are not limited to, the unavailability of a party, a party's representative, or a witness; the incompleteness of discovery; and the possibility of settlement of the case.

(2) Motion for dismissal.

(3) Motion for summary judgment.

(4) Motion to ~~delete~~ redact identifying details in the decision.

(5) Motion for default.

(6) Motion to vacate default.

f. Hearing on motions. ~~Hearing on motions.~~ Motions subsequent to the commencement of a contested case proceeding shall be determined by the presiding officer.

g. Summary judgment procedure. ~~Summary judgment procedure.~~ Summary judgment may be obtained under the following conditions and circumstances:

(1) A party may, after a reasonable time to complete discovery, after completion of discovery, or by agreement of the parties, move, with or without supporting affidavits, for a summary judgment in the party's favor upon all or any part of a party's claim or defense.

(2) The motion shall be filed not less than 45 days prior to the date the case is set for hearing, unless otherwise ordered by the presiding officer. Any party resisting the motion shall file the following within 30 days from the time of service of the motion: a resistance; a statement of disputed facts, if any; and a memorandum of authorities supporting the resistance. If affidavits supporting the resistance are filed, they must be filed with the resistance. The time fixed for hearing or normal submission on the motion shall be not less than 35 days after the filing of the motion, unless another time is ordered by the presiding officer. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(3) to (5) No change.

(6) Should it appear from the affidavits of a party opposing the motion that the party cannot ~~for~~ reasons stated present, by affidavit, facts essential to justify the party's opposition, the presiding officer may refuse the application for judgment, may order a continuance to permit affidavits to be obtained, may order depositions be taken or discovery be completed, or may make any other order appropriate.

(7) An order on summary judgment that disposes of less than the entire case is appealable to the director at the same time that the proposed order is appealable pursuant to subrule ~~7.17(8)~~ 7.19(8).

7.19(6) Briefs and oral argument.

a. At any time, upon the request of any party or in the presiding officer's discretion, the presiding officer may require the filing of briefs on any of the issues before the presiding officer prior to or at the

time of hearing, or at a subsequent time. At the hearing, the parties should be prepared to make oral arguments as to the facts and law at the conclusion of the hearing if the presiding officer so directs.

b. ~~An original~~ A copy only of all briefs shall be filed. Filed briefs shall conform to the requirements of ~~rule 701—7.5(17A)~~ subrules 7.5(1) and 7.5(2).

c. If the parties agree on a schedule for submission of briefs, the schedule shall be binding on the parties and the presiding officer except that, for good cause shown, the time may be extended upon application of a party.

7.19(7) Defaults. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

a. Where appropriate and not contrary to law, any party may move for default against a party who has failed to file a required pleading or has failed to appear after proper service.

b. A default decision or a decision rendered on the merits after a party failed to appear or participate in a contested case proceeding becomes a final department 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 in ~~subrule 7.17(8)~~ 7.19(8). A motion to vacate must state all facts relied upon by the moving party which 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, and such affidavit(s) must be attached to the motion.

c. 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.

d. 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.

e. ~~“Good cause” for purposes of this rule shall have the same meaning as “good cause” as interpreted in the case of *Purethane, Inc. v. Iowa State Board of Tax Review*, 498 N.W.2d 706 (Iowa 1993)~~ For purposes of this rule, “good cause” shall mean the same as “good cause” in Iowa Rule of Civil Procedure 1.977.

f. 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 as provided in ~~subrule 7.17(13)~~ 7.19(13).

g. to i. No change.

7.19(8) Orders.

a. At the conclusion of the hearing, the presiding officer, in the presiding officer's discretion, may request the parties to submit proposed findings of fact and conclusions of law. Upon the request of any party, the presiding officer shall allow the parties an opportunity to submit proposed findings of fact and conclusions of law. In addition to or in lieu of the filing of briefs, upon the request of all of the parties waiving any contrary contested case provisions of law or of these rules, the presiding officer shall allow the parties to submit proposed findings of fact and conclusions of law, and the presiding officer may sign and adopt as the decision or proposed decision one of such proposed findings of fact and conclusions of law without any changes.

b. The decision in a contested case is an order which shall be in writing or stated in the record. The order shall include findings of fact prepared by the ~~person presiding at the hearing~~ officer, unless the ~~person presiding officer~~ is unavailable, and based solely on the evidence in the record and on matters officially noticed in the record, and shall include conclusions of law. The findings of fact and conclusions of law shall be separately stated. If a party has submitted proposed findings of fact, the order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. The decision must include an explanation of why the relevant evidence in

the record supports each material finding of fact. If the issue of reasonable litigation costs was held in abeyance pending the outcome of the substantive issues in the contested case and the proposed order decides substantive issues in favor of the ~~protester~~ taxpayer, the proposed order shall include a notice of time and place for a hearing on the issue of whether reasonable litigation costs shall be awarded and on the issue of the amount of such award, unless the parties agree otherwise. All decisions and orders in a contested case proceeding shall be based solely on the legal bases and arguments presented by the parties. In the event that the presiding officer believes that a legal basis or argument for a decision or order exists, but has not been presented by the parties, the presiding officer shall notify the parties and give them an opportunity to file a brief that addresses such legal basis or argument.

c. When a motion has been made to ~~delete~~ redact identifying details in an order on the basis of personal privacy or trade secrets, the justification for such ~~deletion~~ redaction or refusal to ~~delete~~ redact shall be made by the moving party and shall appear in the order.

d. When the director initially presides at a hearing or considers decisions on appeal from or review of a proposed decision by the presiding officer other than the director, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of a second agency within the time provided by statute or rule. When a presiding officer other than the director presides at the hearing, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of the director within 30 days of the date of the order, including Saturdays, Sundays, and legal holidays, or 10 days, excluding Saturdays, Sundays, and legal holidays, for a revocation order pursuant to rule ~~701—7.23(17A)~~ 701—7.39(17A). However, if the contested case proceeding involves a question of an award of reasonable litigation costs, the proposed order on the substantive issues shall not be appealable to or reviewable by the director on the director's motion until the issuance of a proposed order on the reasonable litigation costs. If there is no such appeal or review within 30 days or 10 days, whichever is applicable, from the date of the proposed order on reasonable litigation costs, both the proposed order on the substantive issues and the proposed order on the reasonable litigation costs become the final orders of the department for purposes of judicial review or rehearing. On an appeal from, review of, or application for rehearing concerning the presiding officer's order, the director has all the power which the director would initially have had in making the decision; however, the director will consider only those issues ~~or selected issues~~ presented at the hearing before the presiding officer or ~~any issues of fact or law~~ raised independently by the presiding officer, including the propriety of and the authority for raising issues. The parties will be notified of those issues which will be considered by the director.

e. Notwithstanding ~~the provisions of~~ this rule, where a presiding officer other than the director issues an interlocutory decision or ruling which does not dispose of all the issues, except reasonable litigation costs, in the contested case proceeding, the party adversely affected by the interlocutory decision or ruling may apply to the director within 20 days (10 days for a revocation proceeding) of the date of issuance of the interlocutory decision or ruling to grant an appeal in advance of the proposed decision. The application shall be served on the parties and the presiding officer. The party opposing the application shall file any resistance within 15 days of the service of the application unless, for good cause, the director extends the time for such filing. The director, in the exercise of discretion, may grant the application on finding that such interlocutory decision or ruling involves substantial rights and will materially affect the proposed decision and that a determination of its correctness before hearing on the merits will better serve the interests of justice. The order of the director granting the appeal may be on terms setting forth the course of proceedings on appeal, including advancing the appeal for prompt submission, and the order shall stay further proceedings below. The presiding officer, at the request of the director, shall promptly forward to the director all or a portion of the file or record in the contested case proceeding.

f. to h. No change.

i. A cross-appeal may be taken within the 30-day period for taking an appeal to the director or in any event within 5 days after the appeal to the director is taken. If a cross-appeal is taken from a revocation order pursuant to rule ~~701—7.23(17A)~~ 701—7.39(17A), the cross-appeal may be taken

within the 10-day period for taking an appeal to the director or in any event within 5 days after the appeal to the director is taken.

j. No change.

7.19(9) No change.

~~**7.19(10) Expedited cases when applicable.** In case a protest is filed where the case is not of precedential value and the parties desire a prompt resolution of the dispute, the department and the protester may agree to have the case designated as an expedited case.~~

~~*a. Agreement.* The department and the protester shall execute an agreement to have the case treated as an expedited case. In this case, discovery is waived. The provisions of this agreement shall constitute a waiver of the rights set forth in Iowa Code chapter 17A for contested case proceedings. Within 30 days of written notice to the clerk of the hearings section sent by the parties stating that an agreement to expedite the case has been executed, the clerk of the hearings section must transfer the protest file to the division of administrative hearings.~~

~~*b. Finality of decision.* A decision entered in an expedited case proceeding shall not be reviewed by the director or any other court and shall not be treated as a precedent for any other case.~~

~~*c. Discontinuance of proceedings.* Any time prior to a decision's being rendered, the taxpayer or the department may request that expedited case proceedings be discontinued if there are reasonable grounds to believe that the issues in dispute would be of precedential value.~~

~~*d. Procedure.* Upon return of an executed agreement for this procedure, the department shall within 14 days file its answer to the protest. The case shall be docketed for hearing as promptly as the presiding officer can reasonably hear the matter.~~

~~**7.19(11) 7.19(10) Burden of proof.** The burden of proof with respect to assessments or denials of refunds in contested case proceedings is as follows:~~

~~*a. to c.* No change.~~

~~*d.* In all instances where the burden of proof is not expressly placed upon the department by this subrule, the burden of proof is upon the protester taxpayer.~~

~~**7.19(12) 7.19(11) Costs.**~~

~~*a. to h.* No change.~~

~~*i.* The taxpayer who seeks an award of reasonable litigation costs must specifically request such award in the protest appeal, or the request for award will not be considered.~~

~~*j.* No change.~~

~~*k.* At the hearing held for the purpose of deciding whether an award for reasonable litigation costs should be awarded, consideration shall be given to the following points:~~

~~(1) Whether the department's position was substantially justified;~~

~~(2) Whether the protester taxpayer is the prevailing taxpayer;~~

~~(3) Whether the taxpayer has established how the alleged reasonable litigation costs were incurred.~~

~~The burden is upon the protester taxpayer to establish how the alleged reasonable litigation costs were incurred. This requires a detailed accounting of the nature of each cost, the amount of each cost, and to whom the cost was paid or owed;~~

~~(4) Whether alleged litigation costs are reasonable or necessary;~~

~~(5) Whether the protester taxpayer has met the protester's taxpayer's burden of demonstrating all of these points.~~

~~**7.19(13) 7.19(12) Interlocutory appeals.**~~

~~*a. and b.* No change.~~

~~**7.19(14) 7.19(13) Consolidation and severance.**~~

~~*a. Consolidation. Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:~~

~~(1) The matters at issue involve common parties or common questions of fact or law;~~

~~(2) Consolidation would expedite and simplify consideration of the issues involved; and~~

~~(3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.~~

~~*b. Severance. Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.~~

c. *Stipulations.* Since stipulations are encouraged, it is expected and anticipated that the parties proceeding to a hearing will stipulate to evidence to the fullest extent to which complete or qualified agreement can be reached including all material facts that are not, or should not be, fairly in dispute.

d. *Informal disposition.* Without the necessity of proceeding to an evidentiary hearing in a contested case, the parties may agree in writing to informally dispose of the case by stipulation, agreed settlement, or consent order or by another method agreed upon. If such informal disposition is utilized, the parties shall so indicate to the presiding officer that the case has been settled. Upon request, the presiding officer shall issue a closing order to reflect such a disposition. The contested case is terminated upon issuance of a closing order.

e. *Mutual waivers.* Unless otherwise precluded by law, the parties in a contested case proceeding may mutually agree to waive any provision under this rule governing contested case proceedings.

This rule is intended to implement Iowa Code sections 17A.12, 17A.14, 17A.15, 421.60 and 452A.68.

ITEM 10. Rescind rule **701—7.21(17A)**.

ITEM 11. Renumber existing rule **701—7.22(17A)** as **701—7.23(17A)**.

ITEM 12. Amend renumbered rules 701—7.21(17A) and 701—7.22(17A) as follows:

701—7.21(17A) Record and transcript.

7.21(1) The record in a contested case shall include:

- a. All pleadings, motions, and rulings;
- b. All evidence received or considered and all other submissions;
- c. A statement of all matters officially noticed;
- d. All questions and offers of proof, objections, and rulings thereon;
- e. All proposed findings and exceptions;
- f. All orders of the presiding officer; and
- g. The order of the director on appeal or review.

7.21(2) Oral hearings regarding proceedings on appeal to or considered on motion of the director which are recorded by electronic means shall not be transcribed for the record of such appeal or review unless a party, by written notice, or the director, orally or in writing, requests such transcription. Such a request must be filed with the clerk of the ~~hearings section~~ who will be responsible for making the transcript. A transcription will be made only of that portion of the oral hearing relevant to the appeal or review, if so requested and if no objection is made by any other party to the proceeding or the director. Upon request, the department shall provide a copy of the whole record 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.

7.21(3) Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that ~~reecordation~~ recording, unless otherwise provided by law.

7.21(4) Upon issuance of a proposed decision which leaves no issues open for further consideration or upon issuance of a closing order, the administrative hearings division shall promptly forward the record of a contested case proceeding to the director. However, the administrative hearings division may keep the tapes of any evidentiary proceeding in case a transcript of the proceeding is required and, if one is required, the administrative hearings division shall make the transcription and promptly forward the tapes and the transcription to the director.

This rule is intended to implement Iowa Code section 17A.12.

701—7.22(17A) Application for rehearing. Any party to a contested case may file an application with the director for a rehearing in the contested case, stating the specific grounds therefor and the relief sought. The application must be filed within 20 days after the final order is issued. See subrule ~~7-17(8)~~ 7.19(8) as to when a proposed order becomes a final order. A copy of such application shall be timely mailed by the applicant to all parties in conformity with rule ~~701—7.21(17A)~~ 701—7.3(17A). The director shall have 20 days from the filing of the application for rehearing to grant or deny the

application. If the application for rehearing is granted, a notice will be served on the parties stating the time and place of the rehearing. An application for rehearing shall be deemed denied if not granted by the director within 20 days after filing.

7.22(1) to 7.22(3) No change.

This rule is intended to implement Iowa Code section 17A.16.

ITEM 13. Amend renumbered rule 701—7.23(17A) as follows:

701—7.23(17A) Ex parte communications and disqualification.

7.23(1) *Ex parte communication.* A party that has knowledge of a prohibited communication by any party or presiding officer should file a copy of the written prohibited communication or a written summary of the prohibited oral communication with the clerk of the ~~hearings section~~. The clerk of the ~~hearings section~~ will transfer to the presiding officer the filed copy of the prohibited communication.

a. and b. No change.

c. How to avoid prohibited communications. 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 this chapter and may be supplemented by telephone, facsimile, electronic mail, or other means of notification. Where permitted, oral communications may be initiated through conference telephone calls including all parties or their representatives.

d. to g. No change.

h. Disclosure by presiding officer. Promptly after receiving the communication or being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. 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 shortly be provided to the parties.

i. Sanction. 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, suspension, or revocation of the privilege to practice before the department or the administrative hearings division. Violation of ex parte communication prohibitions by department personnel or their representatives shall be reported to the clerk of the ~~hearings section~~ for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

7.23(2) *Disqualification of a presiding officer.* Request for disqualification of a presiding officer must be filed in the form of a motion supported by an affidavit asserting an appropriate ground for disqualification. A substitute presiding officer may be appointed by the division of administrative hearings if the disqualified presiding officer is an administrative law judge. If the disqualified presiding officer is the director, the governor must appoint a substitute presiding officer.

a. Grounds for disqualification. ~~Grounds for disqualification.~~ 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:

- (1) Has a personal bias or prejudice concerning a party or a representative of a party;
- (2) 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;
- (3) 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;
- (4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- (5) 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;

- (6) 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 to the case;
 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
- (7) Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

b. Personally investigated. “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 which 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 department functions, including fact gathering for purposes other than investigation of the matter which 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 these rules.

c. Disqualification and the record. ~~Disqualification and the record.~~ In a situation where a presiding officer or other person knows of information which 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 shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

d. Motion asserting disqualification. ~~Motion asserting disqualification.~~

(1) If a party asserts disqualification on any appropriate ground, the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17. 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.

(2) 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 and seek a stay as provided under this chapter.

This rule is intended to implement Iowa Code section 17A.17.

ITEM 14. Renumber existing rule ~~701—7.23(17A)~~ as ~~701—7.39(17A)~~.

ITEM 15. Amend rule ~~701—7.24(17A)~~ as follows:

~~**701—7.24(17A) Declaratory order—in general.** Any oral or written advice or opinion rendered to members of the public by department personnel not pursuant to a petition for declaratory order is not binding upon the department. However, department personnel, including field personnel, ordinarily will discuss substantive tax issues with members of the public or their representatives prior to the receipt of a petition for a declaratory order, but such oral or written opinions or advice are not binding on the department. This should not be construed as preventing members of the public or their representatives from inquiring whether the department will issue a declaratory order on a particular question. In these cases, however, the name of the taxpayer shall be disclosed. The department will also discuss questions relating to certain procedural matters such as, for example, submittal of a request for a declaratory order or submittal of a petition to initiate rule-making procedures. Members of the public may, of course, seek oral technical assistance from a departmental employee in regard to the proper preparation of a return or report required to be filed with the department. Such oral advice is advisory only, and the department is not bound to recognize the advice in the examination of the return, report or records.~~

~~**7.24(1) Petition** Filing a petition for declaratory order.~~

a. How to submit a petition. Any person may file with the Clerk of the Hearings Section, Department of Revenue, Fourth Floor, Hoover State Office Building, Des Moines, Iowa 50319, a petition seeking a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department using the methods described in rule 701—7.3(17A).

b. When a petition is considered filed. A petition is deemed filed when it is received by the clerk of the hearings section department as described in rule 701—7.4(17A). The clerk of the hearings section department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the clerk of the hearings section department with an extra copy for this purpose. The

c. Department forms. Petitioners may use the form provided on GovConnectIowa or the form provided on the department’s website, tax.iowa.gov/forms, to submit a petition.

d. Manually created petitions.

(1) If not submitted using the department-provided formats, the petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF REVENUE

Petition by (Name of Petitioner)	*	PETITION FOR
for a Declaratory Order on (Cite	*	DECLARATORY ORDER
provisions of law involved).	*	Docket No. _____
	*	

~~b.~~ (2) The petition must provide the following information:

(1) 1. A clear and concise statement of all relevant facts on which the order is requested;

(2) 2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law;

(3) 3. The questions the petitioner wants answered, stated clearly and concisely;

(4) 4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers;

(5) 5. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome;

(6) 6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity;

(7) 7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition;

(8) 8. Any request by petitioner for a meeting provided for by this rule; and

(9) 9. Whether the petitioner is presently under audit by the department; and

~~e.~~ 10. The petition must be dated and signed by signature of the petitioner or the petitioner’s representative and date of signature. It must also include the name, mailing address, and telephone number of the petitioner and of the petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed. Petitions submitted by a representative must have a valid IDR power of attorney form or representative certification form, as applicable in accordance with rule 701—7.6(17A), on file with the department.

7.24(2) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the clerk of the hearings section department shall give notice of the petition to all persons not served by the petitioner to whom notice is required by any provision of law. The clerk of the hearings section department may also give notice to any other persons.

7.24(3) Intervention.

a. Nondiscretionary intervention. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order, shall be allowed to intervene in a proceeding for a declaratory order.

b. Discretionary intervention. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

c. Filing and form of petition for intervention. A petition for intervention shall be filed with the Clerk of the Hearings Section, Department of Revenue, Fourth Floor, Hoover State Office Building, Des Moines, Iowa 50319. ~~in accordance with paragraph 7.3(1) "b," "c," or "d."~~ Such a petition is deemed filed when it is received by the clerk of the hearings section in accordance with rule 701—7.4(17A). ~~The clerk of the hearings section department~~ will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF REVENUE

Petition by (Name of Original	*	PETITION FOR
Petitioner) for a Declaratory Order	*	INTERVENTION
on (Cite provisions of law cited in	*	Docket No. _____
original Petition).	*	

- d. The petition for intervention must provide the following information:
- (1) Facts supporting the intervenor’s standing and qualifications for intervention;
 - (2) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers;
 - (3) Reasons for requesting intervention and disclosure of the intervenor’s interest in the outcome;
 - (4) A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity;
 - (5) The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented;
 - (6) Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding;
 - (7) Whether the intervenor is presently under audit by the department; and
 - (8) Consent of the intervenor to be bound by the declaratory order.

e. (9) The petition must be dated and signed by the intervenor or the intervenor’s representative. It must also include the name, mailing address, and telephone number of the intervenor and of the intervenor’s representative and a statement indicating the person to whom communications should be directed. Petitions for intervention submitted by a representative must have a valid IDR power of attorney form or representative certification form, as applicable in accordance with rule 701—7.6(17A), on file with the department.

f. e. Standing. For a petition for intervention to be allowed, the petitioner must have consented to be bound by the declaratory order and the petitioner must have standing regarding the issues raised in the petition for declaratory order. Facts described in the petition for intervention must be those supporting intervention, not related to the substantive issues in the petition. The petition for intervention must not correct facts that are in the petition for declaratory order or raise any additional facts. To have standing, the intervenor must have a legally protectible and tangible interest at stake in the petition for declaratory order under consideration by the director for which the party wishes to petition to intervene. ~~Black’s Law Dictionary, Centennial Edition, p. 1405, citing *Guidry v. Roberts*, 331 So. 44, 50 (La.App.). Based on Iowa case law, the department may refuse to entertain a petition from one whose rights will not be~~

invaded or infringed. *Bowers v. Bailey*, 237 Iowa 295, 21 N.W.2d 773 (1946). The department may, by rule, impose a requirement of standing upon those that seek a declaratory order at least to the extent of requiring that they be potentially aggrieved or adversely affected by the department action or failure to act. Arthur Earl Bonfield, “The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, The Rule making Process,” 60 Iowa Law Review 731, 812-13 (1975). The department adopts this requirement of standing for those seeking a petition for a declaratory order and those seeking to intervene in a petition for a declaratory order.

g. f. Associations. An association or a representative group is not considered to be an entity qualifying for filing a petition requesting a declaratory order on behalf of all of the association or group members. Each member of an association may not be similarly situated or represented by the factual scenario set forth in such a petition.

h. g. Factually distinct matters. If a party seeks to have an issue determined by declaratory order, but the facts are different from those in a petition for declaratory order that is currently under consideration by the director, the interested party should not petition as an intervenor in the petition for declaratory order currently under the director’s consideration. Instead, the party should file a separate petition for a declaratory order, and the petition should include all of the relevant facts. The director may deny a petition for intervention without denying the underlying petition for declaratory order that is involved.

7.24(4) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

7.24(5) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the ~~Policy and Communications Division~~ Legal Services Section, Iowa Department of Revenue, Fourth Floor, Hoover State Office Building P.O. Box 14457, Des Moines, Iowa 50319. 50306-3457; or by email to the address provided in paragraph 7.3(1)“b.”

7.24(6) Service and filing of petitions and other papers.

a. When service is required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

b. Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed ~~with the Clerk of the Hearings Section, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319~~ in the same manner described in subrule 7.24(1). All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department.

c. Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided in rules ~~701—7.8(17A) and 701—7.21(17A)~~ 701—7.3(17A) and 701—7.4(17A).

7.24(7) Department consideration.

a. Informal meetings. Upon request by petitioner in the petition, the department may schedule a brief and informal meeting between the original petitioner, all intervenors, and the department, a member of the department, or a member of the staff of the department to discuss the questions raised.

b. Requests for additional information. The department may solicit additional information from the petitioner and establish a time frame for response. The department may also solicit comments or information from any other person on the questions raised. Also, comments or information on the questions raised may be submitted to the department by any person.

7.24(8) Action on petition.

a. Within 30 days after receipt of a petition for a declaratory order, the director shall take action on the petition. That action may include issuing an order, issuing a refusal, or scheduling the issuance of a decision for a later date.

b. The date of issuance of an order or of a refusal to issue an order is ~~as defined in rule 701—7.2(17A)~~ the date of mailing of the order or refusal or date of delivery if service is by other means.

7.24(9) Refusal to issue order.

a. Reasons for refusal to issue order. The department shall not issue a declaratory order where prohibited by Iowa Code section 17A.9 and may refuse to issue a declaratory order on some or all questions raised for any of the following reasons:

(1) to (9) No change.

(10) The petitioner requests the department to determine whether a statute is unconstitutional on its face; ~~or~~

(11) The petition requests a declaratory order on an issue presently under investigation or audit or in rule-making proceedings or in litigation in a contested case or court proceedings; ~~or~~

(12) The petition requests a declaratory order on an issue that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

b. Action on refusal. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

c. Filing of new petition. Refusal to issue a declaratory order pursuant to this rule does not preclude the filing of a new petition that seeks to eliminate the grounds for the department's refusal to issue an order.

7.24(10) Contents of declaratory order, refusal; effective date.

a. In addition to the ~~order~~ ruling itself, a declaratory order or refusal must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

b. A declaratory order is effective on the date of issuance.

7.24(11) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be ~~mailed~~ delivered promptly to the original petitioner and all intervenors or otherwise served in accordance with rule 701—7.3(17A).

7.24(12) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. A declaratory order is binding on the department, the petitioner, and any intervenors. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final department action on the petition. A declaratory order, once issued, will not be withdrawn at the request of the petitioner.

7.24(13) Prejudice or no consent. Withdrawal of the petition. ~~The department will not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding. The petitioner may voluntarily dismiss its petition by notifying the department in writing at any time before the order is issued. The petitioner may not dismiss the petition after the order is issued.~~

This rule is intended to implement Iowa Code section 17A.9.

ITEM 16. Amend rule 701—7.25(17A) as follows:

701—7.25(17A) Department procedure for rule making.

7.25(1) Applicability. ~~The department hereby adopts and incorporates by reference the following Uniform Rules on Agency Procedure for Rule Making, which may be found on the general assembly's website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf and which are printed in the first volume of the Iowa Administrative Code, with the additions, changes, and deletions to those rules listed below: Except to the extent otherwise expressly provided by statute, all rules adopted by the department are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.~~

7.25(2) Advice on possible rules before notice of proposed rule adoption. ~~X.2(17A) Advice on possible rules before notice of proposed rule adoption.~~ In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)“a,” solicit comments from the public on a subject matter of possible rule making by

the department by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

The department may send notices of proposed rule making and a request for comments to any agency, organization, or association known to the department to have a direct interest or expertise pertaining to the substance of the proposed rule.

7.25(3) Public rule-making docket. The department utilizes the public rule-making docket available to all agencies on the Iowa legislature's website.

7.25(4) Notice of proposed rule making. ~~X.4(1) Notice of proposed rule making—contents.~~

a. Contents. Except for rules filed through emergency rule making, at least 35 days before the adoption of a rule the department shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- (1) A brief explanation of the purpose of the proposed rule.
- (2) The specific legal authority for the proposed rule.
- (3) Except to the extent impracticable, the text of the proposed rule.
- (4) Where, when, and how persons may present their views on the proposed rules.
- (5) Where, when, and how persons may demand an oral proceeding on the proposed rule if the Notice does not already provide for one.

Where the inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the department shall include in the Notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the department for the resolution of each of those issues.

b. Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 7.25(12).

c. Registration for Notices of Intended Action. ~~X.4(3) Copies of notices.~~ ~~In addition to the text of this subrule, the department adds that the payment for the subscription and the subscription term is one year.~~ Any person may register on the department's website to receive announcements related to rules from the department. Persons registered to receive announcements from the department will be notified of the publication of the department's Notices of Intended Action and Adopted and Filed rules. Persons who desire to request a paper copy of any rule filing shall make a request to the department's administrative rules coordinator, in writing or by email. The request must specify the rules requested and specify the number of copies. The requester will be required to reimburse the department for the actual costs incurred in providing copies.

7.25(5) Public participation. ~~X.5(17A) Public participation.~~ ~~In addition to the text of this rule, the department adds that written submissions should be submitted to the Administrator of the Policy and Communications Division, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319. Also, any requests for special requirements concerning accessibility are to be made to the Clerk of the Hearings Section, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319; telephone (515)281-3204.~~

a. Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing or via email, on the proposed rule. These submissions should identify the proposed rule to which they relate and should be submitted to the person designated on the Notice of Intended Action, or to the attention of the department's administrative rules coordinator, at the address provided in paragraph 7.3(1)"c" or by email to the address provided in paragraph 7.3(1)"b."

b. Oral proceedings. The department may, at any time, schedule an oral proceeding on a proposed rule. The department shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the department by the administrative rules review committee, a governmental subdivision, a state agency, an association having not less than 25 members, or at least 25 persons. That request must contain the following information:

(1) A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

(2) A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

(3) A request by a state agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing the request.

c. *Conduct of oral proceedings.*

(1) Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1) "b" or this chapter.

(2) Scheduling and notice. An oral proceeding on a proposed rule may be held in person, virtually, or both. The proceeding shall not be held earlier than 20 days after the related Notice of Intended Action is published in the Iowa Administrative Bulletin.

(3) Presiding officer. An employee of the department shall preside at the oral proceeding on a proposed rule.

(4) Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments, or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the department at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

1. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of both themselves and other individuals.

2. Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

3. To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

4. The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

5. Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the department.

6. The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

7. Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding. However, no participant shall be required to answer any question.

8. The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

d. *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the department may obtain information concerning a proposed rule through any other lawful means deemed appropriate under circumstances.

e. *Accessibility.* The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact

the person listed on the Notice of Intended Action or the department's administrative rules coordinator in advance to arrange access or other needed services.

7.25(6) *Regulatory analysis.* X.6(17A) *Regulatory analysis.* In addition to the text of this rule, the department adds that small businesses or organizations of small businesses may register on the department's small business impact list by making a written application to the Administrator of the Policy and Communications Division, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319.

a. *Small business impact mailing list.* Small businesses or organizations of small businesses may be registered on the department's small business impact list by making a written application addressed to the department's administrative rules coordinator by ordinary mail or email to the address provided in paragraph 7.3(1) "b." The application for registration shall state:

- (1) The name of the small business or organization of small businesses;
- (2) The address of the small business or organization of small businesses;
- (3) The name of a person authorized to transact business for the applicant;
- (4) A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact;
- (5) Whether the registrant desires copies of Notices of Intended Action at cost or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The department may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The department may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses shall be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

b. *Time of distribution.* Within seven days after submission of a Notice of Intended Action to the legislative services agency's administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(3), the department shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

c. *Qualified requestors for regulatory analysis—economic impact.* The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) "a" after a proper request from:

- (1) The legislative services agency's administrative rules coordinator, or
- (2) The administrative rules review committee.

d. *Qualified requestors for regulatory analysis—business impact.* The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) "b" after a proper request from:

- (1) The administrative rules review committee;
- (2) The legislative services agency's administrative rules coordinator;
- (3) At least 25 or more persons who sign the request provided that each represents a different small business, or
- (4) An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

e. *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the department shall adhere to the timelines described in Iowa Code section 17A.4A(4).

f. *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the department. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

g. Contents of concise summary. The contents of the concise summary shall conform to the requirements of Iowa Code sections 17A.4A(4) and 17A.4A(5).

h. Publication of a concise summary. The department shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

i. Regulatory analysis contents—rules review committee or rules coordinator. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the legislative services agency’s administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) “a,” unless a written request expressly waives one or more of the items listed in the section.

j. Regulatory analysis contents—substantial impact on small business. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the legislative services agency’s administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) “b.”

~~7.25(7) Fiscal impact statement. X.7(17A,25B) Fiscal impact statement.~~ A rule that mandates additional combined expenditures exceeding \$100,000 or combined expenditures of at least \$500,000 within five years, by all affected political subdivisions, or by agencies and entities which contract with political subdivisions to provide services, must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

If the department determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the department shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

~~7.25(8) Time and manner of rule adoption. X.8(17A) Time and manner of rule adoption.~~

a. Time of adoption. The department shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the department shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

b. Consideration of public comment. Before the adoption of a rule, the department shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any written summary of the oral submissions and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

c. Reliance on department expertise. Except as otherwise provided by law, the department may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

~~7.25(9) Variance between adopted rule and published notice of proposed rule adoption. X.9(17A) Variance between adopted rule and published notice of proposed rule adoption.~~

a. Allowable variances. The department shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

(1) The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that Notice; and

(2) The differences are a logical outgrowth of the contents of that Notice of Intended Action or the comments submitted in response thereto; and

(3) The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

b. Fair warning. In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the department shall consider the following factors:

(1) The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests.

(2) The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action.

(3) The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

c. *Petition for rule making.* The department shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the department finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to the petitioner, the legislative services agency's administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

d. *Concurrent rule-making proceedings.* Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

7.25(10) Exemptions from public rule-making procedures, emergency rule making. ~~X.10(17A)~~ Exemptions from public rule-making procedures. In addition to the text of this rule, the department adds that exempt categories are generally limited to rules for nonsubstantive changes to a rule, such as rules for correcting grammar, spelling or punctuation in an existing or proposed rule.

a. *Omission of notice and comment.* To the extent the department for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the department may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

b. *Category exempt.* Rule makings for nonsubstantive changes to a rule, such as rules for correcting grammar, spelling or punctuation in an existing or proposed rule, are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, and contrary to the public interest.

c. *Public proceedings on rules adopted without them.* The department may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon paragraph 7.25(10) "a." Upon written petition by a governmental subdivision, the administrative rules review committee, a state agency, the legislative services agency's administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the department shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon paragraph 7.25(10) "a." This petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of the petition. After a standard rule-making proceeding commenced pursuant to this subrule, the department may either readopt the rule it adopted without benefit of all usual procedures on the basis of paragraph 7.25(10) "a" or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

7.25(11) Concise statement of reasons. ~~X.11(17A)~~ Concise statement of reasons. In addition to the text of this rule, the department adds that a request for a concise statement of reasons for a rule must be submitted to the Administrator of the Policy and Communications Division, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319.

a. *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered by mail to the address listed in paragraph 7.3(1) "c" or by email to the person listed on the adopted rule filing or to the department's administrative rules coordinator at the address provided in paragraph 7.3(1) "b." The request should indicate whether the statement is sought for all or only a

specified part of the rule. Requests shall be considered made on the date received in accordance with rule 701—7.4(17A).

b. *Contents.* The concise statement of reasons shall contain:

- (1) The reasons for adopting the rule;
- (2) An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any change;
- (3) The principal reasons urged in the rule-making proceeding for and against the rule, and the department's reasons for overruling the arguments made against the rule.

c. *Time of issuance.* After a proper request, the department shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

7.25(12) *Contents, style, and form of rule.* X.12(1) ~~Contents, style, and form of rule—contents.~~

a. *Contents.* Each rule adopted by the department shall contain the text of the rule and, in addition:

- (1) The date the department adopted the rule;
- (2) A brief explanation of the principal reasons for the rule-making action if the reasons are required by Iowa Code section 17A.4(2), or the department in its discretion decides to include the reasons;
- (3) A reference to all rules repealed, amended, or suspended by the rule;
- (4) A reference to the specific statutory or other authority authorizing adoption of the rule;
- (5) Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- (6) A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if the reasons are required by Iowa Code section 17A.4(2), or the department in its discretion decides to include the reasons; and

(7) The effective date of the rule.

b. *Incorporation by reference.* X.12(4) ~~Contents, style, and form of rule—style and form.~~ The department may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the department finds that the incorporation of its text in the department proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the department proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The department may incorporate such matter by reference in a proposed or adopted rule only if the department makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the department, and how and where copies may be obtained from the department or an agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The department shall retain permanently a copy of any materials incorporated by reference in a rule of the department. If the department adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

c. *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the department shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the department. The department will provide a copy of that full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the

standards available electronically. At the request of the administrative code editor, the department shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

7.25(14) Filing of rules. X.14(17A) Filing of rules. The department shall file each rule it adopts in the office of the legislative services agency's administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule shall have included with it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the fiscal impact statement or concise statement is issued. In filing a rule, the department shall use the standard form prescribed by the legislative services agency's administrative rules coordinator.

7.25(15) Effectiveness of rules prior to publication, emergency rule making. X.15(17A) Effectiveness of rules prior to publication.

a. Grounds. The department may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

b. Special notice. When the department makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) "b," the department shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the department to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice, or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) "b" shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of paragraph 7.25(15) "b."

X.16(17A) General statement of policy.

7.25(16) Review of rules by department. X.17(17A) Review by agency of rules.

a. Request for review. Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator for the department to conduct a formal review of a specified rule. Upon approval of that request by the department's administrative rules coordinator, the department shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The department may refuse to conduct a review if it has conducted a review of the specified rule within five years prior to the filing of the written request.

b. Conduct of review. In conducting the formal review, the department shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall include a concise statement of the department's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any requests for exceptions to the rule received by the department or granted by the department. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to

the criticisms as well as the reasons for the changes. A copy of the department's report shall be sent to the administrative rules review committee and the legislative services agency's administrative rules coordinator. The report shall also be available for public inspection.

7.25(2) The department hereby states that the following cited Uniform Rules on Agency Procedure for Rule Making are not adopted by the department:

X.1(17A) Applicability.

X.3(17A) Public rule-making docket.

X.4(2) Notice of proposed rule making—incorporation by reference.

X.12(2) Contents, style, and form of rule—incorporation by reference.

X.12(3) Contents, style, and form of rule—references to materials not published in full.

X.13(17A) Agency rule-making record.

This rule is intended to implement Iowa Code chapter 17A and section 421.14.

ITEM 17. Amend rule 701—7.26(17A) as follows:

701—7.26(17A) Public inquiries on rule making and the rule-making records. The department maintains records of information obtained and all actions taken and criticisms received regarding any rule within the past five years. The department also keeps a record of the status of every rule within the rule-making procedure. Inquiries concerning the status of rule making may be made by contacting the ~~Administrator of the Policy and Communications Division, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319.~~ department's administrative rules coordinator by mail at the address listed in paragraph 7.3(1) "c" or by email to the address provided in paragraph 7.3(1) "b." For additional information regarding criticism of rules, see rule 701—7.27(17A).

This rule is intended to implement Iowa Code section 17A.3.

ITEM 18. Amend rule 701—7.27(17A) as follows:

701—7.27(17A) Criticism of rules. ~~The Administrator of the Policy and Communications Division, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, is designated as the office where interested~~ Interested persons may submit by electronic means or by mail criticisms, requests for waivers, or comments regarding a rule: to the department's administrative rules coordinator by mail at the address listed in paragraph 7.3(1) "c" or by email to the address provided in paragraph 7.3(1) "b." A criticism of a specific rule must be more than a mere lack of understanding of a rule or a dislike of the rule. To constitute a criticism of a rule, the criticism must be in writing, indicate it is a criticism of a specific rule, and have a valid legal basis for support. All requests for waivers, comments, or criticisms received on any rule will be kept in a separate record for a period of five years by the department.

This rule is intended to implement Iowa Code sections 17A.7 and 421.60.

ITEM 19. Amend rule 701—7.28(17A) as follows:

701—7.28(17A) Waiver or variance of certain department rules. All discretionary rules or discretionary provisions in a rule over which the department has jurisdiction, in whole or in part, may be subject to waiver or variance. ~~See subrules 7.28(3) and 7.28(4).~~

7.28(1) Definitions. The following terms apply to the interpretation and application of this rule:

"Discretionary rule" or "discretionary provisions in a rule" means rules or provisions in rules resulting from a delegation by the legislature to the department to create a binding rule to govern a given issue or area. The department is not interpreting any statutory provision of the law promulgated by the legislature in a discretionary rule. Instead, a discretionary rule is authorized by the legislature when the legislature has delegated the creation of binding rules to the department and the contents of such rules are at the discretion of the department. A rule that contains both discretionary and interpretive provisions is deemed to be a discretionary rule to the extent of the discretionary provisions in the rule.

“*Interpretive rules*” or “*interpretive provisions in rules*” means rules or provisions in rules which define the meaning of a statute or other provision of law or precedent where the department does not possess the delegated authority to bind the courts to any extent with its definition.

“*Waiver ~~or variance~~*” means ~~an agency~~ a department action which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

7.28(2) *Scope of rule.*

a. This rule creates generally applicable standards and a generally applicable process for granting individual waivers ~~or variances~~ from the discretionary rules or discretionary provisions in rules adopted by the department in situations where no other specifically applicable law provides for waivers ~~or variances~~. To the extent another more specific provision of law purports to govern the issuance of a waiver ~~or variance~~ from a particular rule, the more specific waiver ~~or variance~~ provision shall supersede this rule with respect to any waiver ~~or variance~~ from that rule.

b. The waiver ~~or variance~~ provisions set forth in this rule do not apply to rules over which the department does not have jurisdiction or when issuance of the waiver ~~or variance~~ would be inconsistent with any applicable statute, constitutional provision or other provision of law.

7.28(3) *Applicability of this rule.*

a. This rule applies only to waiver ~~or variance~~ of those ~~departmental~~ rules that are within the exclusive rule-making authority of the department. This rule shall not apply to interpretive rules that merely interpret or construe the meaning of a statute, or other provision of law or precedent, if the department does not possess statutory authority to bind a court, to any extent, with its interpretation or construction. Thus, this waiver ~~or variance~~ rule applies to discretionary rules and discretionary provisions in rules, and not to interpretive rules.

b. The application of this rule is strictly limited to petitions for waiver ~~or variance~~ filed outside of a contested case proceeding. Petitions for waiver ~~or variance~~ from a discretionary rule or discretionary provisions in a rule filed after the commencement of a contested case as provided in rule ~~701—7.14(17A)~~ 701—7.16(17A) will be treated as an issue of the contested case to be determined by the presiding officer of the contested case.

7.28(4) *Authority to grant a waiver ~~or variance~~.* The director may not issue a waiver ~~or variance~~ under this rule unless:

a. The legislature has delegated authority sufficient to justify the action; and

b. The waiver ~~or variance~~ is consistent with statutes and other provisions of law. No waiver ~~or variance~~ from any mandatory requirement imposed by statute may be granted under this rule.

7.28(5) *Criteria for waiver ~~or variance~~.* In response to a petition, the director may, in the director’s sole discretion, issue an order granting a waiver ~~or variance~~ from a discretionary rule or a discretionary provision in a rule adopted by the department, in whole or in part, as applied to the circumstances of a specified person, if the director finds that the waiver ~~or variance~~ is consistent with subrules 7.28(3) and 7.28(4) and if all of the following criteria are also met:

a. The waiver ~~or variance~~ would not prejudice the substantial legal rights of any person;

b. The rule or provisions of the rule are not specifically mandated by statute or another provision of law;

c. The application of the rule or rule provision would result in an undue hardship or injustice to the petitioner; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule or rule provision for which the waiver ~~or variance~~ is requested.

7.28(6) *Director’s discretion.* The final decision to grant or deny a waiver ~~or variance~~ shall be vested in the director. This decision shall be made at the sole discretion of the director based upon consideration of relevant facts.

7.28(7) *Burden of persuasion.* The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the director should exercise discretion to grant the petitioner a waiver ~~or variance~~ based upon the criteria contained in subrule 7.28(5).

7.28(8) *Contents Form and contents of petition.*

a. Department forms. A petition for waiver ~~or variance must be in the following~~ may be filed using the form available on the department’s portal, GovConnectIowa. Alternatively, a petition for waiver may be filed using the form available on the department’s website, tax.iowa.gov/forms.

b. Manually created petitions.

(1) Persons that do not use the department’s portal, GovConnectIowa, or the form available on the department’s website shall follow the following format:

IOWA DEPARTMENT OF REVENUE		
Name of Petitioner	*	PETITION FOR
Address of Petitioner	*	WAIVER
Type of Tax at Issue	*	Docket No. _____
	*	

~~b. (2)~~ A manually created petition for waiver ~~or variance~~ must contain all of the following, where applicable and known to the petitioner:

~~(1)~~ 1. The name, address, email address, telephone number, and case number or state identification number of the entity or person for whom a waiver ~~or variance~~ is being requested;

~~(2)~~ 2. A description and citation of the specific rule or rule provisions from which a waiver ~~or variance~~ is being requested;

~~(3)~~ 3. The specific waiver ~~or variance~~ requested, including a description of the precise scope and operative period for which the petitioner wants the waiver ~~or variance~~ to extend;

~~(4)~~ 4. The relevant facts that the petitioner believes would justify a waiver ~~or variance~~. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts represented in the petition, and a statement of reasons that the petitioner believes will justify a waiver ~~or variance~~;

~~(5)~~ 5. A complete history of any prior contacts between the petitioner and the department relating to the activity affected by the proposed waiver ~~or variance~~, including audits, notices of assessment, refund claims, appeals, contested case hearings, or investigative reports relating to the activity within the last five years;

~~(6)~~ 6. Any information known to the petitioner relating to the department’s treatment of similar cases;

~~(7)~~ 7. The name, address, and telephone number of any public agency or political subdivision which might be affected by the granting of a waiver ~~or variance~~;

~~(8)~~ 8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver ~~or variance~~;

~~(9)~~ 9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver ~~or variance~~;

~~(10)~~ 10. Signed releases of information authorizing persons with knowledge of relevant facts to furnish the department with information relating to the waiver ~~or variance~~; and

~~(11)~~ If the petitioner seeks to have identifying details deleted, which deletion is authorized by statute, such details must be listed with the statutory authority for the deletion; and

~~(12)~~ 11. Signature by the petitioner at the conclusion of the petition attesting to the accuracy and truthfulness of the information set forth in the petition.

~~7.28(9)~~ Filing of petition. A petition for waiver ~~or variance~~ must be filed ~~with the Clerk of the Hearings Section, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319~~ using one of the methods described in subrule 7.3(1).

~~7.28(10)~~ Additional information. Prior to issuing an order granting or denying a waiver ~~or variance~~, the director may request additional information from the petitioner relating to the petition and surrounding circumstances. The director may, on the director’s own motion, or at the petitioner’s

request, schedule a telephonic or in-person meeting between the petitioner or the petitioner's representative, or both, and the director to discuss the petition and surrounding circumstances.

7.28(11) Notice of petition for waiver ~~or variance~~. The petitioner shall provide, within 30 days of filing the petition for waiver ~~or variance~~, a notice consisting of a concise summary of the contents of the petition for waiver ~~or variance~~ and stating that the petition is pending. Such notice shall be mailed by the petitioner to all persons entitled to such notice. Such persons to whom notice must be mailed include, but are not limited to, the director and all parties to the petition for waiver ~~or variance~~, or the parties' representatives. The petitioner must then file written notice ~~with the clerk of the hearings section (address indicated above)~~ to the department's legal services section by mail to the address listed in paragraph 7.3(1) "c" or by email to the address provided in paragraph 7.3(1) "b," attesting that the notice has been mailed. The names, addresses and telephone numbers of the persons to whom the notices were mailed shall be included in the filed written notice. The department has the discretion to give such notice to persons other than those persons notified by the petitioner.

7.28(12) Ruling on a petition for waiver ~~or variance~~. An order granting or denying a waiver ~~or variance~~ must conform to the following:

a. An order granting or denying a waiver ~~or variance~~ shall be in writing and shall contain a reference to the particular person and rule or rule provision to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the narrow and precise scope and operative time period of a waiver ~~or variance~~, if one is issued.

b. If a petition requested the deletion of identifying details, then the order must either redact the details prior to the placement of the order in the public record file referenced in subrule 7.28(17) or set forth the grounds for denying the deletion of identifying details as requested.

e. b. Conditions. The director may condition the grant of a waiver ~~or variance~~ on any conditions which the director deems to be reasonable and appropriate in order to protect the public health, safety and welfare.

7.28(13) Time period for waiver ~~or variance~~; extension. Unless otherwise provided, an order granting a petition for waiver ~~or variance~~ will be effective for 12 months from the date the order granting the waiver ~~or variance~~ is issued. Renewal of a granted waiver ~~or variance~~ is not automatic. To renew the waiver ~~or variance~~ beyond the 12-month period, the petitioner must file a new petition requesting a waiver ~~or variance~~. The renewal petition will be governed by the provisions in this rule and must be filed prior to the expiration date of the previously issued waiver ~~or variance~~ or extension of waiver ~~or variance~~. Even if the order granting the waiver ~~or variance~~ was issued in a contested case proceeding, any request for an extension shall be filed with and acted upon by the director. However, renewal petitions must request an extension of a previously issued waiver ~~or variance~~. Granting the extension of the waiver ~~or variance~~ is at the director's sole discretion and must be based upon whether the factors set out in subrules 7.28(4) and 7.28(5) remain valid.

7.28(14) Time for ruling. The director shall grant or deny a petition for waiver ~~or variance~~ as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees in writing to a later date or the director indicates in a written order that it is impracticable to issue the order within the 120-day period.

7.28(15) When deemed denied. Failure of the director to grant or deny a waiver ~~or variance~~ within the 120-day or the extended time period shall be deemed a denial of that petition.

7.28(16) Service of orders. Within seven days of its issuance, any order issued under this rule shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

7.28(17) Record keeping. The department is required to maintain a record of all petitions for waiver ~~or variance~~ and rulings granting or denying petitions for waiver ~~or variance~~.

a. *Petitions for waiver ~~or variance~~.* The department shall maintain a record of all petitions for waiver ~~or variance~~ available for public inspection. Such records will be indexed and filed and made available for public inspection ~~at the office of the clerk of the hearings section at the address set forth in subrule 7.28(9).~~

b. Report of orders granting or denying a waiver or variance. All orders granting or denying a waiver or variance shall be summarized in a semiannual report to be drafted by the department and submitted to the administrative rules coordinator and the administrative rules review committee submitted on the Internet site as prescribed in Iowa Code section 17A.9A.

7.28(18) Cancellation of waiver or variance. A waiver or variance issued pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice, the director issues an order finding any of the following:

a. The person who obtained the waiver or variance order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver or variance; or

b. The alternative means for ensuring that public health, safety, and welfare will be adequately protected after issuance of the waiver or variance order have been demonstrated to be insufficient, and no other means exist to protect the substantial legal rights of any person; or

c. The person who obtained the waiver or variance has failed to comply with all of the conditions in the waiver or variance order.

7.28(19) Violations. A violation of a condition in a waiver or variance order shall be treated as a violation of the particular rule or rule provision for which the waiver or variance was granted. As a result, the recipient of a waiver or variance under this rule who violates a condition of the waiver or variance may be subject to the same remedies or penalties as a person who violates the rule or rule provision at issue.

7.28(20) Defense. After an order granting a waiver or variance is issued, the order shall constitute a defense, within the terms and the specific facts indicated therein, for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked, unless subrules 7.28(18) and 7.28(19) are applicable.

7.28(21) Hearing and appeals.

a. Appeals from a decision granting or denying a waiver or variance in a contested case proceeding shall be in accordance with the rules governing hearings and appeals from decisions in contested cases. These appeals shall be taken within 30 days of the issuance of the ruling granting or denying the waiver or variance request, unless a different time is provided by rule or statute, such as provided in the area of license revocation (see rule ~~701—7.23(17A)~~ 701—7.39(17A)).

b. The provisions of Iowa Code sections 17A.10 to 17A.18A and rule ~~701—7.17(17A)~~ 701—7.19(17A) regarding contested case proceedings shall apply to any petition for waiver or variance of a rule or provisions in a rule filed within a contested case proceeding. A petition for waiver or variance of a provision in a rule outside of a contested case proceeding will not be considered under the statutes or rule ~~701—7.17(17A)~~ 701—7.19(17A). Instead, the director's decision on the petition for waiver or variance is considered to be "other agency action."

This rule is intended to implement Iowa Code section 17A.9A.

ITEM 20. Amend rule ~~701—7.29(17A)~~ as follows:

~~701—7.29(17A)~~ Petition for rule making.

~~7.29(1)~~ *Form Filing, form, and contents of petition.*

a. Filing. Any person or agency may file a petition for rule making at the Office of the Director, Department of Revenue, Hoover State Office Building, Fourth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319 using one of the methods described in subrule 7.3(1). A petition is deemed filed when it is received by the director. The department will provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

b. Department forms. A petition may be filed using the form available on GovConnectIowa or the form available on the department's website, tax.iowa.gov/forms.

c. Manually created petitions.

(1) Persons that do not use the form available on GovConnectIowa, or the form available on the department's website, shall follow the following format:

DEPARTMENT OF REVENUE

Petition by (Name of Petitioner)	*	PETITION FOR
for the (adoption, amendment, or	*	RULE MAKING
repeal) of rules relating to (state	*	
subject matter).	*	

~~b.~~ (2) The petition must provide the following information:

(1) ~~1.~~ A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.

(2) ~~2.~~ A citation to any law deemed relevant to the department's authority to take the action urged or to the desirability of that action.

(3) ~~3.~~ A brief summary of the petitioner's arguments in support of the action urged in the petition.

(4) ~~4.~~ A brief summary of any data supporting the action urged in the petition.

5. A complete history of any prior contacts between the petitioner and the department relating to the activity affected by the proposed rule making, including audits, notices of assessment, refund claims, appeals, contested case hearings, or investigative reports relating to the activity within the last five years.

(5) ~~6.~~ The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by or interested in the proposed action which is the subject of the petition.

(6) ~~7.~~ Any request by the petitioner for a meeting.

(7) ~~8.~~ Any other matters deemed relevant that are not covered by the above requirements.

d. *File-stamped copy.* The department will provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose.

7.29(2) *Form signed and dated.* The petition must be signed and dated by the petitioner or the petitioner's representative. It must also include the name, mailing address, telephone number, and, if requested, the email address of the petitioner and of the petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

7.29(3) *Denial by department.* The department may deny a petition because it does not substantially conform to the required form or because all the required information has not been provided.

7.29(4) *Briefs.* The petitioner may attach a brief to the petition in support of the action urged in the petition. The department may request a brief from the petitioner or from any other person concerning the substance of the petition.

7.29(5) *Status of petition.* Inquiries concerning the status of a petition for rule making may be made to the ~~Office of the Director, Department of Revenue, Hoover State Office Building, Fourth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319.~~ department's administrative rules coordinator by mail at the address listed in paragraph 7.3(1) "c" or by email to the address provided in paragraph 7.3(1) "b."

7.29(6) *Informal meeting.* If requested in the petition by the petitioner, the department may schedule an informal meeting between the petitioner and the department, or a member of the staff of the department, to discuss the petition. The department may request that the petitioner submit additional information or argument concerning the petition. The department may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the department by any person.

7.29(7) *Action required.* Within 60 days after the filing of the petition, or within an extended period as agreed to by the petitioner, the department must, in writing, either: (a) deny the petition and notify the petitioner of the department's action and the specific grounds for the denial; or (b) grant the petition and notify the petitioner that the department has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial of the petition or the granting of the petition on the date that the department mails or delivers the required notification to the petitioner. All

orders granting or denying a petition shall be submitted on the Internet site as prescribed in Iowa Code section 17A.9A.

7.29(8) *New petition.* Denial of a petition because the petition does not substantially conform to the required form does not preclude the filing of a new petition on the same subject when the new petition contains the required information that was the basis for the original denial.

This rule is intended to implement Iowa Code chapter 17A.

ITEM 21. Amend rule 701—7.30(9C,91C) as follows:

701—7.30(9C,91C) Procedure for nonlocal business entity bond forfeitures. Upon the failure of a transient merchant or an out-of-state contractor to pay any taxes payable, the amount of bond posted with the secretary of state by the transient merchant or out-of-state contractor necessary to pay the tax shall be forfeited. The following subrules shall govern the procedure for that forfeiture.

7.30(1) to 7.30(4) No change.

7.30(5) *Protest of bond forfeiture.* The application of a nonlocal business entity for a hearing shall be written and substantially in the form set out for protests of other ~~departmental~~ department action in rule ~~701—7.8(17A)~~ 701—7.9(17A). The caption of the application shall be basically in the form set out in subrule ~~7.8(6)~~ 7.9(6) except the type of proceeding shall be designated as a bond forfeiture collection. The body of the application for hearing must substantially resemble the body of the protest described in subrule ~~7.8(7)~~ 7.9(6). However, referring to numbered paragraph 7.8(7)“a,” 7.9(6)“b”(2)“1,” the nonlocal business entity shall state the date of the notice described in subrule 7.30(4). With regard to ~~paragraph 7.8(7)“c,”~~ subparagraph 7.9(6)“b”(2), in the case of a tax payable which is not administered by the department, the errors alleged may be errors on the part of other departments or subdivisions of the state of Iowa. The application for hearing shall be filed with the department’s administrative law judge in the manner described in rule ~~701—7.8(17A)~~ 701—7.10(17A). The docketing of an application for hearing shall follow the procedure for the docketing of ~~a protest~~ an appeal under that rule.

7.30(6) *Prehearing, hearing and rehearing procedures.* The following rules are applicable to preliminary and contested case proceedings under this rule: ~~701—7.3(17A) to 701—7.7(17A), 701—7.9(17A) to 701—7.13(17A), 701—7.15(17A) and 701—7.15(17A) to 701—7.22(17A) 701—7.17(17A) to 701—7.23(17A).~~

7.30(7) No change.

This rule is intended to implement Iowa Code sections 9C.4 and 91C.7.

ITEM 22. Amend rule 701—7.31(421) as follows:

701—7.31(421) Abatement of unpaid tax. ~~For assessment notices issued on or after January 1, 1995, if~~ If the statutory period for appeal of a notice of assessment has expired, the director may abate any portion of unpaid tax, penalties or interest which the director determines is erroneous, illegal, or excessive. The authority of the director to settle doubtful and disputed claims for taxes or tax refunds or tax liability of doubtful collectability is not covered by this rule.

7.31(1) and 7.31(2) No change.

7.31(3) *Review of requests.* The director may delegate review of and response to abatement requests to department staff.

This rule is intended to implement Iowa Code section 421.60.

ITEM 23. Amend rule 701—7.33(421) as follows:

701—7.33(421) Mailing to the last-known address or personal delivery of notices of assessment and refund denial letters. Taxpayers must update their address with the department in order to receive notices of refunds of tax, notices of assessment, and notices of refund claim denials. When such a notice is sent to a taxpayer’s last-known address, the notice is legally effective even if the taxpayer never receives it.

7.33(1) *Failure by department to mail to last-known address or personally deliver.*

a. If the department fails to either mail a notice of assessment to the taxpayer's last-known address or fails to personally deliver the notice to the taxpayer, interest is waived for the month the failure occurs through the month of correct mailing or personal delivery.

a. b. In addition, if the department fails to either mail to the taxpayer's last-known address or personally deliver to the taxpayer a notice of assessment or denial of a claim for refund to the taxpayer's last-known address or fails to personally deliver the notice to a taxpayer and, if applicable, or fails to mail or personally deliver a copy of the notice to the taxpayer's authorized representative, if applicable, the time period to appeal the notice of assessment or a denial of a claim for refund is suspended until the notice or claim denial is correctly mailed or personally delivered or for a period not to exceed one year, whichever is the lesser period.

b. c. Collection activities, except when a jeopardy situation exists in the case of a jeopardy assessment, shall be suspended and the statute of limitations for assessment and collection of the tax shall be tolled during the period in which interest is waived.

7.33(2) Determination of last-known address. ~~The department will make the determination of the taxpayer's last-known address on a tax-type-by-tax-type basis. However, a notice of assessment or refund claim denial will be considered to be mailed to the last-known address if it is mailed to an address used for another tax type. A notice of assessment mailed to one of two addresses used by a taxpayer was sufficient. Langdon P. Marvin, Jr., 40 TC 982; Jack Massengale, TC Memo 1968-64.~~

a. A taxpayer's last-known address for a particular tax type shall be the one of the following most recently provided by the taxpayer and with which the department has updated its records:

- (1) The address provided in an application to register or receive a permit for a particular tax type;
- (2) The address used on the most recent filed and processed Iowa tax return of a particular tax type;
- (3) The address received by the department in a written, concise statement the taxpayer mailed to: Changes in Name or Address, Iowa Department of Revenue, P.O. Box 10465, Des Moines, Iowa 50306;
- (4) The address provided by the taxpayer in GovConnectIowa.

b. While the determination of last-known address may differ by tax type, a notice of assessment or refund claim denial will be considered to be mailed to the last-known address if it is mailed to the taxpayer's last-known address used for another tax type.

7.33(3) ~~The last-known address is the address used on the most recent filed and processed return. The following principles, established by case law, for the Internal Revenue Service (IRS) also will be applied in determining the taxpayer's last-known address for purposes of this rule.~~

a. Although the taxpayer filed a tax return showing a new address, the IRS had not processed the return sufficiently for the new address to be available by computer to the IRS agent who sent the notice of deficiency. Before a change of address is considered available, a reasonable amount of time must be allowed to process and transfer information to the IRS's central computer system. *Diane Williams v. Commissioner of Internal Revenue*, U.S. Court of Appeals, 9th Circuit; 935 F. 2d 1066.

b. If the department knows the taxpayer has moved but does not know the new mailing address, the prior mailing address is the proper place to send a deficiency notice. *Kaestner v. Schmidt*, 473 F. 2d 1294; *Kohn vs. U.S. et al.*, 56 AFTR 2d 85-6147.

c. Knowledge acquired by a collection agent regarding the taxpayer's address in an unrelated investigation was not required to be imputed to the examination division responsible for mailing a notice of deficiency. *Wise v. Commissioner*, 688 F. Supp. 1164.

d. However, information acquired by the department in a related investigation of the taxpayer is binding upon the department, e.g., where the taxpayer files a power of attorney showing a change of address.

7.33(4) Procedures for notifying the department of a change in taxpayer's address. The department generally will use the address on the most recent filed and properly processed return by tax type as the address of record for all notices of assessment and denial of claims for refund. If a taxpayer no longer wishes the address of record to be the address on the most recently filed return, the taxpayer must give clear and concise written notification of a change in address to the department. Notifications of a change in address should be addressed to: Changes in Name or Address, Iowa Department of Revenue, P.O. Box 10465, Des Moines, Iowa 50306.

~~a. If after a joint return or married filing separately on a combined return is filed either taxpayer establishes a separate residence, each taxpayer should send clear and concise written notification of a current address to the department.~~

~~b. If a department employee contacts a taxpayer in connection with the filing of a return or an adjustment to a taxpayer's return, the taxpayer may provide clear and concise written notification of a change of address to the department employee who initiated the contact.~~

~~c. A taxpayer should notify the U.S. Postal Service facility serving the taxpayer's old address of the taxpayer's new address in order that mail from the department can be forwarded to the new address. However, notification to the U.S. Postal Service does not constitute the clear and concise written notification that is required to change a taxpayer's address of record with the department.~~

7.33(3) *Personal delivery to a taxpayer.* The following shall constitute personal delivery to a taxpayer:

a. Personal service upon a taxpayer by any method deemed sufficient to constitute personal service of an original notice pursuant to the Iowa Rules of Civil Procedure.

b. Providing a notice of assessment or refund claim denial to the taxpayer by electronic means based on the taxpayer's election to receive electronic communications in GovConnectIowa.

c. With respect to a taxpayer who has not provided a last-known address for a particular tax type within the prior two years, mailing to an address the department receives from a third-party skip tracing service; a public or private utility company in response to a subpoena issued pursuant to Iowa Code section 421.17(32); or a federal, state, or local agency.

d. By any other method that is reasonably calculated to result in the taxpayer's actually receiving the notice, if the taxpayer actually receives the notice.

7.33(4) *Personal delivery to authorized representatives.* The department may mail or personally deliver a copy of a notice to an authorized representative by one of the following methods:

a. Mailing to the address used on the most recently filed and processed written authorization as described in rule 701—7.6(17A);

b. In the case of fiduciary or inheritance tax matters, mailing to the address for the authorized representative contained on the most recently filed and processed return;

c. With respect to an authorized representative who has elected to receive notices electronically, by providing the notice electronically through GovConnectIowa or similar method of electronic service;

d. By any method deemed sufficient to constitute personal service of an original notice pursuant to the Iowa Rules of Civil Procedure;

e. By any other method that is reasonably calculated to result in the authorized representative's actually receiving a copy of the notice, if the authorized representative actually receives a copy of the notice.

This rule is intended to implement Iowa Code section 421.60.

ITEM 24. Amend renumbered rule 701—7.39(17A) as follows:

701—7.39(17A) Licenses.

7.39(1) *Denial of license; refusal to renew license.*

a. When the department is required by constitution or statute to provide notice and an opportunity for an evidentiary hearing prior to the refusal or denial of a license, a notice, as prescribed in rule 701—7.14(17A) 701—7.16(17A), shall be served by the department upon the licensee or applicant. Prior to the refusal or denial of a license, the department shall give 30 days' written notice to the applicant or licensee in which to appear at a hearing to show cause why a license should not be refused or denied. In addition to the requirements of rule 701—7.14(17A) 701—7.16(17A), the notice shall contain a statement of facts or conduct and the provisions of law which warrant the denial of the license or the refusal to renew a license. If the licensee so desires, the licensee may file a petition as provided in subrule ~~7.23(3)~~ 7.39(3) with the presiding officer within 30 days prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, rule ~~701—7.17(17A)~~ 701—7.19(17A) governing contested case proceedings shall apply.

b. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the department, and in case the application is denied or the terms of the new license limited, until the last date for seeking judicial review of the department's order or a later date fixed by order of the department or the reviewing court. See rule ~~481—100.2(99B)~~ ~~481—100.3(99B)~~ regarding gambling license applications.

7.39(2) Revocation of license.

a. The department shall not revoke, suspend, annul or withdraw any license until written notice is served by personal service or restricted certified mail pursuant to rule ~~701—7.14(17A)~~ ~~701—7.16(17A)~~ within the time prescribed by the applicable statute and the licensee whose license is to be revoked, suspended, annulled, or withdrawn, is given an opportunity to show at an evidentiary hearing conducted pursuant to rule ~~701—7.17(17A)~~ ~~701—7.19(17A)~~ compliance with all lawful requirements for the retention of the license. However, in the case of the revocation, suspension, annulment, or withdrawal of a sales or use tax permit, written notice will be served pursuant to rule ~~701—7.14(17A)~~ ~~701—7.16(17A)~~ only if the permit holder requests that this be done following notification, by ordinary mail, of the director's intent to revoke, suspend, annul, or withdraw the permit. In addition to the requirements of rule ~~701—7.14(17A)~~ ~~701—7.16(17A)~~, the notice shall contain a statement of facts or conduct and the provisions of law which warrant the revocation, suspension, annulment, or withdrawal of the license. A licensee whose license may be revoked, suspended, annulled, or withdrawn, may file a petition as provided in subrule ~~7.23(3)~~ ~~7.39(3)~~ with the clerk of the hearings section prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, rule ~~701—7.17(17A)~~ ~~701—7.19(17A)~~ governing contested case proceedings shall apply.

b. Notwithstanding paragraph ~~7.23(2)~~ "a," ~~7.39(2)~~ "a," if the department finds that public health, safety, or welfare imperatively requires emergency action and the department incorporates a finding to that effect in an order to the licensee, summary suspension of a license shall be ordered pending proceedings for revocation as provided herein. These proceedings shall be promptly instituted and determined. When a summary suspension as provided herein is ordered, a notice of the time, place and nature of the evidentiary hearing shall be attached to the order.

7.39(3) Petition.

a. When a person desires to file a petition as provided in subrules ~~7.23(1)~~ ~~7.39(1)~~ and ~~7.23(2)~~ ~~7.39(2)~~, the petition to be filed shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____	*	PETITION
(state taxpayer's name and address, and type of license)	*	Docket No. _____
	*	(filed in by Department)
	*	

- b. The petition shall substantially state in separate numbered paragraphs the following:
- ~~a.~~ (1) The full name and address of the petitioner;
 - ~~b.~~ (2) Reference to the type of license and the relevant statutory authority;
 - ~~c.~~ (3) Clear, concise and complete statements of all relevant facts showing why petitioner's license should not be revoked, refused, or denied;
 - ~~d.~~ (4) Whether a similar license has previously been issued to or held by petitioner or revoked and if revoked the reasons therefor; and

e. (5) The signature of the petitioner or petitioner’s representative, the address of petitioner and of the petitioner’s representative, and the telephone number of petitioner or petitioner’s representative.

This rule is intended to implement Iowa Code section 17A.18.

ITEM 25. Adopt the following **new** definition of “GovConnectIowa” in rule **701—8.1(17A,421)**:
“GovConnectIowa” means the e-services portal of the department.

ITEM 26. Adopt the following **new** rule 701—8.6(421):

701—8.6(421) Electing to receive communications in electronic format. A taxpayer or taxpayer representative that is a registered account holder in GovConnectIowa may elect to receive notices, correspondence, or other communication electronically through GovConnectIowa in lieu of receiving them by regular mail. With respect to any notice, correspondence, or communication served electronically, response deadlines shall be calculated from the date the taxpayer is notified electronically of the correspondence or the item is mailed, whichever is earlier. For each account a taxpayer representative represents, if the taxpayer representative is registered in GovConnectIowa, the taxpayer representative will receive electronic notifications even if the taxpayer does not have an account. However, if the taxpayer has elected to continue to receive paper mail, the representative will continue to receive paper mail. If the taxpayer representative is not registered in GovConnectIowa, notifications will be provided by regular mail.

8.6(1) How to make the election. The election must be made by selecting the appropriate setting on GovConnectIowa.

8.6(2) Limitations.

a. This election only exists for persons registered in GovConnectIowa.

b. Unless specified elsewhere in rule, this option is limited to notices, correspondence, or other communications on tax types managed in GovConnectIowa.

c. This election is not available for mail required to be sent by means other than regular mail.

d. Where the department finds it beneficial to continue to send items by regular mail, the department may continue to send regular mail even if an electronic copy is also provided and even if the person elects to receive electronic mail.

This rule is intended to implement Iowa Code section 421.60(11).

ITEM 27. Rescind and reserve rule **701—38.7(422)**.

ITEM 28. Rescind and reserve rule **701—51.8(422)**.

ITEM 29. Rescind and reserve rule **701—57.7(422)**.

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