

CHAPTER 2
STATE BOARD OF TAX REVIEW—CONDUCT OF APPEALS AND
RULES OF PRACTICE AND PROCEDURE
[Prior to 12/17/86, Revenue Department[730]]

DIVISION I
APPELLATE CASES

GENERAL RULES OF PRACTICE AND PROCEDURE FOR FINAL CONTESTED CASE DECISIONS OF
OR ATTRIBUTABLE TO THE DIRECTOR OF REVENUE

701—2.1(421,17A) Definitions. For the purposes of these rules, the following definitions shall apply:
“Board” or “state board” means the state board of tax review as created by chapter 342 of the Acts of the Sixty-second General Assembly and governed by Iowa Code chapter 17A and section 421.1.
“Department” means the Iowa department of revenue.
“Director” means the director of the Iowa department of revenue.
“Secretary” means the secretary for the state board of tax review.

701—2.2(421,17A) Appeal and jurisdiction.

2.2(1) Jurisdiction. Jurisdiction is conferred upon the state board by the giving of written notice to the department within 30 days of the rendering of the decision, order, or directive, which is a final agency action from which such appeal is taken. The appellant may appeal the entire decision or order issued by the director or the appellant may appeal only certain issues set forth in the review by the director. In cases in which the state board does not have original jurisdiction, the state board has the power to review all of the original issues raised by the parties in the contested case, even if the issues were not appealed or subject to cross-appeal by the parties.

2.2(2) Notice of appeal. The notice of appeal must be proper in format and content as set forth in 701—2.3(421,17A), which governs the notice of appeal.

Notice of appeal may be given by certified mail, return receipt requested, addressed to the department of revenue to the attention of the director, or by service on the director as provided by the Iowa Rules of Civil Procedure. The mailing address for the notice of appeal is Secretary for the State Board, Director’s Office, State Board of Tax Review, Hoover State Office Building, 1305 East Walnut Street, Fourth Floor, Des Moines, Iowa 50319.

Proof that the notice of appeal was filed with the state board shall be made by executing an affidavit of mailing signed by the appellant or the appellant’s duly authorized representative, with return receipt and a copy of the notice attached. The affidavit shall state that the notice of appeal was mailed to the secretary for the state board indicating the mailing address that was used, or the affidavit shall state that the filing of the notice of appeal was conducted by in-person delivery to the secretary for the state board with a file-stamped copy of the notice having been received and attached to the affidavit.

2.2(3) Scheduling of case briefs and arguments. The state board will determine the briefing and argument schedule for the matter on appeal. The state board may resolve the appeal based on the briefs or provide an opportunity for oral argument. The state board may amend a scheduling notice that was issued by the state board. The state board may amend the notice on the board’s own motion or after consideration of a petition requesting such a modification from any of the parties involved in the appeal.

701—2.3(421,17A) Form of appeal. The written notice of appeal shall contain a caption in the following form:

BEFORE THE STATE BOARD OF TAX REVIEW HOOVER STATE OFFICE BUILDING DES MOINES, IOWA		
IN THE MATTER OF _____ (state taxpayer’s name, address and designate type of proceeding, e.g., income tax refund claim)	}	NOTICE OF APPEAL DOCKET NO. (Docket No. is assigned by Board)

The notice of appeal shall substantially state in separate numbered paragraphs the following:

1. The appellant's name and legal residence;
2. The date on which the director's decision, order or directive was issued;
3. The amount of assessment or refund denial, nature of tax, year or other period, date of assessment or refund denial, and approximate amount of total tax liability in controversy;
4. A clear and concise assignment of each and every error;
5. A clear and concise statement of the facts upon which the affected taxpayer relies as sustaining the assignment of error;
6. The relief requested;
7. The signature of affected taxpayer or counsel, together with address to which all subsequent correspondence, notice or papers shall be served or mailed.

The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service.

701—2.4(421,17A) Certification by director. Within 30 days after notice of appeal is given, the director shall certify to the board all records; documents; reports; audits; a copy of the decision, order or directive from which appeal is taken; and all other pertinent information.

701—2.5(421,17A) Motions. All motions shall be in writing and shall be filed with the secretary for the state board within 30 days after the filing of the attached pleading and shall contain the reasons and grounds supporting the motion. The state board shall act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit.

701—2.6(421,17A) Answer. An answer shall be filed with the secretary for the state board within 30 days after the filing of pleading responded to, unless attacked by motion as provided in rule 701—2.5(421,17A), and then the answer shall be filed within 30 days after the date on which the state board issues a ruling on the motion.

701—2.7(421,17A) Docketing. Appeals shall be assigned consecutive docket numbers. Records must be maintained by the secretary for the state board consisting of the case name and the corresponding docket number assigned to the case. The records of each case shall also include each action and each act done, with the proper dates as follows:

1. The title of the appeal;
2. Brief statement of the type of tax, year or other period, date of assessment, refund denial, and the amount involved including tax, penalty, interest and costs;
3. The manner and time of service of notice of appeal;
4. The appearance of all parties;
5. Notice of hearing, together with manner and time of service; and
6. The decision of the state board or other disposition of the case and the date.

701—2.8(421,17A) Filing of papers. After proof of notice has been filed, all motions, pleadings, briefs, and other papers to be filed shall be filed in quadruplicate with the secretary for the state board who shall send copies to members of the state board and to all other parties of record, unless represented by counsel of record, then to such counsel.

701—2.9(421,17A) Hearing an appeal. In the event that the case consists of a review by the state board of a decision of or attributable to the director in a contested case proceeding, the state board will consider only those issues or selected issues actually presented at the contested case proceeding where such issues were of the type which by statute were entrusted to the director for determination. Further, when reviewing the decision of or attributable to the director on these issues presented at the contested case proceeding, the board shall not hear any further evidence with respect to those issues, but the board shall afford each party an opportunity to present briefs and oral arguments.

701—2.10(17A,421) Appearances by appellant. Any appellant may appear in person or, in the case of corporations, partnerships or other associations, by their duly authorized representative, or by an attorney-at-law or a certified public accountant authorized to practice in the state of Iowa.

701—2.11(421,17A) Authority of state board to issue procedural orders. The state board or a member of the state board may issue preliminary orders regarding procedural matters. The secretary for the state board shall immediately mail a copy of any such preliminary order entered under this rule to the two members of the board who did not participate in the order. All orders entered under this rule shall become the action of the board unless the members of the board who did not participate in the order notify the secretary of their objection within five days of their receipt of the order. If the members of the board who did not participate in the order timely object, then the order shall be null and void. The secretary shall notify the parties of the order entered under this rule, when it becomes the order of the board. The chairperson, or other member designated by the chairperson, may grant a continuance of the hearing on appeal for “good cause” even though there is insufficient time before the scheduled hearing for other members of the board to object to the continuance.

701—2.12(421,17A) Continuances. Any hearing may be continued for “good cause.” Requests for continuance prior to the hearing shall be in writing and promptly filed with the state board immediately upon “the cause” becoming known.

701—2.13(17A,421) Place of hearing. Unless otherwise designated by the state board, the hearing shall be held in the office of the State Board of Tax Review, Hoover State Office Building, Fourth Floor, 1305 E. Walnut Street, Des Moines, Iowa 50319.

701—2.14(17A,421) Members participating. All appeals shall be heard by a minimum of two members of the state board. Orders and decisions shall be signed by one member of the board and shall name participating members. Decisions shall affirm, modify, remand, or reverse the decision, order, or directive from which an appeal was made. A majority decision by the state board shall govern and control. Written dissenting decisions may be filed.

701—2.15(17A,421) Presiding officer. The chairperson of the state board or a designated member shall preside at the hearing.

701—2.16(17A,421) Appeals of state board decisions. Prior to July 1, 2004, only a taxpayer could seek judicial review by the state board of a decision or order previously issued by the director. However, effective for state board decisions issued on or after July 1, 2004, either the department or the taxpayer may seek judicial review of a decision or order rendered by the state board. The department or taxpayer may seek judicial review of the entire decision or order of the state board or may seek judicial review of only certain issues contained in the decision or order of the state board.

DIVISION II
ORIGINAL JURISDICTION

RULES GOVERNING CONTESTED CASE PROCEEDINGS
IN WHICH THE STATE BOARD HAS ORIGINAL JURISDICTION
TO COMMENCE A CONTESTED CASE PROCEEDING

701—2.17(421,17A) Applicability and scope. The rules set forth under division II govern the proceedings for all cases in which the state board has original jurisdiction to commence a contested case proceeding.

701—2.18(17A) Definitions. For the purposes of division II, the following definitions shall apply:
“Board” or “state board” means the state board of tax review created by Iowa Code section 421.1.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5), over which the state board of tax review has original jurisdiction to commence a contested case proceeding, and includes any matter defined as a no factual dispute contested case pursuant to Iowa Code section 17A.10A.

“*Department*” means the department of revenue.

“*Department of inspections and appeals*” means the Iowa department of inspections and appeals which was created and is governed by Iowa Code chapter 10A.

“*Director*” means the director of the department of revenue 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.

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

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

“*Person*” means any individual; estate; trust; fiduciary; partnership including limited liability partnership; corporation including limited liability corporation; association; governmental subdivision; public or private organization of any character; or any other individual or entity allowed by definition under the law of another agency involved in the proceedings under this division.

“*Presiding officer*” means the members of the state board officiating over the contested case proceedings or, if the state board exercises its discretion and the notice of appeal is transferred from the state board to the department of inspections and appeals, then “presiding officer” means an administrative law judge employed by the division of administrative hearings of the department of inspections and appeals.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case.

701—2.19(421,17A) Time requirements. Time shall be computed as provided in Iowa Code section 4.1(34), “Time—legal holidays.”

701—2.20(421,17A) Notice of appeal. Jurisdiction is conferred upon the state board by the giving of written notice to the department within 30 days of the rendering of the decision, order, or directive from which such appeal is taken. However, the state board does not have jurisdiction with regard to a final equalization notice issued pursuant to Iowa Code section 441.49, unless written notice is given within 10 days of the date of the order in accordance with rule 701—71.15(441).

Notice of appeal to the state board may be given by certified mail, return receipt requested, and addressed to the department of revenue to the attention of the director at Iowa Department of Revenue, Hoover State Office Building, Fourth Floor, 1305 E. Walnut Street, Des Moines, Iowa 50319, or by service on the director as provided by the Iowa Rules of Civil Procedure.

Notice shall be proved by affidavit of mailing signed by the appellant or the appellant’s duly authorized representative, with return receipt and a copy of the notice attached, filed with the secretary, or by filing with the secretary a copy of the notice of appeal with return of service attached.

701—2.21(421,17A) Form of appeal. The written notice of appeal shall contain a caption in the following form:

BEFORE THE STATE BOARD OF TAX REVIEW HOOVER STATE OFFICE BUILDING DES MOINES, IOWA		
IN THE MATTER OF _____ (state taxpayer’s name, address and designate type of proceeding, e.g., income tax refund claim)	}	NOTICE OF APPEAL DOCKET NO. (Docket No. is assigned by Board)

The notice of appeal shall substantially state in separate numbered paragraphs the following:

1. The appellant's name and legal residence;
2. The date appellant received the director's decision, order, or directive;
3. The amount of assessment or refund at issue, nature of tax, year or other period, date of assessment or refund denial, and approximate amount of total tax liability in controversy;
4. A clear and concise assignment of each and every error;
5. A clear and concise statement of the facts upon which the affected taxpayer relies as sustaining the assignment of error;
6. The relief requested; and
7. The signature of affected taxpayer or counsel, together with address to which all subsequent correspondence, notice or papers shall be served or mailed.

701—2.22(421,17A) Certification by director. Within 30 days after notice of appeal is given, the director shall certify to the board all records; documents; reports; audits; a copy of the decision, order, or directive from which appeal is taken; and all other pertinent information.

701—2.23(421,17A) Answer. An answer shall be filed with the secretary for the state board within 30 days after the filing of pleading responded to, unless attacked by motion as provided in rule 701—2.5(421,17A). If a motion is filed attacking the pleadings as provided in 701—2.5(421,17A), then the answer shall be filed within 30 days after the date on which the board issues a ruling on the motion.

701—2.24(421,17A) Docketing. Appeals shall be assigned consecutive docket numbers. Records must be maintained by the secretary for the state board consisting of the case name and the corresponding docket number assigned to the case. The records of each case shall also include each action and each act done, with the proper dates as follows:

1. The title of the appeal;
2. Brief statement of the type of tax, year or other period, date of assessment, and the amount involved including tax, penalty, interest and costs;
3. The manner and time of service of notice of appeal;
4. The appearance of all parties;
5. Notice of hearing, together with manner and time of service; and
6. The decision of the state board or other disposition of the case and the date.

701—2.25(421,17A) Appearances by appellant. Any appellant may appear in person or, in the case of corporations, partnerships or other associations, by their duly authorized representative, or by an attorney-at-law or a certified public accountant authorized to practice in the state of Iowa.

701—2.26(421,17A) Place of hearing. Unless otherwise designated by the state board, the hearing shall be held in the office of the State Board of Tax Review, Hoover State Office Building, Fourth Floor, 1305 E. Walnut Street, Des Moines, Iowa 50319.

701—2.27(421,17A) Transcript of hearing. Hearings shall be tape-recorded. Any party may provide a certified court reporter at the party's own expense. Any party may request that a transcription of the tape-recorded hearing be composed. The department reserves the right to impose a charge for transcription services.

701—2.28(421,17A) Requests for contested case proceeding. Any party may request commencement of a contested case proceeding by filing a written request for such a proceeding after the notice of appeal and an answer have been filed.

701—2.29(421,17A) Notice of hearing.

2.29(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure;

- b. Certified mail, return receipt requested;
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

2.29(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the state board or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the parties' representatives where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Identification of the presiding officer, if known. If the identity of the presiding officer is not known, a description of who will serve as presiding officer;
- h. Notification of the time period in which a party may request that the presiding officer be an administrative law judge; and
- i. Whether the state board on its own motion has decided to transfer the case to the division of administrative hearings.

701—2.30(17A) Presiding officer.

2.30(1) Request. Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 30 days after service of a request for commencement of a contested case proceeding as provided in 701—2.28(421,17A).

2.30(2) Denial of request. The state board may deny the request only upon a finding that one or more of the following apply:

- a. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare;
- b. An administrative law judge with the qualifications identified in subrule 2.30(4) is unavailable to hear the case within a reasonable time;
- c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented;
- d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues;
- e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal;
- f. The request was not timely filed;
- g. The request is not consistent with a specified statute; or
- h. The state board based on its discretion may wish to retain the case due to the subject matter of the case or issues involved in the case.

2.30(3) Ruling on request. The state board shall issue a written ruling specifying the grounds for its decision within 30 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in 2.30(4), the parties shall be notified at least 10 days prior to the hearing if a qualified administrative law judge will not be available.

2.30(4) Qualifications of the administrative law judge. An administrative law judge assigned to act as a presiding officer in a case in which the state board has original jurisdiction shall have the following technical expertise unless waived by the state board: The administrative law judge must be an attorney licensed to practice law in the state of Iowa and, based on the discretion of the state board, possess sufficient technical expertise in the area of taxation and related matters to be capable of rendering a fair and competent decision in such cases.

2.30(5) *Appeal of proposed decision by the administrative law judge.* 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 state board. A party must seek any available appeal in order to exhaust adequate administrative remedies.

2.30(6) *Review of interagency appeals.* Unless otherwise provided by law, members of the state board, when reviewing a proposed decision upon interagency appeal, shall have the powers which apply to presiding officers.

701—2.31(421,17A) Transfer of case for hearing or appeal. The secretary for the state board shall transfer the case file to the division of administrative hearings within 30 days of the date of a determination by the state board that the case should be transferred. The parties to the case shall be notified at least 10 days prior to the hearing if a qualified administrative law judge will be available.

The administrative hearings division shall, upon issuance of a proposed decision, promptly forward the record of the contested case proceeding and all other papers associated with the case to the state board, if no timely motion to vacate under rule 701—2.46(421,17A) is filed. If such a motion is filed, the record shall be promptly forwarded after the motion to vacate is denied or a proposed decision is rendered on the merits.

701—2.32(421,17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of division II. However, the state board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

701—2.33(421,17A) Telephone proceedings. 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 consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

701—2.34(17A,421) Disqualifications of a presiding officer.

2.34(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship who: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

2.34(2) Personally investigated. The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators,

unsolicited receipt of information 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 functions of the state board, 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 or a member of the state board shall be disclosed if required by Iowa Code section 17A.11 and the rules set forth in this division.

2.34(3) Withdrawal. 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.

2.34(4) Motion for disqualification. If a party asserts disqualification on any appropriate ground, including those listed in subrule 2.34(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. 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.

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 a stay as provided under the rules of this division.

701—2.35(421,17A) Consolidation and severance.

2.35(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

2.35(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions of the proceedings severed.

701—2.36(17A) Service and filing of pleadings and other papers.

2.36(1) When service is required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

2.36(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by in-person delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

2.36(3) Filing—when required. All pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Secretary for the State Board of Tax Review, Hoover State Office Building, Fourth Floor, 1305 E. Walnut Street, Des Moines, Iowa 50319. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the state board at the address for the secretary for the state board as previously stated. Thereafter, once an administrative law judge becomes a presiding officer, such papers will be filed with that administrative law judge.

2.36(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed with the state board or an administrative law judge if one of the following has occurred:

a. At the time it is delivered to the secretary for the state board at the Hoover State Office Building, Fourth Floor, 1305 E. Walnut Street, Des Moines, Iowa 50319, or to the address for the administrative law judge;

b. When delivered to an established courier service for immediate delivery to the Secretary for the State Board, Hoover State Office Building, Fourth Floor, 1305 E. Walnut Street, Des Moines, Iowa 50319, or to the address of the administrative law judge; or

c. When mailed by first-class mail or state interoffice mail to the secretary for the state board at the address indicated above or to the address of the administrative law judge, so long as there is proof of mailing.

2.36(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

701—2.37(421,17A) Discovery.

2.37(1) Discovery procedure. Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

2.37(2) Discovery motions. Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 2.37(1). The presiding officer may rule on the basis of the written motion and any response, or may order written or oral arguments on the motion.

2.37(3) Admissibility of evidence. Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

701—2.38(421,17A) Subpoenas.

2.38(1) Issuance.

a. A subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

2.38(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

701—2.39(421,17A) Motions.

2.39(1) Form. No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

2.39(2) Response. Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

2.39(3) Oral argument. The presiding officer may schedule oral argument on any motion.

2.39(4) *Deadline.* Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the state board or an order of the presiding officer.

2.39(5) *Motions for summary judgment.* Motions for summary judgment shall comply with requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or written submission shall be not less than 30 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to appeal or rehearing pursuant to these rules.

701—2.40(421,17A) Prehearing conference.

2.40(1) *Request.* Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall not be scheduled less than three business days prior to the hearing date.

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

2.40(2) *Prehearing information.* Each party shall bring to the prehearing conference the following:

- a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names;
- b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them; and
- c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

2.40(3) *Permissible prehearing conference actions.* In addition to the requirements of subrule 2.40(2), the parties at a prehearing conference may:

- a. Enter into stipulations of law or fact;
- b. Enter into stipulations on the admissibility of exhibits;
- c. Identify matters which the parties intend to request be officially noticed;
- d. Enter into stipulations for waiver of any provision of law; and
- e. Consider any additional matters which will expedite the hearing.

2.40(4) *Telephone.* Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

701—2.41(421,17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

2.41(1) *Application.* A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that

request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

2.41(2) *Factors in determining a continuance.* In determining whether to grant a continuance, the presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

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

701—2.42(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal shall be with prejudice.

701—2.43(421,17A) Intervention.

2.43(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

2.43(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 30 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

2.43(3) *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

2.43(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

701—2.44(421,17A) Hearing procedures.

2.44(1) *Authority of presiding officer.* The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

2.44(2) *Objections.* All objections shall be timely made and stated on the record.

2.44(3) *Representation.* Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

2.44(4) *Participation in hearing.* Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

2.44(5) *Decorum.* The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

2.44(6) *Sequestration.* Witnesses may be sequestered during the hearing.

2.44(7) *Conduct of the hearing.* The presiding officer shall conduct the hearing in the following manner:

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

b. The parties shall be given an opportunity to present opening statements;

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

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

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

701—2.45(421,17A) Evidence.

2.45(1) *Admissibility.* The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

2.45(2) *Stipulations.* Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

2.45(3) *Scope of admissible evidence.* Evidence in the proceeding shall be confined to the issues about which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

2.45(4) *Exhibits.* The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

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

2.45(5) *Objection.* Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

2.45(6) *Offer of proof.* Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

701—2.46(421,17A) Default or dismissal.

2.46(1) Grounds. 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.

2.46(2) Moving for default. Where appropriate and not contrary to law, any party may move for default against a party who has failed to file a required pleading, has failed to pursue, or has failed to appear after proper service.

2.46(3) 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, 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. 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, which affidavit(s) must be attached to the motion.

2.46(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision of the motion to vacate.

2.46(5) 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.

2.46(6) "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).

2.46(7) 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.

2.46(8) 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.

2.46(9) A default decision may award any relief consistent with the request for relief made in the pleadings and embraced in the issues.

2.46(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay.

701—2.47(421,17A) Ex parte communication.

2.47(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following the 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 a 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 state board. Nothing in this provision is intended to preclude the presiding officer from seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties. Any communication received by the presiding officer from those persons cannot directly or indirectly communicate any ex parte communications the receipt of which is prohibited under the Iowa Rules of Civil Procedure and the Code of Ethics. In addition, any communication received by the presiding officer cannot furnish, augment, diminish, or modify the evidence in the record.

2.47(2) 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.

2.47(3) Written, oral, or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

2.47(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided to all parties or their representatives and may be supplemented by telephone, facsimile,

electronic mail or other means of notification. Where permitted, oral communications may be initiated through a telephone conference call including all parties or their representatives.

2.47(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

2.47(6) Other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 2.47(2).

2.47(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

2.47(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the period in which a contested case is pending 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, or disclosed if an appropriate order is made. 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.

2.47(9) 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 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.

2.47(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the state board. Violation of ex parte communication prohibitions by state board personnel shall be reported to the secretary for the State Board of Tax Review, Hoover State Office Building, Fourth Floor, 1305 E. Walnut Street, Des Moines, Iowa 50319, for possible sanctions, including censure, suspension, dismissal, or other disciplinary action.

701—2.48(421,17A) Recording costs. Upon request, the state board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

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

701—2.49(421,17A) Interlocutory appeals. Upon written request of a party or on its own motion, the state board may review an interlocutory order of a presiding officer. In determining whether to do so, the state board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the state board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

701—2.50(421,17A) Final decision.

2.50(1) When the state board presides over the reception of evidence at the hearing, its decision is a final decision.

2.50(2) When the state board does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the state board without further proceedings unless there is a timely motion to vacate under rule 701—2.46(421,17A), or an appeal to, or review on motion of, the state board within the time provided in rule 701—2.51(421,17A).

701—2.51(421,17A) Applications for rehearing.

2.51(1) *Who may file.* Any party to a contested case proceeding may file an application for rehearing from a final order.

2.51(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the decision on the existing record and whether, on the basis of the grounds enumerated in subrule 2.51(3), the applicant requests an opportunity to submit additional evidence.

2.51(3) *Time of filing.* The application for rehearing shall be filed with the state board within 30 days after issuance of the final decision.

2.51(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record that are joining in the application for rehearing. If the application does not contain a certificate of service, the state board shall serve copies on all parties.

2.51(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 30 days after its filing.

701—2.52(421,17A) Stays of agency and board actions.

2.52(1) *When available.* Any party to a contested case proceeding may petition the state board for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition for a stay shall state the reasons justifying a stay or other temporary remedy.

2.52(2) *When granted.* In determining whether to grant a stay, the state board shall consider the factors listed in Iowa Code section 17A.19(5).

2.52(3) *Vacation.* A stay may be vacated by the state board upon application of the department or any other party.

701—2.53(421,17A) No factual dispute contested case. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs, and oral argument should be submitted to the state board for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

701—2.54(421,17A) Appeal and review of a state board decision. Either party may appeal a final decision issued by the state board. An appeal from a final state board decision is termed “judicial review of an agency decision,” which is governed by Iowa Code section 17A.19.

These rules are intended to implement Iowa Code chapter 17A and Iowa Code sections 421.1, 421.2 and 441.49.

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