

CHAPTER 7
APPEALS, TAXPAYER REPRESENTATION, AND OTHER ADMINISTRATIVE PROCEDURES
[Prior to 12/17/86, Revenue Department[730]]

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

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

[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 1545C, IAB 7/23/14, effective 8/27/14; ARC 5940C, IAB 10/6/21, effective 11/10/21]

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

“*Act*” means the Iowa administrative procedure Act.

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

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

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

“*Clerk*” means the clerk of the legal services and appeals division or the clerk's designee.

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

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

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

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

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

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

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

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

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

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

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

“*Last-known address*” means the last address associated with a taxpayer by tax type, as determined pursuant to rule 701—7.33(421).

“*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; limited liability company; association; governmental subdivision; or public or private organization of any character or any other person covered by the Act other than an agency.

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

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

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

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

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

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

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

“*Rule*” means a department statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of the department. Notwithstanding any other statute, the term includes an executive order or directive of the governor which creates an agency or establishes a program or which transfers a program between agencies established by statute or rule. The term includes the amendment or repeal of an existing rule, but does not include the excluded items set forth in Iowa Code section 17A.2(11).

“*Small business*” means the same as defined in Iowa Code section 17A.4A(8)“a.”

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

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

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

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

[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 1545C, IAB 7/23/14, effective 8/27/14; ARC 5940C, IAB 10/6/21, effective 11/10/21]

701—7.3(17A) How to submit an appeal, petition or related documents; service. Appeals, petitions, and other documents governed by this chapter may be filed electronically, by mail, or in person, in accordance with the limits described below. The principal office of the department in the Hoover State Office Building in Des Moines, Iowa, shall generally be open between the hours of 8 a.m. and 4:30 p.m. daily, except Saturdays, Sundays, and holidays as defined in Iowa Code section 421.9A.

7.3(1) Ways to submit an appeal, petition, or related document. Unless otherwise specified in another rule in this chapter, a person may submit an appeal, petition, related document, or document filed during an appeal or pending petition:

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

b. By email to idrhearings@iowa.gov.

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

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

7.3(2) *Filings with the department of inspections and appeals and service upon the department during contested case proceedings.* All documents or papers required or permitted to be filed with an administrative law judge appointed by the division of administrative hearings to be a presiding officer in a contested case shall be filed with the department of inspections and appeals in accordance with rule 481—10.12(17A). All papers or documents required or permitted by this chapter to be filed with the department or the director and served upon the opposing party or other person in a contested case shall be served by ordinary mail unless another rule specifically refers to another method.

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

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

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701—7.4(17A) Time requirements for filings.

7.4(1) *Computing time.* Time shall be computed in accordance with Iowa Code section 421.9A. For electronic submissions, in addition to the requirements described in Iowa Code section 421.9A, local time for the state of Iowa applies.

7.4(2) *Date of filing.* The date of filing for appeal requests, petitions, or other related documents shall be:

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

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

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

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

[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21; ARC 6551C, IAB 10/5/22, effective 11/9/22]

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

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

a. *Signatures.* Signatures must meet the requirements of 701—subrule 8.2(6). The signature shall constitute a certification that the signer has read the document; that, under penalty of perjury, the signer

declares that to the best of the signer's knowledge and belief, the information contained in the document is true, correct, and complete; and that no statement contained in the document is misleading.

b. Citations. Citations may be italicized or underlined.

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

a. Be clear and legible.

b. Be on white paper.

c. Be on the applicable department appeal, application for reinstatement, or petition form available on the department's forms website tax.iowa.gov/forms under the category "Applications and Other" or, if not on the department's form, include a proper caption on the first page.

d. Include a signature.

e. Include copies as herein provided or as specified in other applicable rules.

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

a. A document in PDF, Microsoft Word, Microsoft Excel, or image format that complies with subrules 7.5(1) and 7.5(2), or

b. The body of an email that meets all of the requirements of subrules 7.5(1) and 7.5(2).

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

a. A document in PDF, Microsoft Word, Microsoft Excel, or image format that complies with subrules 7.5(1) and 7.5(2) that is properly uploaded and properly submitted through GovConnectIowa.

b. Completed and submitted on the applicable form provided on GovConnectIowa.

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

[ARC 5940C, IAB 10/6/21, effective 11/10/21]

701—7.6(17A,22,421,422) Authorized representatives—powers of attorney and representative certifications. No individual, including an attorney, accountant, or other representative, will be recognized as representing any taxpayer in regard to any claim, appeal, or other matter before the department or in any communication with, hearing before, or conference with the department, or any member or agent thereof, unless there is first filed with the department a written authorization meeting the requirements of this rule and Iowa Code section 421.59. If a taxpayer wishes to allow the department to discuss otherwise confidential tax matters with an individual other than an authorized representative, without giving that individual authority to act on the taxpayer's behalf, the taxpayer must provide the department with written authorization to disclose such confidential tax information as provided in rule 701—5.7(17A,22,421,422).

7.6(1) Individuals authorized to represent a taxpayer, generally; transfers of decision-making authority.

a. If a taxpayer wishes to have any other individual or individuals act on the taxpayer's behalf in matters before the department, the taxpayer must file with the department an Iowa department of revenue (IDR) power of attorney form, as described in subrule 7.6(5), authorizing that individual to do so. Even if an individual desires to represent a taxpayer only through correspondence with the department but does not intend to personally appear before the department in a hearing or conference, the taxpayer must submit an IDR power of attorney form appointing that individual to act on the taxpayer's behalf.

b. Individuals with the authority to act on behalf of a taxpayer, including pursuant to Iowa Code section 421.59(2) or chapter 633B, must file a representative certification form as described in subrule 7.6(6). Subrule 7.6(6) contains more information about individuals who may qualify as authorized representatives and the information required.

7.6(2) Powers authorized.

a. An IDR power of attorney or representative certification form, as applicable, is required by the department before an individual can perform one or more of the following acts on behalf of the taxpayer:

(1) To receive copies of any notices or documents sent by the department, its representatives, or its attorneys.

(2) To receive, but not to endorse and collect, checks made payable to the taxpayer in payment of any refund of Iowa taxes, penalties, or interest. Certain representatives with a valid representative certification form may be authorized to receive, endorse, and collect checks made payable to the taxpayer in payment of any refund of Iowa taxes, penalties, or interest.

(3) To execute waivers (including offers of waiver) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.

(4) To execute consents extending the statutory period for assessment or collection of taxes.

(5) To fully represent the taxpayer in any hearing, determination, final or otherwise, or appeal. Subrule 7.6(8) contains additional requirements.

(6) To enter into any settlement or compromise with the department.

(7) To execute any release from liability required by the department as a prerequisite to divulging otherwise confidential information concerning the taxpayer.

(8) To authorize a third party as authorized representative or disclosure designee for the taxpayer.

b. The taxpayer may limit the scope of the authority of an authorized representative appointed via an IDR power of attorney form by expressly stating the limitations, if any, on the IDR power of attorney form submitted to the department. The taxpayer may not expand the scope of authority of an authorized representative beyond those powers authorized in this rule.

7.6(3) Submitting a form.

a. Submit separately. An IDR power of attorney form or representative certification may not be submitted as an attachment to a tax return except as provided by these rules. A power of attorney form or representative certification form must be submitted separately to the department in accordance with the submission instructions on the form(s).

b. Original or electronic forms accepted. The department may accept either an original form, an electronically scanned and transmitted form, or a copy of a form. A copy received by facsimile transmission (fax) or email may be accepted. All copies, facsimiles, and electronically scanned and transmitted forms must include a valid signature meeting the requirements of rule 701—8.2(17A,421) of the taxpayer to be represented.

c. Timely submission. The form must be submitted within six months of the date of signature, or it will be considered invalid.

d. Appointment of a representative via another form. The department designates certain returns or other departmental forms on which a taxpayer may appoint a representative.

7.6(4) Communications with represented taxpayers. Any notice or other written communication (or copy thereof) from the department provided to the representative, where required or permitted to be given to the taxpayer in any matter before the department, will be given to the taxpayer.

7.6(5) Powers of attorney. Individuals appointed by a taxpayer to represent the taxpayer must file an IDR power of attorney form.

a. Individuals who may execute an IDR power of attorney form. The individual who must execute an IDR power of attorney form is as follows:

(1) Individual. In matters involving an individual taxpayer, an IDR power of attorney form must be signed by the individual or an authorized representative.

(2) Joint or combined returns. In matters involving a joint return or married taxpayers who have elected to file separately on a combined return, each taxpayer must complete and submit the taxpayer's own IDR power of attorney form, even if the taxpayers are represented by the same appointee(s). In any matter concerning a joint return or married taxpayers who have elected to file separately on a combined return, in which the two taxpayers are not to be represented by the same representative(s), the authorized representative of such spouse cannot perform any act with respect to a tax matter that the spouse represented cannot perform alone.

b. Contents of the IDR power of attorney form. An IDR power of attorney form must contain the following information to be valid:

(1) Legal name and address of the taxpayer;

(2) Identification number of the taxpayer (i.e., social security number (SSN), federal identification number (FEIN), or any federal- or Iowa-issued tax identification number);

(3) Name, mailing address, and identification number of the representative (i.e., preparer's tax identification number (PTIN), FEIN, SSN, or any federal- or Iowa-issued tax identification number) or an indication that an issued account number (IAN) is being requested;

(4) Description of the matter(s) for which representation is authorized, which may include:

1. The type of tax(es) involved or an indication that all tax types are within the scope of authority;

2. The specific year(s) or period(s) involved, or an indication that the scope is unlimited (not to exceed three years into the future beyond the signature date) and Iowa tax permit number, or an indication that all tax types are within the scope of authority;

(5) A clear expression of the taxpayer's intention concerning any restrictions to the scope of authority granted to the recognized representative(s) as provided in subrule 7.6(2).

(6) A valid signature meeting the requirements of rule 701—8.2(17A,421) of an individual listed in paragraph 7.6(5) "a."

(7) Any other information required by the department.

c. Authorization period for an IDR power of attorney form.

(1) An IDR power of attorney form may not be used to authorize representation for tax periods that end more than three years after the date on which the IDR power of attorney form is signed by the taxpayer. The authority granted may concern an unlimited number of tax periods which have ended prior to the date on which the IDR power of attorney form is received by the department; however, tax periods must be stated if the intention is to limit the periods. If the tax period section is left blank, all tax periods, including those ending up to three years in the future, are included.

(2) The authority granted by an IDR power of attorney form ceases to be effective for tax periods as defined in subparagraph 7.6(5) "c"(1) upon revocation by the taxpayer, incapacity of the taxpayer, death of the taxpayer, or withdrawal, death, or incapacity of the individual granted power of attorney authority.

d. Evaluation of documentation provided. The department will evaluate the IDR power of attorney form and any additional documentation to confirm authority. Authority to act before the department shall only cover those matters and time frames covered by the submitted documentation. The party claiming authority to act before the department on behalf of a taxpayer shall have the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authority.

e. Revocation and withdrawal.

(1) Revocation by the taxpayer.

1. By written statement. By filing a statement of revocation with the department, a taxpayer may revoke authority granted by an IDR power of attorney form without authorizing a new representative. The statement of revocation must indicate that the authority of the previous representative 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 prior IDR power of attorney form must be attached). If the writing indicates that authorization should be revoked from "all" authorized representatives, this will apply to all representatives appointed via an IDR power of attorney form or an entity representative form.

2. By filing a new IDR power of attorney form. Filing a new IDR power of attorney form for a particular tax type(s) and tax period(s) automatically revokes a previously granted power of attorney authority for that tax type(s) and tax period(s). For a previously designated authorized representative to remain as the taxpayer's authorized representative when a subsequent IDR power of attorney form is filed, the taxpayer must include the representative on the newly submitted IDR power of attorney form. This rule applies regardless of whether the power of attorney authority is authorized by an IDR power of attorney form or on a return as described in subrule 7.6(7). This subrule does not apply to entities appointed as representatives under subrule 7.6(9).

(2) Withdrawal by the representative. By filing a statement with the department, a representative may withdraw from representation in a matter in which an IDR power of attorney form has been filed. The statement must be signed by the representative and must identify the name, identification number, and address of the taxpayer(s); the name, address and identification number of the representative withdrawing; and the matter(s) from which the representative is withdrawing. A representative may

withdraw from multiple matters by including with the statement a list of all matters and taxpayers for which withdrawal is desired.

(3) Administrative revocation by the department. The department may administratively revoke a power of attorney or representative certification authority.

7.6(6) Representative certification; durable and general powers of attorney.

a. Individuals with the authority to act on behalf of a taxpayer, including pursuant to Iowa Code section 421.59(2) or chapter 633B, must file with the department a representative certification form prior to utilizing that authority with the department. Individuals authorized by an IDR power of attorney form are not required to file a representative certification form for themselves.

b. *Contents of the representative certification form.* The representative certification form must include the following information:

- (1) Legal name and address of the taxpayer;
- (2) Identification number of the taxpayer (i.e., SSN, FEIN, or any federal- or Iowa-issued tax identification number relative to matters covered by the IDR power of attorney form);
- (3) Name, mailing address, and identification number (i.e., SSN or any federal- or Iowa-issued tax identification number) of the representative. If the identification number is left blank, a new IAN will be assigned to the representative;
- (4) Proof of authority must be included with the form as follows:
 1. Durable power of attorney or general power of attorney other than an IDR power of attorney form: a copy of the power of attorney document;
 2. Guardian, conservator, or custodian appointed by a court: documentation as required in Iowa Code section 421.59(2)“a”;
 3. Receiver appointed pursuant to Iowa Code chapter 680: a copy of the relevant court order(s);
 4. Individual holding one of the following titles within a corporation, association, partnership, or other entity:
 - Officer/employee of corporation/association: affirmation of authority to act on behalf of the corporation or association on the form designated by the department;
 - Designated partner authorized to act on behalf of a partnership: affirmation of authority to act on behalf of the partnership on the form designated by the department;
 - Individual authorized to act on behalf of a limited liability company in tax matters: affirmation of authority to act on behalf of the limited liability company on the form designated by the department;
 5. Licensed attorney appearing on behalf of the taxpayer or the taxpayer’s estate in a court proceeding: a copy of the filed notice of appearance in the relevant court proceeding;
 6. Parent or guardian of minor taxpayer for whom the parent or guardian has signed the minor’s tax return: a copy of the return signed by the parent or guardian;
 7. Governmental representative: affirmation of authority to act on behalf of the government entity on the form designated by the department;
 8. Executor or personal representative: a copy of the will or court order appointing the individual;
 9. Trustee: a copy of the certificate of trust, trust document, or court order appointing the representative;
 10. Successor of a very small estate under Iowa Code section 633.356(2): affirmation of authority to act on behalf of the estate on the form designated by the department;
- (5) A valid signature meeting the requirements of rule 701—8.2(17A,421) of the representative;
- (6) Any other information required by the department.

c. *Evaluation of documentation provided.* The department will evaluate documentation submitted in support of a representative certification to confirm authority. Authority to act before the department shall only cover those matters and time frames covered by the submitted documentation. The party claiming authority to act before the department on behalf of a taxpayer shall have the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authority.

d. *Revocation.* A representative certification may be revoked in the following ways:

- (1) By the representative being withdrawn, following procedures in subparagraph 7.6(5)“e”(2).
- (2) By the taxpayer, following procedures in subparagraph 7.6(5)“e”(1).

(3) By another representative. An authorized representative properly appointed by a representative certification or an IDR power of attorney form may notify the department that an authorized representative no longer has authority to act on behalf of the taxpayer by filing a statement of revocation with the department. The notification statement must indicate the taxpayer's name, address, and identification, and that the authority of the former representative has ceased and must be signed by a current authorized representative. Also, the name and address of each representative who no longer has authority must be listed (or a copy of the prior representative certification form must be attached).

(4) Administrative revocation by the department, following procedures in paragraph 7.6(5) "e."

7.6(7) *Returns that may be used to grant power of attorney authority.* An IDR power of attorney form 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.

7.6(8) *Individuals authorized to represent themselves or others in a contested case proceeding.* The right to represent oneself or others in connection with any contested case proceeding before the department or administrative hearings division shall be limited to the following classes of individuals, so long as such representation is not barred by another provision of law. Representatives must have a valid IDR power of attorney form or valid representative certification form on file with the department to represent others in a contested case proceeding. The right to represent a taxpayer before the department or the administrative hearings division does not confer the right to represent the taxpayer in a judicial proceeding.

a. Taxpayers who are natural persons representing themselves. One spouse may not represent the other in contested case proceedings, unless the spouse is acting in a capacity described in paragraphs 7.6(8) "b" to "j";

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 the requirements for admission to practice before the courts of the state of Iowa pro hac vice;

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. Attorneys who are acting in the capacity of a director or officer of a corporation must meet the requirements of paragraph 7.6(8) "b" or "c";

f. Partners representing their partnership. Attorneys who are acting in the capacity of a partner must meet the requirements of paragraph 7.6(8) "b" or "c";

g. Fiduciaries. Fiduciaries include trustees, receivers, guardians, personal representatives, administrators, and executors. For purposes of this rule, a fiduciary is considered to be the taxpayer and not a representative of the taxpayer;

h. Government officials authorized by law;

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; and

j. Conservators, guardians, or durable powers of attorney appointed to handle tax matters.

7.6(9) *Entities as authorized representatives.*

a. *Appointment.* A taxpayer may authorize an entity to act on its behalf in tax-related matters by following the procedures described in this subrule in a manner approved by the department. By appointing an authorized entity representative, the taxpayer consents to the authorized entity representative, and any individuals submitted to the department by the authorized entity representative, as described in paragraph 7.6(9) "c," sending and receiving the taxpayer's information to and from the department and taking any other action described in these rules. By appointing an authorized entity representative, the taxpayer understands that the authorized entity representative is solely responsible for maintaining an accurate list of individuals allowed to act on the taxpayer's behalf. The taxpayer agrees that any improper disclosure or use of the taxpayer's information by the entity or entity's current or former employees, agents, or contractors shall solely be the responsibility of the entity and the entity's employees, agents, or contractors. The department shall not be liable for any acts or omissions of the entity or the entity's employees, agents, or contractors.

b. Department approval of authorized entity representatives.

- (1) The department will review authorized entity representative appointments.
- (2) The department has the authority to approve, deny, or remove third-party access to any entity or individual employee upon review.

c. Duties of the authorized entity representative.

(1) The authorized entity representative shall be responsible for managing access for individual employees that it authorizes to act on behalf of the taxpayer in a manner defined by the department. The authorized entity representative shall provide the department a single point of contact for matters involving the entity's status as an approved entity representative.

(2) The authorized entity representative single point of contact must have a valid IA 2848 or representative certification form on file on behalf of the authorized entity representative.

(3) The authorized entity representative will provide information regarding each individual employee authorized to act on behalf of the taxpayer as determined by the department. This information shall be used to identify the individual employee when contacting the department. The authorized entity representative shall maintain with the department an accurate and up-to-date list of individual employees that the authorized entity representative has authorized to act on a taxpayer's behalf under this rule. The authorized entity representative shall remove any individuals from its list with the department as soon as an individual is no longer employed by the entity or is no longer authorized by the entity to act on behalf of a taxpayer. The authorized entity representative shall submit all information and changes to information to the department via GovConnectIowa.

(4) The authorized entity representative shall be responsible for the actions taken by its employees, agents, and contractors on behalf of the taxpayer.

(5) The authorized entity representative shall remain in good standing with the department.

d. Powers authorized. An authorized entity representative may be granted any or all of the powers described in subrule 7.6(2). The taxpayer may restrict the authorized entity representative as described therein.

e. Contents of form. A valid IDR authorized entity representative form must contain the information specified in paragraph 7.6(5) "b."

f. Authorization period.

(1) An authorized entity representative may be used to authorize representation for an unlimited number of tax periods prior to or following the date on which the form is received by the department. If the tax period is left blank, all tax periods are included.

(2) At any time while the taxpayer has an effective authorized entity representative appointment filed with the department, the taxpayer consents to allowing the authorized entity representative and any individuals listed by the authorized entity representative, as described in paragraph 7.6(9) "c," to send and receive the taxpayer's information to and from the department and take any other action described in these rules.

(3) The authority granted by an IDR power of attorney form ceases to be effective upon revocation by the taxpayer, or withdrawal or dissolution of the authorized entity representative. It is the sole responsibility of the taxpayer to revoke an authorized entity representative.

g. Revocation and withdrawal.

(1) Revocation by the taxpayer. Such appointment may be revoked by the taxpayer at any time, via GovConnectIowa or in writing to the department. The revocation must include the name and identification number of the taxpayer, the name of the representative entity, an indication of the wish to withdraw, and the taxpayer's dated signature. If the revocation indicates that authorization should be revoked from "all" authorized representatives, this will apply to all representatives appointed via an IA 2848 or entity representative form.

(2) Withdrawal by the authorized entity representative. By filing a statement with the department, an authorized entity representative may withdraw from representation appointed under this subrule. The statement must be signed by the authorized entity representative single point of contact and must identify the name and address of the taxpayer(s) and the matter(s) from which the authorized entity representative is withdrawing. An authorized entity representative may withdraw from multiple matters by including

with the statement a list of all matters and taxpayers for which withdrawal is desired. Such statement shall be signed by the authorized entity representative single point of contact.

(3) Administrative revocation by the department. The department may administratively revoke any entity representative authority.

[ARC 5532C, IAB 3/24/21, effective 4/28/21; ARC 6582C, IAB 10/5/22, effective 11/9/22]

701—7.7(17A) Docket. Every matter coming within the purview of this chapter shall be assigned a docket number which shall be the official identification number of the matter for the purposes of identification. The parties will be notified of the docket number. The number shall be placed by the parties on all documents thereafter filed in the proceeding. After the transfer of a case to the division of administrative hearings for contested case proceedings, that division may assign another docket number to the case and, in that event, both docket numbers shall be placed by the parties on all documents thereafter filed in the proceeding.

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

[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

701—7.8(17A) Identifying details, requests for redaction.

7.8(1) Information redacted by the department, subject to certain exceptions. Prior to being made available for public inspection, the department shall redact from an appeal or contested case the information required to be redacted in Iowa Code sections 422.20(5) and 422.72(8). “Make available for public inspection” means disclosure to the public by the department pursuant to Iowa Code section 17A.3 or chapter 22.

7.8(2) Process for requesting redaction of other details from a pleading, exhibit, attachment, motion, or written evidence. If a taxpayer desires information contained in a record, other than the information described in Iowa Code sections 422.20(5) “a” and 422.72(8) “a,” to be redacted prior to public inspection, the taxpayer must file a motion and affidavit meeting the requirements below.

a. Process for filing a motion for redaction of other details during a contested case. Motions for redaction of other details from a pleading, exhibit, attachment, motion or written evidence filed after the notice of hearing is issued in a contested case must follow the requirements in subrule 7.17(5).

b. Process for filing a motion for redaction of other details prior to the commencement of a contested case. Motions for redaction of other details from a pleading, exhibit, attachment, motion or written evidence filed prior to a contested case must be filed with the clerk of the hearings section of the department. The motion must be filed separately from the protest described in subrule 7.8(6).

c. Contents of motion. Motions filed under this rule, including those filed during contested cases, shall contain the following:

(1) The name of the person requesting redaction and the docket number of the proceeding.

(2) Clear and convincing evidence that the disclosure would reveal a trade secret or would constitute a clear, unwarranted invasion of personal privacy. Corporations, limited liability companies, other business entities (including but not limited to partnerships and joint ventures), and trusts do not have protectible personal privacy interests.

(3) An unredacted copy of the document containing the information at issue and also a copy of the document with the desired redaction made. If a copy of the document is not in the possession of the taxpayer, the motion must contain a precise description of the document in the possession of the department from which the redaction is sought and a precise description of the information to be redacted. If redaction is sought from more than one document, each document and the information sought to be redacted shall be listed in separate paragraphs.

(4) For each item for which redaction is requested, an explanation of the legal basis for the redaction requested, including an explanation of why the release of the information sought to be redacted is a clear, unwarranted invasion of personal privacy or a trade secret.

(5) An affidavit in support of redaction. The affidavit must:

1. 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 redaction, not merely the legal basis for redaction or conclusory allegations.

2. Contain a general and truthful statement that the information sought to be redacted 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.

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

e. Contested case proceeding. That the information sought to be redacted 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 redaction.

7.8(3) Process for requesting redaction of other details in a final order, decision, or ruling. Motions to redact information from a final order, decision, or ruling cannot be made until the order is issued and must be made within 30 days of the date of the order, decision, or ruling. The taxpayer must follow the requirements in paragraph 7.9(2)“c” and subrule 7.17(5). The department shall have 30 days to respond to the motion from the date the department’s representatives receive notice from the presiding officer, unless otherwise ordered by the presiding officer.

7.8(4) Rulings. Motions filed with the clerk of the hearings section will be ruled on by the director. Motions filed with the administrative law judge will be ruled on by the administrative law judge. In the case of motions before the director prior to contested case proceedings, the department may respond in writing to a motion on the request of the director or upon the initiative by department staff.

7.8(5) Limitation on motions. If the motion or request is denied, the movant may not submit a motion to redact the same identifying details unless the movant is in possession of new information that may support the requested redaction(s) that the movant was not or could not have been aware of at the time of the original motion.

7.8(6) Handling of the file while the motion is pending. During the pendency of a motion, unless otherwise required or permitted by law, the department will treat the motion as if it has been granted and will not publicly release any information pursuant to Iowa Code chapter 22 or 17A sought to be kept confidential by the taxpayer.

This rule is intended to implement Iowa Code chapter 17A and sections 422.20(5) and 422.72(8).
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5932C, IAB 10/6/21, effective 11/10/21; ARC 5940C, IAB 10/6/21, effective 11/10/21]

701—7.9(17A) Appeals. Any person wishing to contest an assessment, denial of refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding, shall file an appeal, in writing, with the department within the time prescribed by the applicable statute or rule for filing notice of application to the director for a hearing. The appeal must be filed as described in rule 701—7.3(17A).

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

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

7.9(3) Paying assessment in order to appeal refund claim denial. Notwithstanding the above, the taxpayer who fails to timely appeal an assessment may contest the assessment by paying the whole assessed tax, interest, and penalty, and 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 appealed, namely, an assessment which is divisible into a tax on each transaction or event,

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

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

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

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

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

7.9(6) Form and content of the appeal.

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

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

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

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

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

- (2) The appeal shall substantially state in separate numbered paragraphs the following:
1. Proper allegations showing:
 - Date of department action, such as the notice of assessment, refund denial, etc.;
 - Whether the taxpayer failed to timely appeal the assessment and, if so, the date of payment and the date of filing of the refund claim;
 - Whether the appeal involves the appeal of a refund claim after six months from the date of filing the refund claim because the department failed to deny the claim;
 - Copies of the documented department action, such as the notice of assessment, refund claim, and refund denial letter;
 - Other items that the taxpayer wishes to bring to the attention of the department; and
 - A request for attorney fees, if applicable.
 2. The type of tax, the taxable period or periods involved, and the amount in controversy.
 3. Each error alleged to have been committed, listed in a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.
 4. Reference to any particular statute or statutes and any rule or rules involved, if known.
 5. Description of records or documents that were not available or were not presented to department personnel prior to the filing of the appeal, if any. Copies of any records or documents that were not previously presented to the department shall be provided.
 6. Any other matters deemed relevant and not covered in the above paragraphs.
 7. The desire of the taxpayer to expedite proceedings. Rule 701—7.13(17A,421) contains more details on expedited proceedings.
 8. A statement setting forth the relief sought by the taxpayer.
 9. The signature of the taxpayer or that of the authorized representative. If the appeal is signed by the taxpayer, include the address and telephone number of the taxpayer in the signature block. If the appeal is signed by an authorized representative, include the address and telephone number of the authorized representative in the signature block. Appeals submitted by an authorized representative must have a valid IDR power of attorney form or representative certification form, as applicable in accordance with rule 701—7.6(17A), on file with the department, or one should be included with the appeal.
 - c. *Spouses.* If an appeal involves an assessment or a refund denial to a married couple and both spouses intend to appeal, both spouses must sign the document as drafted under paragraph 7.9(6) “a” or “b.” Appeals submitted by an authorized representative must include an executed IA 2848 power of attorney form or representative certification form, as applicable, for each spouse, unless an IA 2848 power of attorney form or representative certification form is on file with the department.
- 7.9(7) Amendments.** The taxpayer may amend the appeal at any time before a responsive pleading is filed. Amendments to the appeal after a responsive pleading has been filed may be allowed with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance. The department may request that the taxpayer amend the appeal for purposes of clarification.
- 7.9(8) Denial of renewal of vehicle registration or denial of issuance or renewal, or suspension, of a driver's license.**

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

b. The issues raised in an appeal 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.

[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 1303C, IAB 2/5/14, effective 3/12/14; ARC 2657C, IAB 8/3/16, effective 9/7/16; ARC 5940C, IAB 10/6/21, effective 11/10/21; ARC 6582C, IAB 10/5/22, effective 11/9/22]

701—7.10(17A) Resolution of tax liability. In the event that a proper appeal has been filed as provided hereinafter, other department personnel, when authorized by the appeals section, shall have the authority to discuss the resolution of any matter in the appeal either with the taxpayer or the taxpayer's representative. The personnel shall report their activities in this regard to the appeals section, and the section shall be authorized to approve or reject any recommendations made by the appropriate personnel to resolve an appeal.

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

[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

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

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

- a.* Review and evaluate the validity of the appeal.
- b.* Determine the correct amount of tax owing or refund due.
- c.* Determine the best method of resolving the dispute between the taxpayer and the department.
- d.* Take further action regarding the appeal, including any additions and deletions to the audit, as may be warranted by the circumstances to resolve the appeal, including a request for an informal conference.

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

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

7.11(3) Findings. A position letter addressing the issues raised in the appeal may be issued to the taxpayer or taxpayer's representative unless the issues may be more expeditiously determined in another manner or it is determined that such a letter is unnecessary.

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

7.11(5) Settlements. Only the director, the deputy director, or the division administrator of the legal services and appeals division may approve and sign settlements of appeals. If a settlement is reached during informal procedures, 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 provided to all parties.

This rule is intended to implement Iowa Code section 17A.10.
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

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

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

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

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

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

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

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

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

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

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

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

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

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

7.12(4) Denial of the application. If the review unit denies the application to reinstate the appeal, the taxpayer has 30 days from the date the application for reinstatement was denied in which to request, in writing, a formal hearing on the reinstatement. The taxpayer shall send the written request to the clerk. When a written request for formal hearing is received, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice as prescribed in rule 701—7.16(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the appeal shall be reinstated. Thereafter, rule 701—7.19(17A) pertaining to contested case proceedings shall apply in such reinstatement proceedings. If the taxpayer does not respond to a denial of the application for reinstatement within 30 days of the denial, the appeals section may file a motion to dismiss the application for reinstatement for failure to pursue, in accordance with the procedures described in subrule 7.12(3) above.

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

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

This rule is intended to implement Iowa Code sections 17A.12, 421.10, 421.60, and 422.28.
[ARC 5940C, IAB 10/6/21, effective 11/10/21]

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

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

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

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

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

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

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

This rule is intended to implement Iowa Code sections 17A.12 and 421.60.
[ARC 5940C, IAB 10/6/21, effective 11/10/21]

701—7.14(17A) Answer. If the parties are unable to resolve the appeal informally, or if the parties waive informal proceedings as described in rule 701—7.13(17A,421), the department shall file an answer to the appeal. Subject to the limitations in rule 701—7.13(17A,421), the department will file an answer within 30 days of receipt of written demand for a contested case hearing from the taxpayer. The answer shall be filed with the clerk. In the case of an appeal of an assessment, failure to answer within the 30-day time period and after a demand for hearing has been made shall result in the suspension of interest from the time that the department was required to answer until the date that the department files its answer. In the case of an appeal of a refund denial, failure to answer within the 30-day time period after a demand for hearing has been made shall result in the accrual of interest payable to the taxpayer at double the rate in effect under Iowa Code section 421.7 from the time the department was required to answer until the date that the department files its answer. Failure to file an answer within 30 days after the demand for contested case will not result in a default judgment for the taxpayer.

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

7.14(2) Each paragraph contained in the answer shall be numbered or lettered to correspond, where possible, with the paragraphs of the appeal. The answer shall be filed with the clerk and shall be signed by the department’s counsel or representative.

7.14(3) The department shall promptly serve a copy of the answer upon the representative of record or, if there is no representative of record, then upon the taxpayer when the answer is filed. The department may amend its answer at any time prior to the commencement of the evidentiary hearing.

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

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

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

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

This rule is intended to implement Iowa Code chapter 17A and section 421.60.
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

701—7.15(17A) Subpoenas. Prior to the commencement of a contested case, the department shall have the authority to subpoena books, papers, and records and shall have all other subpoena powers conferred

upon it by law. Subpoenas in this case shall be issued by the director or the director's designee. Once a contested case is commenced, subpoenas must be issued by the presiding officer.

This rule is intended to implement Iowa Code sections 17A.13, 421.9, 421.17, and 422.70.
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

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

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

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

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

7.16(4) Any party may apply to the presiding officer for a continuance or a specific date for the hearing. The presiding officer may grant or deny such requests. The notice shall include:

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

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

This rule is intended to implement Iowa Code section 17A.12.
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

701—7.17(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.

7.17(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.

7.17(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.
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

701—7.18(17A) Prehearing conference.

7.18(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;
- 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.

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

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

7.18(4) If either party to the contested case proceeding fails to appear at the prehearing conference without requesting a continuance and without submitting evidence or arguments which the party wishes to be considered in lieu of appearance, the opposing party may move for dismissal. The motion shall be made in accordance with subrule 7.19(5).

This rule is intended to implement Iowa Code section 17A.12.
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

701—7.19(17A) Contested case proceedings.

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

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

b. If the director retains a contested case, the location for the evidentiary hearing will generally be at the main office of the department at the Hoover State Office Building, First Floor, Des Moines, Iowa 50319. However, the department retains the discretion to change the location of the evidentiary hearing

if necessary. The location of the evidentiary hearing will be designated in the notice of hearing issued by the director.

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

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

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

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

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

d. If there is no factual conflict or credibility of evidence offered in issue, either party, after the contested case has been heard and a proposed decision is pending with a presiding officer other than the director for at least one year, may make application to the director to transfer the case to the director for decision. In addition, if one or more criteria listed in paragraph 7.19(2) "b" exist, the director, on the

director's own motion, may issue a notice to the parties of the director's intention to transfer the case to the director for decision. The opposing party may file, within 20 days after service of such application or notice by the director, a resistance setting forth in detail why the case should not be transferred. If the director approves the transfer of the case, the director shall issue a final contested case decision. The director or a party may request that the parties be allowed to submit proposed findings of fact and conclusions of law.

e. 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.

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

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

e. 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.

7.19(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 mailing addresses of the witnesses to be called. If evidence other than oral testimony is required, each item to be produced must be adequately described. When properly prepared by the presiding officer, the subpoena will be returned to the requesting party for service. Service may be made in any manner allowed by law before the hearing date of the case which the witness is required to attend. No costs for serving a subpoena will be allowed if the subpoena is served by any person other than the sheriff. Subpoenas requested for discovery purposes shall be issued by the presiding officer.

d. Admissibility of evidence.

(1) Evidence having probative value.

1. Although the presiding officer is not bound to follow the technical common law rules of evidence, a finding shall be based upon the kind of evidence on which a reasonably prudent person would rely for the conduct of the person's serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Therefore, the presiding officer may admit and give probative effect to evidence on which a reasonably prudent person would rely for the conduct of the person's serious affairs. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence not provided to a requesting party through discovery shall not be admissible at the hearing. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, substantially any part of the evidence may be required to be submitted in verified written form by the presiding officer.

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

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

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

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

e. Identification of exhibits.

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

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

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

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

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

7.19(5) Motions.

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

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

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

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

e. Types of motions. Types of motions 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 for redaction of identifying details in the decision. For more information, see rule 701—7.9(17A).

(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 summary judgment in the party's favor upon all or any part of a party's claim or defense.

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

(3) 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. 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 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 7.19(8).

7.19(6) Briefs and oral argument.

a. At any time, upon the request of any party or in the presiding officer's discretion, the presiding officer may require the filing of briefs on any of the issues before the presiding officer prior to or at the time of hearing, or at a subsequent time. At the hearing, the parties should be prepared to make oral arguments as to the facts and law at the conclusion of the hearing if the presiding officer so directs.

b. A copy of all briefs shall be filed. Filed briefs shall conform to the requirements of subrules 7.5(1) and 7.5(2).

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

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

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

b. A default decision or a decision rendered on the merits after a party failed to appear or participate in a contested case proceeding becomes a final department action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided in subrule 7.19(8). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, and such affidavit(s) must be attached to the motion.

c. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

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

e. For purposes of this rule, "good cause" shall mean the same as "good cause" in Iowa Rule of Civil Procedure 1.977.

f. A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party as provided in subrule 7.19(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.

7.19(8) Orders.

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

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

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

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

d. When the director initially presides at a hearing or considers decisions on appeal from or review of a proposed decision by the presiding officer other than the director, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of a second agency within the time provided by statute or rule. When a presiding officer other than the director presides at the hearing, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of the director within 30 days of the date of the order, including Saturdays, Sundays, and holidays as defined in Iowa Code section 421.9A, or 10 days, excluding Saturdays, Sundays, and holidays as defined in Iowa Code section 421.9A, for a revocation order pursuant to rule 701—7.39(17A). However, if the contested case proceeding involves a question of an award of reasonable litigation costs, the proposed order on the substantive issues shall not be appealable to or reviewable by the director on the director's motion until the issuance of a proposed order on the reasonable litigation costs. If there is no such appeal or review within 30 days or 10 days, whichever is applicable, from the date of the proposed order on reasonable litigation costs, both the proposed order on the substantive issues and the proposed order on the reasonable litigation costs become the final orders of the department for purposes of judicial review or rehearing. On an appeal from, review of, or application for rehearing concerning the presiding officer's order, the director has all the power which the director would initially have had in making the decision; however, the director will consider only those issues presented at the hearing before the presiding officer or 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 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—7.39(17A), the cross-appeal may be taken within the 10-day period for taking an appeal to the director or in any event within 5 days after the appeal to the director is taken.

j. 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.

7.19(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

(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.

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

a. 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 taxpayer.

7.19(11) 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.

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 appeal, 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 taxpayer is the prevailing taxpayer;

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

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

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

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

7.19(12) *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.

7.19(13) *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.

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

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

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

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

[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 1303C, IAB 2/5/14, effective 3/12/14; ARC 2657C, IAB 8/3/16, effective 9/7/16; ARC 5932C, IAB 10/6/21, effective 11/10/21; ARC 5940C, IAB 10/6/21, effective 11/10/21; ARC 6551C, IAB 10/5/22, effective 11/9/22]

701—7.20(17A) Interventions. Interventions shall be governed by the Iowa rules of civil procedure.

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

[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

701—7.21(17A) Record and transcript.

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

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

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

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

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

is required, the administrative hearings division shall make the transcription and promptly forward the tapes and the transcription to the director.

This rule is intended to implement Iowa Code section 17A.12.
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

701—7.22(17A) Application for rehearing. Any party to a contested case may file an application with the director for a rehearing in the contested case, stating the specific grounds therefor and the relief sought. The application must be filed within 20 days after the final order is issued. See subrule 7.19(8) as to when a proposed order becomes a final order. A copy of such application shall be timely mailed by the applicant to all parties in conformity with rule 701—7.3(17A). The director shall have 20 days from the filing of the application for rehearing to grant or deny the application. If the application for rehearing is granted, a notice will be served on the parties stating the time and place of the rehearing. An application for rehearing shall be deemed denied if not granted by the director within 20 days after filing.

7.22(1) 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. _____
	*	

7.22(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.

7.22(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.
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

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

7.23(1) Ex parte communication. A party that has knowledge of a prohibited communication by any party or presiding officer should file a copy of the written prohibited communication or a written summary of the prohibited oral communication with the clerk. The clerk 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.

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 receiving the communication or being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

i. Sanction. The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule, including default, a decision against the offending party, censure, suspension, or revocation of the privilege to practice before the department or the administrative hearings division. Violation of ex parte communication prohibitions by department personnel or their representatives shall be reported to the clerk for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

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

a. Grounds for disqualification. A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

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

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

c. Disqualification and the record. 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.

[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

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.

7.24(1) Filing a petition for declaratory order.

a. *How to submit a petition.* Any person may file a petition seeking a declaratory order using the methods described in rule 701—7.3(17A).

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

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

d. *Manually created petitions.*

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

DEPARTMENT OF REVENUE

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

- (2) 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;
 9. Whether the petitioner is presently under audit by the department; and
 10. The signature of the petitioner or the petitioner’s representative and date of signature. It must also include the name, mailing address, and telephone number of the petitioner and of the petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed. Petitions submitted by a representative must have a valid IDR power of attorney form or representative certification form, as applicable in accordance with rule 701—7.6(17A), on file with the department.

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

7.24(3) Intervention.

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

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

c. Filing and form of petition for intervention. A petition for intervention shall be filed in accordance with paragraph 7.3(1) “b,” “c,” or “d.” Such a petition is deemed filed when it is received in accordance with rule 701—7.4(17A). The department will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF REVENUE

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

d. The petition for intervention must provide the following information:

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

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

e. Standing. For a petition for intervention to be allowed, the petitioner must have consented to be bound by the declaratory order and the petitioner must have standing regarding the issues raised in the petition for declaratory order. Facts described in the petition for intervention must be those supporting intervention, not related to the substantive issues in the petition. The petition for intervention must not correct facts that are in the petition for declaratory order or raise any additional facts. To have standing, the intervenor must have a legally protectible and tangible interest at stake in the petition for declaratory order under consideration by the director for which the party wishes to petition to intervene. The department may, by rule, impose a requirement of standing upon those that seek a declaratory order at least to the extent of requiring that they be potentially aggrieved or adversely affected by the department action or failure to act. Arthur Earl Bonfield, “The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, The Rule making Process,” 60 Iowa Law Review 731, 812-13 (1975). The department adopts this requirement of standing for those seeking a petition for a declaratory order and those seeking to intervene in a petition for a declaratory order.

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

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

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

7.24(5) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Legal Services Division, Iowa Department of Revenue, P.O. Box 14457, Des Moines, Iowa 50306-3457; or by email to the address provided in paragraph 7.3(1) "b."

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

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

b. Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed in the same manner described in subrule 7.24(1). All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department.

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

7.24(7) Department consideration.

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

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

7.24(8) Action on petition.

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

b. The date of issuance of an order or of a refusal to issue an order is the date of mailing of the order or refusal or date of delivery if service is by other means.

7.24(9) Refusal to issue order.

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

- (1) 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;

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

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

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

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

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

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

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

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

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

7.24(13) Withdrawal of the petition. The petitioner may voluntarily dismiss its petition by notifying the department in writing at any time before the order is issued. The petitioner may not dismiss the petition after the order is issued.

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

[ARC 0251C, IAB 8/8/12, effective 9/12/12; Editorial change: IAC Supplement 9/23/20; ARC 5940C, IAB 10/6/21, effective 11/10/21]

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

7.25(1) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the department are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

7.25(2) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1) "a," solicit comments from the public on a subject matter of possible rule making by the department by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

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

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

7.25(4) Notice of proposed rule making.

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

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

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

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

c. Registration for Notices of Intended Action. Any person may register on the department's website to receive announcements related to rules from the department. Persons registered to receive announcements from the department will be notified of the publication of the department's Notices of Intended Action and Adopted and Filed rules. Persons who desire to request a paper copy of any rule filing shall make a request to the department's administrative rules coordinator, in writing or by email. The request must specify the rules requested and specify the number of copies. The requester will be required to reimburse the department for the actual costs incurred in providing copies.

7.25(5) Public participation.

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

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

- (1) A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
- (2) A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.
- (3) A request by a state agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing the request.

c. Conduct of oral proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

e. Accessibility. The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person listed on the Notice of Intended Action or the department’s administrative rules coordinator in advance to arrange access or other needed services.

7.25(6) Regulatory analysis.

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

- (1) The name of the small business or organization of small businesses;
- (2) The address of the small business or organization of small businesses;
- (3) The name of a person authorized to transact business for the applicant;

(4) A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact;

(5) Whether the registrant desires copies of Notices of Intended Action at cost or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

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

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

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

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

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

- (1) The administrative rules review committee;
- (2) The legislative services agency's administrative rules coordinator;
- (3) At least 25 or more persons who sign the request provided that each represents a different small business, or

(4) An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

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

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

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

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

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

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

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

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

7.25(8) Time and manner of rule adoption.

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

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

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

7.25(9) Variance between adopted rule and published notice of proposed rule adoption.

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

- (1) The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that Notice; and
- (2) The differences are a logical outgrowth of the contents of that Notice of Intended Action or the comments submitted in response thereto; and
- (3) The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

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

- (1) The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests.
- (2) The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action.
- (3) The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

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

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

7.25(10) Exemptions from public rule-making procedures, emergency rule making.

a. Omission of notice and comment. To the extent the department for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process

of adopting a particular rule, the department may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

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

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

7.25(11) Concise statement of reasons.

a. General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered by mail to the address listed in paragraph 7.3(1)“c” or by email to the person listed on the adopted rule filing or to the department’s administrative rules coordinator at the address provided in paragraph 7.3(1)“b.” The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests shall be considered made on the date received in accordance with rule 701—7.4(17A).

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

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

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

7.25(12) Contents, style, and form of rule.

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

- (1) The date the department adopted the rule;
- (2) A brief explanation of the principal reasons for the rule-making action if the reasons are required by Iowa Code section 17A.4(2), or the department in its discretion decides to include the reasons;

- (3) A reference to all rules repealed, amended, or suspended by the rule;
- (4) A reference to the specific statutory or other authority authorizing adoption of the rule;
- (5) Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

- (6) A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if the reasons are required by Iowa Code section 17A.4(2), or the department in its discretion decides to include the reasons; and

- (7) The effective date of the rule.

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

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

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

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

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

b. Special notice. When the department makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) "b," the department shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the department to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the

various alternatives available for this purpose, the comparative costs to the department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice, or electronic means.

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

7.25(16) Review of rules by department.

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

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

This rule is intended to implement Iowa Code chapter 17A and section 421.14.
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

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 department’s administrative rules coordinator by mail at the address listed in paragraph 7.3(1) “c” or by email to the address provided in paragraph 7.3(1) “b.” For additional information regarding criticism of rules, see rule 701—7.27(17A).

This rule is intended to implement Iowa Code section 17A.3.
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

701—7.27(17A) Criticism of rules. Interested persons may submit criticisms, requests for waivers, or comments regarding a rule to the department’s administrative rules coordinator by mail at the address listed in paragraph 7.3(1) “c” or by email to the address provided in paragraph 7.3(1) “b.” A criticism of a specific rule must be more than a mere lack of understanding of a rule or a dislike of the rule. To constitute a criticism of a rule, the criticism must be in writing, indicate it is a criticism of a specific rule, and have a valid legal basis for support. All requests for waivers, comments, or criticisms received on any rule will be kept in a separate record for a period of five years by the department.

This rule is intended to implement Iowa Code sections 17A.7 and 421.60.
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

701—7.28(17A) Waiver 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.

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

7.28(2) Scope of rule.

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

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

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

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

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

7.28(5) Criteria for waiver. In response to a petition, the director may, in the director’s sole discretion, issue an order granting a waiver 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 is consistent with subrules 7.28(3) and 7.28(4) and if all of the following criteria are also met:

a. The waiver 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 is requested.

7.28(6) Director's discretion. The final decision to grant or deny a waiver 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 based upon the criteria contained in subrule 7.28(5).

7.28(8) Form and contents of petition.

a. Department forms. A petition for waiver may be filed using the form available on the department's portal, GovConnectIowa. Alternatively, a petition for waiver may be filed using the form available on the department's website, tax.iowa.gov/forms.

b. Manually created petitions.

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

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

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

1. The name, address, email address, telephone number, and case number or state identification number of the entity or person for whom a waiver is being requested;
2. A description and citation of the specific rule or rule provisions from which a waiver is being requested;
3. The specific waiver requested, including a description of the precise scope and operative period for which the petitioner wants the waiver to extend;
4. The 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 represented in the petition, and a statement of reasons that the petitioner believes will justify a waiver;
5. A complete history of any prior contacts between the petitioner and the department relating to the activity affected by the proposed waiver, including audits, notices of assessment, refund claims, appeals, 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;
8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver;
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver;
10. Signed releases of information authorizing persons with knowledge of relevant facts to furnish the department with information relating to the waiver; and
11. Signature by the petitioner at the conclusion of the petition attesting to the accuracy and truthfulness of the information set forth in the petition.

7.28(9) Filing of petition. A petition for waiver must be filed using one of the methods described in subrule 7.3(1).

7.28(10) Additional information. Prior to issuing an order granting or denying a waiver, 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. The petitioner shall provide, within 30 days of filing the petition for waiver, a notice consisting of a concise summary of the contents of the petition for waiver 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 the parties' representatives. The petitioner must then file written notice to the department's legal services section by mail to the address listed in paragraph 7.3(1) "c" or by email to the address provided in paragraph 7.3(1) "b," attesting that the notice has been mailed. The names, addresses and telephone numbers of the persons to whom the notices were mailed shall be included in the filed written notice. The department has the discretion to give such notice to persons other than those persons notified by the petitioner.

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

a. An order granting or denying a waiver 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, if one is issued.

b. Conditions. The director may condition the grant of a waiver 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; extension. Unless otherwise provided, an order granting a petition for waiver will be effective for 12 months from the date the order granting the waiver is issued. Renewal of a granted waiver is not automatic. To renew the waiver beyond the 12-month period, the petitioner must file a new petition requesting a waiver. 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 extension of waiver. Even if the order granting the waiver 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. Granting the extension of the waiver 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 as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees in writing to a later date or the director indicates in a written order that it is impracticable to issue the order within the 120-day period.

7.28(15) When deemed denied. Failure of the director to grant or deny a waiver 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 and rulings granting or denying petitions for waiver.

a. *Petitions for waiver.* The department shall maintain a record of all petitions for waiver available for public inspection. Such records will be indexed and filed and made available for public inspection.

b. *Report of orders granting or denying a waiver.* All orders granting or denying a waiver shall be submitted on the Internet site as prescribed in Iowa Code section 17A.9A.

7.28(18) Cancellation of waiver. A waiver 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 order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The alternative means for ensuring that public health, safety, and welfare will be adequately protected after issuance of the waiver 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 has failed to comply with all of the conditions in the waiver order.

7.28(19) Violations. A violation of a condition in a waiver order shall be treated as a violation of the particular rule or rule provision for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver 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 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 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 request, unless a different time is provided by rule or statute, such as provided in the area of license revocation (see rule 701—7.39(17A)).

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

This rule is intended to implement Iowa Code section 17A.9A.
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

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

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

a. *Filing.* Any person or agency may file a petition for rule making using one of the methods described in subrule 7.3(1).

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

c. *Manually created petitions.*

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

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

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

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

7. Any request by the petitioner for a meeting.

8. Any other matters deemed relevant that are not covered by the above requirements.

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

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

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

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

7.29(5) Status of petition. Inquiries concerning the status of a petition for rule making may be made to the department's administrative rules coordinator by mail at the address listed in paragraph 7.3(1) "c" or by email to the address provided in paragraph 7.3(1) "b."

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

7.29(7) Action required. Within 60 days after the filing of the petition, or within an extended period as agreed to by the petitioner, the department must, in writing, either: (a) deny the petition and notify the petitioner of the department's action and the specific grounds for the denial; or (b) grant the petition and notify the petitioner that the department has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial of the petition or the granting of the petition on the date that the department mails or delivers the required notification to the petitioner. All orders granting or denying a petition shall be submitted on the Internet site as prescribed in Iowa Code section 17A.9A.

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

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

[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

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

7.30(6) *Prehearing, hearing and rehearing procedures.* The following rules are applicable to preliminary and contested case proceedings under this rule: 701—7.3(17A) to 701—7.15(17A) and 701—7.17(17A) to 701—7.23(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.
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

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

7.31(1) 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.

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

This rule is intended to implement Iowa Code section 421.60.
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

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 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 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.
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

701—7.33(421) Mailing to the last-known address or personal delivery of notices of assessment and refund denial letters. Taxpayers must update their address with the department in order to receive notices of refunds of tax, notices of assessment, and notices of refund claim denials. When such a

notice is sent to a taxpayer's last-known address, the notice is legally effective even if the taxpayer never receives it. A taxpayer's authorized representative is responsible for keeping the representative's address updated with the department. When such a notice is sent to a representative's last-known address, the notice is legally effective even if the representative never receives it.

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

a. If the department fails to either mail a notice of assessment to the taxpayer's last-known address or 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.

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

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

7.33(2) *Determination of last-known address.*

a. A taxpayer's last-known address for a particular tax type shall be one of the following most recently updated in the department's records:

- (1) The address provided in an application to register or receive a permit for a particular tax type;
- (2) The address used on the most recent filed and processed Iowa tax return of a particular tax type;
- (3) The address received by the department in a written, concise statement the taxpayer mailed to: Changes in Name or Address, Iowa Department of Revenue, P.O. Box 10465, Des Moines, Iowa 50306;
- (4) The address provided by the taxpayer in GovConnectIowa;
- (5) The address provided by the taxpayer in any correspondence to the department;
- (6) The address the department receives from a third-party skip tracing service; a public or private utility company in response to a subpoena issued pursuant to Iowa Code section 421.17(32); or a federal, state, or local agency.

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

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

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

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

c. Mailing to an address the department receives from a third-party skip tracing service; a public or private utility company in response to a subpoena issued pursuant to Iowa Code section 421.17(32); or a federal, state, or local agency.

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

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

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

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

c. By providing the notice electronically through GovConnectIowa or similar method of electronic service;

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

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

This rule is intended to implement Iowa Code section 421.60.
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21; ARC 6550C, IAB 10/5/22, effective 11/14/22]

701—7.34(421) Power of attorney. Rescinded ARC 5532C, IAB 3/24/21, effective 4/28/21.

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.
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

701—7.36(421) Tax return preparers.

7.36(1) Definitions. For the purposes of this rule and for Iowa Code sections 421.62, 421.63, and 421.64, the following definitions apply:

“An enrolled agent enrolled to practice before the federal Internal Revenue Service (IRS) pursuant to 31 CFR §10.4” means an individual who has an active status as an enrolled agent under 31 CFR §10.4(a) or (d) and is not currently under suspension or disbarment from practice before the IRS. An enrolled agent does not include an enrolled retirement plan agent under 31 CFR §10.4(b) or a registered tax return preparer under 31 CFR §10.4(c).

“An individual admitted to practice law in this state or another state” means an individual who has an active license to practice law in this state or another state, is considered in good standing with the licensing authority of this or another state, and is currently authorized to engage in the practice of law.

“An individual licensed as a certified public accountant or a licensed public accountant under Iowa Code chapter 542 or a similar law of another state” means an individual who has an active certified public accountant license or an active public accountant license under Iowa Code chapter 542 or a similar law of another state and is in good standing with the Iowa accountancy examining board or similar authority of another state.

“Hour of continuing education” means a minimum of 50 minutes spent by a tax return preparer in actual attendance at or completion of an IRS-approved provider of continuing education course.

“Income tax return or claim for refund” means any return or claim for refund under Iowa Code chapter 422, excluding withholding returns under Iowa Code section 422.16.

“New tax preparer” means an individual who qualifies as a “tax return preparer” under Iowa Code section 421.62 for the current tax year but would not have qualified as such during any prior calendar year. See paragraph 7.36(8) “a” for examples regarding who qualifies as a new tax preparer.

“Tax return preparer” means any individual who, for a fee or other consideration, prepares ten or more income tax returns or claims for refund during a calendar year, or who assumes final responsibility for completed work on such income tax returns or claims for refund on which preliminary work has been done by another individual.

“Tax return preparer” does not include any of the following:

1. An individual licensed as a certified public accountant or a licensed public accountant under Iowa Code chapter 542 or a similar law of another state.
2. An individual admitted to practice law in this state or another state.
3. An enrolled agent enrolled to practice before the federal IRS pursuant to 31 CFR §10.4.

4. A fiduciary of an estate, trust, or individual, while functioning within the fiduciary's legal duty and authority with respect to that individual or that estate or trust or its testator, trustor, grantor, or beneficiaries.

5. An individual who prepares the tax returns of the individual's employer, while functioning within the individual's scope of employment with the employer.

6. An individual employed by a local, state, or federal government agency, while functioning within the individual's scope of employment with the government agency.

7. An employee of a tax return preparer, if the employee provides only clerical or other comparable services and does not sign tax returns.

See paragraph 7.36(8) "a" for examples regarding who qualifies as a tax return preparer.

7.36(2) *Penalty for tax return preparer's failure to include preparer tax identification number (PTIN) on income tax returns or claims for refund.* On or after January 1, 2020, a tax return preparer who fails to include the tax return preparer's PTIN on any income tax return or claim for refund prepared by the tax return preparer and filed with the department shall pay to the department a penalty of \$50 for each violation, unless the tax return preparer shows that the failure was reasonable under the circumstances and not willful or reckless conduct. The maximum aggregate penalty imposed upon a tax return preparer pursuant to Iowa Code section 421.62 and this rule shall not exceed \$25,000 during any calendar year. See paragraph 7.36(8) "c" for examples pertaining to the tax return preparer PTIN requirement.

7.36(3) *Tax return preparer continuing education requirement.* Beginning January 1, 2020, and every year thereafter, a tax return preparer shall complete a minimum of 15 hours of continuing education courses each year. At least two hours of continuing education shall be on professional ethics, and the remaining hours shall pertain to federal or state income tax. Each course shall be taken from an IRS-approved provider of continuing education. If a course offered by an IRS-approved provider is primarily on state-specific income tax content, the course will qualify for the continuing education requirements under Iowa Code section 421.64 and this rule, even if such course does not count toward federal continuing professional education. Tax return preparers who complete more than the required 15 hours of continuing education in one calendar year may not count the excess hours toward a subsequent year's requirement. See paragraph 7.36(8) "b" for examples pertaining to the tax return preparer continuing education requirement.

7.36(4) *Preparation of income tax returns or claims for refund.* An individual prepares an income tax return or claim for refund when the individual signs (or should sign) a return, either because the individual completes the return or because the individual assumes final responsibility for preliminary work completed by other individuals.

7.36(5) *Approved providers and courses.*

a. Approved providers of continuing education. Any IRS-approved provider of continuing education is acceptable. It is not mandatory that a continuing education course be taken from an Iowa provider.

b. Approved continuing education course subject matters. All continuing education courses shall be on the topics of federal or state income tax or professional ethics.

c. Approved continuing education format. Continuing education courses that satisfy the requirements of Iowa Code section 421.64 and this rule may be taken for credit in person, online, or by self-study, as long as they are administered by an IRS-approved provider of continuing education.

7.36(6) *Reporting hours of continuing education and retaining records.*

a. Reporting hours of continuing education to the department. Tax return preparers shall report their continuing education hours to the department by February 15 of the calendar year following the year in which hours were completed to be eligible to prepare income tax returns or claims for refund. Hours must be reported using IA Form 78-012. If a tax return preparer fails to complete the required minimum hours of continuing education by the date prescribed in this subrule, the individual must show that failure to do so was reasonable under the circumstances and not willful or reckless conduct. IRS-approved providers are not required to report continuing education courses to the department.

b. Retaining records of continuing education. Tax return preparers are required to retain records of continuing education completion for a minimum of five years. This record retention shall include,

but is not limited to, certificates of completion if offered by the IRS-approved provider of continuing education upon completion of a course.

7.36(7) Reinstatement of a tax return preparer. When a tax return preparer fails to complete the minimum 15 hours of continuing education courses as required by Iowa Code section 421.64 and this rule but demonstrates that the failure was reasonable under the circumstances and not willful or reckless conduct, the department may require the tax return preparer to make up any uncompleted hours and submit a completed IA Form 78-012 to the department by a date set by the department before the tax return preparer may engage in activity as a tax return preparer.

7.36(8) Examples.

a. Tax return preparer examples.

EXAMPLE 1: During the 2020 calendar year and every prior year, an individual, N, prepares nine or fewer income tax returns or claims for refund described in this rule for a fee or other consideration. During the 2021 calendar year, N, for a fee or other consideration, prepares ten income tax returns or claims for refund described in this rule. N meets the definition of a tax return preparer for the 2021 calendar year. Therefore, N will be subject to the penalty for failure to include N's PTIN on every income tax return or claim for refund described in this rule that N prepares during the 2021 calendar year. However, N also qualifies as a "new tax preparer" for the 2021 calendar year because this is the first year N satisfies the definition of a "tax return preparer." Therefore, N does not need to complete 15 hours of continuing education courses during 2020 to prepare returns in 2021, but N will need to complete the minimum 15 hours of continuing education courses during the 2021 calendar year to be eligible to prepare returns during the 2022 calendar year if N will meet the definition of "tax return preparer" in 2022.

EXAMPLE 2: An individual, B, prepares ten income tax returns or claims for refund described in this rule during the 2019 calendar year for a fee or other consideration. Therefore, B is a tax return preparer. However, B is not required to complete any hours of continuing education courses prior to preparing returns in 2020, nor will B incur a penalty for failing to include B's PTIN on any of those returns prepared in calendar year 2019 because the requirements described in this rule do not take effect until January 1, 2020. Assume B continues to prepare income tax returns or claims for refund described in this rule for a fee or other consideration during the 2020 calendar year, but B only prepares a total of nine such tax returns throughout the entire 2020 calendar year. B does not complete any hours of continuing education courses during the 2020 calendar year. B will not be eligible to prepare ten or more income tax returns or refund claims described in this rule for a fee or other consideration during the 2021 calendar year because even though B did not prepare ten or more income tax returns or claims for refund in 2020, B would have been classified as a tax return preparer in 2019. Thus, B is not considered a new tax preparer for purposes of the 2021 calendar year.

b. Continuing education requirement examples.

EXAMPLE 3: During the 2020 calendar year, an individual, P, prepares ten income tax returns or claims for refund described in this rule for a fee or other consideration. Therefore, P is a tax return preparer. During the 2020 calendar year, P also completes 30 hours of continuing education courses from programs offered by an IRS-approved provider of continuing education, 4 hours of which are on professional ethics and the remaining hours on income tax. P is eligible to prepare returns during the 2021 calendar year. However, P must complete 15 additional hours of continuing education courses offered by an IRS-approved provider, including 2 hours on professional ethics and the remaining hours on income tax, during the 2021 calendar year to be eligible to prepare returns during the 2022 calendar year if P will meet the definition of "tax return preparer" in 2022. P's excess hours completed in 2020 may not be applied toward the 15 hours of continuing education courses that P must complete in 2021 to be eligible to prepare returns in 2022.

EXAMPLE 4: During the 2020 calendar year, a tax return preparer, P, completes 12 hours of continuing education courses from programs offered by an IRS-approved provider of continuing education. Two of the hours are on professional ethics, and the rest relate to income tax. P is not eligible to prepare income tax returns or claims for refund during the 2021 calendar year, regardless of the year of the returns P is preparing, because P has not completed a total of 15 continuing education hours during the 2020

calendar year. During the 2021 calendar year, P completes 15 hours of continuing education courses from programs offered by an IRS-approved provider. Two of P's hours are from professional ethics courses, and the remaining 13 hours are from income tax courses. P is eligible to prepare returns during the 2022 calendar year, regardless of the years of the returns P prepares. However, P is still ineligible to prepare returns for the remaining duration of the 2021 calendar year, regardless of the years of the returns P wishes to prepare.

c. PTIN requirement examples.

EXAMPLE 5: An individual, X, works at a firm in the business of preparing income tax returns for a fee or other consideration. X completes a substantial amount of preliminary work on ten returns described in this rule during the scope of X's employment (that are not the returns of X's employer) during the 2020 calendar year, but X does not assume final responsibility for the work or sign the returns. Instead, X's supervisor, Y, reviews the work completed by X and signs the returns. Y is a tax return preparer because Y assumed final responsibility for the returns. Therefore, Y's PTIN is required on all of the returns. X's PTIN is not required on any of the returns, nor will X incur any penalties for omitting X's PTIN on the returns.

EXAMPLE 6: An individual, X, has a partnership with another individual, Y, in which X and Y prepare income tax returns for a fee or other consideration. X completes ten returns described in this rule during the 2020 calendar year. However, before X signs or files the returns, X asks Y to review the returns. Y reviews the returns and suggests substantial changes, but Y then gives the returns back to X. X makes the necessary changes, then signs and files the returns. X is a tax return preparer. X's PTIN is required on all of the returns because X assumed final responsibility for the returns. Y's PTIN is not required on any of the returns. If X fails to include X's PTIN on any of the returns, X will incur a \$50 civil penalty for each violation unless X shows that X's failure was reasonable under the circumstances and not willful or reckless conduct.

EXAMPLE 7: An individual, X, completes five income tax returns and five claims for refund described in this rule for a fee or other consideration during the 2020 calendar year. X does not sign the returns, even though no other paid tax return preparer reviewed X's work and took final responsibility for the return. X's PTIN is required on all of the returns because X is a paid tax return preparer for those returns, even though X failed to sign the returns as required. X is subject to a fine of \$50 per return that did not contain the required PTIN because X is a tax return preparer.

This rule is intended to implement Iowa Code sections 421.62, 421.63, and 421.64.
[ARC 5190C, IAB 9/23/20, effective 10/28/20]

701—7.37(441) Appeals of director's rejection of assessor appointment or reappointment.

7.37(1) *Written request for appeal.* Any assessor or conference board wishing to contest the director's rejection of the conference board's appointment of an assessor under 701—subrule 72.15(4) or reappointment of an assessor under 701—subrule 72.16(3) shall file an appeal, in writing, within 30 days of the director's notice of decision. Any person who does not seek an appeal within 30 days of the director's notice shall be precluded from challenging the director's decision.

7.37(2) *Procedures.* Appeals will be governed by the procedures set forth in this rule together with the procedures set forth in the following rules:

- a.* Subrules 7.3(2) and 7.3(3);
- b.* Rule 701—7.7(17A);
- c.* Rule 701—7.8(17A);
- d.* The introductory paragraph of rule 701—7.9(17A) and subrule 7.9(7);
- e.* Subrules 7.12(1), 7.12(2), and 7.12(6);
- f.* Subrule 7.13(1);
- g.* Subrules 7.14(1) to 7.14(3);
- h.* Rule 701—7.15(17A);
- i.* Rule 701—7.16(17A);
- j.* Rule 701—7.17(17A);
- k.* Rule 701—7.18(17A);

l. Subrule 7.19(1); subrules 7.19(3) through 7.19(7); subrule 7.19(8), except paragraph 7.19(8) “b” related to costs shall not apply; additionally, Iowa Code section 421.60 shall not apply; subrules 7.19(9) and 7.19(13);

m. Rule 701—7.20(17A);

n. Rule 701—7.21(17A);

o. Rule 701—7.22(17A); and

p. Rule 701—7.23(17A).

7.37(3) Presiding officer. The director shall be the presiding officer in a contested case under this rule. The director may request that an administrative law judge assist and advise the director with any matters related to the contested case proceedings, including but not limited to ruling on any prehearing matters, presiding at the contested case hearing, and issuing orders and rulings.

7.37(4) Contents of the appeal. The appeal shall contain the following in separate numbered paragraphs:

a. A statement of the department action giving rise to the appeal.

b. The date of the department action giving rise to the appeal.

c. Each error alleged to have been committed, listed as 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 the particular statutes, rules, or agreement terms, if known.

e. References to and copies of any documents or other evidence relevant to the appeal.

f. Any other matters deemed relevant to the appeal.

g. A statement setting forth the relief sought.

h. The signature, mailing address, and telephone number of the person or that person’s representative.

7.37(5) Burden of proof. The burden of proof is on the party challenging the director’s decision under 701—subrule 72.15(4) or 72.16(3).

This rule is intended to implement Iowa Code section 441.6(3) and chapter 17A.
[ARC 5288C, IAB 11/18/20, effective 12/23/20; ARC 6026C, IAB 11/3/21, effective 12/8/21]

701—7.38(441) Appeals and hearings regarding the director’s intent to remove a member of the board of review.

7.38(1) Written request for hearing. A member of the board of review who has received a notice of intent to remove from the director and who wishes to contest the removal shall file a written request for a hearing within 30 days after the receipt of the notice of the director’s intent to remove the member. Any person who does not seek a hearing within 30 days of receipt of the notice of the director’s intent to remove shall be precluded from challenging the removal.

7.38(2) Procedures. Hearings will be governed by the procedures set forth in this rule together with the procedures set forth in the following rules:

a. The introductory paragraph of rule 701—7.8(17A), excluding the first sentence of the introductory paragraph of 701—7.8(17A); and subrules 7.8(8) and 7.8(9);

b. Subrules 7.9(1) and 7.9(2);

c. Rule 701—7.10(17A);

d. Paragraphs 7.11(2) “d” and “e”;

e. Subrules 7.12(2) to 7.12(4);

f. Rule 701—7.13(17A);

g. Rule 701—7.14(17A);

h. Rule 701—7.15(17A);

i. Rule 701—7.16(17A);

j. Subrule 7.17(1); subrules 7.17(3) through 7.17(7); subrule 7.17(8), except paragraph 7.17(8) “b” related to costs shall not apply; additionally, Iowa Code section 421.60 shall not apply; subrules 7.17(9), 7.17(10), and 7.17(14);

k. Rule 701—7.18(17A);

l. Rule 701—7.19(17A);

- m.* Rule 701—7.20(17A);
- n.* Rule 701—7.21(17A); and
- o.* Rule 701—7.22(17A).

7.38(3) *Presiding officer.* The director shall be the presiding officer in a contested case under this rule. The director may request that an administrative law judge assist and advise the director with any matters related to the contested case proceedings, including but not limited to ruling on any prehearing matters, presiding at the contested case hearing, and issuing orders and rulings.

7.38(4) *Contents of the appeal.* The appeal shall contain the following in separate numbered paragraphs:

- a.* A statement of the department action giving rise to the appeal.
- b.* The date of the department action giving rise to the appeal.
- c.* Each error alleged to have been committed, listed as 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 the particular statutes, rules, or agreement terms, if known.
- e.* References to and copies of any documents or other evidence relevant to the appeal.
- f.* Any other matters deemed relevant to the appeal.
- g.* A statement setting forth the relief sought.
- h.* The signature, mailing address, and telephone number of the person or that person's representative.

7.38(5) *Burden of proof.* The burden of proof is on the party challenging the director's intent to remove a board member.

This rule is intended to implement Iowa Code section 441.32(2) "e" as enacted by 2021 Iowa Acts, House File 871, section 29, and Iowa Code chapter 17A.
[ARC 5930C, IAB 9/22/21, effective 10/27/21]

701—7.39(17A) Licenses.

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

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

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

7.39(2) *Revocation of license.*

a. The department shall not revoke, suspend, annul or withdraw any license until written notice is served by personal service or restricted certified mail pursuant to rule 701—7.16(17A) within the time prescribed by the applicable statute and the licensee whose license is to be revoked, suspended, annulled, or withdrawn, is given an opportunity to show at an evidentiary hearing conducted pursuant to rule 701—7.19(17A) compliance with all lawful requirements for the retention of the license. However, in the case of the revocation, suspension, annulment, or withdrawal of a sales or use tax permit, written notice will be served pursuant to rule 701—7.16(17A) only if the permit holder requests that this be done

following notification, by ordinary mail, of the director's intent to revoke, suspend, annul, or withdraw the permit. In addition to the requirements of rule 701—7.16(17A), the notice shall contain a statement of facts or conduct and the provisions of law which warrant the revocation, suspension, annulment, or withdrawal of the license. A licensee whose license may be revoked, suspended, annulled, or withdrawn, may file a petition as provided in subrule 7.39(3) with the clerk 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—7.19(17A) governing contested case proceedings shall apply.

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

7.39(3) Petition.

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

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

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

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

This rule is intended to implement Iowa Code section 17A.18.
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

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