



IOWA ADMINISTRATIVE BULLETIN

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CONTENTS IN THIS ISSUE

Pages 1514 to 1623 include ARC 0129C to ARC 0147C

ADMINISTRATIVE SERVICES DEPARTMENT

Public Notice 1514

AGENDA

Administrative rules review committee 1509

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice, Update of references to certain
animal diseases, 61.30, 64.1(1), 64.5,
64.17, 64.170 to 64.174, 64.177,
64.178, 65.4(2)“b” ARC 0140C 1514
Filed, Egg handlers, 1.5(2), ch 36 ARC 0138C .. 1614
Filed, Renewable fuel infrastructure
program—timing of application,
16.2(2) ARC 0139C 1614

ALCOHOLIC BEVERAGES DIVISION[185]

COMMERCE DEPARTMENT[181]“umbrella”

Notice, Updates—organization and
operation, uniform rules, amendments
to chs 1 to 3, 19 ARC 0142C 1517

ALL AGENCIES

Agency identification numbers 1512
Citation of administrative rules 1507
Schedule for rule making 1508

ATTORNEY GENERAL[61]

Notice, Required disclosures for
philanthropic contributions made by
certain student loan lenders to certain
educational institutions, ch 37 ARC 0147C.... 1525

EXECUTIVE DEPARTMENT

Executive order number 77 1624

HOMELAND SECURITY AND EMERGENCY

MANAGEMENT DIVISION[605]

PUBLIC DEFENSE DEPARTMENT[601]“umbrella”

Filed, Local emergency management, 7.2
to 7.7 ARC 0129C 1615

HUMAN SERVICES DEPARTMENT[441]

Notice, Appeals; default decisions; good
cause, 7.1, 7.5(2)“g,” 7.13 ARC 0132C 1526
Notice, Coverage, age limit,
reimbursement, and prior authorization
for lenses and frames; removal of
obsolete reference, 78.1(1)“a,” 78.2(1),
78.6, 78.28(3) ARC 0144C 1530
Notice, Medicaid waiver services,
amendments to ch 83 ARC 0143C 1533

INSPECTIONS AND APPEALS

DEPARTMENT[481]

Filed, Minimum construction standards
for critical access hospitals, 51.50(1)
ARC 0135C 1615

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]“umbrella”

Filed Emergency After Notice,
Certificates of insurance for commercial
lending transactions, amendments to
ch 20 ARC 0133C 1611

INTERIOR DESIGN EXAMINING

BOARD[193G]

Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]“umbrella”

Notice, Late fee for renewal of certificate
of registration, 8.1 ARC 0141C 1541

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

- Notice, Shooting sports program grants,
ch 56 **ARC 0146C** 1542

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Notice, Occupational therapists and
occupational therapy assistants, 206.1,
206.8 to 206.12, 206.18, 206.19,
209.2(11) **ARC 0134C**..... 1549

PUBLIC HEARINGS

- Summarized list 1511

REVENUE DEPARTMENT[701]

- Notice of electric and natural gas delivery
tax rate changes. 1552
- Notice, Practice and procedure before the
department, adopt ch 7; amend chs 6,
8, 11, 12, 38, 40, 42, 43, 51, 52, 54, 57,
59, 67, 68, 70, 81, 84 to 86, 89, 103,
104 **ARC 0145C**..... 1554

SECRETARY OF STATE[721]

- Notice Terminated, Election forms and
instructions; voting systems; voter
registration file, amendments to chs 21,
22, 28 **ARC 0131C**..... 1608
- Notice Terminated, Redistricting special
election blackout period, 21.33 **ARC 0130C**... 1609

STATE PUBLIC DEFENDER[493]

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”

- Filed, Indigent defense fund payments
for certified shorthand reporters, 12.7,
12.10, 13.2(4), 13.5 **ARC 0137C** 1617

TRANSPORTATION DEPARTMENT[761]

- Filed, Vehicle title, registration, plates;
dark window exemption; salvage;
regular business hours; permitting;
adoption of federal motor carrier
regulations, amendments to chs 400,
401, 405, 425, 431, 450, 511, 524, 529
ARC 0136C 1621

TREASURER OF STATE

- Notice—Public funds interest rates 1609

PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

PLEASE NOTE: Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rule Making 2012

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 21 '11	Jan. 11 '12	Jan. 31 '12	Feb. 15 '12	Feb. 17 '12	Mar. 7 '12	Apr. 11 '12	July 9 '12
Jan. 6	Jan. 25	Feb. 14	Feb. 29	Mar. 2	Mar. 21	Apr. 25	July 23
Jan. 20	Feb. 8	Feb. 28	Mar. 14	Mar. 16	Apr. 4	May 9	Aug. 6
Feb. 3	Feb. 22	Mar. 13	Mar. 28	Mar. 30	Apr. 18	May 23	Aug. 20
Feb. 17	Mar. 7	Mar. 27	Apr. 11	Apr. 13	May 2	June 6	Sep. 3
Mar. 2	Mar. 21	Apr. 10	Apr. 25	Apr. 27	May 16	June 20	Sep. 17
Mar. 16	Apr. 4	Apr. 24	May 9	May 11	May 30	July 4	Oct. 1
Mar. 30	Apr. 18	May 8	May 23	***May 23***	June 13	July 18	Oct. 15
Apr. 13	May 2	May 22	June 6	June 8	June 27	Aug. 1	Oct. 29
Apr. 27	May 16	June 5	June 20	***June 20***	July 11	Aug. 15	Nov. 12
May 11	May 30	June 19	July 4	July 6	July 25	Aug. 29	Nov. 26
May 23	June 13	July 3	July 18	July 20	Aug. 8	Sep. 12	Dec. 10
June 8	June 27	July 17	Aug. 1	Aug. 3	Aug. 22	Sep. 26	Dec. 24
June 20	July 11	July 31	Aug. 15	Aug. 17	Sep. 5	Oct. 10	Jan. 7 '13
July 6	July 25	Aug. 14	Aug. 29	***Aug. 29***	Sep. 19	Oct. 24	Jan. 21 '13
July 20	Aug. 8	Aug. 28	Sep. 12	Sep. 14	Oct. 3	Nov. 7	Feb. 4 '13
Aug. 3	Aug. 22	Sep. 11	Sep. 26	Sep. 28	Oct. 17	Nov. 21	Feb. 18 '13
Aug. 17	Sep. 5	Sep. 25	Oct. 10	Oct. 12	Oct. 31	Dec. 5	Mar. 4 '13
Aug. 29	Sep. 19	Oct. 9	Oct. 24	***Oct. 24***	Nov. 14	Dec. 19	Mar. 18 '13
Sep. 14	Oct. 3	Oct. 23	Nov. 7	***Nov. 7***	Nov. 28	Jan. 2 '13	Apr. 1 '13
Sep. 28	Oct. 17	Nov. 6	Nov. 21	***Nov. 21***	Dec. 12	Jan. 16 '13	Apr. 15 '13
Oct. 12	Oct. 31	Nov. 20	Dec. 5	***Dec. 5***	Dec. 26	Jan. 30 '13	Apr. 29 '13
Oct. 24	Nov. 14	Dec. 4	Dec. 19	***Dec. 19***	Jan. 9 '13	Feb. 13 '13	May 13 '13
Nov. 7	Nov. 28	Dec. 18	Jan. 2 '13	Jan. 4 '13	Jan. 23 '13	Feb. 27 '13	May 27 '13
Nov. 21	Dec. 12	Jan. 1 '13	Jan. 16 '13	Jan. 18 '13	Feb. 6 '13	Mar. 13 '13	June 10 '13
Dec. 5	Dec. 26	Jan. 15 '13	Jan. 30 '13	Feb. 1 '13	Feb. 20 '13	Mar. 27 '13	June 24 '13
Dec. 19	Jan. 9 '13	Jan. 29 '13	Feb. 13 '13	Feb. 15 '13	Mar. 6 '13	Apr. 10 '13	July 8 '13

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
26	Friday, June 8, 2012	June 27, 2012
1	Wednesday, June 20, 2012	July 11, 2012
2	Friday, July 6, 2012	July 25, 2012

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, June 12, 2012, and Wednesday, June 13, 2012, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Egg handlers, 1.5(2), ch 36 Filed **ARC 0138C**..... 5/30/12
 Renewable fuel infrastructure program—timing of application, 16.2(2) Filed **ARC 0139C**..... 5/30/12
 Update of references to certain animal diseases, 61.30, 64.1(1), 64.5, 64.17, 64.170 to
 64.174, 64.177, 64.178, 65.4(2)“b” Notice **ARC 0140C**..... 5/30/12

ALCOHOLIC BEVERAGES DIVISION[185]

COMMERCE DEPARTMENT[181]“umbrella”

Updates—organization and operation, uniform rules, amendments to chs 1 to 3, 19
Notice **ARC 0142C** 5/30/12

ATTORNEY GENERAL[61]

Required disclosures for philanthropic contributions made by certain student loan lenders to
 certain educational institutions, ch 37 Notice **ARC 0147C**..... 5/30/12

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Licensure; online filing system; fees, amendments to chs 10 to 15, 20, 22, 25, 29, 51
Notice **ARC 0128C** 5/16/12

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Compliance and enforcement procedures, ch 17 Amended Notice **ARC 0126C**..... 5/16/12
 Water quality certification, 61.2(2)“g” Filed **ARC 0121C**..... 5/16/12
 Discharge of storm water—reauthorization of General Permit Nos. 1, 2 and 3, 64.15
Notice **ARC 0118C** 5/16/12

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

PUBLIC DEFENSE DEPARTMENT[601]“umbrella”

Local emergency management, 7.2 to 7.7 Filed **ARC 0129C**..... 5/30/12

HUMAN SERVICES DEPARTMENT[441]

Appeals; default decisions; good cause, 7.1, 7.5(2)“g,” 7.13 Notice **ARC 0132C** 5/30/12
 Coverage, age limit, reimbursement, and prior authorization for lenses and frames; removal
 of obsolete reference, 78.1(1)“a,” 78.2(1), 78.6, 78.28(3) Notice **ARC 0144C** 5/30/12
 Medicaid waiver services, amendments to ch 83 Notice **ARC 0143C**..... 5/30/12

INSPECTIONS AND APPEALS DEPARTMENT[481]

Minimum construction standards for critical access hospitals, 51.50(1) Filed **ARC 0135C**..... 5/30/12

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]“umbrella”

Certificates of insurance for commercial lending transactions, amendments to ch 20
Filed Emergency After Notice **ARC 0133C** 5/30/12

INTERIOR DESIGN EXAMINING BOARD[193G]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]“umbrella”

Late fee for renewal of certificate of registration, 8.1 Notice **ARC 0141C**..... 5/30/12

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Occupational therapists and occupational therapy assistants, 206.1, 206.8 to 206.12, 206.18,
 206.19, 209.2(11) Notice **ARC 0134C** 5/30/12

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Shooting sports program grants, ch 56 Notice **ARC 0146C**..... 5/30/12

PUBLIC SAFETY DEPARTMENT[661]

Electrical examining board—reciprocal licensing, failure to pay fees, 502.2(14), 502.4(6),
 552.2(4) Filed **ARC 0120C** 5/16/12

REVENUE DEPARTMENT[701]

Practice and procedure before the department, adopt ch 7; amend chs 6, 8, 11, 12, 38, 40, 42,
 43, 51, 52, 54, 57, 59, 67, 68, 70, 81, 84 to 86, 89, 103, 104 Notice **ARC 0145C** 5/30/12
 Subpoena of records from public or private utility companies, 151.9 Filed **ARC 0124C** 5/16/12
 Taxability of sales of candy, 231.4 Notice **ARC 0119C** 5/16/12

SECRETARY OF STATE[721]

Election forms and instructions; voting systems; voter registration file, amendments to chs
 21, 22, 28 Notice of Termination **ARC 0131C** 5/30/12
 Redistricting special election blackout period, 21.33 Notice of Termination **ARC 0130C** 5/30/12

SOIL CONSERVATION DIVISION[27]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]“umbrella”
 Financial incentive program for soil erosion control—agricultural land under conservation
 cover, 10.20, 10.60(6) Notice **ARC 0127C** 5/16/12

STATE PUBLIC DEFENDER[493]

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”
 Indigent defense fund payments for certified shorthand reporters, 12.7, 12.10, 13.2(4), 13.5
Filed **ARC 0137C**..... 5/30/12

TRANSPORTATION DEPARTMENT[761]

Vehicle title, registration, plates; dark window exemption; salvage; regular business hours;
 permitting; adoption of federal motor carrier regulations, amendments to chs 400, 401,
 405, 425, 431, 450, 511, 524, 529 Filed **ARC 0136C** 5/30/12

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

Senator Merlin Bartz
 2081 410th Street
 Grafton, Iowa 50440

Representative David Heaton
 510 East Washington Street
 Mt. Pleasant, Iowa 52641

Senator Thomas Courtney
 2609 Clearview
 Burlington, Iowa 52601

Representative Jo Oldson
 4004 Grand Avenue, #302
 Des Moines, Iowa 50312

Senator Wally Horn
 101 Stoney Point Road, SW
 Cedar Rapids, Iowa 52404

Representative Rick Olson
 3012 East 31st Court
 Des Moines, Iowa 50317

Senator John P. Kibbie
 P.O. Box 190
 Emmetsburg, Iowa 50536

Representative Dawn Pettengill
 P.O. Box A
 Mt. Auburn, Iowa 52313

Senator James Seymour
 901 White Street
 Woodbine, Iowa 51579

Representative Guy Vander Linden
 1610 Carbonado Road
 Oskaloosa, Iowa 52577

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Brenna Findley
Administrative Rules Coordinator
 Governor’s Ex Officio Representative
 Capitol, Room 18
 Des Moines, Iowa 50319
 Telephone (515)281-5211

ALCOHOLIC BEVERAGES DIVISION[185]

Updates—organization and operation, uniform rules, amendments to chs 1 to 3, 19 IAB 5/30/12 ARC 0142C	Division Board Room 1918 SE Hulsizer Rd. Ankeny, Iowa	June 19, 2012 10 to 11 a.m.
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DENTAL BOARD[650]

Licensure; online filing system; fees, amendments to chs 10 to 15, 20, 22, 25, 29, 51 IAB 5/16/12 ARC 0128C	Suite D 400 SW 8th St. Des Moines, Iowa	June 5, 2012 2:30 p.m.
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ENVIRONMENTAL PROTECTION COMMISSION[567]

Discharge of storm water—reauthorization of General Permit Nos. 1, 2 and 3, 64.15 IAB 5/16/12 ARC 0118C	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 6, 2012 10 a.m.
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INTERIOR DESIGN EXAMINING BOARD[193G]

Late fee for renewal of certificate of registration, 8.1 IAB 5/30/12 ARC 0141C	Professional Licensing Bureau Offices 1920 SE Hulsizer Rd. Ankeny, Iowa	June 21, 2012 9 to 11 a.m.
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NATURAL RESOURCE COMMISSION[571]

Shooting sports program grants, ch 56 IAB 5/30/12 ARC 0146C	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 21, 2012 12 noon
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PROFESSIONAL LICENSURE DIVISION[645]

Occupational therapists and occupational therapy assistants, 206.1, 206.8 to 206.12, 206.18, 206.19, 209.2(11) IAB 5/30/12 ARC 0134C	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	June 20, 2012 8 to 8:30 a.m.
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The following list will be updated as changes occur.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

ADMINISTRATIVE SERVICES DEPARTMENT[11]
 AGING, DEPARTMENT ON[17]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Agricultural Development Authority[25]
 Soil Conservation Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF INDUSTRY COUNCIL, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
 CITIZENS’ AIDE[141]
 CIVIL RIGHTS COMMISSION[161]
 COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Bureau[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Interior Design Examining Board[193G]
 Savings and Loan Division[197]
 Utilities Division[199]
 CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
 CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
 EARLY CHILDHOOD IOWA STATE BOARD[249]
 ECONOMIC DEVELOPMENT AUTHORITY[261]
 City Development Board[263]
 IOWA FINANCE AUTHORITY[265]
 EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
 EGG COUNCIL, IOWA[301]
 EMPOWERMENT BOARD, IOWA[349]
 ENERGY INDEPENDENCE, OFFICE OF[350]
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
 EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 HUMAN RIGHTS DEPARTMENT[421]
 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services Division[429]
 Persons With Disabilities Division[431]

Latino Affairs Division[433]
Status of African-Americans, Division on the[434]
Status of Women Division[435]
Status of Iowans of Asian and Pacific Islander Heritage[436]
HUMAN SERVICES DEPARTMENT[441]
INSPECTIONS AND APPEALS DEPARTMENT[481]
Employment Appeal Board[486]
Foster Care Review Board[489]
Racing and Gaming Commission[491]
State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
Appeal Board, State[543]
City Finance Committee[545]
County Finance Committee[547]
NATURAL RESOURCES DEPARTMENT[561]
Energy and Geological Resources Division[565]
Environmental Protection Commission[567]
Natural Resource Commission[571]
Preserves, State Advisory Board for[575]
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]
PUBLIC DEFENSE DEPARTMENT[601]
Homeland Security and Emergency Management Division[605]
Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
Professional Licensure Division[645]
Dental Board[650]
Medicine Board[653]
Nursing Board[655]
Pharmacy Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]
VETERINARY MEDICINE BOARD[811]
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
Labor Services Division[875]
Workers' Compensation Division[876]
Workforce Development Board and Workforce Development Center Administration Division[877]

ADMINISTRATIVE SERVICES DEPARTMENT

Public Notice

NOTICE OF OFFICIAL PUBLICATION RATE INCREASE FOR THE FISCAL YEAR
COMMENCING JULY 1, 2012, AND ENDING JUNE 30, 2013

In accordance with Iowa Code section 618.11, Iowa Department of Administrative Services ITE Infrastructure Services/Printing Administrator hereby publishes the lineage rate* for newspaper publications of any order, citation, or other publication required or allowed by law (also known as official publications) for the period commencing on July 1, 2012, and ending on June 30, 2013, in the following amounts:

* Lineage rate: "...each line of eight point type two inches in length, or its equivalent." (Iowa Code section 618.11.)

One insertion = 45.7 cents
Each subsequent insertion = 31 cents

The rate becomes effective on July 1, 2012. The rate was determined by applying the formula specified in the statute. According to the federal Department of Labor, Bureau of Labor Statistics, the consumer price index for all urban consumers increased 2.7% from March 2011 to March 2012. The March index was the most recent index available as of May 7, 2012, the date on which this notice was submitted for publication.

Pursuant to Iowa Code section 618.11, this notice is exempt from the rule-making process in Iowa Code chapter 17A.

Questions with respect to this notice may be directed to:

Lorrie Tritch, ITE Chief Operations Officer
Iowa Department of Administrative Services
1305 E. Walnut
Des Moines, Iowa 50319
Telephone: (515)281-7702
E-mail: Lorrie.Tritch@iowa.gov

ARC 0140C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 163.1(1), the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 61, “Dead Animal Disposal,” Chapter 64, “Infectious and Contagious Diseases,” and Chapter 65, “Animal and Livestock Importation,” Iowa Administrative Code.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

The proposed amendments update and modernize references to certain animal diseases by changing hog cholera to classical swine fever and changing paratuberculosis to Johne's disease in accordance with 2012 Iowa Acts, Senate File 2311, divisions VI and VII, which become effective July 1, 2012.

Any interested persons may make written suggestions or comments on the proposed amendments on or before June 19, 2012. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by E-mail to Margaret.Thomson@IowaAgriculture.gov.

These proposed amendments are subject to the Department's general waiver provisions.

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

These amendments are intended to implement 2012 Iowa Acts, Senate File 2311, sections 33 to 45 (division VI), and sections 46 to 49 (division VII).

The following amendments are proposed.

ITEM 1. Amend rule 21—61.30(167), introductory paragraph, as follows:

21—61.30(167) ~~Hog cholera~~ Classical swine fever—carcasses. All carcasses of hogs dead of ~~cholera~~ classical swine fever must be burned within 24 hours intact, or they may be disposed of within 24 hours by the operator of a licensed rendering plant. In the event that the owner neglects or refuses to make such disposition of the carcass or carcasses of hogs dead of ~~cholera~~ classical swine fever, then the disposal of same shall be handled in accordance with rule 21—61.33(167).

ITEM 2. Amend subrule 64.1(1) as follows:

64.1(1) *Multiple species diseases.*

- Anthrax
- Aujeszky's disease
- Bluetongue
- Brucellosis (*Brucella abortus*)
- Brucellosis (*Brucella melitensis*)
- Brucellosis (*Brucella suis*)
- Crimean Congo haemorrhagic fever
- Echinococcosis/hydatidosis
- Epizootic haemorrhagic disease
- Equine encephalomyelitis (Eastern)
- Foot and mouth disease
- Heartwater
- Japanese encephalitis
- Johne's disease
- Leptospirosis
- New world screwworm (*Cochliomyia hominivorax*)
- Old world screwworm (*Chrysomya bezziana*)
- ~~Paratuberculosis~~
- Q fever
- Rabies
- Rift Valley fever
- Rinderpest
- Surra (*Trypanosoma evansi*)
- Trichinellosis
- Tularemia
- Vesicular stomatitis
- West Nile fever

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

ITEM 3. Amend rule 21—64.5(163), introductory paragraph, as follows:

21—64.5(163) Sale of vaccine. No attenuated or live culture vaccine or virus shall be sold or offered for sale at retail except to a licensed veterinarian of this state, nor shall it be administered to any livestock or poultry except by a licensed veterinarian of the state of Iowa. This does not apply to the sale of and administration of virulent ~~hog cholera~~ classical swine fever virus when sold to and administered by valid permit holders for its use on hogs owned by themselves on their own premises.

ITEM 4. Amend rule 21—64.17(163), introductory paragraph, as follows:

21—64.17(163) Notification of chief of animal industry. It shall be the duty of any city or local board of health or township trustees, whenever notice is given of animals being affected with rabies, glanders, scabies, ~~hog cholera~~ classical swine fever or any contagious or infectious disease or having been exposed to the same, to promptly notify the ~~chief of division of animal industry~~ state veterinarian.

ITEM 5. Amend rule **21—64.170(165A)**, definitions of “Individual herd plan” and “Paratuberculosis-affected animal,” as follows:

“*Individual herd plan*” means a written herd management plan that is designed by the herd owner, the owner’s veterinarian, if requested, and a designated epidemiologist to identify and control ~~paratuberculosis~~ Johne’s disease in an affected herd. The individual herd plan may include optional testing.

“*Paratuberculosis-affected Johne’s disease-affected animal*” means an animal which has reacted positively to an organism-based detection test conducted by an approved laboratory.

ITEM 6. Amend rules 21—64.171(165A) to 21—64.174(165A) as follows:

21—64.171(165A) Supervision of the ~~paratuberculosis~~ Johne’s disease program. The state veterinarian’s office will provide supervision for the ~~paratuberculosis~~ Johne’s disease program.

21—64.172(165A) Official ~~paratuberculosis~~ Johne’s disease tests. Organism-based detection tests will be considered as official ~~paratuberculosis~~ Johne’s disease tests. These tests include, but are not limited to, Polymerase Chain Reaction (PCR) tests and bacteriological culture.

21—64.173(165A) Vaccination allowed. Vaccination against ~~paratuberculosis~~ Johne’s disease is allowed with the permission of the state veterinarian. The herd owner requesting vaccination of the herd must sign and follow a ~~paratuberculosis~~ Johne’s disease herd control plan consisting of best management practices designed to prevent the introduction of and control the spread of ~~paratuberculosis~~ Johne’s disease. A risk assessment may be included as part of the herd control plan. The herd owner shall submit animal vaccination reports to the department on forms provided by the department.

21—64.174(165A) Herd plan. The herd owner, the owner’s veterinarian, if requested, and the designated epidemiologist may develop a plan for preventing the introduction of and controlling the spread of ~~paratuberculosis~~ Johne’s disease in each affected herd.

ITEM 7. Amend rules 21—64.177(165A) and 21—64.178(165A) as follows:

21—64.177(165A) Intrastate movement requirements.

64.177(1) Animals that are positive to an official ~~paratuberculosis~~ Johne’s disease test may be moved from the farm of origin for slaughter only if the animals are moved directly to a recognized slaughtering establishment and accompanied by an owner-shipper statement that identifies the animals as positive to an official ~~paratuberculosis~~ Johne’s disease test and the statement is delivered to the consignee. Positive animals shall be identified prior to movement by application of a C-punch in the right ear of the animal.

64.177(2) Animals that are positive to an official ~~paratuberculosis~~ Johne’s disease test may be moved within Iowa for slaughter and consigned to a state-federal approved slaughter market if the animals are accompanied by an owner-shipper statement that identifies the animals as positive to an official

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

~~paratuberculosis~~ Johne's disease test and the statement is delivered to the consignee. Positive animals shall be identified prior to movement by application of a C-punch in the right ear of the animal.

64.177(3) Animals that are positive to an official ~~paratuberculosis~~ Johne's disease test may be moved within Iowa for purposes other than slaughter only by permit from the state veterinarian.

21—64.178(165A) Import requirements.

64.178(1) Animals that are positive to an official ~~paratuberculosis~~ Johne's disease test may be imported into Iowa for slaughter if the animals are moved directly to a recognized slaughtering establishment and accompanied by an owner-shipper statement that identifies the animals as positive to an official ~~paratuberculosis~~ Johne's disease test and the statement is delivered to the consignee. All animals must be officially identified.

64.178(2) Animals that are positive to an official ~~paratuberculosis~~ Johne's disease test may be imported into Iowa for slaughter and consigned to a state-federal approved slaughter market if the animals are accompanied by an owner-shipper statement that identifies the animals as positive to an official ~~paratuberculosis~~ Johne's disease test and the statement is delivered to the consignee. Positive animals shall be identified at the market, prior to sale, by application of a C-punch in the right ear of the animal.

64.178(3) Animals that are positive to an official ~~paratuberculosis~~ Johne's disease test may be imported into Iowa for purposes other than slaughter only by permit from the state veterinarian.

ITEM 8. Amend paragraph **65.4(2)“b”** as follows:

b. Cattle or bison known to be infected with ~~paratuberculosis~~ (Johne's disease) shall not be imported except to a recognized slaughter establishment and shall be accompanied by an owner-shipper statement that identifies the animals as positive to an official Johne's disease test. Such statement shall be delivered to the consignee, unless prior approval is obtained from the state veterinarian.

ARC 0142C

ALCOHOLIC BEVERAGES DIVISION[185]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 123.21, the Alcoholic Beverages Division hereby gives Notice of Intended Action to amend Chapter 1, “Organization and Operation,” Chapter 2, “Agency Procedure for Rule Making,” Chapter 3, “Declaratory Orders,” and Chapter 19, “Waivers from Rules,” Iowa Administrative Code.

The proposed amendments rescind obsolete language that pertains to state-owned liquor stores, rescind language that is redundant because the subject matter is specifically addressed in the Iowa Code, incorporate language from the Uniform Rules on Agency Procedure that was not originally adopted, update contact information for the Alcoholic Beverages Division, and correct Iowa Code citations.

Interested parties may make written or oral comments on the proposed amendments on or before June 19, 2012. Comments should be directed to Stephanie Strauss, Executive Officer, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021; or by E-mail to Strauss@IowaABD.com.

A public hearing on the proposed amendments will be held Tuesday, June 19, 2012, from 10 to 11 a.m. in the Board Room of the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa. The hearing room is fully accessible. Persons wishing to speak at the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

After analysis and review of this rule making, no impact on jobs has been found. These amendments are intended to implement Iowa Code chapters 123 and 17A. The following amendments are proposed.

ITEM 1. Amend rule 185—1.2(123,17A) as follows:

185—1.2(123,17A) Scope and rules. Promulgated under Iowa Code chapters 17A and 123, these rules shall apply to all matters before the alcoholic beverages division. No rule shall in any way relieve a ~~wholesaler, manufacturer, vintner, rectifier, certificate of compliance holder, manufacturer, micro-distiller, vintner, brewer, wholesaler, alcohol carrier, wine direct shipper, liquor control licensee or wine permittee or beer permittee, or an agent or employee thereof from any duty under the laws of this state. All rules relating to the operation of state liquor stores promulgated hereunder shall remain in effect until July 1, 1987.~~

This rule is intended to implement Iowa Code section 123.4.

ITEM 2. Amend rule 185—1.4(123,17A) as follows:

185—1.4 185—1.3(123,17A) Duties of the division. The alcoholic beverages division administers the laws of this state concerning ~~beer, alcoholic liquor, wine, and wine beer.~~ The division is vested with the sole and exclusive control within the state of Iowa both as purchaser and vendor of all alcoholic liquor sold by distilleries within the state or imported therein, except ~~beer wine and wine beer,~~ except as otherwise provided by law.

ITEM 3. Amend rule 185—1.5(123,17A) as follows:

185—1.5 185—1.4(123,17A) Organization—commission.

1.4(1) Commission. The alcoholic beverages division consists of five commission members appointed by the governor and confirmed by the senate. The commission acts as a policy-making body and serves in an advisory capacity to the administrator. ~~The commission meets statutorily on the first of July of each year and thereafter as scheduled by the chairperson.~~ A quorum shall consist of at least three commission members.

~~1.5(1) 1.4(2) Administrator.~~ Subject to senate confirmation, the governor appoints an administrator who conducts the daily operations of the division as prescribed by Iowa Code chapter 123. ~~These operations consist of but are not limited to:~~

- ~~a.—Purchases of alcoholic liquor and wine for resale by the division.~~
- ~~b.—The granting, refusing, suspension, or revoking of liquor control licenses, beer permits, wine permits, and special licenses.~~
- ~~c.—The establishment of wholesale and retail prices for alcoholic beverages sold by the division.~~
- ~~d.—The establishment or discontinuance of state liquor stores.~~

~~1.5(2) Hearing board. Rescinded IAB 8/18/93, effective 7/29/93.~~

This rule is intended to implement Iowa Code sections 123.5 ~~and~~, 123.6, 123.9, and 123.10.

ITEM 4. Amend rule 185—1.6(123,17A) as follows:

185—1.6 185—1.5(123,17A) Central offices. The central office is located at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021, ~~(515)964-6800; telephone (515)281-7400 or 1-866-469-2223.~~ The central office consists of ~~the office of the administrator of the division, the office of the deputy administrator, the bureaus of store operations, products management, licensing and operations control.~~ The central office is responsible for the operational support of the division ~~including such functions as purchasing, store operations policy and control, products management, licensing, supply and other administrative duties.~~ The central office and is the principal custodian of all divisional orders, statements of law or policy issued by the division, ~~legal documents concerning properties,~~ and other public documents on file with the division.

This rule is intended to implement Iowa Code section 123.4.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

ITEM 5. Amend rule 185—1.7(123,17A) as follows:

185—1.7 185—1.6(123,17A) Matters applicable to all proceedings.

~~1.7(4)~~ **1.6(1)** *Communications.* All communications to the division shall be addressed to the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021, unless otherwise specifically directed. Bids, complaints, pleadings, or other papers required to be filed with the division, shall be filed in the office of the ~~secretary to the~~ administrator within the time limit, if any, for such filing. Unless otherwise specifically provided, all communications and documents are officially filed upon receipt at the office of the division.

~~1.7(2)~~ **1.6(2)** *Office hours.* Office hours are 8 a.m. to 4:30 p.m., Monday through Friday. Offices are closed on Saturdays, Sundays, and official state holidays designated in accordance with state laws.

~~1.7(3)~~ **1.6(3)** *Public information.* Any interested person may examine all public records of the division including the decisions, orders, rules, opinions, and other statements of law or policy issued by the division in the discharge of its function. These documents may be examined in the offices of the division during regular business hours or on the Web site of the division located at www.IowaABD.com. Unless otherwise provided by law, all information contained therein shall be made available for public inspection.

ITEM 6. Amend rule 185—2.1(17A) as follows:

185—2.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the agency are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

ITEM 7. Amend subrule 2.4(3) as follows:

2.4(3) Copies of notices. Persons desiring to receive copies of future Notices of Intended Action by subscription ~~must~~ shall file with the agency a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the agency for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price, which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year.

ITEM 8. Amend rule 185—2.5(17A) as follows:

185—2.5(17A) Public participation.

2.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to Administrator, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3944, or the person designated in the Notice of Intended Action.

2.5(2) Oral proceedings. The agency may, at any time, schedule an oral proceeding on a proposed rule. The agency 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 agency by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request ~~must~~ shall also contain the following additional information:

1. *a.* A request by one or more individual persons ~~must~~ shall be signed by each of them and include the address and telephone number of each of them.

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

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

~~3.~~ c. A request by an agency or governmental subdivision ~~must~~ shall be signed by an official having authority to act on behalf of the entity and ~~must~~ shall contain the address and telephone number of the person signing that request.

2.5(3) Conduct of oral proceedings.

a. 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*” as amended by 1998 Iowa Acts, chapter 1202, section 8, or this chapter.

b. No change.

c. Presiding officer. The agency, a member of the agency, or another person designated by the agency who ~~will be~~ is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the agency does not preside, the presiding officer shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding unless the agency determines that such a memorandum is unnecessary because the agency will personally listen to or read the entire transcript of the oral proceeding.

d. No change.

2.5(4) No change.

2.5(5) Accessibility. The agency shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the alcoholic beverages division at ~~(515)281-7430~~ (515)281-7400 or 1-866-469-2223 in advance to arrange access or other needed services.

ITEM 9. Amend rule 185—2.6(17A) as follows:

185—2.6(17A) Regulatory analysis.

2.6(1) Definition of small business. A “small business” is defined in ~~1998 Iowa Acts, chapter 1202, section 10(7).~~ Iowa Code section 17A.4A(8)“*a.*”

2.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the agency’s small business impact list by making a written application addressed to Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-~~3944~~. The application for registration shall state:

a. to e. No change.

The agency 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 agency 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 will 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.

2.6(3) No change.

2.6(4) Qualified requesters for regulatory analysis—economic impact. The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(2a).~~ Iowa Code section 17A.4A(2)“*a*” after a proper request from:

a. and b. No change.

2.6(5) Qualified requesters for regulatory analysis—business impact. The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(2b).~~ Iowa Code section 17A.4A(2)“*b*” after a proper request from:

a. to d. No change.

2.6(6) Time period for analysis. Upon receipt of a timely request for a regulatory analysis, the agency shall adhere to the time lines described in ~~1998 Iowa Acts, chapter 1202, section 10(4).~~ Iowa Code section 17A.4A(4).

2.6(7) Contents of request. A request for a regulatory analysis is made when it is mailed or delivered to the agency. The request shall be in writing and satisfy the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(1).~~ Iowa Code section 17A.4A(1).

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

2.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(4,5)~~ Iowa Code section 17A.4A(4), (5), and (6).

2.6(9) *Publication of a concise summary.* The agency shall make available, to the maximum extent feasible, copies of the published summary in conformance with ~~1998 Iowa Acts, chapter 1202, section 10(5)~~ Iowa Code section 17A.4A(6).

2.6(10) *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 administrative rules coordinator, the regulatory analysis shall conform to the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(2a)~~; Iowa Code section 17A.4A(2) “a” unless a written request expressly waives one or more of the items listed in the section.

2.6(11) *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 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 ~~1998 Iowa Acts, chapter 1202, section 10(2b)~~; Iowa Code section 17A.4A(2) “b.”

ITEM 10. Amend subrule 2.7(1) as follows:

2.7(1) *Fiscal impact statement.* A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services ~~must~~ shall be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement ~~must~~ shall satisfy the requirements of Iowa Code section 25B.6.

ITEM 11. Amend subrule 2.10(2) as follows:

2.10(2) *Public proceedings on rules adopted without them.* The agency 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 subrule 2.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 2.10(1). Such a petition ~~must~~ shall 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~~ shall be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the agency may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 2.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

ITEM 12. Amend subrule 2.11(1) as follows:

2.11(1) *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 agency shall issue a concise statement of reasons for the rule. Requests for such a statement ~~must~~ shall be in writing and be delivered to the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

ITEM 13. Amend subrule 2.12(1) as follows:

2.12(1) *Contents.* Each rule adopted by the agency shall contain the text of the rule and, in addition:

- a. No change.
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by ~~1998 Iowa Acts, chapter 1202, section 8~~; Iowa Code section 17A.4A(1) “b” or the agency in its discretion decides to include such reasons;
- c. to e. No change.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

f. 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 such reasons are required by ~~1998 Iowa Acts, chapter 1202, section 8,~~ Iowa Code section 17A.4(2) or the agency in its discretion decides to include such reasons; and

g. No change.

ITEM 14. Amend rule 185—2.13(17A) as follows:

185—2.13(17A) Agency rule-making record.

2.13(1) Requirement. The agency shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference ~~must~~ shall be available for public inspection.

2.13(2) Contents. The agency rule-making record shall contain:

a. to *g.* No change.

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section ~~17A.4(2)~~ 17A.4(4) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section ~~17A.4(4),~~ 17A.4(6) "*a.*" and any agency response to that objection;

j. and *k.* No change.

2.13(3) and 2.13(4) No change.

ITEM 15. Amend rule 185—2.14(17A) as follows:

185—2.14(17A) Filing of rules. The agency shall file each rule it adopts in the office of the administrative rules coordinator. The filing ~~must~~ shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule ~~must~~ shall have attached to 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~~ shall be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.

ITEM 16. Amend subrule 2.16(1) as follows:

2.16(1) Compilation, indexing, public inspection. The agency shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section ~~17A.2(10)~~ 17A.2(11) "*a.*" "*c.*" "*f.*" "*g.*" "*h.*" "*k.*" Each addition to, change in, or deletion from the official compilation ~~must~~ shall also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section ~~17A.2(7)~~ "*f.*" 17A.2(11) "*f.*" or otherwise authorized by law to be kept confidential, the compilation ~~must~~ shall be made available for public inspection and copying.

ITEM 17. Amend subrule 2.17(2) as follows:

2.17(2) Formal review process. In conducting the formal review, the agency shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report ~~must~~ shall include a concise statement of the agency'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 petitions for waiver of the rule received by the agency or granted by the agency. 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 agency's report shall be sent to the administrative

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

rules review committee and the administrative rules coordinator. The report ~~must~~ shall also be available for public inspection.

ITEM 18. Amend ~~185—Chapter 2~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

ITEM 19. Amend rule 185—3.1(17A) as follows:

185—3.1(17A) Petition for declaratory order. Any person may file a petition with the alcoholic beverages division for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the division, at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. A petition is deemed filed when it is received by ~~that office~~ the division. The division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition ~~must~~ shall be typewritten or legibly handwritten in ink and ~~must~~ shall substantially conform to the following form:

ALCOHOLIC BEVERAGES DIVISION		
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER

The petition ~~must~~ shall provide the following information:

- 1. to 7. No change.
- 8. Any request by petitioner for a meeting provided for by rule ~~185—3.7~~(17A).

The petition ~~must~~ shall be dated and signed by the petitioner or the petitioner’s representative. It ~~must~~ shall also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed.

ITEM 20. Amend subrule 3.3(3) as follows:

3.3(3) Filing of petition. A petition for intervention shall be filed at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. Such a petition is deemed filed when it is received by that office. The division 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~~ shall be typewritten or legibly handwritten in ink and ~~must~~ shall substantially conform to the following form:

ALCOHOLIC BEVERAGES DIVISION		
Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION

The petition for intervention ~~must~~ shall provide the following information:

- 1. to 6. No change.
- The petition ~~must~~ shall be dated and signed by the intervenor or the intervenor’s representative. It ~~must~~ shall also include the name, mailing address, and telephone number of the intervenor and intervenor’s representative, and a statement indicating the person to whom communications should be directed.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

ITEM 21. Amend rule 185—3.5(17A) as follows:

185—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Administrator, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941.

ITEM 22. Amend subrule 3.6(2) as follows:

3.6(2) 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 Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

ITEM 23. Amend subrule 3.8(1) as follows:

3.8(1) Agency action. Within the time allowed by ~~1998 Iowa Acts, chapter 1202, section 13(5)~~, Iowa Code section 17A.9(5) after receipt of a petition for a declaratory order, the administrator or designee shall take action on the petition as required by ~~1998 Iowa Acts, chapter 1202, section 13(5)~~ Iowa Code section 17A.9(5).

ITEM 24. Amend rule 185—3.9(17A) as follows:

185—3.9(17A) Refusal to issue order.

3.9(1) Refusal to issue order. The division shall not issue a declaratory order where prohibited by ~~1998 Iowa Acts, chapter 1202, section 13(1)~~, Iowa Code section 17A.9(1) “a” and “b” and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. to 10. No change.

3.9(2) Grounds for refusal. A refusal to issue a declaratory order ~~must~~ shall indicate the specific grounds for the refusal and constitutes final agency action on the petition.

3.9(3) No change.

ITEM 25. Amend rule 185—3.10(17A) as follows:

185—3.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order ~~must~~ shall 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.

A declaratory order is effective on the date of issuance.

ITEM 26. Amend **185—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 17A ~~as amended by 1998 Iowa Acts, chapter 1202.~~

ITEM 27. Amend subrule 19.3(2) as follows:

19.3(2) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

a. to c. No change.

d. Relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

e. to j. No change.

ITEM 28. Amend rule 185—19.10(17A) as follows:

185—19.10(17A) Appeals. Granting or denying a request for waiver is final agency action under Iowa Code chapter 17A. ~~An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by statute or rule.~~

ARC 0147C

ATTORNEY GENERAL[61]**Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261F.4(6), the Attorney General hereby gives Notice of Intended Action to adopt new Chapter 37, “Required Disclosures for Philanthropic Contributions Made by Certain Student Loan Lenders to Certain Educational Institutions,” Iowa Administrative Code.

The provisions of Iowa Code chapter 261F govern educational loans. Iowa Code section 261F.4(6) requires the Attorney General to adopt rules providing for disclosures relating to philanthropic contributions made as specified in Iowa Code section 261F.1(5)“d.” The proposed rule includes the disclosure requirements for lenders and for educational institutions.

Any interested person may make written suggestions or comments on the proposed rule prior to June 22, 2012. Such written materials should be directed to William L. Brauch, Director, Consumer Protection Division, Iowa Attorney General’s Office, Hoover State Office Building, 1305 E. Walnut Street, Des Moines, Iowa 50319; fax (515)281-6771; or via E-mail to Consumer@Iowa.gov. Persons who wish to convey their views orally should contact Mr. Brauch at (515)281-5926 or at the office of the Consumer Protection Division on the second floor of the Hoover State Office Building.

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

This amendment is intended to implement Iowa Code section 261F.4(6).

The following amendment is proposed.

Adopt the following **new** 61—Chapter 37:

CHAPTER 37

REQUIRED DISCLOSURES FOR PHILANTHROPIC CONTRIBUTIONS MADE BY CERTAIN STUDENT LOAN LENDERS TO CERTAIN EDUCATIONAL INSTITUTIONS

61—37.1(261F) Required disclosures by educational loan providers and covered institutions relating to certain philanthropic contributions.

37.1(1) Definitions. The terms “borrower,” “covered institution,” “educational loan,” “gift,” “lender,” “lending institution,” “preferred lender arrangement,” and “preferred lender list” have the same meaning as those terms are defined in Iowa Code section 261F.1.

a. The term “de minimus” means a monetary amount or fair market value of \$100 or less, as applicable. For the purposes of this chapter, a gift from a lending institution is not de minimus if the cumulative sum of all such monetary and other gifts from the lending institution to the covered institution exceeds \$100 in the same calendar year.

b. The term “monetary value” relating to a nonmonetary philanthropic contribution means the fair market value of the contribution. The contributor must consider all the facts and circumstances connected with the contribution in determining fair market value, including but not limited to the use, desirability to the recipient, scarcity of the contributed product or service and the average price the recipient would pay to purchase the contributed product or service.

c. The term “philanthropic contribution” means a charitable contribution that is unrelated to educational loans from a lending institution to a covered institution and is not de minimus.

37.1(2) A covered institution with a preferred lender list that has received a philanthropic contribution from a preferred lender during the current calendar year or either of the two prior calendar years shall do each of the following:

ATTORNEY GENERAL[61](cont'd)

a. Include one of the following on all preferred lender lists:

(1) A clear and conspicuous statement of all philanthropic contributions received from preferred lenders during the current calendar year and the two prior calendar years, including the monetary value and nature of each contribution.

(2) A hyperlink to the covered institution's primary public Web site related to private educational loans to the statement required pursuant to paragraph 37.1(2) "b."

b. Post for public viewing on the covered institution's primary public Web site related to private educational loans a clear and conspicuous statement of all philanthropic contributions received from preferred lenders during the current calendar year and the two prior calendar years, including the monetary value and nature of each contribution, or maintain a hyperlink displayed on that Web site that links the reader to the required statement.

37.1(3) A lender in a preferred lender arrangement with a covered institution shall do each of the following within 30 business days of making a philanthropic contribution to the covered institution:

a. Disclose to the attorney general the existence, monetary value and nature of the philanthropic contribution. The disclosure shall be sent to: Director, Consumer Protection Division, 1305 E. Walnut Street, Des Moines, Iowa 50319. The attorney general may post the disclosure on the attorney general's Web site.

b. Post for public viewing on the lender's primary public Web site related to private educational loans a clear and conspicuous statement of all philanthropic contributions made to covered institutions during the current calendar year and the two prior calendar years, including the monetary value and nature of each contribution, or maintain a hyperlink displayed on that Web site that links the reader to the required statement.

37.1(4) A charitable contribution unrelated to educational loans that is made by an employee or member of the board of directors of a lending institution to a covered institution is not a philanthropic contribution pursuant to Iowa Code chapter 261F and this rule so long as the lending institution does not represent the donor as being the lending institution or as an employee or member of the board of directors of the lending institution, as applicable, unless required by law.

This rule is intended to implement Iowa Code section 261F.4(6).

ARC 0132C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1) "b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services proposes to amend Chapter 7, "Appeals and Hearings," Iowa Administrative Code.

The proposed amendments will change terminology in Chapter 7 to eliminate references to "mental retardation" in accordance with 2012 Iowa Acts, Senate File 2247.

The proposed amendments will also update rules to explain that a motion to vacate an appeal decision must state all facts relied upon by the moving party and that each fact shall be substantiated by a sworn affidavit or other documentation from a disinterested third party that substantiates the claim of good cause. The definition of "good cause" has been expanded to include examples of good cause and to include examples of when good cause does not exist.

Any interested person may make written comments on the proposed amendments on or before June 19, 2012. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of

HUMAN SERVICES DEPARTMENT[441](cont'd)

Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

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

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

The following amendments are proposed.

ITEM 1. Amend rule **441—7.1(17A)**, definitions of “Aggrieved person” and “Reconsideration,” as follows:

“*Aggrieved person*” means a person against whom the department has taken an adverse action. This includes a person who meets any of the following conditions:

1. to 8. No change.

9. For mental health and developmental disabilities, a person:

- Whose application for state ~~community mental health or mental retardation service funds~~ payment under 441—Chapter 153, Division IV, has been denied or has not been acted upon in a timely manner.

- Who has been notified that there will be a reduction or cancellation of services under the state community mental health or mental retardation service funds payment program.

10. to 12. No change.

“*Reconsideration*” means a review process that must be exhausted before an appeal hearing is granted. Such review processes include, but are not limited to, a reconsideration request through the Iowa Medicaid enterprise or its subcontractors, Magellan Behavioral Health Care, a health maintenance organization, a prepaid health plan, medical assistance patient management services, the managed health care review committee, a division or bureau within the department, the mental health, ~~mental retardation,~~ and developmental disabilities, ~~and brain injury~~ commission, or a licensed health care professional as specified in 441—paragraph 9.9(1) “i.” Once the reconsideration process is complete, a notice of decision will be issued with appeal rights.

ITEM 2. Amend paragraph **7.5(2)“g”** as follows:

g. The appellant is an “aggrieved party” as defined in rule 441—22.1(225C) and is eligible for a compliance hearing with the mental health, ~~mental retardation,~~ and developmental disabilities, ~~and brain injury~~ commission in accordance with rule 441—22.5(225C).

ITEM 3. Amend subrule 7.13(4) as follows:

7.13(4) Default. If a party to the appeal 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 pursuant to subrules 7.13(1), 7.13(2) and 7.13(3) and render a proposed decision on the merits in the absence of the defaulting party.

a. Where appropriate and not contrary to law, any party may move for a default decision ~~or~~ against a party who has failed to file a required pleading or has failed to appear after proper service for a hearing and a A proposed decision on the merits may be issued in the absence of a defaulting party.

b. A default decision or a proposed decision rendered on the merits in the absence of the defaulting party may award any relief against the defaulting party consistent with the relief requested ~~prior to~~ before the default, but the relief awarded against the defaulting party may not exceed the requested relief ~~prior to~~ before the default.

c. Proceedings after a default decision are specified in subrule 7.13(5).

d. Proceedings after a hearing and a proposed decision on the merits in the absence of a defaulting party are specified in subrule 7.13(6).

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 4. Amend subrule 7.13(5) as follows:

7.13(5) Proceedings after default decision.

a. Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless a motion to vacate the decision is filed within the time allowed for an appeal of a proposed decision by subrule 7.16(5).

b. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure to appear or participate at the contested case proceeding and must be filed with the Department of Human Services, Appeals Section, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact. Each affidavit must be attached to the motion. In lieu of an affidavit, the moving party may submit business records or other acceptable documentation from a disinterested third party that substantiates the claim of good cause.

(1) The appeals section shall be responsible for serving all parties with the motion to vacate. All parties to the appeal shall have ten days from service by the department to respond to the motion to vacate. All parties to the appeal shall be allowed to conduct discovery as to the issue of good cause and shall be allowed to present evidence on the issue before a decision on the motion, if a request to do so is included in that party's response. If the department responds to any party's motion to vacate, all parties shall be allowed another ten days to respond to the department.

(2) The appeals section shall certify the motion to vacate to the department of inspections and appeals for the presiding officer to review the motion, hold any additional proceedings, as appropriate, and determine if good cause exists to set aside the default.

c. Timely 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.

d. "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977. is defined as an emergency circumstance that is beyond the control of the party and that prevents the party from being able to participate in the hearing.

(1) Examples of good cause include, but are not limited to:

1. Sudden, severe illness or accident involving the party or the party's immediate family (spouse, partner, children, parents, sibling).

2. Death or serious illness in the party's immediate family.

3. Other circumstances evidencing an emergency situation which was beyond the party's control and was not reasonably foreseeable.

(2) Examples of circumstances that do not constitute good cause include, but are not limited to:

1. A lost or misplaced notice of hearing.

2. Confusion as to the date and time for the hearing.

3. Failure to follow the directions on the notice of hearing.

4. Oversleeping.

5. Other acts demonstrating a lack of due care by the party.

e. Upon determining whether good cause exists, the presiding officer shall issue a proposed decision on the motion to vacate, which shall be subject to review by the director pursuant to rule 441—7.16(17A).

f. Upon a final decision granting a motion to vacate, the contested case hearing shall proceed accordingly, after proper service of notice to all parties. The situation shall be treated as the filing of a new appeal for purposes of calculating time limits, with the filing date being the date the decision granting the motion to vacate became final.

g. Upon a final decision denying a motion to vacate, the default decision becomes final agency action.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 5. Amend subrule 7.13(6) as follows:

7.13(6) *Proceedings after hearing and proposed decision on the merits in the absence of a defaulting party.*

a. Proposed decisions on the merits after a party has failed to appear or participate in a contested case become final agency action unless:

(1) A motion to vacate the proposed decision is filed by the defaulting party based on good cause for the failure to appear or participate, within the time allowed for an appeal of a proposed decision by subrule 7.16(5); or

(2) Any party requests review on the merits by the director pursuant to rule 441—7.16(17A).

b. If a motion to vacate and a request for review on the merits are both made in a timely manner after a proposed decision on the merits in the absence of a defaulting party, the review by the director on the merits of the appeal shall be stayed pending the outcome of the motion to vacate.

c. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure to appear or participate at the contested case proceeding and must be filed with the Department of Human Services, Appeals Section, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114.

(1) The appeals section shall be responsible for serving all parties with the motion to vacate. All parties to the appeal shall have ten days from service by the department to respond to the motion to vacate. All parties to the appeal shall be allowed to conduct discovery as to the issue of good cause and shall be allowed to present evidence on the issue before a decision on the motion, if a request to do so is included in that party's response. If the department responds to any party's motion to vacate, all parties shall be allowed another ten days to respond to the department.

(2) The appeals section shall certify the motion to vacate to the department of inspections and appeals for the presiding officer to review the motion, hold any additional proceedings, as appropriate, and determine if good cause exists to set aside the default.

d. ~~Timely~~ 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.

e. ~~"Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.~~ is defined as an emergency circumstance that is beyond the control of the party and that prevents the party from being able to participate in the hearing.

(1) Examples of good cause include, but are not limited to:

1. Sudden, severe illness or accident involving the party or the party's immediate family (spouse, partner, children, parents, sibling).

2. Death or serious illness in the party's immediate family.

3. Other circumstances evidencing an emergency situation which was beyond the party's control and was not reasonably foreseeable.

(2) Examples of circumstances that do not constitute good cause include, but are not limited to:

1. A lost or misplaced notice of hearing.

2. Confusion as to the date and time for the hearing.

3. Failure to follow the directions on the notice of hearing.

4. Oversleeping.

5. Other acts demonstrating a lack of due care by the party.

f. to j. No change.

ARC 0144C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

The amendments will:

- Clarify coverage criteria and allow for coverage of lenses manufactured outside the United States.
- Increase the upper age limit for annual replacement of frames for children from six to seven years of age.
- Change reimbursement for polycarbonate lenses from an invoice to a fee schedule amount.
- Allow for prior authorization of photochromatic (transition) lenses and press-on prisms.
- Remove obsolete references for therapeutically certified optometrists.

Any interested person may make written comments on the proposed amendments on or before June 19, 2012. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

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

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend paragraph **78.1(1)“a”** as follows:

a. Drugs dispensed by a physician or other legally qualified practitioner (dentist, podiatrist, ~~therapeutically certified~~ optometrist, physician assistant, or advanced registered nurse practitioner) unless it is established that there is no licensed retail pharmacy in the community in which the legally qualified practitioner’s office is maintained. Rate of payment shall be established as in subrule 78.2(2), but no professional fee shall be paid. Payment will not be made for biological supplies and drugs provided free of charge to practitioners by the state department of public health. ~~Rate of payment shall be established as in subrule 78.2(2), but no professional fee shall be paid.~~

ITEM 2. Amend subrule 78.2(1) as follows:

78.2(1) *Qualified prescriber.* All drugs are covered only if prescribed by a legally qualified practitioner (physician, dentist, podiatrist, ~~therapeutically certified~~ optometrist, physician assistant, or advanced registered nurse practitioner).

ITEM 3. Amend subrule 78.6(1) as follows:

78.6(1) Payable professional services are:

- a.* and *b.* No change.
- c.* Auxiliary procedures. The following auxiliary procedures and special tests are payable when performed by an optometrist. Auxiliary procedures and special tests are reimbursed as a separate procedure only when warranted by case history or diagnosis.
 - (1) to (6) No change.
 - (7) Retinal integrity evaluation with a three-mirror lens.

HUMAN SERVICES DEPARTMENT[441](cont'd)

d. Single vision and multifocal spectacle lens service, verification and subsequent service. When lenses are necessary, the following enumerated professional and technical optometric services are to be provided:

(1) When spectacle lenses are necessary, the following enumerated professional and technical optometric services are to be provided:

1. to 3. No change.

(2) New spectacle lenses are subject to the following limitations:

1. to 4. No change.

(3) ~~Protective lenses~~ Spectacle lenses made from polycarbonate or equivalent material are allowed for:

1. to 3. No change.

e. No change.

f. Frame service.

(1) When a new frame is necessary, the following enumerated professional and technical optometric services are to be provided:

1. Selection and styling.

2. Sizing and measurements.

3. Fitting and adjustment.

4. Readjustment and servicing.

(2) New frames are subject to the following limitations:

1. One frame every six months is allowed for children through three years of age.

2. One frame every 12 months is allowed for children four through ~~six~~ seven years of age.

3. When there is a ~~prescribed~~ covered lens change and the new lenses cannot be accommodated by the current frame.

(3) Safety frames are allowed for:

1. Children through seven years of age.

2. Members with a diagnosis-related disability or illness where regular frames would pose a safety risk or result in frequent breakage.

g. No change.

h. Repairs or replacement of frames, lenses or component parts. Payment shall be made for service in addition to materials. The service fee shall not exceed the dispensing fee for a replacement frame. Payment shall be made for replacement of glasses when the original glasses have been lost or damaged beyond repair. Replacement of lost or damaged glasses is limited to one pair of frames and two lenses once every 12 months for adults aged 21 and over, except for people with a mental or physical disability.

i. ~~Fitting of contact~~ Contact lenses, when required following cataract surgery, Payment shall be made for documented keratoconus, aphakia, or for treatment of acute or chronic eye disease, or when the member's vision cannot be adequately corrected with spectacle lenses. Up to eight pairs of contact lenses are allowed for children up to one year of age with aphakia. Up to four pairs of contact lenses per year are allowed for children one to three years of age with aphakia. Contact lenses are subject to the following limitations:

(1) Up to eight pairs of contact lenses are allowed for children up to one year of age.

(2) Up to four pairs of contact lenses are allowed every 12 months for children one through three years of age.

(3) Up to three pairs of contact lenses are allowed every 12 months for children four through seven years of age.

(4) One pair of contact lenses every 24 months for members eight years of age or older.

ITEM 4. Amend subrule 78.6(2) as follows:

78.6(2) Ophthalmic materials. Ophthalmic materials which are provided in connection with any of the foregoing professional optometric services shall provide adequate vision as determined by the optometrist and meet the following standards:

HUMAN SERVICES DEPARTMENT[441](cont'd)

- a. Corrected curve lenses, unless clinically contraindicated, ~~manufactured by reputable American manufacturers.~~
- b. Standard plastic, plastic and metal combination, or metal frames ~~manufactured by reputable American manufacturers, if available.~~
- c. Prescription standards according to the American National Standards Institute (ANSI) standards and tolerance.

ITEM 5. Amend subrule 78.6(3) as follows:

78.6(3) Reimbursement. The reimbursement for allowed ophthalmic material is subject to a fee schedule established by the department or to actual laboratory cost as evidenced by an attached invoice. Reimbursement for rose tint is included in the fee for the lenses.

a. Materials payable by fee schedule are:

- (1) ~~Lenses~~ Spectacle lenses, single vision and multifocal.
- (2) Frames.
- (3) Case for glasses.

b. Materials payable at actual laboratory cost as evidenced by an attached invoice are:

- (1) Contact lenses.
- (2) Schroeder shield.
- (3) Ptosis crutch.
- (4) ~~Protective lenses and safety~~ Safety frames.
- (5) Subnormal visual aids.
- (6) Photochromatic lenses.

ITEM 6. Amend subrule 78.6(4) as follows:

78.6(4) Prior authorization. Prior authorization is required for the following:

a. and b. No change.

c. Subnormal visual aids where near visual acuity is at or better than 20/100 at 16 inches, 2M print. Prior authorization is not required if near visual acuity as described above is less than 20/100. Subnormal visual aids include, but are not limited to, hand magnifiers, loupes, telescopic spectacles, or reverse Galilean telescope systems. Payment shall be actual laboratory cost as evidenced by an attached invoice.

d. Approval for photochromatic tint shall be given when the member has a documented medical condition that causes photosensitivity and less costly alternatives are inadequate.

e. Approval for press-on prisms shall be granted for members whose vision cannot be adequately corrected with other covered prisms.

(Cross-reference 78.28(3))

ITEM 7. Amend subrule 78.6(5) as follows:

78.6(5) Noncovered services. Noncovered services include, but are not limited to, the following services:

- a. Glasses with cosmetic gradient tint lenses or other eyewear for cosmetic purposes.
- b. ~~Glasses for protective purposes including glasses for occupational eye safety, sunglasses, or glasses with photogray lenses. An exception to this is in 78.6(3) "b"(4).~~
- c. A second pair of glasses or spare glasses.
- d. Cosmetic surgery and experimental medical and surgical procedures.
- e. ~~Contact lenses if vision is correctable with noncontact lenses except as found at paragraph 78.6(1) "i."~~
- e. Sunglasses.
- f. Progressive bifocal or trifocal lenses.

ITEM 8. Rescind and reserve subrule **78.6(6)**.

ITEM 9. Amend subrule 78.28(3) as follows:

78.28(3) Optometric services and ophthalmic materials which must be submitted for prior approval are as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. to c. No change.

d. Photochromatic tint. Approval shall be given when the member has a documented medical condition that causes photosensitivity and less costly alternatives are inadequate.

e. Press-on prisms. Approval shall be granted for members whose vision cannot be adequately corrected with other covered prisms.

For all of the above, the optometrist shall furnish sufficient information to clearly establish that these procedures are necessary in terms of the visual condition of the patient. (Cross-references 78.6(4), 441—78.7(249A), and 78.1(18))

ARC 0143C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

The proposed amendments update the procedures for home- and community-based services waivers to reflect:

- The use of a streamlined form for gathering information to determine the applicant’s level of care in the waivers for which the criteria are essentially medical. Form 470-4392, Level of Care Certification for HCBS Waiver Program, provides a one-page summary of the essential factors to be completed by the applicant’s primary care provider. The form is used in the AIDS/HIV, elderly, ill and handicapped, and physical disability waivers.

- The merger of separate assessment forms used for different waivers into two forms: Form 470-4694, Case Management Comprehensive Assessment, used in waivers that require Medicaid case management services governed by 441—Chapter 90, “Targeted Case Management” (the brain injury, elderly, intellectual disability, and children’s mental health waivers); and Form 470-5044, Service Worker Comprehensive Assessment, used in waivers that do not require services governed by 441—Chapter 90 (the AIDS/HIV, ill and handicapped, and physical disability waivers). The assessment forms include documentation of the applicant’s choice of waiver services over institutional care.

- The elimination of the requirement for a reconsideration review by the Iowa Medicaid Enterprise before an applicant is allowed to appeal a level-of-care decision. This change streamlines the eligibility determination process.

- Changes in the rules for obtaining a waiver slot to reflect current procedures, including electronic applications, and to make the rules more uniform across waivers.

- Changes in terminology pursuant to 2012 Iowa Acts, Senate File 2247, which changes the term “mental retardation” to “intellectual disability.”

Any interested person may make written comments on the proposed amendments on or before June 19, 2012. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because the Department requires adherence to uniform procedures in order to make reliable judgments about applicants’ needs. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

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

These amendments are intended to implement Iowa Code sections 249A.3 and 249A.4.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The following amendments are proposed.

ITEM 1. Strike “intermediate care facility for the mentally retarded” wherever it appears in rule **441—83.1(249A)**, definition of “Medical institution,” paragraph **83.8(2)“c,”** rule **441—83.81(249A)**, definition of “Medical institution,” paragraph **83.82(1)“f,”** rule **441—83.101(249A)**, definition of “Medical institution,” and rule **441—83.121(249A)**, definition of “Medical institution,” and insert “intermediate care facility for persons with an intellectual disability” in lieu thereof.

ITEM 2. Amend paragraph **83.2(1)“d”** as follows:

d. The person must be certified as being in need of nursing facility or skilled nursing facility level of care or as being in need of care in an intermediate care facility for ~~the mentally retarded persons with an intellectual disability~~, based on information submitted on Form 470-4392, Level of Care Certification for HCBS Waiver Program.

(1) A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392 when the person applies for waiver services, upon request to report a change in the person’s condition, and annually for reassessment of the person’s level of care.

(2) The IME medical services unit shall be responsible for approval of the certification of the level of care.

(3) Ill and handicapped waiver services will not be provided when the ~~individual~~ person is an inpatient in a medical institution.

ITEM 3. Amend subparagraph **83.2(2)“a”(1)** as follows:

(1) This service plan shall be based, in part, on information in the completed ~~Home and Community-Based Services Assessment or Reassessment Service Worker Comprehensive Assessment, Form 470-0659~~ 470-5044. ~~Form 470-0659 is 470-5044 shall be completed annually, or more frequently upon request or when there are changes in the consumer’s condition.~~ The service worker shall have a face-to-face visit with the ~~consumer member~~ at least annually.

ITEM 4. Strike “ICF/MR” wherever it appears in paragraphs **83.2(2)“b”** and **83.61(1)“c,”** subparagraph **83.61(1)“k”(3)**, paragraphs **83.62(3)“c”** and **83.82(1)“f,”** subparagraph **83.82(2)“a”(4)**, and rule **441—83.90(249A)** and insert “ICF/ID” in lieu thereof.

ITEM 5. Amend paragraphs **83.3(2)“a”** and **“b”** as follows:

a. The county department office shall ~~contact the bureau of long-term care for all applicants for the waiver~~ enter all waiver applications into the individualized services information system (ISIS) to determine if a payment slot is available.

(1) For applicants not currently receiving Medicaid, the county department office shall ~~contact the bureau~~ make the entry by the end of the fifth working day after receipt of a completed Form 470-2927 or 470-2927(S), Health Services Application, or within five working days after receipt of disability determination, whichever is later.

(2) For current Medicaid ~~recipients~~ members, the county department office shall ~~contact the bureau~~ make the entry by the end of the fifth working day after receipt of either ~~Form 470-0659, Home and Community-Based Services Assessment or Reassessment,~~ with the choice of HCBS waiver indicated by ~~signature of the consumer or~~ a written request signed and dated by the ~~consumer applicant.~~

(3) and (4) No change.

b. If no payment slot is available, the ~~bureau of long-term care~~ department shall enter persons on a waiting list according to the following:

(1) ~~Consumers Applicants~~ Applicants not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is ~~date stamped in the county~~ received by the department office or upon ~~the county department office’s~~ receipt of disability determination, whichever is later.

(2) ~~Consumers Applicants~~ Applicants currently eligible for Medicaid shall be added to the waiting list on the basis of the date a request as specified in 83.3(2)“a”(2) is ~~date stamped in the county~~ received by the department office.

(3) to (5) No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 6. Amend subparagraphs **83.3(3)“a”(4)** and **(5)** as follows:

(4) The application is pending because a level of care determination has not been made although the completed assessment, Form 470-0659, ~~Home and Community-Based Services Assessment or Reassessment~~ 470-4392, Level of Care Certification for HCBS Waiver Program, has been submitted to the IME medical services unit.

(5) The application is pending because the assessment, Form 470-0659 470-4392, or the service plan has not been completed. When a determination is not completed 90 days from the date of application due to the lack of a completed assessment, Form 470-0659 470-4392, or service plan, the application shall be denied. ~~The consumer shall have the right to appeal.~~

ITEM 7. Amend paragraph **83.3(3)“c”** as follows:

c. ~~A consumer~~ An applicant must be given the choice between HCBS ill and handicapped waiver services and institutional care. ~~The income maintenance or service worker shall have the consumer applicant,~~ parent, guardian, or attorney in fact under a durable power of attorney for health care ~~complete and shall sign Form 470-0659, Home and Community-Based Services Assessment or Reassessment, indicating~~ 470-5044, Service Worker Comprehensive Assessment, and indicate that the ~~consumer's choice of applicant~~ applicant has elected home- and community-based services ~~or institutional care.~~

ITEM 8. Amend paragraph **83.22(1)“d”** as follows:

d. Certified as being in need of the intermediate or skilled level of care based on information submitted on Form 470-4392, Level of Care Certification for HCBS Waiver Program.

(1) A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392 when the person applies for waiver services, upon request to report a change in the person's condition, and annually for reassessment of the person's level of care.

(2) The IME medical services unit shall be responsible for approval of the certification of the level of care.

(3) Elderly waiver services will not be provided when the person is an inpatient in a medical institution.

ITEM 9. Amend paragraph **83.23(3)“c”** as follows:

c. An applicant must be given the choice between elderly waiver services and institutional care. ~~The consumer applicant,~~ guardian, or attorney in fact under a durable power of attorney for health care shall sign ~~the service plan~~ Form 470-4694, Case Management Comprehensive Assessment, indicating ~~the consumer's choice of caregiver~~ that the applicant has elected waiver services.

ITEM 10. Amend rule 441—83.29(249A) as follows:

441—83.29(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). ~~The applicant or recipient is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or recipient may file an appeal with the department.~~

ITEM 11. Amend paragraph **83.42(1)“b”** as follows:

b. Be certified in need of the level of care that, but for the waiver, would otherwise be provided in a nursing facility or hospital based on information submitted on Form 470-4392, Level of Care Certification for HCBS Waiver Program.

(1) A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392 when the person applies for waiver services, upon request to report a change in the person's condition, and annually for reassessment of the person's level of care.

(2) The IME medical services unit shall be responsible for approval of the certification of the level of care.

(3) AIDS/HIV waiver services shall not be provided when the person is an inpatient in a medical institution.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 12. Amend paragraph **83.42(2)“a”** as follows:

a. ~~The county social department service worker~~ shall perform an assessment of the person's need for waiver services and determine the availability and appropriateness of services. This assessment shall be based, in part, on information in the completed ~~Home and Community-Based Services Assessment or Reassessment Service Worker Comprehensive Assessment~~, Form ~~470-0659~~ 470-5044. Form ~~470-0659~~ 470-5044 shall be completed annually.

ITEM 13. Amend subparagraph **83.43(3)“a”(2)** as follows:

(2) The application is pending because a level of care determination has not been made ~~or pending~~ although the completed ~~assessment~~, Form ~~470-0659~~ 470-4392, Level of Care Certification for HCBS Waiver Program, has been submitted to the IME medical services unit.

ITEM 14. Amend paragraph **83.43(3)“c”** as follows:

c. ~~A consumer~~ An applicant must be given the choice between HCBS AIDS/HIV waiver services and institutional care. ~~The income maintenance or service worker shall have the consumer applicant,~~ parent, guardian, or attorney in fact under a durable power of attorney for health care ~~complete and shall~~ sign Form ~~470-0659~~, Home and Community-Based Services Assessment or Reassessment, indicating ~~the consumer's choice of~~ 470-5044, Service Worker Comprehensive Assessment, and indicate that ~~the applicant has elected home- and community-based services or institutional care.~~

ITEM 15. Amend rule 441—83.49(249A) as follows:

441—83.49(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). ~~The applicant or recipient is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, an appeal may be filed with the department.~~

ITEM 16. Amend rule **441—83.60(249A)**, definitions of “Adult,” “Child,” “Counseling,” “Intermediate care facility for the mentally retarded (ICF/MR),” “Medical institution,” “Mental retardation,” “Qualified mental retardation professional” and “Related condition,” as follows:

“*Adult*” means a person with ~~mental retardation~~ an intellectual disability aged 18 or over.

“*Child*” means a person with ~~mental retardation~~ an intellectual disability aged 17 or under.

“*Counseling*” means face-to-face mental health services provided to the consumer and caregiver by a qualified ~~mental retardation~~ intellectual disability professional (QMRP QIDP) to facilitate home management of the consumer and prevent institutionalization.

“*Intermediate care facility for the mentally retarded persons with an intellectual disability (ICF/MR ICF/ID)*” means an institution that is primarily for the diagnosis, treatment, or rehabilitation of ~~persons who are mentally retarded~~ with an intellectual disability or persons with related conditions and that provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination and integration of health or related services to help each person function at the greatest ability and is an approved Medicaid vendor.

“*Medical institution*” means a nursing facility, intermediate care facility for ~~the mentally retarded~~ persons with an intellectual disability, or hospital which has been approved as a Medicaid vendor.

“*Mental retardation Intellectual disability*” means a diagnosis of mental retardation ~~under this division~~ which shall be made only when the onset of the person's condition was ~~prior to~~ before the age of 18 years and shall be based on an assessment of the person's intellectual functioning and level of adaptive skills. The diagnosis shall be made by a person who is a psychologist or psychiatrist who is professionally trained to administer the tests required to assess intellectual functioning and to evaluate a person's adaptive skills. A diagnosis of mental retardation shall be made in accordance with the criteria provided in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, published by the American Psychiatric Association.

“*Qualified mental retardation intellectual disability professional*” means a person who has at least one year of experience working directly with persons with ~~mental retardation~~ intellectual disability or other developmental disabilities and who is one of the following:

HUMAN SERVICES DEPARTMENT[441](cont'd)

1. to 10. No change.

“*Related condition*” means a severe, chronic disability that meets all the following conditions:

1. It is attributable to cerebral palsy, epilepsy, or any other condition, other than mental illness, found to be closely related to ~~mental retardation~~ intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of a ~~mentally retarded~~ person with an intellectual disability and requires treatment or services similar to those required for a ~~mentally retarded~~ person with an intellectual disability.

2. to 4. No change.

ITEM 17. Amend paragraph **83.61(2)“a”** as follows:

a. Applicants currently receiving Medicaid case management or services of a department-qualified ~~mental retardation~~ intellectual disability professional (QMRP QIDP) shall have the applicable coordinating staff and other interdisciplinary team members complete Form 470-4694, Case Management Comprehensive Assessment, and identify the applicant’s needs and desires as well as the availability and appropriateness of the services.

ITEM 18. Amend rule 441—83.69(249A), introductory paragraph, as follows:

441—83.69(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). ~~The applicant or consumer is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or consumer may file an appeal with the department.~~

ITEM 19. Amend subrule 83.70(2) as follows:

83.70(2) Continuation of waiver services. The county shall continue to provide HCBS intellectual disability waiver services to members with ~~mental retardation~~ an intellectual disability who were enrolled in the HCBS MR program on August 1, 1996. The county shall provide HCBS intellectual disability waiver services to children who are enrolled in the HCBS intellectual disability waiver after the children turn 18. The state slot for a child in the HCBS intellectual disability waiver will transfer to the county of legal settlement when the child turns 18.

ITEM 20. Amend subrule 83.82(4) as follows:

83.82(4) Securing a state payment slot.

a. The county department office shall ~~contact the bureau of long-term care~~ enter all waiver applications into the individualized services information system (ISIS) to determine if a payment slot is available for all new ~~applications~~ applicants for the HCBS BI waiver program. For new applications for people who require the ~~ICF/MR~~ ICF/ID level of care when the county of legal settlement has payment responsibility pursuant to rule 441—83.90(249A), the county department office shall inform the county of legal settlement of the application.

(1) For applicants not currently receiving Medicaid, the county department office shall ~~contact the bureau~~ make the entry and notify the county of those applicants for whom the county has payment responsibility by the end of the ~~second~~ fifth working day after receipt of a completed Form 470-2927 or 470-2927(S), Health Services Application, or within five working days after receipt of disability determination, whichever is later.

(2) For current Medicaid ~~recipients~~ members, the county department office shall ~~contact the bureau~~ make the entry and notify the county of those persons for whom the county has payment responsibility by the end of the ~~second~~ fifth working day after receipt of either Form 470-3349, Brain Injury Functional Assessment, ~~with the choice of the HCBS waiver indicated by the consumer’s signature,~~ or a written request signed and dated by the ~~consumer~~ waiver applicant.

b. ~~On the third day after the receipt of the completed Form 470-2927 or 470-2927(S), if~~ If no payment slot is available, the ~~bureau of long-term care~~ department shall enter the ~~consumer~~ applicant on a waiting list according to the following:

(1) ~~Consumers~~ Applicants not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~date stamped in the county~~ received by the department office or upon receipt of disability determination, whichever is later. Consumers Applicants currently eligible for Medicaid shall be added to the waiting list on the basis of the date the consumer applicant requests HCBS BI program services as ~~documented by the date of the consumer's signature on Form 470-2927 or 470-2927(S).~~

(2) In the event that more than one application is received at one time, ~~econsumers~~ applicants shall be entered on the waiting list on the basis of the month of birth, January being month one and the lowest number.

~~(2) c.~~ Persons who do not fall within the available slots shall have their applications rejected but their names shall be maintained on the waiting list.

(1) As slots become available, persons shall be selected from the waiting list to maintain the number of approved persons on the program based on their order on the waiting list.

(2) The county shall have financial responsibility for the state share of the costs of services for these ~~econsumers~~ applicants as stated in rule 441—83.90(249A). The county shall include these ~~ICF/MR ICF/ID level of care brain-injured econsumers applicants~~ in their annual county management plan which is approved by the state.

ITEM 21. Amend paragraph **83.83(2)“c”** as follows:

c. ~~A consumer~~ An applicant shall be given the choice between waiver services and institutional care. The ~~consumer applicant~~ or legal representative shall complete and sign Form 470-3349, ~~Brain Injury Functional Assessment 470-4694, Case Management Comprehensive Assessment~~, indicating that the ~~consumer's choice of caregiver applicant~~ applicant has elected home- and community-based services. This shall be arranged by the medical facility discharge planner or case manager.

ITEM 22. Amend subrule 83.87(3) as follows:

83.87(3) Annual assessment. The IME medical services unit shall assess the ~~econsumer member~~ annually and certify the ~~consumer's member's~~ need for long-term care services. The IME medical services unit shall be responsible for determining the level of care based on the completed ~~Brain Injury Waiver Functional Assessment, Form 470-3283 470-4694, Case Management Comprehensive Assessment~~, and supporting documentation as needed.

ITEM 23. Amend rule 441—83.89(249A) as follows:

441—83.89(249A) Appeal rights. Notice of adverse actions and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). ~~The applicant or consumer is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or consumer may file an appeal with the department.~~

The applicant or ~~econsumer member~~ for whom the county has legal payment responsibility shall be entitled to a review of adverse decisions by the county by appealing to the county pursuant to 441—paragraph 25.13(2)“j.” If dissatisfied with the county's decision, the applicant or ~~econsumer member~~ may file an appeal with the department pursuant to rule 441—83.69(249A).

ITEM 24. Amend paragraph **83.102(1)“h”** as follows:

h. Be in need of skilled nursing or intermediate care facility level of care based on information submitted on Form 470-4392, Level of Care Certification for HCBS Waiver Program.

(1) A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392 when the person applies for waiver services, upon request to report a change in the person's condition, and annually for reassessment of the person's level of care.

(2) Initial decisions on level of care shall be made for the department by the IME medical services unit within two working days of receipt of medical information. ~~After notice of an adverse decision by the IME medical services unit, the Medicaid applicant or recipient or the applicant's or recipient's representative may request reconsideration by the IME medical services unit pursuant to subrule 83.109(2). On initial and reconsideration decisions, the~~ The IME medical services unit determines whether the level of care requirement is met based on medical necessity and the appropriateness of the level of care under 441—subrules 79.9(1) and 79.9(2).

HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) Adverse decisions by the IME medical services unit ~~on reconsiderations~~ may be appealed to the department pursuant to 441—Chapter 7 and rule 441—83.109(249A).

ITEM 25. Amend paragraph **83.102(2)“a”** as follows:

a. The ~~consumer~~ applicant shall have a service plan which is developed by the ~~consumer~~ applicant and a department service worker. ~~This~~ The plan must be completed and approved ~~prior to~~ before service provision ~~and at least annually thereafter~~.

(1) The service worker shall identify the need for service based on the needs of the ~~consumer~~ applicant, as documented in Form 470-5044, Service Worker Comprehensive Assessment, as well as the availability and appropriateness of services.

(2) The service worker shall have a face-to-face visit with the member at least annually.

ITEM 26. Amend subrule 83.102(5) as follows:

83.102(5) Securing a slot.

a. The county department office shall ~~contact the bureau of long-term care for all cases~~ enter all waiver applications into the individualized services information system (ISIS) to determine if a slot is available for all new applications applicants for the HCBS physical disability waiver program.

(1) For applicants not currently receiving Medicaid, the county department office shall ~~contact the bureau~~ make the entry by the end of the ~~second~~ fifth working day after receipt of a completed Form 470-2927 or 470-2927(S), Health Services Application, ~~submitted on or after April 1, 1999 or within five working days after receipt of disability determination, whichever is later.~~

(2) For current Medicaid ~~recipients~~ members, the county department office shall ~~contact the bureau~~ make the entry by the end of the ~~second~~ fifth working day after receipt of Form 470-3502, Physical Disability Waiver Assessment Tool, ~~with the choice of HCBS waiver indicated by the signature of the consumer or a written request signed and dated by the consumer waiver applicant.~~

b. ~~On the third day after the receipt of the completed Form 470-2927 or 470-2927(S), Health Services Application, if~~ If no slot is available, the ~~bureau of long-term care~~ department shall enter ~~consumers~~ applicants on the HCBS physical disabilities waiver waiting list according to the following:

(1) ~~Consumers Applicants~~ not currently eligible for Medicaid shall be entered on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is ~~submitted on or after April 1, 1999, and date stamped in the county received by the department office or upon receipt of disability determination, whichever is later.~~ Consumers Applicants currently eligible for Medicaid shall be added on the basis of the date the ~~consumer~~ applicant requests HCBS physical disability program services ~~as documented by the date of the consumer's signature on Form 470-2927 or 470-2927(S).~~ In the event that more than one application is received on the same day, ~~consumers~~ applicants shall be entered on the waiting list on the basis of the day of the month of their birthday, the lowest number being first on the list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

(2) No change.

ITEM 27. Amend subrule 83.103(2) as follows:

83.103(2) Approval of application for eligibility.

a. Applications for this waiver shall be initiated on behalf of the applicant who is a resident of a medical institution with the applicant's consent or with the consent of the applicant's legal representative by the discharge planner of the medical facility where the applicant resides at the time of application.

(1) The discharge planner shall have the applicant's primary care provider complete Form 470-3502, Physical Disability Waiver Assessment Tool 470-4392, Level of Care Certification for HCBS Waiver Program, and submit it to the IME medical services unit.

(2) After completing the determination of the level of care needed by the applicant, the IME medical services unit shall inform the income maintenance worker and the discharge planner of the IME medical services unit's decision.

b. Applications for this waiver shall be initiated by the applicant, the applicant's parent or legal guardian, or the applicant's attorney in fact under a durable power of attorney for health care on behalf of the applicant who is residing in the community.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) ~~The applicant, the applicant's parent, the applicant's legal guardian, or the applicant's attorney in fact under a durable power of attorney for health care primary care provider shall complete Form 470-3502, Physical Disability Waiver Assessment Tool 470-4392, Level of Care Certification for HCBS Waiver Program, and submit it to the IME medical services unit.~~

(2) After completing the determination of the level of care needed by the applicant, the IME medical services unit shall inform the income maintenance worker and the applicant, the applicant's parent or legal guardian, or the applicant's attorney in fact under a durable power of attorney for health care.

c. No change.

d. An applicant shall be given the choice between waiver services and institutional care. The applicant or the applicant's parent, legal guardian, or attorney in fact under a durable power of attorney for health care shall sign Form ~~470-3502, Physical Disability Waiver Assessment Tool 470-5044, Service Worker Comprehensive Assessment~~, indicating that the applicant's choice of caregiver applicant has elected home- and community-based services.

e. to g. No change.

ITEM 28. Amend subrule 83.107(2) as follows:

83.107(2) Annual assessment. ~~The IME medical services unit shall review the consumer's member's need for continued care annually and recertify the consumer's member's need for long-term care services, pursuant to the standards and subject to the reconsideration and appeal processes at paragraph 83.102(1) "h" and the appeal process at rule 441—83.109(249A), based on the completed Form 470-3502, Physical Disability Waiver Assessment Tool 470-4392, Level of Care Certification for HCBS Waiver Program, and supporting documentation as needed. Form 470-3502 is completed by the service worker at the time of recertification.~~

ITEM 29. Rescind and reserve subrule **83.109(2)**.

ITEM 30. Amend subrule 83.122(3) as follows:

83.122(3) Level of care. ~~The consumer applicant must be certified as being in need of a level of care that, but for the waiver, would be provided in a psychiatric hospital serving children under the age of 21. The IME medical services unit shall certify the consumer's applicant's level of care annually based on Form 470-4211, Children's Mental Health Waiver Assessment 470-4694, Case Management Comprehensive Assessment.~~

ITEM 31. Amend subrule 83.122(5) as follows:

83.122(5) Choice of program. ~~The consumer applicant must choose HCBS children's mental health waiver services over institutional care, as indicated by the signature of the consumer's applicant's parent or legal guardian on Form 470-4211, Children's Mental Health Waiver Assessment 470-4694, Case Management Comprehensive Assessment.~~

ITEM 32. Amend subparagraph **83.123(1)"a"(2)** as follows:

(2) ~~Form 470-4211, Children's Mental Health Waiver Assessment 470-4694, Case Management Comprehensive Assessment, with HCBS waiver choice indicated by signature of a Medicaid member's parent or legal guardian; or~~

ITEM 33. Amend subparagraphs **83.123(1)"c"(1)** and **(2)** as follows:

(1) ~~The names of consumers applicants not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is submitted and date stamped in the local office received by the department;~~

(2) ~~The names of Medicaid members shall be added to the waiting list on the date Form 470-4211, Children's Mental Health Waiver Assessment, or a written request as specified in 83.123(2)"a"(3) is date stamped in the local office. paragraph 83.123(1)"a."~~

ITEM 34. Amend subrule 83.127(3) as follows:

83.127(3) ~~The service plan shall be based on information in Form 470-4211, Children's Mental Health Waiver Assessment 470-4694, Case Management Comprehensive Assessment.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 35. Amend rule 441—83.129(249A) as follows:

441—83.129(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). ~~An applicant or consumer may obtain a review of the IME medical services unit's level-of-care determination by sending a letter requesting a review to the IME Medical Services Unit, P.O. Box 36478, Des Moines, Iowa 50315. If dissatisfied with the IME medical services unit's review decision, the applicant or consumer may file an appeal with the department in accordance with 441—Chapter 7.~~

ARC 0141C

INTERIOR DESIGN EXAMINING BOARD[193G]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 544C.3, the Interior Design Examining Board proposes to amend Chapter 8, “Renewal and Reinstatement,” Iowa Administrative Code.

This amendment provides a provision for late renewal of a certificate of registration, which better aligns Interior Design Examining Board rules with the rules of the other professional licensing boards. This amendment also improves service to registrants.

Any interested person may make written or oral suggestions or comments on the proposed amendment on or before June 21, 2012. Comments should be directed to Robert Lampe, Executive Officer, Iowa Interior Design Examining Board, 1920 SE Hulsizer Road, Ankeny, Iowa 50021; by telephone at (515)281-7360; or by E-mail to robert.lampe@iowa.gov.

A public hearing will be held on Thursday, June 21, 2012, from 9 to 11 a.m. at the offices of the Professional Licensing Bureau, 1920 SE Hulsizer Road, Ankeny, Iowa. At the hearing, persons who wish to speak will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

Any person who plans to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact the Board to discuss specific needs.

This amendment is subject to waiver or variance pursuant to 193—Chapter 5.

This amendment was approved by the Board on April 2, 2012.

After analysis and review of this rule making, no adverse impact on jobs has been found. While the amendment includes the addition of a new fee, the new fee is less than the amount (\$100) to reactivate an expired certificate of registration, and therefore reduces the cost to the applicant. Although there should be no adverse impact on jobs, and the amendment may motivate registrants to renew and therefore may have a positive impact on jobs, the Board will continue to work with stakeholders to minimize any negative impact and maximize any positive impact towards jobs.

This amendment is intended to implement Iowa Code section 544C.3.

The following amendment is proposed.

Amend rule 193G—8.1(17A,272C,544C), introductory paragraph, as follows:

193G—8.1(17A,272C,544C) Renewal of certificates of registration. Certificates of registration expire biennially on June 30. Following the transition period described in 193G—subrule 2.1(4), certificates issued to registrants with last names beginning with A through K shall expire on June 30 of even-numbered years and certificates issued to registrants with last names beginning with L through Z shall expire on June 30 of odd-numbered years. In order to maintain authorization to practice in Iowa, a registrant is required to renew the certificate of registration prior to the expiration date. However, the

INTERIOR DESIGN EXAMINING BOARD[193G](cont'd)

board will accept an otherwise sufficient renewal application which is untimely if the board receives the application and late fee of \$25 within 30 days of the date of expiration. A registrant who fails to renew by the expiration date is not authorized to use the title of registered interior designer in Iowa until the certificate is reinstated as provided in rule 193G—3.2(17A,272C,544C).

ARC 0146C**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455A.5(6), 456A.24 and 456A.30, the Natural Resource Commission hereby gives Notice of Intended Action to adopt new Chapter 56, “Shooting Sports Program Grants,” Iowa Administrative Code.

The proposed chapter creates program grants for shooting range development and enhancement around the state. These ranges are excellent tools for hunter recruitment and retention, as well as a source of recreation in their own right. The Department of Natural Resources’ shooting sports program receives federal dollars plus some state Fish and Game Protection Fund dollars to foster shooting sports and hunter safety in the state. Utilizing a portion of these funds to implement shooting range program grants furthers the Department’s mission of encouraging and promoting outdoor recreation.

The program contains two funding avenues: (1) for the development of new ranges or the improvement of existing ranges; and (2) for the purchase of range equipment. This new chapter implements this program by defining eligibility, application procedures, project selection criteria, the make-up and role of a scoring committee, and record-keeping requirements. This chapter is the product of a weeklong stakeholder meeting between the Department, county conservation boards, nonprofit shooting ranges, and private citizens, all of whom have expertise and interest in shooting sports. The program grants and this new chapter were specifically structured to ensure clarity of the rules, positive impact to the state, and maximum benefit to the general public.

Any interested person may make written suggestions or comments on the proposed chapter on or before June 21, 2012. Such written materials should be directed to Ben Berka, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail Ben.Berka@dnr.iowa.gov. Persons who wish to convey their views orally should contact Ben Berka at (515)281-0140 or at Mr. Berka’s office on the fourth floor of the Wallace State Office Building.

Additionally, the Department intends to hold a public hearing on this rule making at the Wallace State Office Building, Des Moines, Iowa, on June 21, 2012, at 12 noon in the Fourth Floor West Conference Room. At the public hearing, persons may present their views either orally or in writing. Persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule making.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

These grants will have a positive economic impact on the state, and present the following job creation opportunities:

1. Attendance will increase at shooting ranges (both those that receive grant dollars as well as those that do not) because there will be a general increase in awareness and interest in shooting sports through promotional activities;
2. Increased general interest in shooting sports will provide retailers, outfitters, suppliers, and other related businesses increased revenue opportunities; and

NATURAL RESOURCE COMMISSION[571](cont'd)

3. Increased support for the Department's hunter recruitment and retention efforts will, in turn, benefit many businesses through equipment purchases, traveling needs, and license sales.

The complete Jobs Impact Statement prepared by the Department is available from the Department upon request.

These rules are intended to implement Iowa Code sections 456A.24 and 456A.30.

The following amendment is proposed.

Adopt the following **new** 571—Chapter 56:

CHAPTER 56
SHOOTING SPORTS PROGRAM GRANTS

DIVISION I
DEVELOPMENT GRANTS

571—56.1(456A) Purpose. The purpose of the shooting sports development grant is to provide state cost sharing to eligible applicants for the creation of new shooting ranges and improvement of existing shooting ranges and facilities. The department of natural resources shall administer this program.

571—56.2(456A) Definitions.

“*Commission*” means the natural resource commission.

“*Committee*” means the review and selection committee established in subrule 56.6(1).

“*Department*” means the department of natural resources as created in Iowa Code section 455A.2.

“*Director*” means the director of the department of natural resources.

571—56.3(456A) Eligibility requirements. The applicant must submit an application and all supporting documents in a timely manner.

56.3(1) Applicant requirements. The entity submitting the application must meet the requirements of this subrule. The entity must:

- a. Allow public access;
- b. Be free of any unresolved close-out issues on prior grant projects;
- c. Ensure that the shooting range will be located on property owned by the applicant or that the property is enrolled in a long-term lease of at least 25 years;
- d. Have liability insurance unless not required by law; and
- e. Make the range available for department hunter education courses, department hunter recruitment efforts, department archery programs, and Scholastic Clay Target Program activities.

56.3(2) Eligible entities. The following entities are eligible to apply for development grants:

- a. Iowa-based shooting sports organizations.
- b. Iowa primary and secondary public and private schools.
- c. Iowa public and private colleges and universities.
- d. Iowa nonprofit corporations.
- e. Public ranges not owned by the state, city park and recreation agencies, or county governments.

56.3(3) Ineligible entities. Privately owned for-profit ranges and state-owned-and-operated public ranges are not eligible for development grants.

571—56.4(456A) Maximum grant amounts. The maximum grant award is \$50,000 per project with at least a 25 percent match as described in subrule 56.5(3).

571—56.5(456A) Grant application submissions.

56.5(1) Form of application. Grant applications shall be on forms provided by the department and shall follow guidelines provided by the department.

NATURAL RESOURCE COMMISSION[571](cont'd)

56.5(2) Application deadline. Grant applications (one original and five copies) must be received by the department by September 15 for the 2012 grant cycle. All subsequent years shall have a grant application deadline of February 1.

56.5(3) Match and local funding. Applicants are expected to finance 25 percent of development grant projects, either through cash, donated materials/labor, or other preapproved in-kind match. An applicant shall certify that it has committed its match before the 90 percent up-front grant payment will be made pursuant to rule 571—56.11(456A). A letter of intent signed by the mayor, the chairperson of the board of supervisors, the chairperson of the county conservation board, or the CEO or chief financial officer of an agency, organization, or corporation and submitted with the application showing intent to include matching funds in finalized budgets will be accepted as proof of commitment. Applicants must forward proof of local funding to the department by November 1 of the 2012 grant cycle, and June 1 for all subsequent years. If proof of local funding is not submitted, the application will be removed from the list of approved projects.

56.5(4) Competitive bids. Any development expense more than \$500 that is funded by grant dollars must be purchased through a competitive bid or quotation process. Records of such process must be submitted with close-out documentation. Items purchased by any other means are not reimbursable under the grant.

571—56.6(456A) Project review and selection.

56.6(1) Review and selection committee. The review and selection committee shall be comprised of six members appointed by the director. The committee shall review and evaluate project applications and determine final project approval to be recommended to the commission. Three members shall be department staff, and three members shall be from the public/private sector and shall be appointed based upon their expertise and interest in one of the three shooting sports of rifle/handgun, shotgun, and archery.

56.6(2) Conflict of interest. If a project is submitted to the committee by an entity with a member or employee on the committee, that committee member shall not participate in discussion and shall not vote on that particular project.

56.6(3) Consideration withheld. The committee will not consider any application which, on the date of the selection session, is not complete or for which additional pertinent information has been requested and not received. The committee will not consider any application from an entity which, on the date of the selection session, has not demonstrated compliance with or does not have a reasonable plan for achieving compliance with the requirements of Iowa Code section 657.9.

56.6(4) Application rating system. The committee will apply a numerical rating system to each grant application that is considered for funding. The criteria and maximum number of points are as follows:

- a. Overall program strength and feasibility – 30 points.
- b. Education – 30 points.
- c. Proximity to other public ranges – 25 points.
- d. Range capacity – 15 points.
- e. Project type – 10 points.

56.6(5) Rating of scores for tiebreakers. If two or more projects receive the same score, the committee shall use the points awarded for overall program strength and feasibility, paragraph 56.6(4) “a,” to determine which project has a higher rank.

571—56.7(456A) Commission review. The commission will review and act upon all committee recommendations at the next scheduled commission meeting. The commission may reject any application selected for funding. Applicants shall be notified of their grant status in writing within 30 days after the commission meeting.

571—56.8(456A) Appeals. Unfunded applicants may appeal the commission’s decision to the director within five days of receipt of the commission’s decision. A letter of appeal shall be sent to the director of the department. Before making a final decision as to the grant award, the director shall review the application, committee score sheets and commission minutes.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—56.9(456A) Grant amendments. Grant amendments may be made upon request by the applicant, subject to the availability of funds and approval by the director or the director's designee.

571—56.10(456A) Timely commencement of projects. Grant recipients are expected to carry out their projects in an expeditious manner. Projects shall be initiated no later than two months following their approval by the committee and shall be completed no later than June 30 of the year following the grant award. Failure to initiate projects in a timely manner may be cause for termination of the agreement and cancellation of the grant.

571—56.11(456A) Payments. Ninety percent of approved grant funding may be paid to project grantees when requested, but no earlier than the start-up date of the project. Ten percent of the grant total shall be withheld by the department, pending successful completion of the project and final site inspection, or until any irregularities discovered as a result of the final site inspection have been resolved.

56.11(1) Expense documentation, balance payment or reimbursement. Documentation of expenditures eligible for prepayment or reimbursement shall be submitted on forms provided by the department and shall be accompanied by applicable receipts showing evidence that the expense is necessary and reasonably related to the creation of a new shooting range or to the improvement of an existing shooting range or facility. The grantee shall sign a certification stating that all expenses for which reimbursement is requested are related to the project and have been paid by the grantee prior to requesting reimbursement. If necessary, the department may request copies of canceled checks to verify expenditures.

56.11(2) Reasonable costs. For purposes of this rule, expenses that are necessary and reasonably related to the creation of a new shooting range or to the improvement of an existing shooting range or facility include, without limitation: (1) costs associated with the lease or acquisition of real property used for the project; (2) personal property acquired for use in the project; and (3) management and maintenance costs associated with the project. However, in no event shall funds awarded under this program be used to cover costs associated with employment or personnel costs of the grant recipient, including salaries and benefits. Those costs, however, may be used to meet the match requirement described in subrule 56.5(3).

571—56.12(456A) Record keeping and retention. Grant recipients shall keep adequate records relating to the administration of the project, particularly relating to all incurred expenses. These records shall be available for audit by representatives of the department and the state auditor's office for a period of three years following the close of the grant. All records shall be retained in accordance with state laws.

56.12(1) Definition of records. Records include but are not necessarily limited to invoices, canceled checks, bank statements, and bid and quote documentation.

56.12(2) Annual reports. Grant recipients shall submit on forms provided by the department an annual report for seven years following the close of the grant.

571—56.13(456A) Project life and recovery of grant funds. Applicants shall state an expected project life of at least ten years which will become part of the project agreement. Should the funded project cease to be used for public recreation before the end of the stated project life, the director may seek to recover the remaining value of the grant award.

571—56.14(456A) Unlawful use of grant funds. Unlawful use of grant funds includes whenever any property, real or personal, acquired or developed with grant funds under this program passes from the control of the grantee or is used for purposes other than the approved project.

571—56.15(456A) Remedy. Grant funds used without authorization for purposes other than the approved project, or unlawfully, must be returned to the department for deposit in the account supporting this program. In the case of diversion of personal property, the grantee shall remit to the department funds in the amount of the original purchase price of the property. The grantee shall have a period of

NATURAL RESOURCE COMMISSION[571](cont'd)

three months after notification from the department in which to correct the unlawful use of funds. The remedy provided in this rule is in addition to others provided by law.

571—56.16(456A) Ineligibility. Whenever the director determines that a grantee is in violation of these rules, that grantee shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the director.

DIVISION II
EQUIPMENT GRANTS

571—56.17(456A) Purpose. The purpose of the shooting sports equipment grant is to provide state cost-sharing to eligible applicants for the purchase or improvement of shooting range equipment. The department shall administer the program.

571—56.18(456A) Definitions.

“*Commission*” means the natural resource commission.

“*Committee*” means the review and selection committee established in subrule 56.22(1).

“*Department*” means the department of natural resources as created in Iowa Code section 455A.2.

“*Director*” means the director of the department of natural resources.

571—56.19(456A) Eligibility requirements. The applicant must submit an application and all supporting documents in a timely manner.

56.19(1) Applicant requirements. The entity submitting the application must meet the requirements of this subrule. The entity must:

- a. Allow public access;
- b. Be free of any unresolved close-out issues with prior grant projects;
- c. Ensure that the shooting range will be located on property owned by the applicant or that the property is enrolled in a long-term lease of at least 25 years;
- d. Have liability insurance unless not required by law; and
- e. Make the range available for department hunter education courses, department hunter recruitment efforts, department archery programs, and Scholastic Clay Target Program activities.

56.19(2) Eligible entities. The following entities are eligible to apply for equipment grants:

- a. Iowa-based shooting sports organizations.
- b. Iowa primary and secondary public and private schools.
- c. Iowa public and private colleges and universities.
- d. Iowa nonprofit corporations.
- e. Public ranges not owned by the state, city park and recreation agencies, or county governments.

56.19(3) Ineligible entities. Privately owned for-profit ranges and state-owned-and-operated public ranges are not eligible for equipment grants.

571—56.20(456A) Maximum grant amounts. There is no maximum request amount for equipment grants, but a 50 percent match is required as described in subrule 56.21(3).

571—56.21(456A) Grant application submissions.

56.21(1) Form of application. Grant applications shall be on forms provided by the department and shall follow guidelines provided by the department.

56.21(2) Application deadline. Grant applications (one original and five copies) must be received by the department by September 15 for the 2012 grant cycle. All subsequent years shall have a grant application deadline of February 1.

56.21(3) Match and local funding. Applicants are expected to finance 50 percent of equipment grant projects, either through cash, donated materials/labor, or other preapproved in-kind match. An applicant shall certify that it has committed its match before the 90 percent up-front grant payment will be made pursuant to rule 571—56.27(456A). A letter of intent signed by the mayor, the chairperson of the board

NATURAL RESOURCE COMMISSION[571](cont'd)

of supervisors, the chairperson of the county conservation board, or the CEO or chief financial officer of an agency, organization, or corporation and submitted with the application showing intent to include matching funds in finalized budgets will be accepted as proof of commitment. Applicants must forward proof of local funding to the department by November 1 of the 2012 grant cycle, and June 1 for all subsequent years. If proof of local funding is not submitted, the application will be removed from the list of approved projects.

56.21(4) *Competitive bids.* Any equipment costing more than \$500 that is funded by grant dollars must be purchased through a competitive bid or quotation process. Records of such process must be submitted with close-out documentation. Items purchased by any other means are not reimbursable under the grant.

571—56.22(456A) Project review and selection.

56.22(1) *Review and selection committee.* The review and selection committee shall be comprised of six members appointed by the director. The committee shall review and evaluate grant applications and determine final project approval to be recommended to the commission. Three members shall be from department staff, and three members shall be from the public/private sector and shall be appointed based upon their expertise and interest in one of the three shooting sports of rifle/handgun, shotgun, and archery.

56.22(2) *Conflict of interest.* If an equipment request is submitted to the committee by an entity with a member or employee on the committee, that committee member shall not participate in discussion and shall not vote on that particular equipment purchase.

56.22(3) *Consideration withheld.* The committee will not consider any grant application which, on the date of the selection session, is not complete or for which additional pertinent information has been requested and not received. The committee will not consider any application from an entity which, on the date of the selection session, is proposing to use the equipment at a facility that has not demonstrated compliance with or does not have a reasonable plan for achieving compliance with the requirements of Iowa Code section 657.9.

56.22(4) *Application rating system.* The committee will apply a numerical rating system to each grant application that is considered for funding. The criteria and maximum number of points are as follows:

- a. Overall program strength and feasibility – 30 points.
- b. Education – 30 points.
- c. Proximity to other public ranges – 25 points.
- d. Range capacity – 15 points.
- e. Project type – 10 points.

56.22(5) *Rating of scores for tiebreakers.* If two or more projects receive the same score, the committee shall use the points awarded for overall program strength and feasibility, paragraph 56.22(4)“a,” to determine which project has a higher rank.

571—56.23(456A) Commission review. The commission will review and act upon all committee recommendations at the next scheduled commission meeting. The commission may reject any grant application the committee has selected for funding. Applicants shall be notified of their grant status in writing within 30 days of the commission meeting.

571—56.24(456A) Appeals. Unfunded applicants may appeal the commission’s decision to the director within five days of receipt of the commission’s decision. A letter of appeal shall be sent to the director of the department. Before making a final decision as to the grant award, the director shall review the application, committee score sheets and commission minutes.

571—56.25(456A) Grant amendments. Grant amendments may be made upon request by the applicant, subject to the availability of funds and approval by the director or director’s designee.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—56.26(456A) Timely commencement of projects. Grant recipients are expected to carry out their projects in an expeditious manner. Projects shall be initiated no later than two months following their approval by the committee and shall be completed no later than June 30 of the year following the grant award. Failure to initiate projects in a timely manner may be cause for termination of the agreement and cancellation of the grant.

571—56.27(456A) Payments. Ninety percent of approved grant funding may be paid to grantees when requested, but not earlier than the start-up date of the project. Ten percent of the grant total shall be withheld by the department, pending successful completion of the project and final site inspection, or until any irregularities discovered as a result of the final site inspection have been resolved.

56.27(1) Expense documentation, balance payment or reimbursement. Documentation of expenditures eligible for prepayment or reimbursement shall be submitted on forms provided by the department and shall be accompanied by applicable receipts showing evidence that the expense is necessary and reasonably related to the purchase or improvement of shooting range equipment. The grantee shall sign a certification stating that all expenses for which reimbursement is requested are related to the purchase and have been paid by the grantee prior to requesting reimbursement. If necessary, the department may request copies of canceled checks to verify expenditures.

56.27(2) Reasonable costs. For purposes of this rule, expenses that are necessary and reasonably related to the purchase or improvement of shooting range equipment include, without limitation, costs of the actual equipment approved as the funded project and associated delivery costs, as well as the management and maintenance costs associated with such equipment. However, in no event shall funds awarded under this program be used to cover costs associated with employment or personnel costs of the grant recipient, including salaries and benefits. Those costs, however, may be used to meet the match requirement described in subrule 56.21(3).

571—56.28(456A) Record keeping and retention. Grant recipients shall keep adequate records relating to the administration of the project, particularly relating to all incurred expenses. These records shall be available for audit by representatives of the department and the state auditor's office for a period of three years following the close of the grant. All records shall be retained in accordance with state laws.

56.28(1) Definition of records. Records include but are not necessarily limited to invoices, canceled checks, bank statements, and bid and quote documentation.

56.28(2) Annual reports. Grant recipients shall submit on forms provided by the department an annual report for five years following the close of the grant.

571—56.29(456A) Project life and recovery of grant funds. Applicants shall state an expected project life of at least ten years which will become part of the project agreement. Should the funded project cease to be used for public recreation before the end of the stated project life, the director may seek to recover the remaining value of the grant award.

571—56.30(456A) Unlawful use of grant funds. Unlawful use of grant funds includes whenever any property, real or personal, acquired or developed with grant funds under this program passes from the control of the grantee or is used for purposes other than the approved project.

571—56.31(456A) Remedy. Grant funds used without authorization, for purposes other than the approved project, or unlawfully, must be returned to the department for deposit in the account supporting this program. In the case of diversion of personal property, the grantee shall remit to the department funds in the amount of the original purchase price of the property. The grantee shall have a period of three months after notification from the department in which to correct the unlawful use of funds. The remedy provided in this rule is in addition to others provided by law.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—56.32(456A) Ineligibility. Whenever the director determines that a grantee is in violation of these rules, that grantee shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the director.

These rules are intended to implement Iowa Code sections 456A.24 and 456A.30.

ARC 0134C**PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy hereby gives Notice of Intended Action to amend Chapter 206, “Licensure of Occupational Therapists and Occupational Therapy Assistants,” and Chapter 209, “Discipline for Occupational Therapists and Occupational Therapy Assistants,” Iowa Administrative Code.

These proposed amendments define occupational therapy practice, update supervision requirements, remove outdated language for renewal to be consistent with Iowa Code chapter 147 and clarify that conviction of a crime includes when judgment of conviction or sentence was deferred.

Any interested person may make written comments on the proposed amendments no later than June 20, 2012, addressed to Judy Manning, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail judith.manning@idph.iowa.gov.

A public hearing will be held June 20, 2012, from 8 to 8:30 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

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

These amendments are intended to implement Iowa Code sections 147.3, 147.10, 147.55, 148B.1, 148B.2, 148B.4 and 148B.5.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of “Occupational therapy practice” in rule **645—206.1(147)**:

“*Occupational therapy practice*” means the therapeutic use of occupations, including everyday life activities with individuals, groups, populations, or organizations, to support participation, performance, and function in roles and situations in home, school, workplace, community, and other settings. Occupational therapy services are provided for habilitation, rehabilitation, and the promotion of health and wellness to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction. Occupational therapy addresses the physical, cognitive, psychosocial, sensory-perceptual, and other aspects of performance in a variety of contexts and environments to support engagement in occupations that affect physical and mental health, well-being, and quality of life. The practice of occupational therapy includes:

1. Evaluation of factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), rest and sleep, education, work, play, leisure, and social participation, including:

- Client factors, including body functions (such as neuromusculoskeletal, sensory-perceptual, visual, mental, cognitive, and pain factors) and body structures (such as cardiovascular, digestive, nervous, integumentary, genitourinary systems, and structures related to movement) and values, beliefs, and spirituality.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- Habits, routines, roles, rituals, and behavior patterns.
- Physical and social environments; cultural, personal, temporal and virtual contexts; and activity demands that affect performance.
 - Performance skills, including motor and praxis, sensory-perceptual, emotional regulation, cognitive, communication and social skills.
- 2. Methods or approaches selected to direct the process of interventions, including:
 - Establishment of a skill or ability that has not yet developed or remediation or restoration of a skill or ability that is impaired or is in decline.
 - Compensation, modification, or adaptation of activity or environment to enhance performance or to prevent injuries, disorders, or other conditions.
 - Retention and enhancement of skills or abilities without which performance in everyday life activities would decline.
 - Promotion of health and wellness, including the use of self-management strategies, to enable or enhance performance in everyday life activities.
 - Prevention of barriers to performance and participation, including injury and disability prevention.
- 3. Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), rest and sleep, education, work, play, leisure, and social participation, including:
 - Therapeutic use of occupations, exercises, and activities.
 - Training in self-care, self-management, health management and maintenance, home management, community/work reintegration, and school activities and work performance.
 - Development, remediation, or compensation of neuromusculoskeletal, sensory-perceptual, visual, mental, and cognitive functions, pain tolerance and management, and behavioral skills.
 - Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.
 - Education and training of individuals, including family members, caregivers, groups, populations, and others.
 - Care coordination, case management, and transition services.
 - Consultative services to groups, programs, organizations, or communities.
 - Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.
 - Assessment, design, fabrication, application, fitting, and training in seating and positioning, assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.
 - Assessment, recommendation, and training in techniques to enhance functional mobility, including management of wheelchairs and other mobility devices.
 - Low vision rehabilitation.
 - Driver rehabilitation and community mobility.
 - Management of feeding, eating, and swallowing to enable eating and feeding performance.
 - Application of physical agent modalities and use of a range of specific therapeutic procedures (such as wound care management, interventions to enhance sensory-perceptual and cognitive processing, and manual therapy) to enhance performance skills.
 - Facilitating the occupational performance of groups, populations, or organizations through the modification of environments and the adaptation of processes.

ITEM 2. Rescind rule 645—206.8(272C) and adopt the following **new** rule in lieu thereof:

645—206.8(148B) Supervision requirements.

206.8(1) Care rendered by unlicensed assistive personnel shall not be documented or charged as occupational therapy unless direct on-site supervision is provided by an OT or in-sight supervision is provided by an OTA.

206.8(2) Occupational therapist supervisor responsibilities. The supervisor shall:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- a.* Provide supervision to a licensed OTA, OT limited permit holder and OTA limited permit holder.
- b.* Provide on-site supervision or supervision by telecommunication as long as the occupational therapy services are rendered in accordance with the provisions of subrule 206.8(5).
- c.* Assume responsibility for all delegated tasks and shall not delegate a service which exceeds the expertise of the OTA or OTA limited permit holder.
- d.* Provide evaluation and development of a treatment plan for use by the OTA.
- e.* Ensure that the OTA, OT limited permit holder and OTA limited permit holder under the OT's supervision have current licenses to practice.
- f.* Ensure that the signature of an OTA on an occupational therapy treatment record indicates that the occupational therapy services were provided in accordance with the rules and regulations for practicing as an OTA.

206.8(3) The following are functions that only an occupational therapist may provide and that shall not be delegated to an OTA:

- a.* Interpretation of referrals;
- b.* Initial occupational therapy evaluation and reevaluations;
- c.* Identification, determination or modification of patient problems, goals, and care plans;
- d.* Final discharge evaluation and establishment of the discharge plan;
- e.* Assurance of the qualifications of all assistive personnel to perform assigned tasks through written documentation of their education or training that is maintained and available at all times;
- f.* Delegation of and instruction in the services to be rendered by the OTA including, but not limited to, specific tasks or procedures, precautions, special problems, and contraindicated procedures; and
- g.* Timely review of documentation, reexamination of the patient and revision of the plan when indicated.

206.8(4) Supervision of unlicensed assistive personnel. OTs are responsible for patient care provided by unlicensed assistive personnel under the OT's supervision. Unlicensed assistive personnel shall not provide independent patient care unless each of the following standards is satisfied:

- a.* The supervising OT shall physically participate in the patient's treatment or evaluation, or both, each treatment day;
- b.* The unlicensed assistive personnel shall provide independent patient care only while under the on-site supervision of the supervising OT;
- c.* Documentation made in occupational therapy records by unlicensed assistive personnel shall be cosigned by the supervising OT; and
- d.* The supervising OT shall provide periodic reevaluation of the performance of unlicensed assistive personnel in relation to the patient.

206.8(5) The OT must participate in treatment including direct face-to-face patient contact every twelfth visit or 60 calendar days, whichever comes first, for all patients regardless of setting and must document each visit.

206.8(6) Occupational therapy assistant responsibilities.

- a.* The occupational therapy assistant:
 - (1) Shall provide only those services for which the OTA has the necessary skills and shall consult the supervising occupational therapist if the procedures are believed not to be in the best interest of the patient;
 - (2) Shall gather data relating to the patient's disability during screening, but shall not interpret the patient information as it pertains to the plan of care;
 - (3) Shall communicate any change, or lack of change, which occurs in the patient's condition and which may need the assessment of the OT;
 - (4) Shall provide occupational therapy services only under the supervision of the occupational therapist;
 - (5) Shall provide treatment only after evaluation and development of a treatment plan by the occupational therapist;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(6) Shall refer inquiries that require interpretation of patient information to the occupational therapist;

(7) Shall have on-site or immediate telecommunicative supervision as long as the occupational therapy services are rendered in accordance with the provisions of subrule 206.8(5);

(8) May receive supervision from any number of occupational therapists;

(9) Shall maintain documentation of supervision on a daily basis that shall be available for review upon request of the board.

b. The signature of an OTA on the occupational therapy treatment record indicates that occupational therapy services were provided in accordance with the rules and regulations for practicing as an OTA.

206.8(7) Unlicensed assistive personnel. Unlicensed assistive personnel may assist an OTA in providing patient care in the absence of an OT only if the OTA maintains in-sight supervision of the unlicensed assistive personnel and the OTA is primarily and significantly involved in that patient's care.

206.8(8) The occupational therapy limited permit holder may evaluate clients, plan treatment programs, and provide periodic reevaluations under supervision of a licensed occupational therapist who shall bear full responsibility for care provided under the occupational therapist's supervision.

ITEM 3. Rescind rule **645—206.9(147)**.

ITEM 4. Renumber rule **645—206.10(147)** as **645—206.9(147)**.

ITEM 5. Renumber rule **645—206.12(147)** as **645—206.10(147)**.

ITEM 6. Amend renumbered subrule 206.10(1) as follows:

206.10(1) The biennial license renewal period for a license to practice as an occupational therapist or occupational therapy assistant shall begin on the sixteenth day of the birth month and end on the fifteenth day of the birth month two years later. ~~The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.~~ The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive ~~the notice from the board~~ does not relieve the licensee of the responsibility for renewing the license.

ITEM 7. Renumber rules **645—206.18(17A,147,272C)** and **645—206.19(17A,147,272C)** as **645—206.11(17A,147,272C)** and **645—206.12(17A,147,272C)**.

ITEM 8. Amend subrule 209.2(11) as follows:

209.2(11) Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice ~~occupational therapy~~ within the profession, regardless of whether the judgment of conviction or sentence was deferred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

REVENUE DEPARTMENT

Notice of Electric and Natural Gas Delivery Tax Rate Changes

Pursuant to the authority of Iowa Code sections 437A.4 and 437A.5, the Director of Revenue hereby gives notice of the changes to the electric and the natural gas delivery tax rates. These rates will be used in conjunction with the number of kilowatt hours of electricity and the number of therms of natural gas delivered to consumers in calendar year 2011 by each taxpayer, for replacement taxes payable in the 2012-2013 fiscal year.

REVENUE DEPARTMENT(cont'd)

2011 ELECTRIC DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3213	Bellevue Municipal Utilities	0.00008756
3228	Bigelow Municipal Electric	0.00174202
3216	Buffalo Municipal Electric	0.00000215
3221	Cedar Falls Municipal Elec. Utility	0.00030357
3230	City of Fredericksburg	0.00000507
3236	Coggon Municipal Light Plant	0.00004637
3095	Greenfield Municipal Utilities	0.00114896
3267	Hopkinton Municipal Utilities	0.00000720
3112	Manning Municipal Electric	0.00022981
3332	Traer Municipal Utilities	0.00064941
3342	Webster City Municipal Utilities	0.00039282
3345	West Bend Municipal Power Plant	0.00087382

CO. #	IOU's — ELECTRICS	DELIVERY TAX RATE
7206	Amana Society Service Co.	0.00056524
7248	Eldridge Electric & Water Utilities	0.00053727

CO. #	REC's	DELIVERY TAX RATE
4208	Atchison-Holt Electric Coop	0.00093279
4218	Butler County REC	0.00069530
4253	Franklin Rural Electric Coop	0.00082787
4259	Grundy County REC	0.00093253
4261	Guthrie County REC	0.00132141
4262	Hancock Co. REC	0.00105435
4266	Hawkeye Tri-County Electric Coop	0.00052236
4223	Heartland Power Coop	0.00036539
4273	Iowa Lakes Electric Coop	0.00061700
4280	Lyon Rural Electric Coop	0.00061202
4300	North West Rural Electric Coop	0.00034819
4308	Osceola Electric Coop	0.00034241
4353	Wright Co. REC	0.00053840

REVENUE DEPARTMENT(cont'd)

2011 NATURAL GAS DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5215	Brighton Gas	0.00659847
5238	Coon Rapids Municipal Gas	0.00003652
5241	Corning Municipal Gas	0.00000659
5281	Manilla Municipal Gas	0.00040945
5283	Manning Municipal Gas	0.00015233
5340	Wayland Municipal Gas	0.00032608
5344	West Bend Municipal Gas	0.00002027
5349	Winfield Municipal Gas	0.00045910

CO. #	IOU's — GAS	DELIVERY TAX RATE
5204	Allerton Gas	0.02530723
5272	Interstate Power	0.00252602
5312	Peoples Natural Gas	0.00680931
5335	United Cities Gas	0.01371598

ARC 0145C**REVENUE DEPARTMENT[701]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 6, “Organization, Public Inspection,” to rescind Chapter 7, “Practice and Procedure Before the Department of Revenue,” and to adopt a new Chapter 7 with the same title, and to amend Chapter 8, “Forms and Communications,” Chapter 11, “Administration,” Chapter 12, “Filing Returns, Payment of Tax, Penalty and Interest,” Chapter 38, “Administration,” Chapter 40, “Determination of Net Income,” Chapter 42, “Adjustments to Computed Tax and Tax Credits,” Chapter 43, “Assessments and Refunds,” Chapter 51, “Administration,” Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Chapter 54, “Allocation and Apportionment,” Chapter 57, “Administration,” Chapter 59, “Determination of Net Income,” Chapter 67, “Administration,” Chapter 68, “Motor Fuel and Undyed Special Fuel,” Chapter 70, “Replacement Tax and Statewide Property Tax,” Chapter 81, “Administration,” Chapter 84, “Unfair Cigarette Sales,” Chapter 85, “Tobacco Master Settlement Agreement,” Chapter 86, “Inheritance Tax,” Chapter 89, “Fiduciary Income Tax,” Chapter 103, “State-Imposed and Locally Imposed Hotel and Motel Taxes—Administration,” and Chapter 104, “Hotel and Motel—Filing Returns, Payment of Tax, Penalty, and Interest,” Iowa Administrative Code.

Item 4 rescinds existing Chapter 7 and adopts a new Chapter 7 in which obsolete rules regarding proceedings before the Department of Revenue that commenced prior to July 1, 1999, have been omitted and in which the remaining rules have been reorganized.

REVENUE DEPARTMENT[701](cont'd)

Items 1 through 3 and 5 through 44 amend various rules and subrules to correct cross references related to new Chapter 7.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than July 2, 2012, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before June 19, 2012. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by June 19, 2012.

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

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

The following amendments are proposed.

ITEM 1. Amend rule **701—6.2(17A)**, third unnumbered paragraph, as follows:

Identifying details which would clearly warrant an invasion of personal privacy or trade secrets will be deleted from any final order, decision or opinion which is made available for public inspection upon a proper showing by the person requesting such deletion as provided in rules 701—7.15(17A) and 7.42(17A) rule 701—7.9(17A).

ITEM 2. Amend rule 701—6.4(17A), introductory paragraph, as follows:

701—6.4(17A) Copies of proposed rules. A trade or occupational association which has registered its name and address with the department of revenue may receive, by mail, copies of proposed rules. Registration of the association's name and address with the department is accomplished by written notification to the Administrator, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa ~~50319~~ 50306. In the written notification, the association must designate, by reference to rule ~~701—7.36(421,17A)~~ 701—7.1(421,17A), the type of proposed rules and the number of copies of each rule it wishes to receive. If the association wishes to receive copies of proposed rules not enumerated in rule ~~701—7.36(421,17A)~~ 701—7.1(421,17A), it may make a blanket written request at the time of registration or at any time prior to the adoption of such rules. A charge of 20 cents per single-sided page shall be charged to cover the actual cost of providing each copy of the proposed rule. In the event the actual cost exceeds 20 cents for a single-sided page, it will be billed accordingly.

ITEM 3. Amend rule 701—6.5(17A), introductory paragraph, as follows:

701—6.5(17A) Regulatory analysis procedures. Any small business as defined in Iowa Code section 17A.4A or organization of small businesses which has registered its name and address with the department of revenue shall receive by mail a copy or copies of any proposed rule which may have an impact on small business. Registration of the business's or organization's name and address with the department is accomplished by written notification to the Policy Section, Policy and Communications

REVENUE DEPARTMENT[701](cont'd)

Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. In the written notification, the business or organization must state that it wishes to receive copies of rules which may have an impact on small business, the number of copies of each rule it wishes to receive, and must also designate, by reference to rule ~~701—7.36(421,17A)~~ 701—7.1(421,17A), the types of proposed rules it wishes to receive. If the small business or organization of small businesses wishes to receive copies of proposed rules not enumerated in rule ~~701—7.36(421,17A)~~ 701—7.1(421,17A), it may make a blanket written request at the time of registration or at any time prior to the adoption of the rules. A charge of 20 cents per single-sided page shall be imposed to cover the actual cost of providing each copy of the proposed rule. In the event the actual cost exceeds 20 cents for a single-sided page, it will be billed accordingly.

ITEM 4. Rescind 701—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF REVENUE

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 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, 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, generation skipping transfer tax, qualified use inheritance tax and estate tax—Iowa Code chapters 450, 450A, 450B and 451;
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:

“Act” means the Iowa administrative procedure Act.

REVENUE DEPARTMENT[701](cont'd)

"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.

"Clerk of the hearings section" means the clerk of the hearings section of the department.

"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.

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

"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. 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; 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, application for initiation of proceedings to adopt, amend or repeal a rule or document filed in licensing.

"Pleadings" means protest, answer, reply or other similar document filed in a contested case proceeding, including contested cases involving no factual dispute.

REVENUE DEPARTMENT[701](cont'd)

“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 department employees designated by the director and of the attorney general’s staff who have been assigned to review protests 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 or 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.

“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); 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,” chapter 450A, “Generation Skipping Transfer Tax,” or chapter 451, “Iowa Estate 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. The principal office of the department in the Hoover State Office Building in Des Moines, Iowa, shall 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) 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.

7.3(2) All documents or papers filed with an administrative law judge appointed by the division of administrative hearings to be a presiding officer shall be filed with the Department of Inspections and

REVENUE DEPARTMENT[701](cont'd)

Appeals, Administrative Hearings Division, Third Floor, Wallace State Office Building, Des Moines, Iowa 50319.

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

701—7.4(17A) Computation of time, filing of documents. 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 Iowa Code section 4.1(34).

7.4(1) 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.

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.

701—7.5(17A) Form and style of papers. All pleadings, petitions, briefs and motions or other documents filed with the department shall be typewritten, shall have a proper caption, and shall have a signature and copies as herein provided or as specified in some other rule.

7.5(1) Papers shall be typed on only one side of plain white paper. Pleadings, petitions, motions, orders and any other papers allowed or required to be filed by these rules may be on any size paper. Citations should be underscored.

7.5(2) The proper caption shall be placed in full upon the first paper filed.

7.5(3) The signature of the petitioner, party, or authorized representative shall be subscribed in writing to the original of all pleadings, petitions, briefs or motions and shall be an individual's and not a firm's name except that the signature of a corporation shall be the name of the corporation by one of its active officers. The name and mailing address of the party or the party's representative actually signing shall be typed or printed immediately beneath the written signature. The signature shall constitute a certification that the signer has read the document; that to the best of the signer's knowledge, information and belief, every statement contained in the document is true and no such statement is misleading.

a. A taxpayer or the taxpayer's representative using e-mail or other electronic means to submit an income tax return, a sales tax or use tax return, a return for any other tax administered by the department, an application for a sales tax permit or other permit, a deposit form for remitting withholding tax or other taxes administered by the department, or any other document to the department may use an electronic signature or a signature designated by the department in lieu of a handwritten signature. To the extent that a taxpayer or the taxpayer's representative submits to the department a tax return, deposit document, application or other document by e-mail or other electronic means with an electronic signature or signature designated by the department, the taxpayer should include in the record of the document the taxpayer's federal identification number so that the taxpayer's identity is established. For purposes of this rule, "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a tax return, deposit document, or other document filed with the department and executed or adopted by a person with the intent to sign the return, deposit document, or other document filed with the department. For purposes of this rule, "signature designated by the department" means a symbol or other information that is provided by the department to the taxpayer or the taxpayer's representative and is to serve instead of the handwritten signature of the taxpayer.

b. In a situation where the taxpayer or the taxpayer's representative has submitted a return or other document to the department by e-mail, the taxpayer should include the taxpayer's e-mail address in the record of the document. However, notwithstanding the above information, a taxpayer may not submit a

REVENUE DEPARTMENT[701](cont'd)

tax return or other document to the department with an electronic signature when a handwritten signature is required with the return or document by federal or state law.

7.5(4) Every pleading (other than protest) or motion or brief shall bear proof of service upon the opposing party as provided by the Iowa Rules of Civil Procedure.

7.5(5) Except as otherwise provided in these rules or ordered by the department, an original copy only of every pleading, brief, motion or petition shall be filed.

7.5(6) All copies shall be clear and legible but may be on any weight of paper.

7.5(7) Upon motion of an opposing party or on its own motion, the department may, in its discretion, if a person or party has failed to comply with this rule, require such person or party to follow the provisions of this rule and may point out the defects and details needed to comply with the rule prior to the filing of the rule.

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

701—7.6(17A) Persons authorized to represent themselves or others. Due to the complex questions involved and the technical aspects of taxation, persons are encouraged to seek the aid, advice, assistance and counsel of practicing attorneys and certified public accountants.

7.6(1) The right to represent one's self or others in connection with any proceeding before the department or administrative hearings division shall be limited to the following classes of persons:

- a. Taxpayers who are natural persons representing themselves;
- b. Attorneys duly qualified and entitled to practice in the courts of the state of Iowa;
- c. Attorneys who are entitled to practice before the highest court of record of any other state and who have complied with Iowa Ct. R. 31.14;
- d. Accountants who are authorized, permitted, or licensed under Iowa Code chapter 542;
- e. Duly authorized directors or officers of corporations representing the corporation of which they are respectively a director or officer, excluding attorneys who are acting in the capacity of a director or officer of a corporation and who have not met the requirements of paragraph 7.6(1) "c" above;
- f. Partners representing their partnership;
- g. Fiduciaries;
- h. Government officials authorized by law; and
- i. Enrolled agents, currently enrolled under 31 CFR §10.6 for practice before the Internal Revenue Service, representing a taxpayer in proceedings under division II of Iowa Code chapter 422.

7.6(2) No person who has served as an official or employee of the department shall within a period of two years after the termination of such service or employment appear before the department or receive compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application with respect to which the person was directly concerned and in which the person personally participated during the period of service or employment.

7.6(3) Any person appearing in any proceeding involving the department, regardless of whether the department is a party, must have on file with the department a valid Iowa power of attorney.

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

701—7.7(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 has been filed as provided hereinafter, the appropriate department personnel, when authorized by the review unit, shall have the authority to discuss the resolution of any matter in the protest either with the protester or the protester's representative. The appropriate personnel shall report their activities in this regard to the review unit, and the unit shall be authorized to approve or reject any recommendations made by the appropriate personnel to resolve a protest.

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

701—7.8(17A) Protest. 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

REVENUE DEPARTMENT[701](cont'd)

file a protest, 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 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 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.

7.8(1) 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 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 which are not in the proper form as provided by this rule. See subrule 7.11(2) for dismissals.

7.8(2) 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. Even though a protest is so filed, the department is entitled to examine and inspect the refund claimant's records to verify the refund claim.

7.8(3) Notwithstanding the above, the taxpayer who fails to timely protest 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, 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 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 as authorized by this rule.

7.8(4) 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 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 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.

REVENUE DEPARTMENT[701](cont'd)

7.8(5) The protest shall be brought by and in the name of the interested or affected person or by and in the full descriptive name of the fiduciary 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 the name set forth in the protest and the correct name, a statement of the reason for the discrepancy shall be set forth in the protest.

7.8(6) The protest 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
designate type of proceeding, e.g.,	*	DOCKET NO. _____
income tax refund claim)	*	(filled in by Department)

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

- a. Proper allegations showing:
 - (1) Date of assessment;
 - (2) Date of refund denial;
 - (3) Whether the protester failed to timely appeal the assessment and, if so, the date of payment and the date of filing of the refund claim;
 - (4) Whether the protest 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;
 - (5) The assessment, refund claim, and refund denial, copies of which shall be attached;
 - (6) Other items that the protester wishes to bring to the attention of the department; and
 - (7) A request for attorney fees, if applicable.
- b. The type of tax, the taxable period or periods involved and the amount in controversy.
- c. 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. Reference to any particular statute or statutes and any rule or rules involved, if known.
- e. Description of records or documents which were not available or were not presented to department personnel prior to the filing of the protest, if any. Copies of any records or documents that were not previously presented to the department shall be provided.
- f. Any other matters deemed relevant and not covered in the above paragraphs.
- g. The desire of the protester to waive informal or contested case proceedings if waiver is desired. Unless the protester so indicates a waiver, informal procedures will be initiated.
- h. A statement setting forth the relief sought by the protester.
- i. The signature of the protester or that of the protester'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.

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) The protester may amend the protest at any time prior to the commencement of the evidentiary hearing. The department may request that the protester amend the protest 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

REVENUE DEPARTMENT[701](cont'd)

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) 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 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 by the person, which are limited to a mistake of fact, may include but are not limited to:

- (1) The person has the same name as the obligor but is not the correct obligor;
- (2) The amount in question has been paid; or
- (3) The person has made arrangements with the department to pay the amount.

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

701—7.9(17A) Identifying details.

7.9(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) 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).

a. The motion shall contain the following:

(1) The name of the person requesting deletion and the docket number of the proceeding, if applicable;

(2) The legal basis for the motion for deletion, which is either that release of the material would be a clearly unwarranted invasion of personal privacy or the material is a trade secret. A corporation may not claim an unwarranted invasion of privacy;

(3) A precise description of the document, report, or other material in the possession of the department from which the deletion is sought and a precise description of the information to be deleted. If deletion is sought from more than one document, each document and the materials sought to be deleted from it shall be listed in separate paragraphs. Also contained in each separate paragraph shall be a statement of the legal basis for the deletion requested in that paragraph, which is that release of the material sought to be deleted is a clearly unwarranted invasion of privacy or the material is a trade secret and the material serves no public purpose.

b. An affidavit in support of deletion must accompany each motion. The affidavit must be sworn to by a person familiar with the facts asserted within it and shall contain a clear and concise explanation of the facts justifying deletion, not merely the legal basis for deletion or conclusionary allegations.

c. All affidavits shall contain a general and truthful statement that the information sought to be deleted is not available to the public from any source or combination of sources, direct or indirect, and a general statement that the release would serve no public purpose.

REVENUE DEPARTMENT[701](cont'd)

d. The burden of showing that deletion is justified shall be on the movant. The burden is not carried by mere conclusionary statements or allegations, for example, that the release of the material would be a clearly unwarranted invasion of personal privacy or that the material is a trade secret.

e. That the matter sought to be deleted is part of the pleadings, motions, evidence, and the record in a contested case proceeding otherwise open for public inspection and that the matter would otherwise constitute confidential tax information shall not be grounds for deletion (1992 Op. IA Att'y Gen. 1).

f. The ruling on the motion shall be strictly limited to the facts and legal bases presented by the movant, and the ruling shall not be based upon any facts or legal bases not presented by the movant.

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

701—7.10(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 shall be assigned a docket number which shall be the official number 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 number shall be placed by the parties on all papers 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 a docket number to the case and, in that event, the docket number shall be placed by the parties on all papers thereafter filed in the proceeding.

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

701—7.11(17A) Informal procedures and dismissals of protests.

7.11(1) Informal procedures. Persons are encouraged to utilize the informal procedures provided herein so that a settlement may be reached between the parties without the necessity of initiating contested case proceedings. Therefore, unless the protester indicates a desire to waive the informal procedures in the protest or the department waives informal procedures upon notification to the protester, such informal procedures will be initiated as herein provided upon the filing of a proper protest.

a. Review unit. A review unit is created within the department and, subject to the control of the director, the unit will:

- (1) Review and evaluate the validity of all protests made by taxpayers from the department action.
- (2) Determine the correct amount of tax owing or refund due.
- (3) Determine the best method of resolving the dispute between the protester and the department.
- (4) Take further action regarding the protest, including any additions and deletions to the audit, as may be warranted by the circumstances to resolve the protest, including a request for an informal conference.

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

b. The review unit may concede any items contained in the protest which it determines should not be controverted by the department. If the protester has not waived informal procedures, the review unit may request that the protester and the protester'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 of narrowing the issues presented in the protest if no settlement can be made. The review unit may request clarification of the issues from the protester or further information from the protester or third persons.

c. Findings dealing with the issues raised in the protest may be issued unless the issues may be more expeditiously determined in another manner or it is determined that findings are unnecessary. The protester will be notified of the decision on the issues in controversy.

d. Nothing herein will prevent the review unit and the protester from mutually agreeing on the manner in which the protest will be informally reviewed.

e. Settlements. 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 all parties.

REVENUE DEPARTMENT[701](cont'd)

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) "c." Such application must be filed within 30 days of the date of the dismissal notice. Thereafter, the procedure in paragraph 7.11(2) "c" 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.

701—7.12(17A) Answer. The department may, in lieu of findings, file an answer to the protest. When findings are issued, the department will file an answer within 30 days of receipt of written notification from the protester stating disagreement with the findings. The answer shall be filed with the clerk of the hearings section.

REVENUE DEPARTMENT[701](cont'd)

7.12(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) “c” within 30 days after being notified, the department may seek dismissal of the protest pursuant to subrule 7.11(2).

7.12(2) 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.

7.12(3) Each paragraph contained in the answer shall be numbered or lettered to correspond, where possible, with the paragraphs of the protest. An original copy only of 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.

7.12(4) The department shall forthwith 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. The department may amend its answer at any time prior to the commencement of the evidentiary hearing.

7.12(5) The provisions of rule 701—7.12(17A) 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 or the department.

7.12(6) 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.

7.12(7) 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.

7.12(8) The department’s answer should set forth the basis for retention of the case by the director as provided in subrule 7.17(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.

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

701—7.13(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 17A.13.

701—7.14(17A) Commencement of contested case proceedings. A demand or request by the protester for the commencement of contested case proceedings must be in writing and filed with the clerk of the hearings section by electronic means, 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, or by personal service on the office of the clerk of the hearings section during business hours. The demand or request is considered filed on the date of the postmark. 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.

7.14(1) 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.

REVENUE DEPARTMENT[701](cont'd)

7.14(2) 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 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. The notice will be given by the presiding officer.

7.14(3) 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 party may apply to the presiding officer for a specific date for the hearing. 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.

7.14(4) After the delivery of the notice commencing the contested case proceedings, the parties may file further pleadings or amendments to pleadings as they desire. However, any pleading or amendment thereto which is filed within seven 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.

701—7.15(17A) Discovery. The rules of the supreme court of the state of Iowa applicable in civil proceedings with respect to depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission shall apply to discovery procedures in contested case proceedings. Disputes concerning discovery shall be resolved by the presiding officer. If necessary a hearing shall be scheduled, with reasonable notice to the parties, and, upon hearing, an appropriate order shall be issued by the presiding officer.

7.15(1) When the department relies on a witness in a contested case, whether or not the witness is a departmental employee, who has made prior statements or reports with respect to the subject matter of the witness' testimony, the department shall, on request, make such statements or reports available to a party for use on cross-examination unless those statements or reports are otherwise expressly exempt from disclosure by constitution or statute. Identifiable departmental records that are relevant to disputed material facts involved in a contested case shall, upon request, promptly be made available to the party unless the requested records are expressly exempt from disclosure by constitution or statute.

7.15(2) Evidence obtained in such discovery may be used in contested case proceedings if that evidence would otherwise be admissible in the contested case proceeding.

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

701—7.16(17A) Prehearing conference.

7.16(1) Upon the motion of the presiding officer, or upon the written request of a party, the presiding officer shall direct the parties to appear at a specified time and place before the presiding officer for a prehearing conference to consider:

- a. The possibility or desirability of waiving any provisions of the Act relating to contested case proceedings by written stipulation representing an informed mutual consent;
- b. The necessity or desirability of setting a new date for hearing;
- c. The simplification of issues;
- d. The necessity or desirability of amending the pleadings either for the purpose of clarification, amplification or limitation;
- e. The possibility of agreeing to the admission of facts, documents or records not controverted, to avoid unnecessary introduction of proof;
- f. The procedure at the hearing;
- g. Limiting the number of witnesses;

REVENUE DEPARTMENT[701](cont'd)

h. The names and identification of witnesses and the facts each party will attempt to prove at the hearing;

i. Conduct or schedule of discovery; and

j. Such other matters as may aid, expedite or simplify the disposition of the proceeding.

7.16(2) Any action taken at the prehearing conference shall be recorded in an appropriate order, unless the parties enter upon a written stipulation as to such matters or agree to a statement thereof made on the record by the presiding officer.

7.16(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 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.

7.16(4) If either party to the contested case proceeding fails to appear at the prehearing conference, fails to request a continuance, or fails to submit 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).

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

701—7.17(17A) Contested case proceedings.

7.17(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 Floor, Des Moines, Iowa 50309. 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.

7.17(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). 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), 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 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 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:

REVENUE DEPARTMENT[701](cont'd)

- (1) There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety and welfare;
- (2) A qualified administrative law judge is unavailable to hear the case within a reasonable time;
- (3) The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented;
- (4) The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues;
- (5) The case involves an issue or issues the resolution of which would create important precedent;
- (6) The case involves complex or extraordinary questions of law or fact;
- (7) The case involves issues or questions of law or fact that, based on the director's discretion, should be retained by the director;
- (8) Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal;
- (9) The request was not timely filed;
- (10) The request is not consistent with a specified statute; and
- (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). 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 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 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, 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. The director has the right to require that any presiding officer, other than the director, be a licensed attorney in the state of Iowa, unless the contested case only involves licensing. In addition, any presiding officer must possess, upon determination by the director, sufficient technical expertise and experience in the areas of taxation and presiding over proceedings to effectively determine the issues involved in the proceeding.

f. Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the director.

7.17(3) Conduct of proceedings.

a. A proceeding shall be conducted by a presiding officer who shall:

- (1) Open the record and receive appearances;
- (2) Administer oaths and issue subpoenas;
- (3) Enter the notice of hearing into the record;
- (4) Receive testimony and exhibits presented by the parties;
- (5) In the presiding officer's discretion, interrogate witnesses;
- (6) Rule on objections and motions;
- (7) Close the hearing; and
- (8) Issue an order containing findings of fact and conclusions of law.

b. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the

REVENUE DEPARTMENT[701](cont'd)

consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearing. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Parties shall be notified at least 30 days in advance of the date and place of the hearing.

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. 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, (2) intervenor (if applicable), (3) department, (4) rebuttal by protester, (5) oral argument by parties (if necessary).

d. If the protester 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. 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 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. If the parties have mutually agreed to waive the provisions of the Act in regard to contested case proceedings, the hearing will be conducted in a less formal manner than when an evidentiary hearing is conducted.

f. If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, upon the presiding officer's own motion or upon the motion of the party who has appeared, adjourn the hearing, enter a default decision, or proceed with the hearing and make a decision on the merits in the absence of the party.

g. Contemptuous conduct by any person appearing at a hearing shall be grounds for the person's exclusion from the hearing by the presiding officer.

h. A stipulation by the parties of the issues or a statement of the issues in the notice commencing the contested case cannot be changed by the presiding officer without the consent of the parties. The presiding officer shall not, on the presiding officer's own motion, change or modify the issues agreed upon by the parties. Notwithstanding the provisions of this paragraph, a party, within a reasonable time prior to the hearing, may request that a new issue be addressed in the proceedings, except that the request cannot be made after the parties have stipulated to the issues.

7.17(4) Rules of evidence. In evaluating evidence, the department's experience, technical competence, and specialized knowledge may be utilized.

a. *Oath.* All testimony presented before the presiding officer shall be given under oath, which the presiding officer has authority to administer.

b. *Production of evidence and testimony.* The presiding officer may issue subpoenas to a party on request, as permitted by law, compelling the attendance of witnesses and the production of books, papers, records, or other real evidence.

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 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.*

REVENUE DEPARTMENT[701](cont'd)

(1) Evidence having probative value. 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 reasonably prudent persons are accustomed to rely for the conduct of their 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 reasonably prudent persons are accustomed to rely for the conduct of their 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.

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 shall be presumed to have conceded the accuracy of the federal determination unless the protester 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.

(1) Identification of exhibits. Exhibits which are offered by protesters 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. 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 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.

REVENUE DEPARTMENT[701](cont'd)

7.17(5) Motions.

a. After commencement of contested case proceedings, appropriate motions may be filed 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. 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. 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 why the motion should be granted.

d. 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 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 identifying details in the decision.

(5) Motion for default.

(6) Motion to vacate default.

f. 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 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 within 30 days from the time of service of the motion a resistance; statement of disputed facts, if any; and 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) Upon any motion for summary judgment pursuant to this rule, there shall be affixed to the motion a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits which support such contentions and a memorandum of authorities.

(4) Supporting and opposing affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

REVENUE DEPARTMENT[701](cont'd)

The presiding officer may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, further affidavits, or oral testimony. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleading, but the party's response must set forth specific facts, by affidavits or as otherwise provided in this rule, showing that there is a genuine issue for hearing. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

(5) If, on motion under this rule, judgment is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the presiding officer at the hearing of the motion, by examining the pleadings and the evidence before the presiding officer and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually, and in good faith, controverted. The presiding officer shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the hearing of the contested case, the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

(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).

7.17(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 copy only of all briefs shall be filed. Filed briefs shall conform to the requirements of rule 701—7.5(17A).

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.

7.17(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). 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.

REVENUE DEPARTMENT[701](cont'd)

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).

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).

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

h. A default decision may award any relief consistent with the request for relief by the party in whose favor the default decision is made and embraced in the contested case issues; but unless the defaulting party has appeared, the relief awarded cannot exceed the relief demanded.

i. A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for a stay.

7.17(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, unless the person 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, 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 identifying details in an order on the basis of personal privacy or trade secrets, the justification for such deletion or refusal to delete 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, or 10 days, excluding Saturdays, Sundays, and legal holidays, for a revocation order pursuant to rule 701—7.23(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,

REVENUE DEPARTMENT[701](cont'd)

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. In the event of an appeal to or review of the proposed order by the director, the administrative hearings division shall be promptly notified of the appeal or review by the director. The administrative hearings division shall, upon such notice, promptly forward the record of the contested case proceeding and all other papers associated with the case to the director.

g. A decision by the director may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding of fact, or may reverse or modify any conclusion of law that the director finds to be in error.

h. Orders will be issued within a reasonable time after termination of the hearing. Parties shall be promptly notified of each order by delivery to them of a copy of the order by personal service, regular mail, certified mail, return receipt requested, or any other method to which the parties may agree. For example, a copy of the order can be submitted by electronic mail if both parties agree.

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), 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. Upon issuance of a closing order or the proposed decision by a presiding officer other than the director, such presiding officer no longer has jurisdiction over the contested case. Thereafter, any further proceedings associated with or related to the contested case must occur before the director.

7.17(9) Stays.

a. During the pendency of judicial review of the final contested case order of the department, the party seeking judicial review may file with the director an application for a stay. The application shall set forth in detail the reasons why the applicant is entitled to a stay and shall specifically address the following four factors:

- (1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter;
- (2) The extent to which the applicant will suffer irreparable injury if the stay is not granted;
- (3) The extent to which the granting of a stay to the applicant will substantially harm the other parties to the proceedings; and

REVENUE DEPARTMENT[701](cont'd)

(4) The extent to which the public interest relied on by the department is sufficient to justify the department's actions in the circumstances.

b. The director shall consider and balance the previously mentioned four factors and may consult with department personnel and the department's representatives in the judicial review proceeding. The director shall expeditiously grant or deny the stay.

7.17(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, state board of tax review, 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.

7.17(11) Burden of proof. The burden of proof with respect to assessments or denials of refunds in contested case proceedings is as follows:

a. The department must carry the burden of proof by clear and convincing evidence as to the issue of fraud with intent to evade tax.

b. The burden of proof is on the department for any tax periods for which the assessment was not made within six years after the return became due, excluding any extension of time for filing such return, except where the department's assessment is the result of the final disposition of a matter between the taxpayer and the Internal Revenue Service or where the taxpayer and the department signed a waiver of the statute of limitations to assess.

c. The burden of proof is on the department as to any new matter or affirmative defense raised by the department. "New matter" means an adjustment not set forth in the computation of the tax in the assessment or refund denial, as distinguished from a new reason for the assessment or refund denial. "Affirmative defense" is a defense resting on facts not necessary to support the taxpayer's case.

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.

7.17(12) Costs.

a. A prevailing taxpayer in a contested case proceeding related to the determination, collection, or refund of a tax, penalty, or interest may be awarded by the department reasonable litigation costs incurred subsequent to the issuance of the notice of assessment or refund denial that are based upon the following:

- (1) The reasonable expenses of expert witnesses.
- (2) The reasonable costs of studies, reports, and tests.
- (3) The reasonable fees of independent attorneys or independent accountants retained by the taxpayer. No such award is authorized for accountants or attorneys who represent themselves or who are employees of the taxpayer.

b. An award for reasonable litigation costs shall not exceed \$25,000 per case.

c. No award shall be made for any portion of the proceeding which has been unreasonably protracted by the taxpayer.

REVENUE DEPARTMENT[701](cont'd)

d. For purposes of this subrule, “prevailing taxpayer” means a taxpayer who establishes that the position of the department in the contested case proceeding was not substantially justified and who has substantially prevailed with respect to the amount in controversy, or has substantially prevailed with respect to the most significant issue or set of issues presented. If the position of the department in issuance of the assessment or refund denial was not substantially justified and if the matter is resolved or conceded before the contested case proceeding is commenced, there cannot be an award for reasonable litigation costs.

e. The definition of “prevailing taxpayer” is taken from the definition of “prevailing party” in 26 U.S.C. §7430. Therefore, federal cases determining whether the Internal Revenue Service’s position was substantially justified will be considered in the determination of whether a taxpayer is entitled to an award of reasonable litigation costs to the extent that 26 U.S.C. §7430 is consistent with Iowa Code section 421.60(4).

f. The taxpayer has the burden of establishing the unreasonableness of the department’s position.

g. Once a contested case has commenced, a concession by the department of its position or a settlement of the case either prior to the evidentiary hearing or any order issued does not, per se, either authorize an award of reasonable litigation costs or preclude such award.

h. If the department relied upon information provided or action conducted by federal, state, or local officials or law enforcement agencies with respect to the tax imposed by Iowa Code chapter 453B, an award for reasonable litigation costs shall not be made in a contested case proceeding involving the determination, collection, or refund of that tax.

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

j. A request for an award of reasonable litigation costs shall be held in abeyance until the concession or settlement of the contested case proceeding, or the issuance of a proposed order in the contested case proceeding, unless the parties agree otherwise.

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 is the prevailing taxpayer;
- (3) The burden is upon the protester 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 has met the protester’s burden of demonstrating all of these points.

7.17(13) *Interlocutory appeals.*

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

b. Interlocutory appeals do not apply to licensing.

7.17(14) *Consolidation and severance.*

a. 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. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

REVENUE DEPARTMENT[701](cont'd)

c. 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. 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. 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.

701—7.18(17A) Interventions. Interventions shall be governed by the Iowa rules of civil procedure.

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

701—7.19(17A) Record and transcript.

7.19(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.

7.19(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.

7.19(3) Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

7.19(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—7.20(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) 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). The director shall have 20 days from the filing of the application for rehearing to grant or deny the application. If the application for

REVENUE DEPARTMENT[701](cont'd)

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.

7.20(1) The application for rehearing 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 designate type of proceeding, e.g., income tax refund claim)	*	APPLICATION FOR REHEARING
	*	DOCKET NO. _____
	*	

7.20(2) The application for rehearing shall substantially state in separate numbered paragraphs the following:

- a. Clear and concise statements of the reasons for requesting a rehearing and each and every error which the party alleges to have been committed during the contested case proceedings;
- b. Clear and concise statements of all relevant facts upon which the party relies;
- c. Reference to any particular statute or statutes and any rule or rules involved;
- d. The signature of the party or that of the party's representative, the address of the party or of the party's representative, and the telephone number of the party or the party's representative.

7.20(3) No applications for rehearing shall be filed with or entertained by an administrative law judge.

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

701—7.21(17A) Service. All papers or documents required by this chapter to be filed with the department or the presiding officer and served upon the opposing party or other person shall be served by ordinary mail unless another rule specifically refers to another method. All notices required by this chapter to be served on parties or persons by the department or presiding officer shall be served by ordinary mail unless another rule specifically refers to another method.

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

701—7.22(17A) Ex parte communications and disqualification.

7.22(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. *Prohibited communications.* Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the department or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in this rule, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record. Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

REVENUE DEPARTMENT[701](cont'd)

b. "Ex parte" communication defined. Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

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

e. Advice to presiding officer. Persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the parties are not disqualified from participating in the making of a proposed or final decision under any provision of law and the parties comply with these rules.

f. Procedural communications. Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible and shall notify other parties when seeking to continue hearings or other deadlines.

g. Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication, shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

h. Disclosure by presiding officer. Promptly after 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.

7.22(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. 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;

REVENUE DEPARTMENT[701](cont'd)

(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” 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. 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.

(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.

701—7.23(17A) Licenses.

7.23(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), 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), the notice shall contain a statement of facts or conduct and the

REVENUE DEPARTMENT[701](cont'd)

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) 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) 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) regarding gambling license applications.

7.23(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) 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) 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) 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), 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) 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) governing contested case proceedings shall apply.

b. Notwithstanding paragraph 7.23(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.

7.23(3) Petition. When a person desires to file a petition as provided in subrules 7.23(1) and 7.23(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 _____ (state taxpayer's name and address, and type of license)	* * * *	PETITION DOCKET NO. _____ (filled in by Department)
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The petition shall substantially state in separate numbered paragraphs the following:

- a. The full name and address of the petitioner;
- b. Reference to the type of license and the relevant statutory authority;
- c. Clear, concise and complete statements of all relevant facts showing why petitioner's license should not be revoked, refused, or denied;

REVENUE DEPARTMENT[701](cont'd)

- d. Whether a similar license has previously been issued to or held by petitioner or revoked and if revoked the reasons therefor; and
- e. 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.

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 for declaratory order.

a. 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. A petition is deemed filed when it is received by the clerk of the hearings section. The clerk of the hearings section shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the clerk of the hearings section an extra copy for this purpose. 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. The petition must provide the following information:
 - (1) A clear and concise statement of all relevant facts on which the order is requested;
 - (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) The questions the petitioner wants answered, stated clearly and concisely;
 - (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) The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome;
 - (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) 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) Any request by petitioner for a meeting provided for by this rule; and
 - (9) Whether the petitioner is presently under audit by the department.

REVENUE DEPARTMENT[701](cont'd)

c. The petition must be dated and signed by the petitioner or the petitioner’s representative. 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.

7.24(2) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the clerk of the hearings section 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 may also give notice to any other persons.

7.24(3) Intervention.

a. 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. 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. 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. Such a petition is deemed filed when it is received by the clerk of the hearings section. The clerk of the hearings section 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. 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.

f. 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. 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

REVENUE DEPARTMENT[701](cont'd)

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. Bonfield, "The Iowa Administrative Procedure Act, Background, Construction, Applicability and Public Access to Agency Law, The Rule-making Process," 60 Iowa Law Review 731, 805 (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. 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. 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, Department of Revenue, Fourth Floor, Hoover State Office Building, Des Moines, Iowa 50319.

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

a. When service 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. 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).

7.24(7) Department consideration. 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. The department may solicit comments or information from any 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.

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).

REVENUE DEPARTMENT[701](cont'd)

7.24(9) Refusal to issue order:

a. 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 the following reasons:

- (1) The petition does not substantially comply with the required form;
- (2) The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order;
- (3) The department does not have jurisdiction over the questions presented in the petition;
- (4) The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding that may definitively resolve them;
- (5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter;
- (6) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order;
- (7) There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances;
- (8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct, in an effort to establish the effect of that conduct or to challenge a department decision already made;
- (9) The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner;
- (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.

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

c. 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; effective date.

a. In addition to the order itself, a declaratory order 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 promptly to the original petitioner and all intervenors.

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. 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.

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

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

7.25(1) 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 Web site at <https://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf> and which are printed in the first

REVENUE DEPARTMENT[701](cont'd)

volume of the Iowa Administrative Code, with the additions, changes, and deletions to those rules listed below:

X.2(17A) Advice on possible rules before notice of proposed rule adoption.

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

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.

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.

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.

X.7(17A,25B) Fiscal impact statement.

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

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

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.

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.

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

X.12(4) Contents, style, and form of rule—style and form.

X.14(17A) Filing of rules.

X.15(17A) Effectiveness of rules prior to publication.

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

X.17(17A) Review by agency of rules.

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.

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. For additional information regarding criticism of rules, see rule 701—7.27(17A).

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

REVENUE DEPARTMENT[701](cont'd)

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 persons may submit by electronic means or by mail criticisms, requests for waivers, or comments regarding a rule. 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.

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 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) 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

REVENUE DEPARTMENT[701](cont'd)

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 of petition.*

- a. A petition for waiver or variance must be in the following format:

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

b. A petition for waiver or variance must contain all of the following, where applicable and known to the petitioner:

- (1) The name, 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) A description and citation of the specific rule or rule provisions from which a waiver or variance is being requested;
- (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) 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) 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, contested case hearings, or investigative reports relating to the activity within the last five years;
- (6) Any information known to the petitioner relating to the department's treatment of similar cases;
- (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) 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) The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance;

REVENUE DEPARTMENT[701](cont'd)

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

(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) 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.

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) 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.

c. 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.

REVENUE DEPARTMENT[701](cont'd)

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.

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)).

b. The provisions of Iowa Code sections 17A.10 to 17A.18A and rule 701—7.17(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). 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.

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

7.29(1) *Form of petition.*

a. 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. A petition is deemed filed when it is received by the director. The department will

REVENUE DEPARTMENT[701](cont'd)

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:

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. The petition must provide the following information:

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

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

(5) 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) Any request by the petitioner for a meeting.

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

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 e-mail 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.

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.

REVENUE DEPARTMENT[701](cont'd)

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.

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) *Definitions.*

a. “Nonlocal business entity” is either an out-of-state contractor or a transient merchant as those terms are defined in paragraphs 7.30(1)“*b*” and “*f*.”

b. “Out-of-state contractor” means a general contractor, subcontractor, architect, engineer, or other person who contracts to perform in this state construction or installation of structures or other buildings or any other work covered by Iowa Code chapter 103A and whose principal place of business is outside Iowa.

c. “Taxes payable by a transient merchant” refers to all taxes administered by the department, and penalties, interest, and fees which the department has previously determined to be due by assessment or due as a result of an appeal from an assessment.

d. “Taxes payable by an out-of-state contractor” means tax, penalty, interest, and fees which the department, another state agency, or a subdivision of the state, has determined to be due by assessment or due as a result of an appeal from an assessment. The tax assessed must accrue as the result of a contract to perform work covered by Iowa Code chapter 103A.

e. “Taxes payable” means any amount referred to in paragraphs 7.30(1)“*c*” and “*d*” above.

f. “Transient merchant” shall be defined, for the purposes of this rule, as that term is defined in Iowa Code section 9C.1.

7.30(2) *Increases in existing bonds.* If an out-of-state contractor has on file with the secretary of state a bond for any particular contract and for that particular contract the contractor has tax due and owing but unpaid and this tax is greater than the amount of the bond, the department shall require the out-of-state contractor to increase the bond on file with the secretary of state in an amount sufficient to pay tax liabilities which will become due and owing under the contract in the future.

7.30(3) *Responsibility for notification.* Concerning taxes which are payable by an out-of-state contractor but which are not administered by the department of revenue, it shall be the duty of the department or subdivision of Iowa state government to which the taxes are owed to notify the department of revenue of the taxes payable by the out-of-state contractor in order to institute bond forfeiture proceedings or an increase in the amount of the bond which the out-of-state contractor must post.

7.30(4) *Initial notification.* After it is determined that a bond ought to be forfeited, notice of this intent shall be sent to the nonlocal business entity and its surety of record, if any. Notice sent to the nonlocal business entity or its surety shall be sent to the last-known address as reflected in the records of the secretary of state. The notice sent to an out-of-state contractor shall also be mailed to the contractor’s registered agent for service of process, if any, within Iowa. This notice may be sent by ordinary mail. The notice shall state the intent to demand forfeiture of the nonlocal business entity’s bond, the amount of bond to be forfeited, the nature of the taxes alleged to be payable, the period for which these taxes are due, and the department or subdivision of Iowa to which the taxes are payable. The notice shall also state the statutory authority for the forfeiture and the right to a hearing upon timely application.

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 action in rule 701—7.8(17A). The caption of the application shall be basically in the form set out in subrule 7.8(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). However, referring to paragraph 7.8(7)“*a*,” 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*,” in the case of a tax payable

REVENUE DEPARTMENT[701](cont'd)

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). The docketing of an application for hearing shall follow the procedure for the docketing of a protest 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), and 701—7.15(17A) to 701—7.22(17A).

7.30(7) *Sureties and state departments other than revenue.*

a. A surety shall not have standing to contest the amount of any tax payable.

b. If there exist taxes payable by an out-of-state contractor and these taxes are payable to a department or subdivision of state government other than the department of revenue, that department or subdivision shall be the real party in interest to any proceeding conducted under this rule, and it shall be the responsibility of that department or subdivision to provide its own representation and otherwise bear the expenses of representation.

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

701—7.31(421) *Abatement of unpaid tax.* For assessment notices issued on or after January 1, 1995, if the statutory period for appeal 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) *Assessments qualifying for abatement.* To be subject to an abatement, an assessment or a portion of an assessment for which abatement is sought must not have been paid and must have exceeded the amount due as provided by the Iowa Code and the administrative rules issued by the department interpreting the Iowa Code. If a taxpayer fails to timely appeal an assessment that is based on the Iowa Code or the department's administrative rules interpreting the Iowa Code within the statutory period, then the taxpayer cannot request an abatement of the assessment or a portion thereof.

7.31(2) *Procedures for requesting abatement.* The taxpayer must make a written request to the director for abatement of that portion of the assessment that is alleged to be erroneous, illegal, or excessive. A request for abatement must contain:

a. The taxpayer's name and address, social security number, federal identification number, or any permit number issued by the department;

b. A statement on the type of proceeding, e.g., individual income tax or request for abatement; and

c. The following information:

(1) The type of tax, the taxable period or periods involved, and the amount of tax that was excessive or erroneously or illegally assessed;

(2) Clear and concise statements of each and every error which the taxpayer alleges to have been committed by the director in the notice of assessment and which causes the assessment to be erroneous, illegal, or excessive. Each assignment of error must be separately numbered;

(3) Clear and concise statements of all relevant facts upon which the taxpayer relies (documents verifying the correct amount of tax liability must be attached to the request);

(4) Reference to any particular statute or statutes and any rule or rules involved, if known;

(5) The signature of the taxpayer or that of the taxpayer's representative and the addresses of the taxpayer and the taxpayer's representative;

(6) Description of records or documents which were not available or were not presented to department personnel prior to the filing of this request, if any (copies of any records or documents that were not previously presented to the department must be provided with the request); and

(7) Any other matters deemed relevant and not covered in the above subparagraphs.

This rule is intended to implement Iowa Code section 421.60.

REVENUE DEPARTMENT[701](cont'd)

701—7.32(421) Time and place of taxpayer interviews. The time and place of taxpayer interviews are to be fixed by an employee of the department, and employees of the department are to endeavor to schedule a time and place that are reasonable under the circumstances.

7.32(1) Time of taxpayer interviews. The department will schedule the day(s) for a taxpayer interview during a normally scheduled workday(s) of the department, during the department's normal business hours. The department will schedule taxpayer interviews throughout the year without regard to seasonal fluctuations in the business of particular taxpayers or their representatives. The department will, however, work with taxpayers or their representatives to try to minimize any adverse effects in scheduling the date and time of a taxpayer interview.

7.32(2) Type of taxpayer interview.

a. The department will determine whether a taxpayer interview will be an office interview (i.e., an interview conducted at a department office) or a field interview (i.e., an interview conducted at the taxpayer's place of business or residence, or some other location that is not a department office) based on which form of interview will be more conducive to effective and efficient tax administration.

b. The department will grant a request to hold an office interview at a location other than a department office in case of a clear need, such as when it would be unreasonably difficult for the taxpayer to travel to a department office because of the taxpayer's advanced age or infirm physical condition or when the taxpayer's books, records, and source documents are too cumbersome for the taxpayer to bring to a department office.

7.32(3) Place of taxpayer interview. The department will make an initial determination of the place for an interview, including the department regional office to which an interview will be assigned, based on the address shown on the return for the tax period to be examined. Requests by taxpayers to transfer the place of interview will be resolved on a case-by-case basis, using the criteria set forth in paragraph 7.32(3) "c."

a. Office taxpayer interviews. An office interview of an individual or sole proprietorship generally is based on the residence of the individual taxpayer. An office interview of a taxpayer which is an entity generally is based on the location where the taxpayer entity's original books, records, and source documents are maintained.

b. Field taxpayer interviews. A field interview generally will take place at the location where the taxpayer's original books, records, and source documents pertinent to the interview are maintained. In the case of a sole proprietorship or taxpayer entity, this usually will be the taxpayer's principal place of business. If an interview is scheduled by the department at the taxpayer's place of business, which is a small business and the taxpayer represents to the department in writing that conducting the interview at the place of business would essentially require the business to close or would unduly disrupt business operations, the department upon verification will change the place of interview.

c. Requests by taxpayers to change place of interview. The department will consider, on a case-by-case basis, written requests by taxpayers or their representatives to change the place that the department has set for an interview. In considering these requests, the department will take into account the following factors:

- (1) The location of the taxpayer's current residence;
- (2) The location of the taxpayer's current principal place of business;
- (3) The location where the taxpayer's books, records, and source documents are maintained;
- (4) The location at which the department can perform the interview most efficiently;
- (5) The department resources available at the location to which the taxpayer has requested a transfer; and
- (6) Other factors which indicate that conducting the interview at a particular location could pose undue inconvenience to the taxpayer.

d. Granting of requests to change place of interview. A request by a taxpayer to transfer the place of interview generally will be granted under the following circumstances:

- (1) If the current residence of the taxpayer in the case of an individual or sole proprietorship, or the location where the taxpayer's books, records, and source documents are maintained, in the case of

REVENUE DEPARTMENT[701](cont'd)

a taxpayer entity, is closer to a different department office than the office where the interview has been scheduled, the department normally will agree to transfer the interview to the closer department office.

(2) If a taxpayer does not reside at the residence where an interview has been scheduled, the department will agree to transfer the examination to the taxpayer's current residence.

(3) If, in the case of an individual, a sole proprietorship, or a taxpayer entity, the taxpayer's books, records, and source documents are maintained at a location other than the location where the interview has been scheduled, the department will agree to transfer the interview to the location where the taxpayer's books, records, and source documents are maintained.

(4) The location of the place of business of a taxpayer's representative generally will not be considered in determining the place for an interview. However, the department in its sole discretion may determine, based on the factors described in paragraph 7.32(3) "c," to transfer the place of interview to the representative's office.

(5) If any applicable period of limitations of assessment and collection provided in the Iowa Code will expire within 13 months from the date of a taxpayer's request to transfer the place of interview, the department may require, as a condition to the transfer, that the taxpayer agree in writing to extend the limitations period up to one year.

(6) The department is not required to transfer an interview to an office that does not have adequate resources to conduct the interview.

(7) Notwithstanding any other provision of this rule, employees of the department may decline to conduct an interview at a particular location if it appears that the possibility of physical danger may exist at that location. In these circumstances, the department may transfer an interview to a department office and take any other steps reasonably necessary to protect its employees.

(8) Nothing in this rule shall be interpreted as precluding the department from initiating the transfer of an interview if the transfer would promote the effective and efficient conduct of the interview. Should a taxpayer request that such a transfer not be made, the department will consider the request according to the principles and criteria set forth in paragraph 7.32(3) "c."

(9) Regardless of where an examination takes place, the department may visit the taxpayer's place of business or residence to establish facts that can only be established by direct visit, such as inventory or asset verification. The department generally will visit for these purposes on a normal workday of the department during the department's normal business hours.

7.32(4) Audio recordings of taxpayer interviews.

a. A taxpayer is permitted, upon advance notice to the department, to make an audio recording of any interview of the taxpayer by the department relating to the determination or collection of any tax. The recording of the interview is at the taxpayer's own expense and must be with the taxpayer's own equipment.

b. Requests by taxpayers to make audio recordings must be addressed to the department employee who is conducting the interview and must be received by no later than ten calendar days before the interview. If ten calendar days' advance notice is not given, the department may, in its discretion, conduct the interview as scheduled or set a new date.

c. The department employee conducting the interview will approve the request to record the interview if:

- (1) The taxpayer (or representative) supplies the recording equipment;
- (2) The department may produce its own recording of the proceedings;
- (3) The recording takes place in a suitable location; and
- (4) All participants in the proceedings other than department personnel consent to the making of the audio recording, and all participants identify themselves and their role in the proceedings.

d. A department employee is also authorized to record any taxpayer interview, if the taxpayer receives prior notice of the recording and is provided with a transcript or a copy of the recording upon the taxpayer's request.

e. Requests by taxpayers (or their representatives) for a copy or transcript of an audio recording produced by the department must be addressed to the employee conducting the interview and must be

REVENUE DEPARTMENT[701](cont'd)

received by the department no later than 30 calendar days after the date of the recording. The taxpayer must pay the costs of duplication or transcription.

f. At the beginning of the recording of an interview, the department employee conducting the interview must state the employee's name, the date, the time, the place, and the purpose of the interview. At the end of the interview, the department employee will state that the interview has been completed and that the recording has ended.

g. When written records are presented or discussed during the interview being recorded, they must be described in sufficient detail to make the audio recording a meaningful record when matched with the other documentation contained in the case file.

This rule is intended to implement Iowa Code section 421.60.

701—7.33(421) Mailing to the last-known address.

7.33(1) If the department fails to 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. In addition, if the department fails to mail 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, to the taxpayer's authorized representative, 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. Collection activities, except when a jeopardy situation exists, 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) 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.

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.

REVENUE DEPARTMENT[701](cont'd)

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.

This rule is intended to implement Iowa Code section 421.60.

701—7.34(421) Power of attorney. No attorney, accountant, or other representative will be recognized as representing any taxpayer in regard to any claim, appeal, or other matter relating to the tax liability of such taxpayer in any hearing before or conference with the department, or any member or agent thereof, unless there is first filed with the department a written authorization.

7.34(1) A power of attorney is required by the department when the taxpayer wishes to authorize an individual to perform one or more of the following acts on behalf of the taxpayer:

a. To receive copies of any notices or documents sent by the department, its representatives or its attorneys.

b. To receive, but not to endorse and collect, checks in payment of any refund of Iowa taxes, penalties, or interest.

c. To execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.

d. To execute consents extending the statutory period for assessment or collection of taxes.

e. To fully represent the taxpayer(s) in any hearing, determination, final or otherwise, or appeal.

f. To enter into any compromise with the director's office.

g. To execute any release from liability required by the department prerequisite to divulging otherwise confidential information concerning the taxpayer(s).

h. Other acts as stipulated by the taxpayer.

7.34(2) A power of attorney or any supplemental notification intended to be utilized as a power of attorney must contain the following information to be valid:

a. Name and address of the taxpayer;

b. Identification number of the taxpayer (i.e., social security number, federal identification number, or any state-issued tax identification number relative to matters covered by the power of attorney);

c. Name, mailing address, and PTIN (preparer's tax identification number), FEIN (federal employer identification number) or SSN (social security number) of the representative;

d. Description of the matter(s) for which representation is authorized which, if applicable, must include:

(1) The type of tax(es) involved;

(2) The specific year(s) or period(s) involved; and

(3) In estate matters, decedent's date of death; and

e. A clear expression of the taxpayer's intention concerning the scope of authority granted to the recognized representative(s) as provided in subrule 7.34(1).

7.34(3) A power of attorney may not be used for tax periods that end more than three years after the date on which the power of attorney is received by the department. A power of attorney may concern an unlimited number of tax periods which have ended prior to the date on which the power of attorney is received by the department; however, each tax period must be separately stated.

7.34(4) The individual who must execute a power of attorney depends on the type of taxpayer involved as follows:

REVENUE DEPARTMENT[701](cont'd)

a. Individual taxpayer. In matters involving an individual taxpayer, a power of attorney must be signed by the individual.

b. Husband and wife. In matters involving a joint return or married taxpayers who have elected to file separately on a combined return in which both husband and wife are to be represented by the same representative(s), the power of attorney must be executed by both husband and wife. In any matters concerning a joint return or married taxpayers who have elected to file separately on a combined return in which both husband and wife are not to be represented by the same representatives, the power of attorney must be executed by the spouse who is to be represented. However, the recognized representative of such spouse cannot perform any act with respect to a tax matter that the spouse represented cannot perform alone.

c. Corporation. In the case of a corporation, a power of attorney must be executed by an officer of the corporation having authority to legally bind the corporation, which must certify that the officer has such authority.

d. Association. In the case of an association, a power of attorney must be executed by an officer of the association having authority to legally bind the association, which must certify that the officer has such authority.

e. Partnership. In the case of a partnership, a power of attorney must be executed by all partners, or if executed in the name of the partnership, by the partner or partners duly authorized to act for the partnership, which must certify that the partner(s) has such authority.

7.34(5) A power of attorney is not needed for individuals who have been named as an authorized representative on a fiduciary return of income filed under Iowa Code section 422.14 or a tax return filed under Iowa Code chapter 450, 450A or 451.

7.34(6) A new power of attorney for a particular tax type(s) and tax period(s) revokes a prior power of attorney for that tax type(s) and tax period(s) unless the taxpayer has indicated on the power of attorney form that a prior power of attorney is to remain in effect. For a previously designated representative to remain as the taxpayer's representative when a subsequent power of attorney form is filed, the taxpayer must attach a copy of the previously submitted power of attorney form which designates the representative that the taxpayer wishes to retain. To revoke a designated power of attorney without appointing a new power of attorney, see subrule 7.34(7).

EXAMPLE A. A taxpayer executes a power of attorney for the taxpayer's accountant to represent the taxpayer during an audit of the taxpayer's books and records. After the department issues a notice of assessment, the taxpayer wishes to have the taxpayer's attorney-at-law as an authorized representative in addition to the taxpayer's accountant. The taxpayer may use one of two options to designate the accountant and the attorney-at-law as the taxpayer's representatives: (1) The taxpayer may complete and submit to the department a new power of attorney, Form IA2848 or federal Form 2848, designating both the accountant and the attorney-at-law as the taxpayer's authorized representatives (by submittal of a new power of attorney form, the prior power of attorney designations are revoked, leaving only the subsequent new power of attorney form effective); or (2) the taxpayer may properly complete a new power of attorney form by including the designated attorney-at-law's name, address, PTIN, FEIN or SSN, tax type(s) and tax period(s) on the first page and checking the appropriate box on page 2 of Form IA2848 or page 2 of federal Form 2848. In addition, to retain the accountant as the taxpayer's representative, the taxpayer must also attach to the new completed power of attorney form a copy of the previously submitted power of attorney form designating the accountant as the taxpayer's representative.

EXAMPLE B. A taxpayer wishes to designate an additional power of attorney and retain a prior power of attorney. However, the taxpayer does not wish to utilize a Form IA2848 or a federal Form 2848. In this situation, the taxpayer must send written notification to the department designating the new power of attorney's name, address, PTIN, SSN or FEIN, the tax type(s), the tax period(s) of representation and the name, address, and PTIN, SSN or FEIN of the previously designated power of attorney that the taxpayer seeks to retain for that tax period.

In each of the foregoing examples, the original power of attorney will continue to automatically receive the notices concerning the specified tax matter, unless such authority is explicitly revoked by the taxpayer. Also see subrule 7.34(13) regarding notices.

REVENUE DEPARTMENT[701](cont'd)

7.34(7) By filing a statement of revocation with the department, a taxpayer may revoke a power of attorney without authorizing a new representative. The statement of revocation must indicate that the authority of the previous power of attorney is revoked and must be signed by the taxpayer. Also, the name and address of each representative whose authority is revoked must be listed (or a copy of the power of attorney must be attached).

7.34(8) By filing a statement with the department, a representative may withdraw from representation in a matter in which a power of attorney has been filed. The statement must be signed by the representative and must identify the name and address of the taxpayer(s) and the matter(s) from which the representative is withdrawing.

7.34(9) A properly completed Iowa power of attorney, Form IA2848, or a properly designated federal form as described in this subrule, satisfies the requirements of this rule. In addition to the Iowa power of attorney, Form IA2848, the department can accept Internal Revenue Service Form 2848, if references to the "Internal Revenue Service" are crossed out and "Iowa Department of Revenue" is inserted in lieu thereof, as long as such a form contains specific designation by the taxpayer for the state-related taxes at issue. Designation must include, but is not limited to, name, address, PTIN, SSN or FEIN of the representative, the tax type(s) and tax period(s). In addition, the department will accept any other document which satisfies the requirements of this rule.

7.34(10) The department will not recognize as a valid power of attorney a power of attorney form attached to a tax return filed with the department except in the instance of a form attached to a fiduciary return of income form, inheritance tax return, generation skipping tax return, or estate tax return.

7.34(11) The department will accept either the original, an electronically scanned and transmitted power of attorney form, or a copy of a power of attorney. A copy of a power of attorney received by facsimile transmission (fax) will be accepted. All copies, facsimiles and electronically scanned and transmitted power of attorney forms must include a valid signature of the taxpayer to be represented.

7.34(12) If an individual desires to represent a taxpayer through correspondence with the department, the individual must submit a power of attorney even though no personal appearance is contemplated.

7.34(13) Any notice or other written communication (or copy thereof) required or permitted to be given to the taxpayer in any matter before the department must be given to the taxpayer and, unless restricted by the taxpayer, to the taxpayer's first designated power of attorney who is representing the taxpayer for the tax type(s) and tax period(s) contained in the notice. Due to limitations of the department's automated systems, it is the general practice of the department to limit distribution of copies of documents by the department to the taxpayer's first designated power of attorney. Determination of the first designated power of attorney will be based on the earliest execution date of the power of attorney and the first name designated on a power of attorney form listing more than one designated representative.

7.34(14) Information from power of attorney forms, including the representative's PTIN, SSN or FEIN, is utilized by department personnel to:

a. Determine whether a representative is authorized to receive or inspect confidential tax information;

b. Determine whether the representative is authorized to perform the acts set forth in subrule 7.34(1);

c. Send copies of computer-generated notices and communications to the representative as authorized by the taxpayer; and

d. Ensure that the taxpayer's representative receives all notices and communications authorized by the taxpayer, but that notices and communications are not sent to a representative with the same or similar name.

This rule is intended to implement Iowa Code section 421.60.

REVENUE DEPARTMENT[701](cont'd)

701—7.35(421) Taxpayer designation of tax type and period to which voluntary payments are to be applied.

7.35(1) A taxpayer may designate in separate written instructions accompanying the payment the type of tax and tax periods to which any voluntary payment is to be applied. The taxpayer may not designate the application of payments which are the result of enforced collection.

7.35(2) Enforced collection includes, but is not limited to, garnishment of wages, bank accounts, or payments due the taxpayer, or seizure of assets.

This rule is intended to implement Iowa Code section 421.60.

ITEM 5. Amend paragraph **8.5(7)“b”** as follows:

b. When the firm either disagrees with the denial of participation letter or the suspension from participation letter, the firm must file a written protest to the department within 60 days of the date of the denial letter or the suspension letter. The written protest must be filed pursuant to rule ~~701—7.41(17A)~~ 701—7.8(17A). During the administrative review process, the denial of the firm's participation in or the suspension of the firm from the Iowa electronic filing program shall remain in effect.

ITEM 6. Amend subrules 11.6(2) and 11.6(3) as follows:

11.6(2) Notice of assessment. If, after following the procedure outlined in subrule 11.6(1), paragraph “b,” no agreement is reached and the person does not pay the amount determined to be correct, a notice of the amount of tax due shall be sent to the person responsible for paying the tax. This notice of assessment shall bear the signature of the director and will be sent by mail.

If the notice of assessment is timely protested according to the provisions of rule ~~701—7.41(17A)~~ 701—7.8(17A), proceedings to collect the tax will not be commenced until the protest is ultimately determined, unless the department has reason to believe that a delay caused by the appeal proceedings will result in an irrevocable loss of tax ultimately found to be due and owing the state of Iowa. ~~The department will consider a protest to be timely if filed no later than 30 days following the date of assessment notice. See rule 701—7.4(17A).~~ For notices of assessment issued on or after January 1, 1995, ~~the~~ The department will consider a protest to be timely if filed no later than 60 days following the date of the assessment notice or, if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule ~~701—7.41(17A)~~ 701—7.8(17A) and file a refund claim within the period provided by law for filing such claims.

11.6(3) Supplemental assessments and refund adjustments. The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule ~~701—7.41(17A)~~ 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

ITEM 7. Amend rule **701—12.9(422)**, first unnumbered paragraph, as follows:

A claim for refund shall be filed with the department, stating in detail the reasons and facts and, if necessary, supporting documents for which the claim for refund is based. See 1968 O.A.G. 879. If the claim for refund is denied, and the person wishes to protest the denial, the department will consider a protest to be timely if filed no later than ~~30~~ 60 days following the date of denial. See rule ~~701—7.41(17A)~~ 701—7.8(17A). ~~For refunds denied on or after January 1, 1995, the department will consider a protest to be timely if filed no later than 60 days following the date of denial.~~

ITEM 8. Amend rule ~~701—38.7(422)~~ as follows:

701—38.7(422) Power of attorney. For information regarding power of attorney, see rule ~~701—7.34(421) and 7.38(421,17A)~~.

REVENUE DEPARTMENT[701](cont'd)

ITEM 9. Amend rule 701—38.11(422) as follows:

701—38.11(422) Appeals of notices of assessment and notices of denial of taxpayer's refund claims. A taxpayer may appeal to the director at any time within 60 days from the date of the notice of assessment of tax, additional tax, interest, or penalties. For assessments issued on or after January 1, 1995, if a taxpayer fails to timely appeal a notice of assessment, the taxpayer may pay the entire assessment and file a refund claim within the period provided by law for filing such claims. In addition, a taxpayer may appeal to the director at any time within 60 days from the date of notice from the department denying changes in filing methods, denying refund claims, or denying portions of refund claims. See rule ~~701—7.41(17A)~~ 701—7.8(17A) for information on filing appeals or protests.

This rule is intended to implement Iowa Code sections 421.10 and 422.28.

ITEM 10. Amend subrule **40.46(4)**, third unnumbered paragraph, as follows:

If the department rejects the team member's use of the alternative method, the team member may file a protest within 60 days of the date of the department's letter of rejection. The nonresident team member's protest of the department's rejection of the alternate formula must be made in accordance with rule ~~701—7.41(17A)~~ 701—7.8(17A) and must state, in detail, why the method provided in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method set forth in this rule.

ITEM 11. Amend subrule **42.27(2)**, second unnumbered paragraph, as follows:

The utilities board will notify the department of the number of kilowatt-hours of electricity sold by the qualified facility or generated and used on site by the qualified facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the owner. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 42.27(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule ~~701—7.41(17A)~~ 701—7.8(17A). The department will not issue a tax credit certificate if the facility is not operational within 18 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 42.27(1).

ITEM 12. Amend subrule **42.28(2)**, second unnumbered paragraph, as follows:

The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that are generated and purchased from an eligible facility or used for on-site consumption by the producer during the tax year. The department will calculate the credit and issue a tax credit certificate to the purchaser or producer. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 42.28(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule ~~701—7.41(17A)~~ 701—7.8(17A). The department will not issue a tax credit certificate if the facility is not operational within 30 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 42.28(1). In addition, the department will not issue a tax credit certificate to any person who received a wind energy production tax credit in accordance with Iowa Code chapter 476B.

ITEM 13. Amend subrule 42.35(3), introductory paragraph, as follows:

42.35(3) Claiming the tax credit. After the application is reviewed, the department will issue a tax credit certificate to the electric utility. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. Once the tax credit certificate is issued, the

REVENUE DEPARTMENT[701](cont'd)

credit may be claimed only against the type of tax reflected on the certificate. If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing; and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule ~~701—7.41(17A)~~ 701—7.8(17A).

ITEM 14. Amend rule ~~701—43.2(422)~~, second unnumbered paragraph, as follows:

If an assessment or refund adjustment is appealed (protested under rule ~~701—7.41(17A)~~ 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation. Nothing in this rule shall prevent the making of an assessment or refund adjustment for the purpose of taking into account the impact upon Iowa net income of federal audit adjustments.

ITEM 15. Amend subrule ~~43.3(1)~~, second unnumbered paragraph, as follows:

If the department determines that the taxpayer's claim is without merit and the claim for refund should be rejected, the department will notify the taxpayer or the taxpayer's personal representative by mail that the claim for refund has been rejected and of the reason for rejection. In addition, the rejection letter will advise the taxpayer that the taxpayer has 60 days from the date of the letter to file a protest of the department's rejection of the claim for refund. The taxpayer's appeal of the rejection of the claim for refund must be filed in accordance with rule ~~701—7.41(17A)~~ 701—7.8(17A).

ITEM 16. Amend paragraph ~~51.2(1)“h,”~~ first unnumbered paragraph, as follows:

If an assessment or refund adjustment is appealed (protested under rule ~~701—7.41(17A)~~ 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation. Nothing in this rule shall prevent the making of an assessment or refund adjustment for the purpose of taking into account the impact upon Iowa net income of federal audit adjustments.

ITEM 17. Amend rule ~~701—51.8(422)~~ as follows:

~~701—51.8(422)~~ Power of attorney. For information regarding power of attorney, see rule ~~701—7.34(421)~~ and ~~7.38(421,17A)~~.

ITEM 18. Amend subrule ~~52.26(2)~~, second unnumbered paragraph, as follows:

The utilities board will notify the department of the number of kilowatt-hours of electricity sold by the qualified facility or generated and used on site by the qualified facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the owner. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule ~~52.26(3)~~. If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule ~~701—7.41(17A)~~ 701—7.8(17A). The department will not issue a tax credit certificate if the facility is not operational within 18 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule ~~52.26(1)~~.

ITEM 19. Amend subrule ~~52.27(2)~~, second unnumbered paragraph, as follows:

The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that are generated and purchased from an eligible facility or used for on-site consumption by the producer during the tax year. The department will calculate the credit and issue a tax credit certificate to the purchaser or producer. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit

REVENUE DEPARTMENT[701](cont'd)

certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 52.27(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule ~~701—7.41(17A)~~ 701—7.8(17A). The department will not issue a tax credit certificate if the facility is not operational within 30 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 52.27(1). In addition, the department will not issue a tax credit certificate to any person who received a wind energy production tax credit in accordance with Iowa Code chapter 476B.

ITEM 20. Amend subrule 52.32(3), introductory paragraph, as follows:

52.32(3) *Claiming the tax credit.* After the application is reviewed, the department will issue a tax credit certificate to the electric utility. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. Once the tax credit certificate is issued, the credit may be claimed only against the type of tax reflected on the certificate. If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing; and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule ~~701—7.41(17A)~~ 701—7.8(17A).

ITEM 21. Amend paragraph **54.6(1)“f,”** fourth unnumbered paragraph, as follows:

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting forth the department's determination and the reasons therefor in accordance with rule ~~701—7.41(17A)~~ 701—7.8(17A). The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

ITEM 22. Amend rule **701—54.9(422)**, eighth unnumbered paragraph, as follows:

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting forth the department's determination and the reasons therefor in accordance with rule ~~701—7.41(17A)~~ 701—7.8(17A). The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

ITEM 23. Amend paragraph **57.2(1)“h,”** first unnumbered paragraph, as follows:

If an assessment or refund adjustment is appealed (protested under rule ~~701—7.41(17A)~~ 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation. Nothing in this rule shall prevent the making of an assessment or refund adjustment for the purpose of taking into account the impact upon Iowa net income of federal audit adjustments.

ITEM 24. Amend rule **701—59.29(422)**, eighth unnumbered paragraph, as follows:

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting forth the department's determination and the reasons therefor in accordance with rule ~~701—7.41(17A)~~ 701—7.8(17A). The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

ITEM 25. Amend rule **701—67.2(452A)**, second unnumbered paragraph, as follows:

If the assessment or refund adjustment is appealed (protested under rule ~~701—7.41(17A)~~ 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

ITEM 26. Amend rule ~~701—67.20(452A)~~ as follows:

701—67.20(452A) Time for filing protest. Any person wishing to contest an assessment, denial of all or any portion of a refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding, must file a protest with the clerk of the hearings section for the department

REVENUE DEPARTMENT[701](cont'd)

pursuant to rule ~~701—7.41(17A)~~ 701—7.8(17A) within 60 days of the issuance of the assessment, denial, or other department action contested. If a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make payments pursuant to rule ~~701—7.41(17A)~~ 701—7.8(17A) and file a refund claim within the period provided by law for filing claims.

This rule is intended to implement Iowa Code section 452A.64.

ITEM 27. Amend subrule 67.23(3) as follows:

67.23(3) Denial of a license. The department may deny a license to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax and will deny a permit of an individual if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual. If the applicant is a partnership, a license may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a license is a corporation, the department may deny the applicant a license if any officer with a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest of the applicant corporation. See rule 701—13.16(422) for a characterization of the terms “tax administered by the department” and “substantially delinquent” in paying a tax. If the application for a license is denied, see rule ~~701—7.55(17A)~~ 701—7.23(17A) for rights to appeal.

ITEM 28. Amend rule 701—68.11(452A) as follows:

701—68.11(452A) Revocation of refund permit. The following violations will result in the revocation of the permit: (1) using a false or altered invoice in support of a claim, (2) making a false statement in a claim for refund or in response to an investigation by the department of a claim for refund, (3) refusal to submit the claimant’s books and records for examination by the department, and (4) nonuse for a period of three years. If the permit is revoked for reason (1), (2), or (3) above, the permit will not be reissued for a period of at least one year. If the permit is revoked for reason (4) above, the permit will be reissued upon proper application. (See rule ~~701—7.55(17A)~~ 701—7.23(17A) for revocation procedure.)

This rule is intended to implement Iowa Code section 452A.19 as amended by 2002 Iowa Acts, Senate File 2305.

ITEM 29. Amend subrules 70.6(2) and 70.6(3) as follows:

70.6(2) Notice of assessment. If, after following the procedure outlined in 70.6(1) “b,” no agreement is reached and the person does not pay the amount determined to be correct to the appropriate county treasurer, a notice of the amount of tax due shall be sent to the taxpayer. This notice of assessment shall bear the signature of the director and will be sent by ordinary mail to the taxpayer with a copy sent to the appropriate county treasurer.

A taxpayer has 60 days from the date of the notice of assessment to file a protest according to the provisions of rule ~~701—7.41(17A)~~ 701—7.8(17A) or, if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule ~~701—7.41(17A)~~ 701—7.8(17A) to the appropriate county treasurer and file a refund claim with the director within the applicable period provided in Iowa Code section 437A.14(1) “b” for filing such claims.

70.6(3) Supplemental assessments and refund adjustments. The director may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule ~~701—7.41(17A)~~ 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the director shall notify the appropriate county treasurer. Such resolution shall preclude the director and the taxpayer from making a supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax year unless there is a showing of mathematical or clerical error or showing of fraud or misrepresentation.

REVENUE DEPARTMENT[701](cont'd)

ITEM 30. Amend subrule 70.7(7) as follows:

70.7(7) A taxpayer has 60 days from the date of the notice of denial of a refund or credit, in whole or in part, to file a protest according to the provisions of rule ~~701—7.41(17A)~~ 701—7.8(17A).

ITEM 31. Amend rule 701—70.8(437A) as follows:

701—70.8(437A) Abatement of tax. The provisions of ~~rules rule 701—7.31(421) and 7.38(421,17A)~~ are applicable to replacement tax. In the event that the taxpayer files a request for abatement with the director, the appropriate county treasurer shall be notified. The director's decision on the abatement request shall be sent to the taxpayer and the appropriate county treasurer.

ITEM 32. Amend subrule **70.19(2)**, first unnumbered paragraph, as follows:

A taxpayer has 60 days from the date of the notice of assessment to file a protest according to the provisions of rule ~~701—7.41(17A)~~ 701—7.8(17A) or, if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule ~~701—7.41(17A)~~ 701—7.8(17A) to the director and file a refund claim with the director within the applicable period provided in Iowa Code sections 437A.22 and 437A.14(1) "b" for filing such claims.

ITEM 33. Amend rule 701—70.21(437A) as follows:

701—70.21(437A) Abatement of tax. The provisions of ~~rules rule 701—7.31(421) and 7.38(421,17A)~~ are applicable to the statewide property tax.

ITEM 34. Amend rule **701—81.6(453A)**, third unnumbered paragraph, as follows:

If an assessment or refund adjustment is appealed (protested under rule ~~701—7.41(17A)~~ 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

ITEM 35. Amend subrule 81.11(2) as follows:

81.11(2) Appeals—time limitations. ~~For assessments or denials of refund claims made on or after July 1, 1987. An assessment or denial of all or any portion of a refund claim issued pursuant to Iowa Code section 453A.28 or 453A.46 may be appealed pursuant to rule 701—7.41(17A) and the protest must be filed within 30 days of the issuance of the assessment or denial of the refund claim.~~ For notices of assessment or refund denial issued on or after January 1, 1995, the department will consider a protest to be timely filed if filed no later than 60 days following the date of the assessment notice or refund denial, or if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule ~~701—7.41(17A)~~ 701—7.8(17A) and file a refund claim within the period provided by law for filing such claims.

ITEM 36. Amend subrule 81.12(1), introductory paragraph, as follows:

81.12(1) Cigarette permits. Cigarette permits issued by the department must be revoked if the permittee willfully violates the provisions of Iowa Code section 453A.2 (sale or gift to minors). The department may revoke permits issued by the department for violation of any other provision of division I of Iowa Code chapter 453A or the rules promulgated thereunder. (Also see Iowa Code chapter 421B and rule 701—84.7(421B).) The revocation shall be subject to the provisions of rule ~~701—7.55(17A)~~ 701—7.23(17A). The notice of revocation shall be given to the permittee at least ten days prior to the hearing provided therein. The department will revoke a permit of a permit holder, who is an individual, if the department has received a certificate of noncompliance from the child support unit in regard to the permit holder, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

ITEM 37. Amend subrule 81.12(2), introductory paragraph, as follows:

81.12(2) Tobacco licenses. The director may revoke, cancel or suspend the license of any tobacco distributor or tobacco subjobber for violation of any provision in division II of Iowa Code chapter 453A, the rules promulgated thereunder, or any other statute applicable to the sale of tobacco products. The

REVENUE DEPARTMENT[701](cont'd)

licensee shall be given ten days' notice of a revocation hearing under Iowa Code section 453A.48(2) and rule ~~701—7.55(17A)~~ 701—7.23(17A). No license may be issued to any person whose license has been revoked under Iowa Code section 453A.44(11) for a period of one year. The department will revoke a license of a licensee, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

ITEM 38. Amend rule ~~701—84.2(421B)~~, second unnumbered paragraph, as follows:

Any requester making sales of cigarettes in or into Iowa for more than 12 months shall submit cost data for the 12-month period ending no more than 30 days prior to the submission of the petition. Any requester making sales of cigarettes in or into Iowa for less than 12 months shall submit cost data for the period beginning with the start of business and ending no more than 30 days prior to the submission of the petition. The department shall notify the wholesaler or retailer of the acceptance or rejection of the petition. If the requester disagrees with the department's determination, the requester may file a protest within 60 days of the department's decision in accordance with rule ~~701—7.41(17A)~~ 701—7.8(17A).

ITEM 39. Amend subrule 85.22(4) as follows:

85.22(4) Procedure for contesting notice of noninclusion or deletion. A tobacco product manufacturer that disagrees with a decision made by the attorney general in relation to the directory may contest the validity of the decision within 60 days of the date of the decision by filing a written protest of that decision with the Iowa Department of Revenue, Clerk of the Hearings Section, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, pursuant to rule ~~701—7.41(17A)~~ 701—7.8(17A). The protest shall conform generally to the requirements of ~~701—subrules 7.41(1) and 7.41(2)~~ 7.8(1) through 7.8(10) to the extent applicable. The protest will, thereafter, be processed and a contested case hearing will be held in general conformity with the rules set forth in ~~701—Chapter 7, Division H, rules 7.43(17A), 7.45(17A), and 7.47(17A) to 7.49(17A)~~ 701—7.10(17A), 701—7.12(17A) and 701—7.14(17A) to 701—7.16(17A), 701—subrule 7.50(7) 7.17(8), and rules 7.51(17A) to 7.54(17A) 701—7.19(17A) to 701—7.22(17A) to the extent applicable. The burden of proof shall be on the tobacco product manufacturer to establish that it or a particular brand family is entitled to be listed in the directory.

The form, status, finality and appealability of orders shall be controlled by the general provisions of ~~701—subrule 7.50(7)~~ 7.17(8), except that no appeal to or on motion of the state board of tax review or any other agency is authorized. All parties to the contested case may appeal any orders entered in relation to the contested case.

Stays of the decision of the attorney general during the pendency of the contested case proceedings and judicial review of the final contested case order of the department may be sought under ~~701—subrule 7.50(8)~~ 7.17(9). However, the addition or retention of a tobacco product manufacturer or brand family in the directory shall not be ordered during the pendency of the contested case proceedings and judicial review of the final contested case order unless a sufficient bond has been provided to the attorney general to ensure that all escrow amounts owed at the time of bonding and all escrow amounts reasonably expected to become due during the pendency of the contested case and all related appeals will be satisfied if the tobacco product manufacturer does not ultimately prevail in its challenge. Such bonds shall be subject to update on a quarterly basis on motion of the attorney general.

If a claim is made that a particular entity is the tobacco product manufacturer and the entity obtains an order allowing it and any of the brands it claims to be responsible for to be listed in the directory pending final resolution of its status and it is ultimately determined that the entity is not the tobacco product manufacturer, the required bond shall be forfeited to the state.

ITEM 40. Amend subrule ~~86.3(4)~~, first unnumbered paragraph, as follows:

If an assessment or refund adjustment is appealed (protested under rule ~~701—7.41(17A)~~ 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

REVENUE DEPARTMENT[701](cont'd)

ITEM 41. Amend rule 701—89.11(422) as follows:

701—89.11(422) Appeals to the director. An estate or trust has the right to appeal to the director for a revision of an assessment for additional tax due, the denial or reduction of a claim for refund, the denial of a request for a waiver of a penalty and the denial of a request for an income tax certificate of acquittance. The beneficiary of an estate or trust has the right to appeal a determination of the correct amount of income distributed and a determination of the correct allocation of deductions, credits, losses and expenses between the estate or trust and the beneficiary. The personal representative of an estate and the trustee of a trust have the right to appeal a determination of personal liability for income taxes required to be paid or withheld and for a penalty personally assessed. An appeal to the director must be in writing and must be made within 60 days of the notice of assessment and the other matters which are subject to appeal or for assessments issued on or after January 1, 1995, if the beneficiary of an estate or trust, the personal representative of an estate, or the trustee of a trust fails to timely appeal a notice of assessment, the person may pay the entire assessment and file a refund claim within the period provided by law for filing such claims. 701—Chapter 7 shall govern appeals to the director. See specifically rules ~~701—7.41(17A) to 7.54(17A)~~ 701—7.8(17A) to 701—7.22(17A) governing taxpayer protests.

This rule is intended to implement Iowa Code chapter 17A ~~as amended by 1998 Iowa Acts, chapter 4202,~~ and sections 421.60 and 422.28.

ITEM 42. Amend rule **701—103.2(423A)**, third unnumbered paragraph, as follows:

If an assessment or refund adjustment is appealed (protested under rule ~~701—7.41(17A)~~ 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

ITEM 43. Amend subrule **103.6(2)**, first unnumbered paragraph, as follows:

If the notice of assessment is timely protested according to the provisions of rule ~~701—7.41(17A)~~ 701—7.8(17A) and Iowa Code section 423.37, proceedings to collect the tax will not be commenced until the protest is ultimately determined, unless the department has reason to believe that a delay caused by such appeal proceedings will result in an irrevocable loss of tax ultimately found to be due and owing the state of Iowa. The department will consider a protest to be timely if filed no later than 60 days following the date of the assessment notice. See rule ~~701—7.41(17A)~~ 701—7.8(17A).

ITEM 44. Amend rule **701—104.6(423A)**, first unnumbered paragraph, as follows:

A claim for refund shall be filed with the department within three years from the date the tax became due or one year from the date of payment, whichever is later, stating in detail the reasons and facts and, if necessary, attaching supporting documents on which the claim for refund is based. If the claim for refund is denied, and the person wishes to protest the denial, the department will consider a protest to be timely if filed no later than 60 days following the date of denial. See rule ~~701—7.41(17A)~~ 701—7.8(17A).

ARC 0131C

SECRETARY OF STATE[721]

Notice of Termination

Pursuant to the authority of Iowa Code section 17A.3(1)“b,” the Secretary of State hereby terminates the rule making initiated by the Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 9990B** on February 8, 2012.

The period for comments passed without the Secretary’s receiving any comments requiring changes to the amendments as they appeared in the Iowa Administrative Bulletin on February 8, 2012. The proposed amendments published under Notice of Intended Action were also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin as **ARC 9989B** on the same date. Therefore, the Secretary of State finds no further need to proceed with rule making for **ARC 9990B**.

ARC 0130C

SECRETARY OF STATE[721]

Notice of Termination

Pursuant to the authority of Iowa Code section 17A.3(1)“b,” the Secretary of State hereby terminates the rule making initiated by the Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 9894B** on November 30, 2011.

The period for comments passed without the Secretary’s receiving any comments requiring changes to the rule as it appeared in the Iowa Administrative Bulletin on November 30, 2011. The proposed rule published under Notice of Intended Action was also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin as **ARC 9893B** on the same date. Therefore, the Secretary of State finds no further need to proceed with rule making for **ARC 9894B**.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions JoAnn Johnson, Superintendent of Banking James M. Schipper, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for May is 4.00%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective May 9, 2012, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum .05%
180-364 days	Minimum .05%
One year to 397 days	Minimum .05%
More than 397 days	Minimum .30%

TREASURER OF STATE(cont'd)

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 0133C

INSURANCE DIVISION[191]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 505.8, the Insurance Division hereby adopts amendments to Chapter 20, "Property and Casualty Insurance Rate and Form Filing Procedures," Iowa Administrative Code.

Chapter 20 establishes certain minimum standards and guidelines of conduct for filing insurance rates and forms and for the implementation of the Iowa Fair Plan Act. The adopted amendments are promulgated to clarify what information an insurance company regulated by the Division may provide its customer in connection with a commercial real estate transaction between the customer and a lender.

This adopted rule making is a result of approximately two years of discussion conducted by the Division with interested parties, plus additional discussion between concerned legislators and interested parties, and other meetings among interested parties. Most of the interested parties agreed to a compromise version of the rules, and that is the version of the rules being adopted. The purpose of the rules, which is clarification of what information an insurance company may provide its customer in connection with a commercial real estate transaction between the customer and a lender, is achieved.

These amendments were published under Notice of Intended Action in the April 4, 2012, Iowa Administrative Bulletin as **ARC 0070C**.

Interested persons were able to make written suggestions or comments on the amendments on or before April 24, 2012. Some written and verbal comments were made. Also, there was a public hearing on April 24, 2012, at 10 a.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa. James R. Mumford, First Deputy Commissioner, acted as hearing officer. A court reporter was present for the hearing and entered as exhibits for the hearing all written comments received and recorded all testimony presented at the hearing.

There was concern expressed that additional definitions were needed in the rule, such as for "nonrecourse lending," "commercial transactions," etc. The Division determined that additional definitions are not needed because the terms have general meaning in the business world and have no different meaning in the rule. No changes to the amendments proposed in the Notice of Intended Action were made.

The concern was expressed about whether there was flexibility once the 20-day trigger had started for the insured and insurer to agree to something other than requested. The Division determined that, since this is a business transaction, it is assumed that both parties will want to reach an agreement about insurance coverage. Thus, if the insurer does not want to agree to the request of the potential insured, the insurer has the option to negotiate further with the potential insured or may deny coverage. The term "insured" should be read in the context of the sentence in which it is being used and technically may not be an insured but a potential insured. No changes to the amendments proposed in the Notice of Intended Action were made.

A request for a sunset provision was made, but the Division has determined that, since the Division has the authority to amend rules when needed, the Division will review these rules for possible changes should unintended consequences of the rules develop. No changes to the amendments proposed in the Notice of Intended Action were made.

The Division intends to review any Commissioner's bulletins relating to this subject for possible rescission or clarification.

The Division finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments, 35 days after publication, should be waived and these amendments should be made effective on May 9, 2012, because these amendments confer a benefit on the public in that they clarify what information an insurance company may provide its customer in connection with a commercial real estate transaction between the customer and a lender. There has been confusion over this issue for more than two years. The interested parties have worked hard to come to a compromise. That compromise is the content of these amendments. A public hearing was held, and no need was found to vary from the

INSURANCE DIVISION[191](cont'd)

compromise. An immediate effective date provides the public with the clarification that has been needed for so long.

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

These amendments are intended to implement Iowa Code chapter 505.

These amendments became effective May 9, 2012.

The following amendments are adopted.

ITEM 1. Amend **191—Chapter 20**, title, as follows:

~~PROPERTY AND CASUALTY INSURANCE RATE AND FORM FILING PROCEDURES~~

ITEM 2. Reserve rules **191—20.61** to **191—20.69**.

ITEM 3. Amend **191—Chapter 20** by adopting the following new Division III:

DIVISION III
CERTIFICATES OF INSURANCE FOR COMMERCIAL LENDING TRANSACTIONS

191—20.70(515) Purpose. The purpose of division III is to clarify what information an insurance company regulated by the division may provide its customer in connection with a commercial real estate transaction between the customer and a lender.

191—20.71(515) Definitions. For purposes of division III, the following definitions shall apply:

“*ACORD*” means the Association for Cooperative Operations Research and Development.

“*Commercial real estate transaction*” means a non-recourse commercial lending transaction in which the underlying property serves as the primary collateral securing the borrower’s repayment of the loan and neither the borrower nor any of its members, partners, or shareholders, nor any related person to any of the aforementioned persons, bears the economic risk of loss in the event of a payment default under the terms of the lending transaction.

“*Division*” means the insurance division.

“*ISO*” means the insurance services office.

191—20.72(515) Evidence of insurance.

20.72(1) Prior to the issuance of an insurance policy by an insurer, an insured who has entered into a commercial real estate transaction may request that the relevant insurer or a producer acting on behalf of the insurer provide the following items as evidence of insurance:

a. An ACORD Form 75, a successor ACORD form, an ISO binder form, or a substantially similar binder form approved by the division; and

b. An ACORD Form 28, a successor ACORD form, an ISO certificate form, or a substantially similar certificate of insurance form approved by the division.

The insurer or the producer acting on behalf of an insurer has the sole discretion to determine which division-approved binder form or certificate of insurance form the insurer or producer uses to comply with this rule.

20.72(2) An insurer or a producer acting on behalf of an insurer shall comply with a request made pursuant to this rule within 20 business days of the receipt of the request. The requirements of this rule shall not apply to an insurance producer who:

a. Is unauthorized to provide the documents described in this rule; and

b. Informs the insured of this fact within 20 business days of the receipt of the request.

20.72(3) Delivery of a binder along with a certificate of insurance requested pursuant to this rule may be accomplished by regular mail, overnight delivery, facsimile, physical delivery, electronic means, or other appropriate means.

20.72(4) Notwithstanding any language on a form provided pursuant to subrule 20.72(1) which language states that the form is for “information only,” a binder together with a certificate of insurance delivered pursuant to this rule shall be valid and may be relied upon by the borrower or by the borrower’s lender as evidence of insurance, including in any private civil action or administrative proceeding, until

INSURANCE DIVISION[191](cont'd)

the delivery of the insurance policy to the borrower or the cancellation of the binder pursuant to Iowa Code sections 515.125 to 515.127.

20.72(5) An insurer or producer acting on behalf of an insurer that produces or delivers a binder and certificate of insurance to its customer pursuant to this rule may charge a reasonable fee for the production and delivery of the documents.

20.72(6) All insurers and all producers subject to this rule shall comply with the terms hereof within 90 days from May 9, 2012.

These rules are intended to implement 2011 Iowa Code Supplement chapter 515.

[Filed Emergency After Notice 5/9/12, effective 5/9/12]

[Published 5/30/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/30/12.

ARC 0138C**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 159.5, the Department of Agriculture and Land Stewardship hereby amends Chapter 1, "Administration," and adopts new Chapter 36, "Egg Handlers," Iowa Administrative Code.

The amendments carry out the transfer of the rules for egg handlers from the Iowa Department of Inspections and Appeals to the Iowa Department of Agriculture and Land Stewardship authorized by 2011 Iowa Acts, House File 453. The statutory provisions will become effective on July 1, 2012.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0078C** on April 4, 2012. One favorable comment was received from the public. These amendments are identical to those published under Notice.

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

These amendments are intended to implement Iowa Code chapters 159 and 196 and 2011 Iowa Acts, House File 453.

These amendments will become effective July 4, 2012.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [1.5(2), Ch 36] is being omitted. These amendments are identical to those published under Notice as **ARC 0078C**, IAB 4/4/12.

[Filed 5/10/12, effective 7/4/12]

[Published 5/30/12]

[For replacement pages for IAC, see IAC Supplement 5/30/12.]

ARC 0139C**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 159.5, the Department of Agriculture and Land Stewardship hereby amends Chapter 16, "Renewable Fuel Infrastructure Program Administration," Iowa Administrative Code.

The amendment clarifies that the Renewable Fuel Infrastructure Board will not make an initial application award if the project has already been in service for more than one year.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0069C** on April 4, 2012. No comments were received from the public. This amendment is identical to that published under Notice.

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

This amendment is intended to implement 2011 Iowa Code Supplement sections 159A.14, 159A.15, and 159A.16.

This amendment will become effective July 4, 2012.

The following amendment is adopted.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

Amend subrule 16.2(2) as follows:

16.2(2) ~~*Prospective grants for projects not yet commenced.*~~ *Timing of application.* A grant may be awarded for an eligible project not yet commenced. However, a grant for an initial application may not be awarded more than one year after the project is put in service.

[Filed 5/10/12, effective 7/4/12]

[Published 5/30/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/30/12.

ARC 0129C

**HOMELAND SECURITY AND EMERGENCY
MANAGEMENT DIVISION[605]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Division hereby amends Chapter 7, "Local Emergency Management," Iowa Administrative Code.

The Homeland Security and Emergency Management Division amends Chapter 7 to reflect changes made to Iowa Code chapter 29C in 2011 Iowa Acts, Senate File 315. Additionally, these amendments change the planning requirements for local emergency management commissions in paragraph 7.3(4)"d."

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 22, 2012, as **ARC 0023C**. The Division received no comments on these amendments. These amendments are identical to those published under Notice of Intended Action.

The Administrator adopted these amendments on May 1, 2012.

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

These amendments are intended to implement 2011 Iowa Code Supplement chapter 29C.

These amendments will become effective on July 4, 2012.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [7.2 to 7.7] is being omitted. These amendments are identical to those published under Notice as **ARC 0023C**, IAB 2/22/12.

[Filed 5/1/12, effective 7/4/12]

[Published 5/30/12]

[For replacement pages for IAC, see IAC Supplement 5/30/12.]

ARC 0135C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 10A.104(5), the Department of Inspections and Appeals hereby amends Chapter 51, "Hospitals," Iowa Administrative Code.

The adopted amendment to subrule 51.50(1) specifies that critical access hospitals shall meet the minimum construction standards for small primary care hospitals set forth in Part 2.3 of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition (Guidelines), produced by the Facility Guidelines Institute. Additionally, the amendment clarifies that critical access hospitals are not required to comply with the following:

- The patient room capacity requirements contained in 2.3-2.2.2.1 of the Guidelines,
- A portion of the Labor Delivery and Recovery/Labor Delivery Recovery and Postpartum (LDR/LDRP) room requirements contained in 2.3-2.2.4.6 of the Guidelines, or

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

- The surgical services requirement contained in 2.3-3.4.1 of the Guidelines.

The Department's current administrative rules dealing with minimum construction standards for hospitals do not specifically address critical access hospitals. While an upcoming edition of the Guidelines will contain a chapter dealing with minimum construction standards for critical access hospitals, the amendment adopts standards associated with small primary care hospitals for critical access hospitals, except for the patient room capacity requirements, certain LDR/LDRP room requirements, and certain surgical services requirements.

The Department does not believe that the amendment imposes any financial hardship on any regulated entity, body, or individual. Rather, the amendment clarifies the standards to be used in the design and construction of critical access hospitals.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 4, 2012, as **ARC 0071C**. No comments were received; no changes were made to the amendment published under Notice of Intended Action.

The Hospital Licensing Board reviewed and approved the amendment at its February 17, 2012, meeting. The Board of Health also reviewed the amendment at its March 14, 2012, meeting, and subsequently approved it at the Board's May 9, 2012, meeting.

After analysis and review of this rule making, it has been determined that a positive impact on jobs could result. Adoption of the amendment exempts critical access hospitals from the single-bed requirement, thus allowing these hospitals to build new facilities with multibed rooms.

This amendment is intended to implement Iowa Code section 135C.14.

This amendment shall become effective July 4, 2012.

The following amendment is adopted.

Amend subrule 51.50(1) as follows:

51.50(1) *Minimum standards.* Hospitals and off-site premises licensed under this chapter shall be built in accordance with the following construction standards.

a. Construction shall be in accordance with the standards set forth in Part 2 and other applicable provisions of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, produced by the Facility Guidelines Institute.

b. A critical access hospital as defined in rule 481—51.1(135B) shall meet the standards for construction for small primary care hospitals set forth in Part 2.3 of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, produced by the Facility Guidelines Institute, with the following exceptions:

(1) The patient room capacity requirements contained in section 2.3-2.2.2.1(1) shall not apply. The maximum number of beds per room shall be two.

(2) The first paragraph of section 2.3-2.2.4.6 is amended to read as follows: "The small primary care hospital shall include the following:".

(3) Section 2.3-3.4.1, which limits the types of surgical procedures, shall not apply.

c. Existing hospitals, critical access hospitals, and off-site premises built in compliance with prior editions of the hospital construction guidelines will be deemed in compliance with subsequent regulations, with the exception of any new structural renovations, additions, functional alterations, or changes in utilization to existing facilities, which shall meet the standards specified in this subrule.

b- d. In jurisdictions without a local building code enforcement program, the construction shall be in conformance with the state building code, as authorized by Iowa Code section 103A.7, in effect at the time of plan submittal for review and approval. In jurisdictions with a local building code enforcement program, local building code enforcement must include both the adoption and enforcement of a local building code through plan reviews and inspections.

A hospital or off-site premises that is required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if the hospital or off-site premises is in compliance with the provisions of rule 661—205.5(100). In any case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

requirement of the state building code, the hospital shall be deemed to be in compliance with the state building code requirement if the Life Safety Code requirement is met.

Rule 661—301.5(103A) shall not be applicable to hospitals and other structures required under this chapter to meet the provisions of the state building code.

e- e. The design and construction of a hospital or off-site premises shall be in conformance with NFPA 101: Life Safety Code 2000 as published by the National Fire Protection Association.

[Filed 5/9/12, effective 7/4/12]

[Published 5/30/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/30/12.

ARC 0137C

STATE PUBLIC DEFENDER[493]

Adopted and Filed

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender hereby amends Chapter 12, "Claims for Indigent Defense Services," and Chapter 13, "Claims for Other Professional Services," Iowa Administrative Code.

These amendments update the requirements for claims made by certified shorthand reporters from the indigent defense fund, clarifying the documentation and information required for such claims and setting maximum rates to be paid for certified shorthand reporting services. The amendments also provide that the State Public Defender may contract with a certified shorthand reporter and designate the reporter to provide all shorthand reporting services for court-appointed cases in a county. In addition, the amendments clarify that a claim by an attorney for reimbursement of expenses directly paid by the attorney to a certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or expert shall only be paid to the extent the claim would have been paid if submitted by the original claimant to the State Public Defender.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0050C** on March 21, 2012.

Comments were received from the public and considered in promulgation of the amendments. One of the more prevalent comments raised concerns that the maximum rates set in the amendments would apply to all clients of the certified shorthand reporters. Subrule 13.2(4) only applies to claims to the indigent defense fund and does not address the rates that a certified shorthand reporter offers to other clients. While Rule 1.713(2) of the Iowa Rules of Civil Procedure may be construed to require a certified shorthand reporter to offer the same rates to other parties, such as the county attorney, in a case in which the reporter provides services for an indigent client, the State Public Defender is unaware of any authority requiring a reporter to provide uniform rates for all clients in separate cases.

In response to the comments received, three changes have been made to the amendments published under Notice. All three are changes to subrule 13.2(4). First, the amendment now clarifies that the certified shorthand reporter may submit a social security number, federal tax identification number, or vendor identification number. Second, the amendment eliminates the requirement that a court order authorizing the hiring of a certified shorthand reporter be obtained before certified shorthand reporting expenses are incurred. Third, the amendment provides that other fees or expenses not expressly addressed in the amendment may be paid with the prior written approval of the State Public Defender.

After analysis and review of this rule making, no adverse impact on jobs has been found. The amendments were developed in collaboration with stakeholder groups to minimize any adverse impact on stakeholders.

These amendments are intended to implement Iowa Code chapters 13B and 815.

These amendments will become effective July 11, 2012.

The following amendments are adopted.

STATE PUBLIC DEFENDER[493](cont'd)

ITEM 1. Amend subrule 12.7(1) as follows:

12.7(1) The state public defender shall reimburse the attorney for the payments made by the attorney for necessary certified shorthand reporters, investigators, foreign language interpreters, evaluations, and experts, if the following conditions are met:

a. The attorney obtained court approval for a certified shorthand reporter, investigator, foreign language interpreter, evaluation or expert prior to incurring any expenses with regard to each.

b. A copy of each of the application and order granting authority accompanies following documents is attached to the claim:

(1) The application and court order authorizing the expenditure of funds at state expense for the certified shorthand reporter, investigator, foreign language interpreter, evaluation, or expert.

(2) If the expenses are for services of investigators, foreign language interpreters, or experts, a court order setting the maximum dollar amount of the claim. If the initial court order authorizing the expenditure sets the maximum amount of the claims, a subsequent order is unnecessary.

(3) An itemization detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) If the expenses are for foreign language interpreters, the court order and itemization required by subparagraphs 12.7(1)“b”(2) and (3) shall be submitted on the Fee Itemization Form and Court Order Approving Claim for Court Interpreter Services form promulgated by the judicial branch.

(5) If the expenses are for a certified shorthand reporter, any additional documentation required in 493—paragraph 13.2(4)“b” when applicable to the services provided.

(6) Documentation that the attorney has already paid the funds to the certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or expert.

c. The expenses would be payable if the certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or an expert submitted such claim directly pursuant to 493—Chapter 13, except for the requirement that the claim be submitted on the miscellaneous claim form promulgated by the state public defender.

d. The certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or expert does not submit a claim for the same services.

~~*d.* The attorney is seeking reimbursement for moneys already expended or certifies that the funds for these services will be used to pay for the certified shorthand reporter, investigator, foreign language interpreter, evaluation, or expert.~~

~~*e.* A copy of the court order authorizing the expense is attached to the claim.~~

~~*f.* In claims for services of investigators, foreign language interpreters, or experts, a copy of a court order setting the maximum dollar amount of the claim is attached to the claim.~~

~~*g. e.* In claims for the cost of an evaluation requested by an appointed attorney, the attorney will shall be reimbursed for the reasonable cost of an evaluation of the client to establish a defense in the case or to determine if the client is competent to stand trial. In either instance, a copy of the court order authorizing the evaluation for one of these specific purposes and an order approving the amount of the evaluation must accompany the claim form. Claims for the cost of an evaluation to be used for any other purpose, such as sentencing or placement, will not be reimbursed.~~

ITEM 2. Amend subrule 12.7(3) as follows:

12.7(3) In an appeal, the state public defender will pay the cost of obtaining the transcript of the trial records and briefs. In such instance, ~~paragraphs~~ subrule 12.7(1)“b” to “d” shall apply.

ITEM 3. Amend rule 493—12.10(13B,815) as follows:

493—12.10(13B,815) Payment errors. If an error resulting in an overpayment or double payment of a claim is discovered by the attorney, by the state public defender, by the department, or otherwise, the claimant shall notify the clerk of court of the error and shall reimburse the department indigent defense fund for the amount of the overpayment. An overpayment that is returned to the department shall be paid by check. The check, made payable to the “Treasurer, State of Iowa,” and together with a copy of the

STATE PUBLIC DEFENDER[493](cont'd)

payment voucher containing the overpayment or double payment, shall be mailed to the ~~Department of Inspections and Appeals, Indigent Defense Unit~~ Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. The attorney is ~~responsible for notifying~~ shall notify the clerk of court of any payment error the overpayment or double payment.

ITEM 4. Amend subrule 13.2(4) as follows:

13.2(4) Claims for certified shorthand reporters. The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for depositions and transcripts provided by certified shorthand reporters ~~if the following conditions are met:~~ only in accordance with the requirements of this subrule.

a. Claim form. The certified shorthand reporter ~~submits~~ shall submit a signed original and one copy of a miscellaneous claim form containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

~~(3) The date on which the deposition/court proceeding commenced.~~

~~(4) (3)~~ The date on which the transcript was ordered.

~~(5) (4)~~ The date on which the transcript was delivered.

~~(6) The number of pages and cost per page.~~

~~(7) (5)~~ The total amount of the claim.

~~(8) (6)~~ The claimant's name,₂ address,₂ social security number,₂ ~~or~~ federal tax identification number,₂ or vendor identification number,₂ e-mail address, if any,₂ and telephone number.

~~b. Court approval to hire the certified shorthand reporter was obtained before any expenses for the certified shorthand reporter were incurred.~~

~~e. b.~~ Required documentation. One copy of each of the following documents is must be attached to the claim:

(1) The ~~application and court~~ order granting authority to hire the certified shorthand reporter at state expense.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting ~~the application noted above~~ authority to hire the certified shorthand reporter, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary certified shorthand reporter services.

(3) ~~Itemization of any additional services or charges based on some criterion other than cost per page including date of deposition, persons deposed, arrival and departure time at the deposition, number of pages and the cost per page, travel time and listing of any other charges.~~

(4) ~~If the certified shorthand reporter charges a "sitting fee" for services based on a specific time, a certification by the certified shorthand reporter that no other services have been performed or charges made by the certified shorthand reporter for any portion of that specific time. If expedited transcript rates are claimed under subparagraph 13.2(4) "d"(10), an e-mail or other written statement from the attorney explaining that expedited delivery is required.~~

(5) If a cancellation fee is claimed under subparagraph 13.2(4) "d"(6), documentation of the date and time that notice of cancellation was given.

~~(5) (6)~~ If the certified shorthand reporter is a state employee, a certification by the certified shorthand reporter that none of the time for which the claim is being submitted is time for which the certified shorthand reporter was being paid by the state.

c. Rates for court transcripts. ~~Unless the certified shorthand reporter has a contract with the state providing for a different rate or manner of payment~~ If the certified shorthand reporter is a judicial branch employee, claims for certified shorthand reporter services for preparation of court transcripts will be limited to the rate approved by the Iowa supreme court for preparation of transcripts and other certified shorthand reporter services.

d. Rates for other transcripts. ~~Unless the certified shorthand reporter has a contract with the state providing for a different rate or manner of payment or the certified shorthand reporter submits a claim~~

STATE PUBLIC DEFENDER[493](cont'd)

for a lesser amount, claims for certified shorthand reporter services for a non-judicial branch employee will be paid only at the rates set forth in this paragraph:

(1) Hourly rate when no transcript ordered. Fees for attending depositions when no transcript is ordered will be paid at the rate of \$45 per hour for the actual time the certified shorthand reporter is present at the depositions including setup and takedown of equipment.

(2) Hourly rate when transcript ordered. Fees for attending depositions when a transcript is ordered will be paid at the rate of \$35 per hour for the actual time the certified shorthand reporter is present at the depositions including setup and takedown of equipment.

(3) Travel time. Fees for travel time will be paid at the rate of \$15 per hour for travel outside of the county of the certified shorthand reporter's office location. Travel time within the county of the certified shorthand reporter's office location will not be paid. No travel time is payable for the delivery of a transcript.

(4) Transcripts. Unless expedited delivery is requested, fees will be paid at the rate of \$3.50 per page for an original, one copy, and an electronic version of the transcript. Copies of a transcript for which an original has already been ordered by any party will be paid at the rate of \$1 per page.

(5) Exhibits. A rate of \$0.10 per page for black and white and \$0.30 per page for color copies will be paid.

(6) Cancellation fees. No cancellation fees will be paid as long as the certified shorthand reporter is given notice of cancellation at least 24 hours before the time scheduled for a deposition. If the deposition is canceled with less than 24 hours' notice, a fee for two hours or the actual time that the certified shorthand reporter is present at the site of the deposition including setup and takedown of equipment, whichever is greater, is payable at the rate set forth in subparagraph 13.2(4) "d"(1). A certified shorthand reporter is deemed to have been given notice of cancellation when an attorney or representative of the attorney delivers notice of a cancellation to the e-mail address provided by the certified shorthand reporter or leaves a message on voicemail or with a representative of the certified shorthand reporter at the telephone number provided by the certified shorthand reporter, not when the certified shorthand reporter actually hears or reads the message.

(7) Minimum time. One hour minimum, exclusive of travel time, will be paid for a deposition that takes less than one hour.

(8) Other time. Except for the initial one hour minimum, all time billed at an hourly rate shall be billed in 15-minute increments.

(9) Postage. Actual postage costs that are reasonable and necessary will be paid.

(10) Expedited transcripts. Expedited transcripts are those that are required to be delivered within five business days of the date requested. Fees of \$6 per page for an original, one copy, and an electronic version of the transcript will be paid for expedited transcripts. Copies of an expedited transcript for which an original has already been ordered by any party will be paid at the rate of \$1 per page.

(11) Other expenses. Any additional expenses or fees for certified shorthand reporting services not set forth above will only be paid with the prior written consent of the state public defender obtained before the services are provided.

~~d. e. Timely claims required. Claims for services completed before July 1, 2008, are timely if submitted to the state public defender for payment before August 15, 2008. Claims for services completed after June 30, 2008, are timely if submitted to the state public defender for payment within 45 days of the date on which services are completed.~~

e. For depositions, services are completed on the date the deposition transcript is delivered or on the date of disposition of the case if no transcript is ordered, whichever date is earlier. For trial transcripts, services are completed on the date the trial transcript is delivered.

f. Claims which that are not timely will shall be denied.

f. Designation of preferred certified shorthand reporter. The state public defender may enter into a contract with one or more certified shorthand reporters to provide court reporting services for depositions in one or more counties and may designate such certified shorthand reporters to be the preferred certified shorthand reporters in the respective counties. Such designations shall be provided to the chief judge of the judicial district for the respective counties and shall be summarized on the Web site of the state

STATE PUBLIC DEFENDER[493](cont'd)

public defender, <http://spd.iowa.gov>. Claims for services provided in a county in which the state public defender has designated a certified shorthand reporter as the preferred certified shorthand reporter shall be denied unless the claims are submitted by the certified shorthand reporter pursuant to the terms of the contract or are submitted by another certified shorthand reporter and include written documentation that the designated certified shorthand reporter was unavailable to handle the deposition.

ITEM 5. Amend rule 493—13.5(13B,815) as follows:

493—13.5(13B,815) Payment errors. If an error resulting in an overpayment or double payment of a claim is discovered by the claimant, by the state public defender, by the department, or otherwise, the claimant shall reimburse the indigent defense fund for the amount of the overpayment. An overpayment or double payment shall be repaid by check. The check, made payable to “Treasurer, State of Iowa,” together with a copy of the payment voucher containing the overpayment or double payment, shall be mailed to the ~~Department of Inspections and Appeals, Indigent Defense Unit~~ Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083. The claimant shall notify the clerk of court of the overpayment or double payment.

[Filed 5/10/12, effective 7/11/12]

[Published 5/30/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/30/12.

ARC 0136C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Iowa Department of Transportation, on May 9, 2012, adopted amendments to Chapter 400, “Vehicle Registration and Certificate of Title,” Chapter 401, “Special Registration Plates,” Chapter 405, “Salvage,” Chapter 425, “Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers,” Chapter 431, “Vehicle Recyclers,” Chapter 450, “Motor Vehicle Equipment,” Chapter 511, “Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight,” Chapter 524, “For-Hire Intrastate Motor Carrier Authority,” and Chapter 529, “For-Hire Interstate Motor Carrier Authority,” Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the April 4, 2012, Iowa Administrative Bulletin as **ARC 0068C**.

The amendments to Chapter 400 strike a requirement that the series of a motor home be included on the certificate of title or registration receipt since a motor home is a type and this requirement is already required by rule; allow the owner of a vehicle who is applying for a bonded title, an owner of a specially constructed, reconstructed, street rod or replica motor vehicle, or an owner who is assigned an identification number to drive or tow the vehicle to and from an examination location with an affidavit to drive; remove street rod and replica motor vehicles from subrule 400.16(4) since the language conflicts with Iowa Code section 321.1(61); and clarify the requirements for converting a motor truck or truck tractor to a motor home.

The amendments to Chapter 401 require that an application for emergency medical services plates be notarized and signed by the applicant and the applicant’s service director and clarify that a person who has disabled veteran plates is not required to obtain a physician’s statement to obtain a persons with disabilities permit.

The amendment to Chapter 405 allows an owner of a salvage vehicle to obtain a duplicate copy of a salvage theft examination certificate from the issuing officer or agency and strikes the \$10 duplicate fee.

The amendments to Chapter 425 and Chapter 431 amend the definition of “regular business hours” to clarify the time period a business must be open.

TRANSPORTATION DEPARTMENT[761](cont'd)

The amendments to Chapter 450 are effective July 4, 2012, and remove the medical exemption for minimum standard of transparency for excessive dark or reflective front windshields, windows or sidewings. Those individuals who receive a medical exemption prior to July 4, 2012, are allowed to continue to maintain and operate motor vehicles with front windshields, windows or sidewings with less than 70 percent but not less than 35 percent light transmittance.

The amendment to Chapter 511 strikes the option for single-trip, multitrip, annual, annual oversize/overweight or all-systems permits to be issued over the telephone. These permits may still be obtained in person, by facsimile, wire service, electronic communication or by mail.

The amendments to Chapter 524 strike language concerning the transfer of motor carrier certificates. 2011 Iowa Acts, chapter 38, sections 24 and 25, eliminated provisions in Iowa Code sections 325A.4(1) and 325A.21 allowing for the transfer of a regular-route passenger certificate.

The amendment to Chapter 529 adopts the current Code of Federal Regulations (CFR) dated October 1, 2011, for 49 CFR Parts 365-368 and 370-379. The amendments to the Federal Motor Carrier Safety Regulations (FMCSR) that have become final and effective since the 2009 edition of the CFR are listed in the information below. The affected parts are followed by the Federal Register (FR) citations.

Amendments to the FMCSR

Part 367 (FR Vol. 75, No. 80, Pages 21993-22012), 4-27-10

The Federal Motor Carrier Safety Administration (FMCSA) established annual registration fees and a fee bracket structure for the Unified Carrier Registration Agreement for the calendar year beginning January 1, 2010, as required under the Unified Carrier Registration Act of 2005, enacted as Subtitle C of Title IV of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended. Effective Date: April 27, 2010.

Part 365 (FR Vol. 75, No. 119, Pages 35318-35329), 6-22-10

The FMCSA eliminated the requirement for most for-hire motor common carriers of property and freight forwarders to maintain cargo insurance in prescribed minimum amounts and file evidence of this insurance with FMCSA. Household goods motor carriers and household goods freight forwarders will continue to be subject to this cargo insurance requirement. Effective Date: March 21, 2011.

Parts 371 and 375 (FR Vol. 75, No. 228, Pages 72987-72999), 11-29-10

The FMCSA amended its regulations to require brokers that arrange the transportation of household goods in interstate or foreign commerce for consumers to comply with certain consumer protection requirements. Brokers must provide: their U.S. DOT number on their advertisements and Internet Web sites; estimates of expected moving charges and brokerage fees; FMCSA pamphlets containing tips for successful moves and the consumer's rights and responsibilities; and the broker's policies concerning deposits, cancellations, and refunds. This rule making is in response to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended, and a petition for rule making from the American Moving and Storage Association. Effective Date: January 28, 2011.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These amendments are identical to those published under Notice of Intended Action.

After analysis and review of this rule making, no impact on jobs has been found. The purpose of this rule making is to streamline efficiencies for the Department. Item 13 removes the option for businesses to call the Department when seeking a permit; however, the online feature should be more convenient for both the Department and Iowa businesses. Further, companies without access to the Internet may submit their applications through mail or facsimile.

These amendments are intended to implement Iowa Code chapters 321, 321E, 321H, 322, 325A and 327B.

TRANSPORTATION DEPARTMENT[761](cont'd)

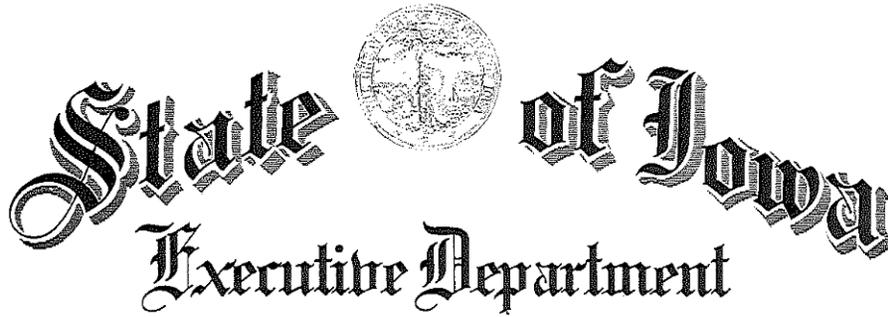
These amendments will become effective July 4, 2012.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 400, 401, 405, 425, 431, 450, 511, 524, 529] is being omitted. These amendments are identical to those published under Notice as **ARC 0068C**, IAB 4/4/12.

[Filed 5/10/12, effective 7/4/12]

[Published 5/30/12]

[For replacement pages for IAC, see IAC Supplement 5/30/12.]



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER SEVENTY-SEVEN

- WHEREAS, when adopting regulations to implement the laws of the State of Iowa, state agencies must reflect legislative language and must not attempt to legislate by regulatory fiat; and
- WHEREAS, Senate File 464, allowing hunting of mourning doves, became law on July 1, 2011; and
- WHEREAS, Senate File 464 also allowed the Natural Resource Commission ("NRC") to establish the season, bag limits, possession limits and localities for hunting mourning doves (2011 Acts, Senate File 464); and
- WHEREAS, Senate File 464 did not allow the NRC to ban the use of traditional shot for use in hunting; in fact the Iowa House of Representatives specifically voted down such a restriction on hunters by a vote of 51 nays to 30 ayes (2011 Amendment H-1444, H.J. 779); and
- WHEREAS, despite clear and unambiguous legislative action, the NRC, attempted to ban traditional shot by administrative rule (IAB Volume XXXIV, ARC9674B (August 10, 2011)); and
- WHEREAS, on August 16, 2011 the bipartisan Administrative Rules Review Committee voted 9-1 to impose a session delay on the last sentence of rule 571 IAC 97.6 which contained the ban on traditional shot; and
- WHEREAS, although H.J.R. 2001 which nullified the ban on traditional shot passed the House of Representatives by a bipartisan vote of 73 to 27, the Senate failed to take up the resolution before adjournment; and
- WHEREAS, according to Iowa Code Chapter 17A, the Iowa Administrative Procedure Act the governor may rescind an adopted rule by executive order within seventy days of the rule becoming effective; and
- WHEREAS, as a result of the Senate's failure to allow a vote on H.J.R. 2001, the last sentence of rule 571 IAC 97.6 banning traditional shot went into effect following adjournment of both chambers on May 9, 2012; and
- WHEREAS, it is in the best interests of the State of Iowa to rescind the Iowa rule banning use of traditional shot by hunters because the determination of whether hunters should be forced to stop using traditional lead shot is the role of the legislature, not an unelected NRC.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, declare that the ban on traditional shot imposed on hunters by the NRC rule attempts to legislate through regulation and hurts the interests of people of the State of Iowa. I hereby order and direct that the final sentence of ARC 9674B, Item 2 of the state administrative rules attempting to ban traditional shot be immediately rescinded pursuant the authority granted to me by Iowa Code Chapter 17A.4(8).



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 11th day of May in the year of our Lord two thousand twelve.

A handwritten signature in black ink, appearing to read "Terry E. Branstad", written over a horizontal line.

TERRY E. BRANSTAD
GOVERNOR

ATTEST:

A handwritten signature in black ink, appearing to read "Matt Schultz", written over a horizontal line.

MATT SCHULTZ
SECRETARY OF STATE