



13001 University Avenue
Clive Iowa 50325-8225
www.ialottery.com
515.725.7900

Kim Reynolds · Governor
Adam Gregg · Lt. Governor

Matthew N. Strawn · Chief Executive Officer

AGENDA

IOWA LOTTERY BOARD

June 25, 2024

10:30 am

Dial In: 515-206-9299

(No PIN # is required to join the call)

- I. Call to Order
 - A. Approval of Agenda
 - B. Approval of Minutes from March 26, 2024 Board Meeting
- II. Remarks from Iowa Department of Revenue Director Mary Mosiman
- III. CEO Report
- IV. Quarterly Reports
 - A. Revenue (Sales and Marketing)
 - B. External Relations
 - C. Security
 - D. Finance
- V. FY 2025 Budget Overview
- VI. State of Iowa Boards & Commissions Update
- VII. Administrative Rules Revisions - Board Action Required
- VIII. Election of Officers
- IX. Tentative FY 2025 Board of Directors Meetings
 - A. September 24, 2024
 - B. December 17, 2024
 - C. March 25, 2025
 - D. June 24, 2025
- X. Adjournment

If you require the assistance of auxiliary aids or services to participate in or attend the meeting because of a disability please call our ADA coordinator at 515-725-7864, or if you are hearing impaired, call Relay TTY at 1-800-735-2942.

MINUTES

IOWA LOTTERY BOARD

March 26, 2024

10:30 a.m.

The Iowa Lottery Board convened at 10:30 a.m. at Lottery Headquarters in Clive; Board Vice-Chair Dana Wingert presiding.

Board Members Present:

Dana Wingert; Mary Junge; Josh Cook

Board Members Present on Teleconference:

Mary Rathje

Board Members Absent:

Katie New

Lottery Staff Participating:

Mary Mosiman, Dept. of Revenue Director; Matt Strawn, Lottery CEO; Jon Roth, CRO; Mary Neubauer, External Relations and Social Responsibility; Steve Waymire, Security; David Ranscht, AAG; Jenny Podrebarac, Accounting and Validations Manager; Laura Wernimont, Internal Audit and Draw Manager; Deb Bassett, Board Secretary

Others Present:

John Schreurs and Shelly Kopriva, Strategic America; Dave Berger, Scientific Games; Victoria Magruder and Sarah DeKock, Flynn Wright; Dar Danielson, Radio Iowa; Sable Joseph, Abby Sills, and Zach Waldmeier, Dept. of Revenue

Others On Teleconference:

Heather Hackbarth, Dept. of Management

CALL TO ORDER

Wingert called the meeting to order at 10:30 a.m. and roll was taken. There was a quorum. New announced the meeting would be held via teleconference in accordance with Iowa Code section 21.8.

Junge moved to conduct the meeting via teleconference. Cook seconded. Motion carried unanimously.

APPROVAL OF AGENDA

Cook moved to approve the agenda for the meeting. Junge seconded. Motion carried unanimously.

APPROVAL OF MINUTES

Rathje moved to approve the December 14, 2023 Board meeting minutes. Junge seconded. Motion carried unanimously.

DIRECTOR'S REMARKS

Mosiman provided an update on realignment and the integration phase of realignment. Overall, integration objectives are going well with tax, alcohol and lottery becoming a united department. The department is aligning financial, security, legal, human resources, and legislative liaison duties.

CEO REPORT

Strawn stated for the first eight months of FY24, lottery sales continue to outpace last year's record performance. Gross sales of \$331,232,616 are 0.9% ahead of FY23 sales through February. Lottery product performance has been mixed thus far in FY24 with scratch tickets, Powerball, Lucky for Life, Pick 3 and Pick 4 all performing ahead of last year sales. InstaPlay, Pulltab, Lotto America and Mega Millions games have not yet seen year-over-year sales growth.

Total Proceeds through February of \$73,981,016 are down 3.3% compared to FY23 proceeds through February. The most significant contributing factor to this modest decrease in year-over-year proceeds compared to this point last year would be an increase in the prize expense budget category. The sales trajectory for March is extremely positive through the first three weeks of the month, and we expect FY24 gross sales will remain ahead of last year's pace as we enter the final quarter of the fiscal year.

During the December meeting, the Board was informed that Strawn had ordered an independent third-party review of a November 27, 2023 incident where errors by Iowa Lottery and Scientific Games staff resulted in the public reporting of incorrect Powerball winning numbers. More details regarding the completion of this review and recommended actions will be provided later in the meeting. Strawn stated that he appreciated everyone's diligence – both internal Lottery personnel and Scientific Games staff - in cooperating with this review, which will lead to improvements in the draw reporting processes.

Strawn also noted that differing legislative bills regarding state boards and commissions are working their way through each legislative chamber; but neither bill makes substantive changes to the composition or structure of the Lottery Board.

Strawn concluded his remarks by thanking retiring Board member, Mary Junge, for her 20+ years of service to the state of Iowa and the Iowa Lottery.

QUARTERLY REPORTS

Revenue (Sales and Marketing):

Roth gave a Revenue report. Through February, sales have continued at a strong pace with \$331.2 million in sales through the end of the month. That was a 0.9% increase versus FY23, and exceeded the Five Year Average by 17.9%. Scratch tickets continued to perform well and lotto sales are being impacted due to the difference in the lotto jackpots this year vs last year.

For Scratch Tickets, performance continues strong with sales of \$203.6 million, or an 8.1% increase YTD vs. FY23. Year over year, the Iowa Lottery has continued to outperform the industry, with a 7.9% increase through February over the past 52 weeks, vs. a (0.8%) decrease for the same time period for Scratch Tickets for the industry.

The lottery had very strong Lotto Category sales last year, especially with the record setting jackpots. Through February, sales to date for the Lotto Category are the second highest for FY24 looking back to 2019. However, sales through February of \$102.4 million are 8.0% lower than FY YTD 2023. Powerball performance this fiscal year has continued with a 4.5% increase in sales. Mega Millions is a bigger challenge with a decrease in sales due to the lower size and timing of jackpots this year compared to last

year. With March lotto sales strengthening due to increasing jackpots for Mega Millions of over \$1 billion and Powerball not far behind, we're hopeful that the FY 2024 Lotto Category will narrow the sales gap compared to last year's performance.

InstaPlay has seen some challenges over the past few months. While performance of \$17.0 million YTD through February outperforms every year but last year, we are still experiencing a decrease in sales for the category. To combat this, work is underway with Scientific Games regarding development of new games to be introduced in early FY25, along with a category refresh for the 2nd quarter of FY25. In addition, the launch of the "Monopoly Game Tokens Progressive InstaPlay" ticket has gone well and sales should also be impacted with the Monopoly promotion beginning at the end of the month.

Pull-Tabs are experiencing similar performance to InstaPlay tickets. With \$8.3 million in sales YTD for FY24, sales for the category have decreased by 4.6%. In addition to other efforts, games in the category have been updated.

Iowa Lottery retailers have benefited from increased sales, and have experienced retail compensation of \$21.6 million, a 1.6% increase in retailer compensation through the end of February compared to FY23.

Regarding promotions, during the holiday season, we created a shorter holiday advertising window to better align costs with the holiday season, and to also offer some unique sports opportunities with the University of Iowa along with a local and NBA package with the Iowa Wolves. Our holiday performance ended up being strong and worked well. Looking ahead, there will be a combination of promotions that will provide VIP experiences for events like the NASCAR races at the Iowa Speedway in June, a Monopoly cash promotion featuring licensed branded Monopoly Scratch & InstaPlay tickets, a new relationship with Iowa State, some significant VIP concert experiences, and exciting VIP football experiences through the University of Iowa and Iowa State University.

External Relations:

Neubauer gave an External Relations report. March is Problem Gambling Awareness Month (PGAM). PGAM emphasizes responsible behavior and coincides with the college basketball tournaments. The goal during this peak gambling period is to increase public awareness of gambling disorders and promote prevention, treatment and recovery services. The Iowa Lottery and the Iowa Department of Health and Human Services have PSA's in heavy rotation during March to address gambling disorders and healthy play. The lottery has also added a new initiative, Truth vs. Myth, to extend the message in a fun and different way.

Neubauer also noted that External Relations, along with the Web team, have upgraded images available in the Pressroom area of the Lottery website. The goal is for the Lottery website to be a one-stop shop for Iowa media outlets to find images they can use in their coverage about lottery games

Security:

Waymire's Security report was provided in the board packet. Waymire noted that the 2 investigator positions that are currently vacant will be filled soon. The team will be able to reach the goal for retail inspections once fully staffed.

Finance:

Podrebarac gave a financial report. Through February, YTD sales are \$331.2 million. The YTD sales are ahead of budget by \$71.1 million, or 27%. YTD sales are also ahead of sales for FY23 by \$3 million, or approximately 0.9%.

Through February, YTD proceeds are \$74 million. The YTD proceeds are ahead of budget by \$24.2 million, or 49%. YTD proceeds are \$2.6M or 3% less than proceeds for the same period of FY23.

Through February, YTD prize expense is \$211.1 million. The YTD prize expense is ahead of budget by \$49.7 million, or 31%. YTD prize expense is also ahead of prizes for FY23 by \$5.9 million, or 3%. Remember that as sales increase, the prize expense also increases.

YTD operating expenses through February remain under budget at \$8.9 million and are comparable to the 5-year average.

POWERBALL DRAW PROCESS

Strawn stated that the Lottery received a final report from an outside independent auditor regarding the November 27, 2023 Powerball misreporting incident and the recommendations mostly relate to security protocols and confidential draw processes. The Lottery and Scientific Games are implementing those recommendations.

SELF-SERVE KIOSK PERFORMANCE & NEW MACHINES

Roth gave an update on the performance of self-service kiosks and the purchase of new machines. YTD, there has been \$20 million in self-service kiosk sales and it's projected \$30 million in sales for self-service kiosks for FY24. The delivery of the 150 new PHD self-service kiosk machines is projected for May through August. Installation of the PHD's is projected for June through September.

CONTRACT EXTENSION – STRATEGIC AMERICA

Roth asked the board approve a one-year contract extension for creative advertising services with Strategic America through June 30, 2025.

Cook moved to approve the contract extension with Strategic America. Junge seconded. Motion carried unanimously.

RETAILER COMPENSATION PROGRAM

Roth stated with the introduction of Powerball Double Play, there is the need to update the Lottery's Retail Compensation Program to include a retail bonus payout amount of \$5,000 for selling the winning ticket for the \$10 million Powerball Double Play prize. Language in the Ticket Allowance section has also been updated to define tickets as "damaged or produced by mistake" for both on-line games and InstaPlay games.

Junge moved to approve the updates to the Retailer Compensation Program. Cook seconded. Motion carried unanimously.

RECOGNITION OF MARY JUNGE

Strawn read a letter from Governor Reynolds thanking Mary Junge for her dedication to the State and for her service on the Board.

Strawn introduced a resolution in recognition and appreciation of Mary Junge's service on the Board:

Resolution of the Iowa Lottery Board in Recognition and Appreciation of Mary Junge

WHEREAS, for 23 years as a member of the Iowa Lottery Board, Mary Junge has played a vital role in the Iowa Lottery fulfilling its mission of conducting a statewide lottery with security and integrity so as to provide continuing entertainment to the public while responsibly maximizing revenues and maintaining the dignity of the State of Iowa and the welfare of its people; and

WHEREAS, beginning on May 1, 1999, Mary Junge has served the Iowa Lottery with expertise and insight, providing invaluable counsel and guidance in assisting the Lottery to achieve major initiatives and record proceeds to state causes; and

WHEREAS, Mary Junge has served the administrations of four Iowa governors with distinction and integrity; and

WHEREAS, through her years of service to the State of Iowa, Mary Junge has had the unique distinction of fulfilling at different times the vital required membership roles on the Iowa Lottery Board of both an attorney admitted to the practice of law in Iowa, and an accountant; and

WHEREAS, by serving on the Iowa Lottery Board from 1999 to 2014 and again from 2016 to 2024, Mary Junge has become the longest-serving Board member in the storied history of the Iowa Lottery; and

WHEREAS, the Iowa Lottery Board wishes to publicly recognize Mary Junge's commitment, dedication, and contributions to the Iowa Lottery and its public-minded mission.

NOW, THEREFORE, BE IT RESOLVED, that the Iowa Lottery Board acknowledges and extends its gratitude to Mary Junge for her distinguished service to the State of Iowa and the Iowa Lottery and her lasting contributions to the enterprise and its mission.

BE IT FURTHER RESOLVED that this Resolution is saved in the permanent minutes of the Iowa Lottery Board and a copy of this Resolution is presented to Mary Junge.

As adopted on this 26th day of March in the year 2024 by the Iowa Lottery Board.

Dana Wingert, Board Vice-Chair

Cook moved to accept the resolution. Rathje seconded. Motion carried unanimously.

ADJOURNMENT

Junge moved to adjourn. Cook seconded. Motion carried unanimously.

Meeting adjourned at 11:30 a.m.



Iowa Lottery - Security Division
Quarterly Activity Summary
03/20/2024 to 06/17/2024

Incident Type	Incident Report	81
	Case Report	18

Contact Reasons	Burglary	2
	Damaged Tickets - Shipping	1
	Employee Theft	9
	Fraud/Forgery	6
	Missing Packs/Tickets	2
	Missing Tickets - Shipping	3
	Other	5
	Player Assist	23
	Promotional Draw	4
	Quality Control Tickets	6
	Region Assist	1
	Retailer Assist	1
	Scratch Ticket Printing Issue	1
	Theft	7
	Ticket Re-construction	7
	Validations	21

Retailer Inspections	432
-----------------------------	-----



Iowa Lottery - Security Division
Annual Activity Summary
06/20/2023 to 06/17/2024

Incident Type	Incident Report	309
	Case Report	98
<hr/>		
Contact Reasons	Burglary	9
	Damaged Tickets - Shipping	2
	Employee Theft	26
	Fraud/Forgery	30
	Missing Packs/Tickets	23
	Missing Tickets - Shipping	14
	Multiple Winner Review	1
	Other	20
	Player Assist	66
	Promotional Draw	23
	Quality Control Tickets	41
	Region Assist	7
	Retailer Assist	6
	Robbery	2
	Scratch Ticket Printing Issue	2
	Theft	45
	Ticket Re-construction	34
	Underage/Juvenile	1
	Validations	53
	Winner File Audit	2
<hr/>		
Retailer Inspections		628

IOWA LOTTERY
PERFORMANCE MEASURES
FY 2024
May 31, 2024

MONTH		JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
Gross Sales	Budget FY 2024	30,805,612	32,254,825	29,662,368	34,235,499	29,815,250	33,747,250	39,247,779	30,367,165	36,024,531	34,061,624	35,357,766	32,105,331
	Actual '24	49,622,689	45,383,189	38,382,065	44,439,178	36,700,677	41,692,825	39,224,564	35,778,315	46,478,492	40,738,868	38,444,958	-
Prize Expense	Budget FY 2024	19,297,292	19,925,094	18,485,080	20,946,784	18,717,266	20,951,463	24,036,531	19,101,157	22,369,845	21,455,399	22,173,695	20,137,394
	Actual '24	31,264,114	27,582,044	24,938,776	29,349,141	22,441,971	28,011,239	24,925,757	22,632,696	29,272,906	26,176,721	24,677,185	-
Operating Expenses	Budget FY 2024	1,253,553	1,356,045	1,253,388	1,319,781	1,327,199	1,264,230	1,385,479	1,299,306	1,317,229	1,315,860	1,435,422	1,287,657
	Actual '24	1,108,707	1,176,130	1,075,057	1,102,678	1,116,711	1,038,117	1,180,069	1,066,066	1,073,230	1,221,112	1,137,805	-
Total Proceeds	Budget FY 2024	6,526,228	5,671,274	5,564,173	6,837,098	5,624,045	5,324,915	8,147,197	6,100,617	5,884,057	6,576,522	6,751,368	5,850,990
	Actual '24	11,582,796	11,022,157	8,226,480	9,363,309	9,222,202	7,663,694	8,763,927	8,136,451	11,182,156	9,081,442	7,462,047	-
YEAR TO DATE													
Gross Sales	Budget FY 2024	30,805,612	63,060,437	92,722,805	126,958,304	156,773,554	190,520,804	229,768,583	260,135,748	296,160,279	330,221,903	365,579,669	397,685,000
	Actual '24	49,622,689	95,005,878	133,387,943	177,827,121	214,527,798	256,220,623	295,445,187	331,223,502	377,701,994	418,440,862	456,885,820	-
Prize Expense	Budget FY 2024	19,297,292	39,222,386	57,707,466	78,654,250	97,371,516	118,322,979	142,359,510	161,460,667	183,830,512	205,285,911	227,459,606	247,597,000
	Actual '24	31,264,114	58,846,158	83,784,934	113,134,075	135,576,046	163,587,285	188,513,042	211,145,738	240,418,644	266,595,365	291,272,550	-
Operating Expenses	Budget FY 2024	1,253,553	2,609,598	3,862,986	5,182,767	6,509,966	7,774,196	9,159,675	10,458,981	11,776,210	13,092,070	14,527,492	15,815,149
	Actual '24	1,108,707	2,284,837	3,359,894	4,462,572	5,579,283	6,617,400	7,797,469	8,863,535	9,936,765	11,157,877	12,295,682	-
Total Proceeds	Budget FY 2024	6,526,228	12,197,502	17,761,675	24,598,773	30,222,818	35,547,733	43,694,930	49,795,547	55,679,604	62,256,126	69,007,494	74,858,484
	Actual '24	11,582,796	22,604,953	30,831,433	40,194,742	49,416,944	57,080,638	65,844,565	73,981,016	85,163,172	94,244,614	101,706,661	-

Current Month Year to Date

Prize Payout - Budget	62.71%	62.22%
Prize Payout - Actual	64.19%	63.75%
Sales - Actual increase (decrease) vs. Budget		24.98%
Proceeds - Actual increase (decrease) vs. Budget		47.38%

IOWA LOTTERY
PERFORMANCE MEASURES
FY 2024

May 31, 2024		JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
MONTH													
Gross Sales	Budget FY 2024	30,805,612	32,254,825	29,662,368	34,235,499	29,815,250	33,747,250	39,247,779	30,367,165	36,024,531	34,061,624	35,357,766	32,105,331
	5-year av.	34,478,110	31,707,549	31,348,986	37,608,289	35,189,488	35,444,862	42,534,974	32,553,218	36,699,073	36,074,266	37,548,725	34,740,053
	Actual '23	44,238,093	33,672,563	32,852,383	41,842,932	51,431,952	38,825,335	48,866,615	36,473,073	38,310,222	38,122,584	38,784,997	38,112,394
	Actual '24	49,622,689	45,383,189	38,382,065	44,439,178	36,700,677	41,692,825	39,224,564	35,778,315	46,478,492	40,738,868	38,444,958	-
Prize Expense	Budget FY 2024	19,297,292	19,925,094	18,485,080	20,946,784	18,717,266	20,951,463	24,036,531	19,101,157	22,369,845	21,455,399	22,173,695	20,137,394
	5-year av.	21,465,762	20,442,425	19,759,085	23,297,414	21,558,920	23,973,507	25,721,798	20,024,591	23,963,967	22,919,840	23,851,068	22,342,258
	Actual '23	26,916,442	22,393,790	20,901,296	26,033,469	30,638,674	26,052,121	29,653,328	22,648,421	24,481,549	25,532,109	25,078,500	24,924,491
	Actual '24	31,264,114	27,582,044	24,938,776	29,349,141	22,441,971	28,011,239	24,925,757	22,632,696	29,272,906	26,176,721	24,677,185	-
Operating Expenses	Budget FY 2024	1,253,553	1,356,045	1,253,388	1,319,781	1,327,199	1,264,230	1,385,479	1,299,306	1,317,229	1,315,860	1,435,422	1,287,657
	5-year av.	1,068,851	1,104,636	1,109,536	1,140,162	1,122,757	1,084,799	1,140,306	1,044,808	1,135,785	1,093,075	1,143,678	1,104,703
	Actual '23	1,039,787	1,254,852	1,196,388	1,151,290	1,184,160	1,121,173	1,199,194	1,145,077	1,195,753	1,074,336	1,244,370	412,524
	Actual '24	1,108,707	1,176,130	1,075,057	1,102,678	1,116,711	1,038,117	1,180,069	1,066,066	1,073,230	1,221,112	1,137,805	-
Total Proceeds	Budget FY 2024	6,526,228	5,671,274	5,564,173	6,837,098	5,624,045	5,324,915	8,147,197	6,100,617	5,884,057	6,576,522	6,751,368	5,850,990
	5-year av.	8,252,705	6,121,261	7,113,346	9,358,544	8,515,236	6,584,106	11,095,842	7,856,942	7,432,627	8,294,713	8,517,010	7,359,985
	Actual '23	11,122,326	5,376,525	7,103,656	10,283,720	14,041,170	7,426,090	12,906,031	8,276,147	8,765,814	7,410,123	8,308,957	7,397,814
	Actual '24	11,582,796	11,022,157	8,226,480	9,363,309	9,222,202	7,663,694	8,763,927	8,136,451	11,182,156	9,081,442	7,462,047	-

YEAR TO DATE

Gross Sales	Budget FY 2024	30,805,612	63,060,437	92,722,805	126,958,304	156,773,554	190,520,804	229,768,583	260,135,748	296,160,279	330,221,903	365,579,669	397,685,000
	5-year av.	34,478,110	66,185,659	97,534,645	135,142,934	170,332,422	205,777,284	248,312,258	280,865,476	317,564,549	353,638,815	391,187,540	425,927,593
	Actual '23	44,238,093	77,910,656	110,763,039	152,605,971	204,037,923	242,863,258	291,729,873	328,202,946	366,513,168	404,635,752	443,420,749	481,533,143
	Actual '24	49,622,689	95,005,878	133,387,943	177,827,121	214,527,798	256,220,623	295,445,187	331,223,502	377,701,994	418,440,862	456,885,820	-
Prize Expense	Budget FY 2024	19,297,292	39,222,386	57,707,466	78,654,250	97,371,516	118,322,979	142,359,510	161,460,667	183,830,512	205,285,911	227,459,606	247,597,000
	5-year av.	21,465,762	41,908,187	61,667,272	84,964,686	106,523,606	130,497,113	156,218,911	176,243,502	200,207,469	223,127,309	246,978,377	269,320,635
	Actual '23	26,916,442	49,310,232	70,211,528	96,244,997	126,883,671	152,935,792	182,589,120	205,237,541	229,719,090	255,251,199	280,329,699	305,254,190
	Actual '24	31,264,114	58,846,158	83,784,934	113,134,075	135,576,046	163,587,285	188,513,042	211,145,738	240,418,644	266,595,365	291,272,550	-
Operating Expenses	Budget FY 2024	1,253,553	2,609,598	3,862,986	5,182,767	6,509,966	7,774,196	9,159,675	10,458,981	11,776,210	13,092,070	14,527,492	15,815,149
	5-year av.	1,068,851	2,173,487	3,283,023	4,423,185	5,545,942	6,630,741	7,771,047	8,815,855	9,951,640	11,044,715	12,188,393	13,293,096
	Actual '23	1,039,787	2,294,639	3,491,027	4,642,317	5,826,477	6,947,650	8,146,844	9,291,921	10,487,674	11,562,010	12,806,380	13,218,904
	Actual '24	1,108,707	2,284,837	3,359,894	4,462,572	5,579,283	6,617,400	7,797,469	8,863,535	9,936,765	11,157,877	12,295,682	-
Total Proceeds	Budget FY 2024	6,526,228	12,197,502	17,761,675	24,598,773	30,222,818	35,547,733	43,694,930	49,795,547	55,679,604	62,256,126	69,007,494	74,858,484
	5-year av.	8,252,705	14,373,966	21,487,312	30,845,856	39,361,092	45,945,198	57,041,040	64,897,982	72,330,609	80,625,322	89,142,332	96,502,317
	Actual '23	11,122,326	16,498,851	23,602,507	33,886,227	47,927,397	55,353,487	68,259,518	76,535,665	85,301,479	92,711,602	101,020,559	108,418,373
	Actual '24	11,582,796	22,604,953	30,831,433	40,194,742	49,416,944	57,080,638	65,844,565	73,981,016	85,163,172	94,244,614	101,706,661	-

	Current Month	Year to Date
Prize Payout - Budget	62.71%	62.22%
Prize Payout - 5-Year Average	63.52%	63.14%
Prize Payout - Actual	64.19%	63.75%
Sales - Actual increase (decrease) vs. 5-Year Average		16.79%
Proceeds - Actual increase (decrease) vs. 5-Year Average		14.09%
Sales - Actual increase (decrease) vs. Budget		24.98%
Proceeds - Actual increase (decrease) vs. Budget		47.38%

IOWA LOTTERY
Statement of Revenues, Expenses and Changes in Net Position
For the Nine Months Ending Sunday, March 31, 2024

	Month ended 3/31/2024	Month ended 3/31/2023	Year-to-date 3/31/2024	Year-to-date 3/31/2023
Operating revenues:				
Scratch ticket sales	\$ 25,609,261.00	\$ 25,716,625.00	\$ 229,195,494.00	\$ 214,207,328.00
InstaPlay sales	2,779,623.00	3,049,509.00	19,760,695.00	22,821,857.00
Pick 3 sales	825,642.50	809,982.50	6,797,911.00	6,765,943.00
Powerball sales	8,438,733.00	2,828,380.00	63,273,287.00	55,310,054.50
Mega Millions Sales	5,692,595.00	2,386,282.00	33,035,635.00	38,179,237.00
Pick 4 sales	531,165.50	509,806.50	4,408,625.00	4,360,342.50
Lucky for Life sales	726,746.00	725,696.00	6,460,116.00	6,305,532.00
Lotto America sales	546,324.00	1,035,465.00	5,191,738.00	8,663,747.00
Pull-tab sales	1,328,402.01	1,248,476.29	9,578,493.24	9,899,127.49
Application fees	325.00	450.00	4,375.00	4,900.00
Other	1,564.95	2,369.70	6,629.66	8,332.50
Total operating revenues	<u>46,480,381.96</u>	<u>38,313,041.99</u>	<u>377,712,998.90</u>	<u>366,526,400.99</u>
Operating expenses:				
Scratch ticket prizes	17,689,612.00	17,180,787.00	158,795,773.81	144,922,958.69
InstaPlay prizes	2,137,370.63	2,177,190.07	14,296,649.25	16,797,737.71
Pick 3 prizes	495,385.50	485,989.50	4,078,746.60	4,059,565.80
Powerball prizes	4,249,686.80	1,415,076.50	31,657,618.65	27,600,441.39
Mega Millions prizes	2,846,297.50	1,193,141.00	16,517,817.50	19,162,232.65
Pick 4 prizes	318,699.30	305,883.90	2,645,175.00	2,906,343.00
Lucky for Life prizes	431,930.63	431,306.52	3,839,473.10	3,747,598.35
Lotto America prizes	273,162.00	517,732.50	2,595,869.00	4,331,873.50
Pull-tab prizes	830,761.25	774,442.15	5,991,519.54	6,190,340.33
Advertising/publicity	792,090.44	608,007.43	8,888,302.47	7,005,861.07
Retailer compensation expense	3,044,116.74	2,489,931.73	24,661,689.03	23,770,193.15
Ticket expense	272,985.34	233,566.57	2,402,335.15	2,684,686.84
Vendor compensation expense	746,770.17	613,359.74	6,064,616.08	5,833,302.23
Salary and benefits	836,465.66	938,365.00	7,818,662.70	7,915,636.50
Travel	27,100.38	22,980.81	196,779.23	246,084.40
Supplies	6,935.43	8,085.27	52,058.95	94,866.70
Printing	-	152.50	2,410.89	1,658.37
Postage	247.32	360.77	6,693.11	6,881.41
Communications	16,092.67	14,898.09	162,166.78	135,670.79
Rentals	8,557.52	10,576.36	78,754.75	86,496.22
Utilities	7,158.09	8,600.21	78,676.47	86,685.14
Professional fees	7,401.00	18,563.25	73,801.90	188,277.08
Vending machine maintenance	26,006.40	25,200.00	230,369.18	219,776.64
Outside services and repairs	129,747.67	174,236.30	1,111,212.48	1,161,217.13
Data processing	11,556.23	14,547.35	104,340.08	114,753.75
Equipment	4,000.50	18,538.10	158,023.78	370,307.96
Reimbursement to other state agencies	34,897.26	34,494.98	313,847.05	373,660.45
Depreciation	40,043.62	34,930.53	364,580.12	370,437.98
Amortization	45,884.70	45,884.70	412,962.30	410,531.46
MUSL/Lotto administrative expense	11,626.88	18,208.55	102,346.25	143,156.73
Debit card fees	27,652.89	14,611.91	196,571.60	113,906.90
Other	5,721.15	4,882.95	45,490.40	68,160.57
Total operating expenses	<u>35,375,963.67</u>	<u>29,834,532.24</u>	<u>293,945,333.20</u>	<u>281,121,300.89</u>
Operating income	<u>11,104,418.29</u>	<u>8,478,509.75</u>	<u>83,767,665.70</u>	<u>85,405,100.10</u>
Non-operating revenue (expenses):				
Proceeds to state causes	(11,182,156.25)	(8,765,813.58)	(85,163,171.63)	(85,301,478.78)
Interest income	102,797.09	107,807.13	1,016,781.95	455,749.08
Interest expense	(2,239.43)	(2,754.38)	(22,329.33)	(25,708.92)
Gain (Loss) on disposal of capital assets	-	-	30,735.00	7,477.11
Net non-operating revenues (expenses)	<u>(11,081,598.59)</u>	<u>(8,660,760.83)</u>	<u>(84,137,984.01)</u>	<u>(84,863,961.51)</u>
Change in net position	<u>22,819.70</u>	<u>(182,251.08)</u>	<u>(370,318.31)</u>	<u>541,138.59</u>
Net position beginning of period	<u>6,515,696.44</u>	<u>6,291,731.79</u>	<u>6,908,834.45</u>	<u>5,568,342.12</u>
Net position end of period	<u><u>6,538,516.14</u></u>	<u><u>6,109,480.71</u></u>	<u><u>6,538,516.14</u></u>	<u><u>6,109,480.71</u></u>

IOWA LOTTERY
Statement of Revenues, Expenses and Changes in Net Position
For the Ten Months Ending Tuesday, April 30, 2024

	Month ended 4/30/2024	Month ended 4/30/2023	Year-to-date 4/30/2024	Year-to-date 4/30/2023
Operating revenues:				
Scratch ticket sales	\$24,570,927.00	\$26,244,360.00	\$253,766,421.00	\$240,451,688.00
InstaPlay sales	2,514,387.00	3,183,962.00	22,275,082.00	26,005,819.00
Pick 3 sales	773,937.50	768,827.50	7,571,848.50	7,534,770.50
Powerball sales	7,767,499.50	3,166,912.00	71,040,786.50	58,476,966.50
Mega Millions Sales	2,077,799.00	2,002,761.00	35,113,434.00	40,181,998.00
Pick 4 sales	509,629.50	485,300.00	4,918,254.50	4,845,642.50
Lucky for Life sales	720,682.00	697,232.00	7,180,798.00	7,002,764.00
Lotto America sales	523,070.00	609,668.00	5,714,808.00	9,273,415.00
Pull-tab sales	1,280,936.43	963,561.44	10,859,429.67	10,862,688.93
Application fees	375.00	350.00	4,750.00	5,250.00
Other	1,199.33	389.02	7,828.99	8,721.52
Total operating revenues	40,740,442.26	38,123,322.96	418,453,441.16	404,649,723.95
Operating expenses:				
Scratch ticket prizes	17,269,796.50	18,468,038.00	176,065,570.31	163,390,996.69
InstaPlay prizes	1,745,710.31	2,421,216.92	16,042,359.56	19,218,954.63
Pick 3 prizes	464,362.50	461,296.50	4,543,109.10	4,520,862.30
Powerball prizes	3,881,415.74	1,556,094.86	35,539,034.39	29,156,536.25
Mega Millions prizes	1,038,899.50	1,013,509.55	17,556,717.00	20,175,742.20
Pick 4 prizes	305,777.70	291,180.00	2,950,952.70	3,197,523.00
Lucky for Life prizes	408,996.29	414,389.39	4,248,469.39	4,161,987.74
Lotto America prizes	261,535.00	304,834.00	2,857,404.00	4,636,707.50
Pull-tab prizes	800,227.11	601,549.34	6,791,746.65	6,791,889.67
Advertising/publicity	854,107.18	536,404.63	9,742,409.65	7,542,265.70
Retailer compensation expense	2,628,501.55	2,502,328.03	27,290,190.58	26,272,521.18
Ticket expense	278,389.17	322,966.70	2,680,724.32	3,007,653.54
Vendor compensation expense	656,355.07	597,009.86	6,720,971.15	6,430,312.09
Salary and benefits	857,261.60	830,275.04	8,675,924.30	8,745,911.54
Travel	26,624.63	26,673.89	223,403.86	272,758.29
Supplies	5,723.25	3,687.42	57,782.20	98,554.12
Printing	225.00	27.50	2,635.89	1,685.87
Postage	281.17	314.97	6,974.28	7,196.38
Communications	15,932.81	16,535.45	178,099.59	152,206.24
Rentals	10,325.72	8,567.42	89,080.47	95,063.64
Utilities	7,272.53	7,925.19	85,949.00	94,610.33
Professional fees	102,205.00	7,294.00	176,006.90	195,571.08
Vending machine maintenance	26,006.40	25,200.00	256,375.58	244,976.64
Outside services and repairs	157,567.98	86,150.81	1,268,780.46	1,247,367.94
Data processing	15,742.53	12,770.04	120,082.61	127,523.79
Equipment	17,870.33	41,514.82	175,894.11	411,822.78
Reimbursement to other state agencies	59,200.24	35,174.94	373,047.29	408,835.39
Depreciation	39,952.27	35,361.25	404,532.39	405,799.23
Amortization	45,884.70	45,884.70	458,847.00	456,416.16
MUSL/Lotto administrative expense	10,807.11	17,361.03	113,153.36	160,517.76
Debit card fees	22,313.93	16,866.98	218,885.53	130,773.88
Other	5,599.07	4,744.93	51,089.47	72,905.50
Total operating expenses	32,020,869.89	30,713,148.16	325,966,203.09	311,834,449.05
Operating income	8,719,572.37	7,410,174.80	92,487,238.07	92,815,274.90
Non-operating revenue (expenses):				
Proceeds to state causes	(9,081,442.16)	(7,410,123.40)	(94,244,613.79)	(92,711,602.18)
Interest income	66,577.51	61,710.75	1,083,359.46	517,459.83
Interest expense	(2,197.67)	(2,713.11)	(24,527.00)	(28,422.03)
Gain (Loss) on disposal of capital assets	-	-	30,735.00	7,477.11
Net non-operating revenues (expenses)	(9,017,062.32)	(7,351,125.76)	(93,155,046.33)	(92,215,087.27)
Change in net position	(297,489.95)	59,049.04	(667,808.26)	600,187.63
Net position beginning of period	6,538,516.14	6,109,480.71	6,908,834.45	5,568,342.12
Net position end of period	6,241,026.19	6,168,529.75	6,241,026.19	6,168,529.75

IOWA LOTTERY
Statement of Revenues, Expenses and Changes in Net Position
For the Eleven Months Ending Friday, May 31, 2024

	Month ended 5/31/2024	Month ended 5/31/2023	Year-to-date 5/31/2024	Year-to-date 5/31/2023
Operating revenues:				
Scratch ticket sales	\$25,559,667.00	\$27,853,551.00	\$279,326,088.00	\$268,305,239.00
InstaPlay sales	3,532,863.00	2,384,301.00	25,807,945.00	28,390,120.00
Pick 3 sales	779,214.50	816,187.50	8,351,063.00	8,350,958.00
Powerball sales	3,091,569.00	3,294,687.50	74,132,355.50	61,771,654.00
Mega Millions Sales	2,552,344.00	1,538,581.00	37,665,778.00	41,720,579.00
Pick 4 sales	518,505.00	488,422.50	5,436,759.50	5,334,065.00
Lucky for Life sales	711,396.00	721,416.00	7,892,194.00	7,724,180.00
Lotto America sales	481,864.00	580,798.00	6,196,672.00	9,854,213.00
Pull-tab sales	1,217,535.46	1,107,052.26	12,076,965.13	11,969,741.19
Application fees	625.00	275.00	5,375.00	5,525.00
Other	2,011.85	12,696.11	9,840.84	21,417.63
Total operating revenues	<u>38,447,594.81</u>	<u>38,797,967.87</u>	<u>456,901,035.97</u>	<u>443,447,691.82</u>
Operating expenses:				
Scratch ticket prizes	16,930,852.00	18,855,358.00	192,996,422.31	182,246,354.69
InstaPlay prizes	2,596,177.46	1,614,192.14	18,638,537.02	20,833,146.77
Pick 3 prizes	467,528.70	489,712.50	5,010,637.80	5,010,574.80
Powerball prizes	1,558,518.80	1,647,699.50	37,097,553.19	30,804,235.75
Mega Millions prizes	1,276,172.00	769,290.50	18,832,889.00	20,945,032.70
Pick 4 prizes	423,414.20	293,053.50	3,374,366.90	3,490,576.50
Lucky for Life prizes	422,807.55	428,762.79	4,671,276.94	4,590,750.53
Lotto America prizes	240,932.00	290,399.00	3,098,336.00	4,927,106.50
Pull-tab prizes	760,782.62	690,032.52	7,552,529.27	7,481,922.19
Advertising/publicity	920,360.72	877,663.35	10,662,770.37	8,419,929.05
Retailer compensation expense	2,502,600.95	2,534,452.33	29,792,791.53	28,806,973.51
Ticket expense	278,966.75	240,055.74	2,959,691.07	3,247,709.28
Vendor compensation expense	613,863.57	624,142.62	7,334,834.72	7,054,454.71
Salary and benefits	831,639.16	928,256.81	9,507,563.46	9,674,168.35
Travel	21,969.91	28,787.03	245,373.77	301,545.32
Supplies	41,910.66	27,103.28	99,692.86	125,657.40
Printing	55.00	90.05	2,690.89	1,775.92
Postage	320.38	182.73	7,294.66	7,379.11
Communications	16,748.78	14,869.58	194,848.37	167,075.82
Rentals	8,623.08	8,583.15	97,703.55	103,646.79
Utilities	5,823.48	5,962.88	91,772.48	100,573.21
Professional fees	34,787.69	38,045.20	210,794.59	233,616.28
Vending machine maintenance	26,006.40	25,200.00	282,381.98	270,176.64
Outside services and repairs	133,836.86	140,009.15	1,402,617.32	1,387,377.09
Data processing	7,370.34	12,764.04	127,452.95	140,287.83
Equipment	67,960.56	69,110.17	243,854.67	480,932.95
Reimbursement to other state agencies	33,567.62	34,162.39	406,614.91	442,997.78
Depreciation	39,311.63	36,403.11	443,844.02	442,202.34
Amortization	45,884.70	45,884.70	504,731.70	502,300.86
MUSL/Lotto administrative expense	9,380.83	17,996.67	122,534.19	178,514.43
Debit card fees	20,336.25	15,226.87	239,221.78	146,000.75
Other	5,273.07	5,663.89	56,362.54	78,569.39
Total operating expenses	<u>30,343,783.72</u>	<u>30,809,116.19</u>	<u>356,309,986.81</u>	<u>342,643,565.24</u>
Operating income	<u>8,103,811.09</u>	<u>7,988,851.68</u>	<u>100,591,049.16</u>	<u>100,804,126.58</u>
Non-operating revenue (expenses):				
Proceeds to state causes	(7,462,046.63)	(8,308,957.17)	(101,706,660.42)	(101,020,559.35)
Interest income	176,144.66	98,993.36	1,259,504.12	616,453.19
Interest expense	(2,155.87)	(2,671.84)	(26,682.87)	(31,093.87)
Gain (Loss) on disposal of capital assets	-	(1,655.00)	30,735.00	5,822.11
Net non-operating revenues (expenses)	<u>(7,288,057.84)</u>	<u>(8,214,290.65)</u>	<u>(100,443,104.17)</u>	<u>(100,429,377.92)</u>
Change in net position	<u>815,753.25</u>	<u>(225,438.97)</u>	<u>147,944.99</u>	<u>374,748.66</u>
Net position beginning of period	<u>6,241,026.19</u>	<u>6,168,529.75</u>	<u>6,908,834.45</u>	<u>5,568,342.12</u>
Net position end of period	<u><u>7,056,779.44</u></u>	<u><u>5,943,090.78</u></u>	<u><u>7,056,779.44</u></u>	<u><u>5,943,090.78</u></u>

Budget For Lottery Fund

	FY 2023 Actual	FY 2024 Spending Plan	FY 2025 Department Request	FY 2025 Spending Plan
<u>Resources</u>				
Lottery sales	\$ 481,533,143	\$ 397,685,000	\$ 402,685,000	\$ 417,685,000
Interest income	757,312	500,000	500,000	500,000
Application fees	5,750	5,000	5,000	5,000
Other	23,299	5,000	5,000	5,000
Total Resources	482,319,504	398,195,000	403,195,000	418,195,000
<u>Expenses and Change in Net Assets</u>				
Prizes	305,254,192	247,597,000	251,012,458	264,389,826
Retailer compensation	31,307,795	26,645,900	26,980,896	27,985,896
Advertising production and media purchases	9,235,256	15,907,400	16,107,400	16,707,400
Retailer Lottery system/Terminal Communications	8,191,177	8,334,867	8,471,163	9,186,996
Scratch/Pull-tab ticket expense	3,496,322	4,734,400	4,734,400	4,734,400
Vending machines & maintenance/Ticket dispensers	497,403	571,120	571,120	571,120
Courier delivery of instant tickets	1,321,114	1,335,000	1,335,000	1,360,000
Lottery operating expense	13,218,903	15,815,149	15,916,258	15,580,379
Interest Expense	33,724	35,000	35,000	35,000
Increase (decrease) in net assets	1,345,246	2,360,680	2,099,571	598,204
Total Expenses and Change in Net Assets	373,901,132	323,336,516	327,263,266	341,149,221
<u>Proceeds</u>				
Proceeds Transfer to Veterans Trust Fund	2,500,000	2,500,000	2,500,000	2,500,000
Proceeds Transfer to Public Safety Survivor Benefit Fund	100,000	100,000	100,000	100,000
Proceeds Transfer to Department of Corrections Survivor Benefits Fund	100,000	100,000	100,000	100,000
Proceeds Transfer to General Fund	105,718,373	72,158,484	73,231,734	74,345,779
Total Proceeds Transfers	108,418,373	74,858,484	75,931,734	77,045,779
Total Expenses and Proceeds	482,319,505	398,195,000	403,195,000	418,195,000

Lottery Operations - Budget Detail

	FY 2023 Actual	FY 2024 Spending Plan	FY 2025 Department Request	FY 2025 Spending Plan
Administrative payroll	\$ 9,764,281	\$ 11,532,905	\$ 11,532,905	\$ 11,413,559
Travel & Transportation	322,051	407,500	407,500	407,500
Supplies	125,172	103,000	103,000	103,000
Printing	3,173	10,500	10,500	10,500
Postage	7,582	10,000	10,000	10,000
Communications	193,849	192,400	192,400	192,400
Rentals	112,216	179,617	179,617	179,617
Utilities	106,350	120,500	120,500	120,500
Professional fees	258,286	204,000	204,000	204,000
Outside services and repair	268,178	262,957	262,957	262,957
Data processing	153,058	150,000	150,000	150,000
Equipment	306,259	651,184	651,184	651,184
Reimbursement to state agencies	504,191	531,900	531,900	406,000
Depreciation	482,770	723,320	984,429	893,796
Amortization	548,185	489,366	489,366	489,366
Other expenses	63,302	246,000	86,000	86,000
Total operating expenses	13,218,903	15,815,149	15,916,258	15,580,379

MEMORANDUM

DATE: June 25, 2024

SUBJECT: 2024 Executive Order 10 Rulemaking Overview: Agency Procedure Rules and Lottery-Specific Rules

TO: Iowa Lottery Board

FROM: Madelyn Cutler, Department Administrative Rules Coordinator

This memorandum provides an initial overview and timeline for rulemaking activity to amend the agency procedure rule chapters that apply to all topic areas and lottery-specific rule chapters moving under 701 Iowa Administrative Code. The timeline is subject to change as new, unforeseen developments arise.

BACKGROUND

Pursuant to [Executive Order 10](#), the Department of Revenue (IDR) is required to review from a zero-base approach and re-adopt administrative rule chapters under a designated timeline. The overall goal of Executive Order 10 is to remove obsolete, redundant, and unnecessary language, in addition to removing language that is duplicative of statute. The reduction of restrictive language, as well as page and word count of the administrative code are also identified benefits to the review.

Since Fall 2023, IDR staff, assisted by the Iowa Attorney General's Office, have been performing a comprehensive review of IDR's administrative rule chapters. The agency procedure rules impacted by alignment for review are dedicated to department organization, declaratory orders, contested cases, public information and open records, and rulemaking and rule waivers. In addition, lottery-specific rule chapters are also being reviewed.

Because the Lottery Board is charged by statute to "[a]dopt policies and procedures and promulgate administrative rules pursuant to chapter 17A relating to the management and operation of the Iowa lottery," and because the Department is combining many rules related to management of the lottery with rules related to managing tax and alcohol, the Lottery Board must review agency procedure rules that include alcohol and lottery to the extent those rules are now also related to lottery management.

TENTATIVE TIMELINE

IDR will evaluate any feedback received and make updates or have follow up discussions as needed to determine if changes are appropriate. The timeline is subject to change based on any received feedback. A tentative timeline related to this rulemaking can be found in the following table:

DATE	ACTION
August 16, 2024	Retrospective Analysis submitted to the Governor's Office (IGOV) and published on the IDR website.
August 23, 2024	Regulatory Analysis filed with IGOV for pre-clearance.
September 18, 2024	Regulatory Analysis published in the Iowa Administrative Bulletin. Public comment period begins.
October 8, 2024	Regulatory Analysis public hearing to receive oral comment. Regulatory Analysis comment period ends.
October 18, 2024	Notice of Intended Action filed with IGOV for pre-clearance.
November 13, 2024	Notice of Intended Action published in the Iowa Administrative Bulletin. Public comment period begins.
December 3, 2024	Public hearing to receive oral comment. Public comment period closes.
<i>December 18, 2024 or later</i>	Adoption Date: Iowa Lottery Commission must meet to adopt.
January 22, 2025	Adopted rules published in the Iowa Administrative Bulletin.
February 26, 2025	Updated rule chapters become effective.

SUBSTANTIVE RULE CHANGE OVERVIEW

As mentioned before, the overall goal of Executive Order 10 is to remove obsolete, redundant, unnecessary language, and language that is duplicative of statute. Many entire rules or chapters are being removed due to those reasons. Any other substantive rule revisions being proposed are outlined in tables below each chapter for both agency procedure rules and lottery-specific rules.

Agency Procedure Rules Review

701–2 Department Organization (*Packet A, page 1*):
185–1 and 531–1.1-1.4 to be repealed

This chapter of agency procedure is required by Iowa Code section 17A.3 to describe the organization of the agency. This chapter must state the department’s general course and method of its operations, mission statement, and outline the department’s administrative subdivisions.

Current rule or subrule	Proposed new rule or subrule	Proposed change(s)
701–6.2-6.5(17A)	701–2.2-2.5(17A)	Outlines the department’s updated alignment division structure with website and office information.
701–6.3(17A) Offices.	701–2.3(17A) Offices.	Classifies Hoover Building as the department headquarters and the alcohol and lottery offices as regional offices, while also classifying the Clive Lottery location as the main lottery office.
701–6.5(17A) Organization of the department.	701–2.5(17A) Organization of the department.	Specifies that the director may establish, abolish, or consolidate department divisions, except for the lottery division. This change conforms to 2024 Iowa Acts, House File 2686.

701–3 Rulemaking and Rule Waivers (*Packet A, page 5*):**185–2, 19 and 531–3, 4 repealed; relevant rules extracted from 701–7 to create a new chapter**

Current rule or subrule	Proposed new rule or subrule	Proposed change(s)
701–7.25(3)	701–3.3(2)	The Department utilizes the public rulemaking docket available to all agencies on the Iowa legislature’s website to display all rulemakings. Currently, alcohol and lottery have separate dockets on their own websites and those will cease to be used.
701–7.25(4)(c)	701–3.3(3)(c)	The Department sends electronic announcements about the publication of Notices of Intended Action and Adopted and Filed rules to anyone who registers to receive them. Currently, this is not in practice for alcohol or lottery. Going forward all published tax, alcohol, and lottery rulemaking documents will be electronically announced to registrants.
701–7.26(17A) Public inquiries on rule making and the rule making records.	701–3.5(99G, 123, 421, 17A) Public inquiries on rulemaking and the rulemaking records.	The maintenance of rulemaking records has a cross-reference to the State Records Manual and Agency Retention Schedule described in IAC 671-2.2 . The retention rules require that comments on rulemaking be kept for 5 years past the effectiveness of the rule, not just the last 5 years. (Record series reference number LEG 10-01.03.G).

Additionally, there are many changes to this chapter that conform to 2024 Iowa Acts, Senate File 2370 that goes into effect on July 1, 2024. Many of the updates we are making pursuant to Executive Order 10, will now be permanently required by law and reflected in this chapter. For example, the required preclearance from IGOV and regulatory analysis for each rulemaking.

701–4 Declaratory Orders (*Packet A, page 41*):**185–3 and 531–6 repealed; relevant rules extracted from 701–7 to create a new chapter**

Originally, IDR included these rules in chapter 701-7, which included most other agency procedures topic as well. The alignment-related changes led to a decision to break this and other subjects out into their own chapters. However, there are several rules in chapter 7 that are now cross-referenced. Cross-referencing is a helpful tool to eliminate redundancy and lower word count.

Examples of cross-referenced rules are: 701–4.3 which outlines how to submit a declaratory order, along with 701–4.4 and 4.5 which outline filing requirements.

Current rule or subrule	Proposed new rule or subrule	Proposed change(s)
701–7.24(1)(d)(2)(9)	701–4.7(1)(c)(2)(9)	In the Petition for Declaratory Order, there was an updated field for whether the petitioner is presently under “audit <u>or investigation</u> ” by the department, since that is language alcohol and lottery use.
701–7.24(1)(e)	701–4.7(1)(e)	Associations are a party carved out of qualifying to file a petition requesting a declaratory order on behalf of its group members. It may however petition for a declaratory order to get answers about its own circumstances. This is not currently addressed in the alcohol and lottery rules.
701–7.24(3)(a)	701–4.7(3)(a)	Nondiscretionary intervention timeline is 20 days. This is the timeline that tax currently uses, however alcohol currently has 15 days and lottery has 25 days, so the decision has been made to split the difference and conform to the timeline tax uses.
701–7.24(7)(a)	701–4.7(7)(a)	The alcohol and lottery rules require the agency to provide an informal meeting if requested, however the law does not require the agency to do so. Additionally, a meeting is not always helpful for this, so we are updating the rule to allow agencies the discretion to decide if an informal meeting would be beneficial.
701–7.24(13)	701–4.7(8)	Withdrawal of petition is not currently addressed in the alcohol and lottery rules, but has been addressed in the tax rules. It is beneficial to address this process in rule.

701–5 Public Records and Fair Information Practices (*Packet A, page 55*):**185–18 and 531–1.5 repealed**

Proposed rule or subrule	Proposed change(s)
701–5.1(17A,22,99G,12 3,421,454)	“Federal tax information” or “FTI” has been amended to include federal returns provided to the department through electronic filing due to the fact it is provided by the taxpayer.
701–5.2(17A,22,99G,12 3,421-454)	Language has been amended to remove the last sentence to comply with alignment purposes and remove language redundant with statute.
701–5.3(3) and (4)	Subrules have been amended to simply state ‘No reason need be given for requesting an open record, except when a fee waiver has been requested.’ The remainder of the language removed is redundant or unnecessary.
701–5.3(6)(c)	States an hourly fee may be charged for actual department expenses associated with the search, retrieval, and examination of requested records, with the first two hours provided free of charge. The fee is based upon the pay scale of the employee involved and other actual costs incurred. Currently, alcohol and lottery did not have this outlined in rule, however lottery did provide the first three hours free of charge under the Iowa Lottery’s Records Retention and Open Records Policy. Lottery also did not have a dollar threshold at which a fee would be waived.
701–5.4(1)(e)	Language has been stricken due to being redundant of 5.4(1), which states that this is used when requesting a confidential record. This lettered paragraph unnecessarily specifies types of confidential records when it's a non-exclusive list.
701–5.8(2)(a)(1)	Language has been amended to include language from 185–18.(10)(2)(a) that the custodian of the record may determine what constitutes a legitimate need for records to be disclosed to agents of the departments.
701–5.8(3)	Language contains several instances of redundant language cleanup for permitted disclosures, in addition to language duplicative of statute. Subrule 701–5.8(2)(a)(1)
701–5.10(1)	Subrule has been amended to include the nature and extent of personally identifiable information collected and stored by the department that needed to be added from alcohol and lottery Public Records and Fair Information Practices chapters.
701–5.10(6)	Language has been amended to identify records containing personally identifiable information and their type of record integrated into a grid, as required under Iowa Code section 22.11. The added language is from alcohol rule 185–18.13(2).

701–6 Contested Cases for Alcohol and Lottery Related Proceedings (*Packet A, page 76*):**185–10 and 531–5 repealed**

Similar to the new Declaratory Order chapter mentioned above, Contested Cases are now in a stand-alone chapter with several cross-references to chapter 701-7. Cross-referencing is a helpful tool to eliminate redundancy and lower the word count. Because tax has many unique contested case procedures, but lottery and alcohol have very similar contested case procedures, the Department is going to maintain a separate chapter of rules on tax contested cases, but will have a combined lottery and alcohol contested case chapter to lower word count and better achieve the objectives of reducing unnecessary rules.

Examples of cross-referenced rules are: 701–6.3 Time requirements, 701–6.9 Consolidation—severance, 701–6.15 Prehearing conferences, 701–6.20 Default, 701–6.21 Ex parte communication and disqualification, 701–6.22 Recording costs, 701–6.23 Interlocutory appeals, and 701–6.26 Applications for rehearing

Current rule or subrule	Proposed new rule or subrule	Proposed change(s)
185–10.4(123, 17A) Statute of limitations.	701–6.10(2)(c)	This rule is not a statutory requirement, but an agency self-imposed statute of limitations for hearing complaints alleging a violation of Iowa Code chapter 123 (alcohol matters).
185–10.5(123, 17A) Requests for a contested case proceeding.	701–6.4(99G, 123, 17A) Requests for a contested case proceeding.	This rule language was maintained due to how differently it is handled for alcohol and lottery compared to tax. Tax anticipates long informal reviews prior to contested cases, whereas alcohol and lottery do not, therefore the tax chapter has more detailed rules on how to file there.
185–10.6(1)	701–6.5(99G, 123, 17A) Notice of hearing delivery.	Language has been added to include methods of delivery that are accepted by the department of inspections, appeals, and licensing as provided for by Iowa Code section 10A.802(4). The applicable rule under 481–10.12 includes first-class mail, which allows for a method that the lottery currently uses. Iowa Code section 17A.18(3) requires personal service or certified mail with return receipt before a license can be sanctioned, therefore first-class mail is not an available method for delivery for alcohol-related purposes.

185–10.13(2)	701–6.11(2)	The subrule on service and filing of pleadings and other papers has been amended to include service by electronic service as permitted by the presiding officer and the Iowa Rules of Civil Procedure. This language is added due to the Department of Inspections, Appeals, and Licensing using an electronic filing system for service.
531–5.16(99G, 17A) Prehearing conference.	701–6.15(99G, 123, 17A) Prehearing conference.	A rule cross-referenced back to Chapter 7. Alcohol did not have this rule, although the lottery did and used this as an opportunity for parties to stipulate facts and consider additional matters to expedite a hearing. The benefit was to maintain this rule, but use the tax chapter language in the interest of a smaller word count.
185–10.17(1)(a)	701–6.16(1)(a)	The subrule for application for continuance has been amended to state “a written application for a continuance should be made at the earliest possible time and no less than <u>three</u> days before the hearing except for a good cause showing.” This timeframe has been lessened from tax and lottery which have ten day windows.
185–10.17(2)	701–6.16(2)	The subrule for issuance of a continuance has been amended to include language allowing each party to request a continuance, unless a continuance would cause the contested case proceeding to exceed a time limit set forth in another applicable statutes or rules. This language was added in response to rule 531–12.13(3) which states any hearing on a suspension or revocation requested by the licensee will be held within 180 days after the notice has been served.
185–10.18(123, 17A) Withdrawals.	701–6.17(99G, 123, 17A) Withdrawals.	Language states a party requesting a contested case proceeding may withdraw that request prior to the hearing. This rule is currently found in alcohol and lottery chapters, but not found in the tax chapter.
185–10.26(123, 17A) Final decision.	701–6.24(99G, 123, 17A) Final decision.	This rule is currently found in alcohol and lottery chapters, but is more detailed in the tax chapter found under 701–7.18(8). Conforming to that rule would require many tax procedures to be carved out, therefore the decision was made to maintain this rule.
185–10.32(123, 17A) Informal settlement.	701–6.30(99G, 123, 17A) Informal settlement.	This rule is not currently addressed in the lottery chapter, but it is provided by Iowa Code chapter 17A. The tax chapter contains an informal procedure that is addressed under rule 701–7.10. Conforming to that rule would require many tax procedures to be carved out, therefore the decision was made to maintain this rule.

Lottery-Specific Rules Review

In addition to amendments required by Executive Order 10 outlined on page 1, the following amendments have been made throughout all lottery-specific rule chapters:

- References updated: Lottery Authority to Lottery Division, Lottery Board to Lottery Commission (because these rules will be effective after July 1, 2024), Lottery Headquarters to Lottery Main Office, inserting Department of Revenue, where applicable.
- The phrase ‘specific game rules’ has been updated throughout all the chapters to ‘game specific rules’ to be consistent with Iowa Code section 99G.3(7).
- Sentences at the end of rules that identify the Code section implemented by the rule have been updated to strike outdated references.

701–1100 Miscellaneous Operational Rules of the Lottery (*Packet B, page 1*):**Previously 531–1; additionally 531–2 to be repealed**

Current rule or subrule	Proposed new rule or subrule	Proposed change(s)
531–1.2 through 1.4(17A)	701–2 Organization	No change, just reorganized.
531–1.5(17A,22,99G,252J) Public records and fair information practices.	701–5 Public Records and Fair Information Practices	No change, just reorganized.
531–1.7(99G) Lottery contracting authority.	N/A	This rule has been stricken due to being outdated. Contracting authority is now held by the Director as reflected in Iowa Code sections 99G.7(3) and 99G.21(2)(h).
531–1.11(99G) Employee incentive programs	N/A	This rule was stricken due being outdated by the Alignment Bill, 2023 Iowa Acts Senate File 514, and removed in Iowa Code section 99G.10.
531–2.16(99G) Background and informational statements.	701–1100.2(99G) Background and informational statements.	This rule cleanup simply removed language duplicative of statute. This would be the only rule remaining under 531–2, therefore chapter 701–1100 was renamed to create a home for miscellaneous rules that did not belong in other chapters, including this one.

701–1101 Prizes (*Packet B, page 19*):**Previously 531–11**

Current rule or subrule	Proposed new rule or subrule	Proposed change(s)
531–11.10(99G) Disability of prizewinner.	701–1101.10(99G) Disability of prizewinner.	The definition of disability has been amended to state “includes, but not limited to mental deficiency and physical or mental incapacity” Being under the age of twenty one years has been removed as part of the definition. Prize payment to minors is addressed in a separate rule, along with various areas of Iowa Code 99G.
531–11.12(99G) Effect of game rules.	701–1101.12(99G) Effect of game rules.	Language has been added to instruct how a player may challenge a determination by means of the contested case process (outlined in IAC 701–6).

701–1102 Licensing (*Packet B, page 23*):**Previously 531–12**

Current rule or subrule	Proposed new rule or subrule	Proposed change(s)
531–12.1(4)	701–1102.2(2)	Language updated for alignment in relation to the reference of ‘centralized collections unit of the department of revenue’ to reflect how an applicant may be denied due to being delinquent in paying any tax due, or the interest or penalty on the tax, administered by the department.
531–12.2(99G) Factors relevant to license issuance.	701–1102.3(99G) Factors relevant to license issuance.	Language and statutory implementation sentence are both updated to comply with Iowa Code section 272D.8
531–12.4(7) and 531–12.12(1) ”v”	701–1102.6(7) and 701–1102.12(1) ”v”	Paragraphs have been stricken due to redundancy and outdated information with alignment in relation to the ‘centralized collections unit of the department of revenue’.
531–12.16(1) through (5)	701–1102.4(99G) Financial responsibility.	Language was updated to align better with statutory language regarding financial responsibility and the department’s discretion to demonstrate the adequate financial responsibility for lottery licensure.

531–12.16(6) and (7)	701–1102.5(99G) Bonds.	Language updated to outline the department’s discretion to require a bond for licensure as necessary and increase the bond amounts, when required. Additionally, the rule states under subrule 701–1102.5(2) that “additional bond amounts or a new bond may be required by the department at any time if the department determines that an existing bond becomes insufficient or the surety thereon becomes unsatisfactory.” Further, minimum bond amounts have been increased based on feedback from Lottery leadership.
531–12.17(99G) Monitor vending machine retailers.	N/A	Language has been stricken due to being outdated. Monitor vending machines no longer being permitted (see 2006 Iowa Acts, 81st G.A., ch. 1005, s. 4; 99G.3(9), 99G.30A)

701–1103 Responsibilities of Retailers (*Packet B, page 30*):

Previously 531–13; additionally 531–14 to be repealed in light of the prohibition on monitor vending machines in section 99G.3(9).

Current rule or subrule	Proposed new rule or subrule	Proposed change(s)
531–13.2(2) and 13.3(1)	N/A	Subrules have been stricken due to being duplicative of statute (Iowa Code sections 99G.30(2) and 99G.24(3)).
531–13.9(99G) Inspection of lottery materials and licensed premises.	701–1103.8(99G) Inspection of lottery materials and licensed premises.	Language has been updated for retailers to allow the department to enter licensed premises to inspect equipment, in addition to the already mentioned ‘lottery materials, tickets, and the premises.’ Examples of equipment would be lottery terminals, lottery provided display units, and self-serve kiosks.
531–13.10(99G) Individuals who may sell lottery tickets.	701–1103.9(99G) Individuals who may sell lottery tickets.	Language has been stricken due to being duplicative of statute under Iowa Code sections 99G.30(2)
531–13.12(99G) Placement of lottery equipment.	701–1103.11(99G) Placement of lottery equipment.	Language has been updated to reflect changes resulting from alignment provided by 2023 Iowa Acts, Senate File 514,

531–13.13(99G) Monitor vending machine retailers.	N/A	Language has been stricken due to being outdated. Monitor vending machines no longer being permitted (see 2006 Iowa Acts, 81st G.A., ch. 1005, s. 4; 99G.3(9), 99G.30A)
---	-----	---

701–1104 Scratch Ticket and InstaPlay Ticket General Rules (*Packet B, page 44*):**Previously 531–18**

Current rule or subrule	Proposed new rule or subrule	Proposed change(s)
531–18.3(99G) Instant ticket price.	N/A	Language has been stricken due to being duplicative of Iowa Code section 99G.3(7).
531–18.8(3)	701–1104.7(3)	Language has been amended to include language regarding the Department’s setoff program.
531–18.8(4)	N/A	Language has been stricken as it is redundant of language found in 701–1107.5(99G) (previously 531–21.5(99G)) which covers all drawings and contests, including those that do not require a ticket or other lottery purchase.
531–18.9(3)	701–1104.8(3)	Language has been amended to state how a player may challenge a ticket validation determination by means of the contested case process (outlined in IAC 701–6).
531–18.11(99G) Board approval of games.	N/A	Language has been stricken due to being duplicative of Iowa Code section 99G.9(2). The rule itself was interpreted to be more restrictive than the statutory authority with no achieved benefit.

701–1105 Pull-Tab General Rules (*Packet B, page 47*):**Previously 531–19**

Current rule or subrule	Proposed new rule or subrule	Proposed change(s)
531–19.3(99G) Pull tab ticket price.	N/A	Rule has been stricken due to being duplicative of statute. The definition of “game specific rules” states each game has rules governing, including, but not limited to, setting the ticket price of the game.
531–19.4(99G) Method of play.	701–1105.3(99G) Method of play.	Language is amended to remove the first sentence due to this information being a part of the statutory definition of pull-tab found under Iowa Code section 99G.3(15).
531–19.5(1)	701–1105.4(2) Lottery responsibility.	Language has been amended to state how a player may challenge a ticket validation determination by means of the contested case process (outlined in IAC 701–6).
19.8(3)	701–1105.7(3)	Language has been amended to include language regarding the Department’s setoff program.
531–19.8(4)	N/A	Language has been stricken as it is redundant of language found in 701–1107.5(99G) (previously 531–21.5(99G)) which covers all drawings and contests, including those that do not require a ticket or other lottery purchase.
531–19.9(99G) Owner of ticket.	N/A	Language has been removed due to being outdated and redundant. Ownership is covered in 701–1101.4 (531-11.4). Pull-tab tickets do carry a signature line making this outdated.
531–19.10(99G) Disputed claim.	701–1105.8(99G) Disputed claim.	Language has been amended to state how a player may challenge whether a prize ticket should be paid by means of the contested case process (outlined in IAC 701–6).
531–19.13(99G) Board approval of game.	N/A	Language has been stricken due to being duplicative of Iowa Code section 99G.9(2). The rule itself was interpreted to be more restrictive than the statutory authority with no achieved benefit.

701–1106 Computerized Games General Rules (*Packet B, page 50*):**Previously 531–20**

Current rule or subrule	Proposed new rule or subrule	Proposed change(s)
531–20.2(99G) Definitions.	701–1106.2(99G) Definitions.	Definitions “central computer” and “predetermined pool drawing machine” are amended to include self-service kiosks.
531–20.11(2)	701–1106.10(2)	The last sentence is being removed due to being redundant with the rest of the language.
531–20.12(1)”f”	701–1106.11(1)(i)	Paragraph has been stricken and language moved to paragraph i.
531–20.12(2)	701–1106.11(2)	Language has been amended to state how a player may challenge a ticket validation determination by means of the contested case process (outlined in IAC 701–6).

701–1107 Drawings & Contests (*Packet B, page 55*):**Previously 531–21**

Current rule or subrule	Proposed new rule or subrule	Proposed change(s)
531–21.2(99G) Definitions.	701–1107.2(99G) Definitions.	The definition of “Contest” has the last sentence stricken and moved to rules 701–1107.4 Method of play and 701–1107.7 Claiming prizes where the information was reflected better.
531–21.3(99G) Price for drawings or contests.	701–1107.3(99G) Price for drawings or contests.	Rule is being amended to update language referencing “VIP club” to “lottery division’s customer loyalty program.” This change better reflects the plan for the VIP club’s future growth as referenced at the Lottery Annual Meeting.
531–21.8(99G) Entry validation requirements.	701–1107.8(99G) Entry validation requirements.	There is no definition of “promotion” in statute or administrative rule, so that is being removed and replaced with “drawings and contests.”
531–21.9(99G) Owner of a ticket.	701–1107.9(99G) Owner of a ticket.	Rule has been amended to state how a player may challenge ticket ownership determination by means of the contested case process (outlined in IAC 701–6).

TITLE 701 – IOWA DEPARTMENT OF REVENUE

CHAPTER ~~4~~1100

~~GENERAL OPERATION~~MISCELLANEOUS OPERATIONAL RULES OF THE LOTTERY

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 1]

[Prior to 9/17/03, see 705—Ch 1]

~~531—1.1(17A) Purpose.~~ The Iowa lottery authority was established by Iowa Code Supplement chapter 99G to operate the state lottery.

This rule is intended to implement Iowa Code section ~~17A.3(1)~~.

~~531—1.2(17A) Organization.~~ The lottery is administered by the lottery authority board. The lottery is directed and supervised by the chief executive officer of the lottery. The lottery authority board has rule-making authority for the lottery.

This rule is intended to implement Iowa Code section ~~17A.3(1)~~.

~~531—1.3(17A) Location.~~ Lottery headquarters is located at 13001 University Avenue, Clive, Iowa 50325-8225. The lottery has regional offices located throughout the state offering some of the services available at the headquarters office. Information regarding lottery headquarters and regional offices can be obtained on the lottery Web site, www.ialottery.com, on point-of-sale game-play publications, and by contacting the lottery headquarters. The lottery authority board may be contacted through lottery headquarters. Office hours at all offices are 8 a.m. — to 4:30 p.m., Monday through Friday. Prize redemption operations close at 4 p.m.

This rule is intended to implement Iowa Code section ~~17A.3(1)~~.

[~~ARC 1954C~~, IAB 4/15/15, effective 5/20/15]

~~531—1.4(17A) Board meetings.~~ The lottery authority board shall meet at least quarterly and may meet more often if necessary. The chief executive officer, the chairperson of the board, or a majority of the board may call a special board meeting. Board meetings are generally held at lottery headquarters at 13001 University Avenue, Clive, Iowa 50325-8225. Board meetings may be held by teleconference.

This rule is intended to implement Iowa Code section ~~17A.3(1)~~ “a.”

[~~ARC 1954C~~, IAB 4/15/15, effective 5/20/15]

~~531—1.5(17A,22,99G,252J) Public records and fair information practices.~~

— **~~1.5(1)~~** In general, the business records of the lottery shall be public to the extent described in Iowa Code chapter 22. However, under Iowa Code Supplement section 99G.34, the following records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

— *a.* Marketing plans, research data, and proprietary intellectual property owned or held by the lottery under contractual agreements.

— *b.* Personnel, vendor, and player social security or tax identification numbers.

— *c.* Computer system hardware, software, functional and system specifications, and game play data files.

— *d.* Security records pertaining to investigations and intelligence-sharing information between lottery security officers and those of other lotteries and law enforcement agencies, the security portions or segments of lottery requests for proposals, proposals by vendors to conduct lottery operations, and records of the security division of the lottery pertaining to game security data, ticket validation tests, and processes.

— *e.* Player name and address lists, provided that the names and addresses of prize winners shall not be withheld.

— *f.* Operational security measures, systems, or procedures and building plans.

—g. Security reports and other information concerning bids or other contractual data, the disclosure of which would impair the efforts of the lottery to contract for goods or services on favorable terms.

—h. Information that is otherwise confidential obtained pursuant to investigations.

—~~1.5(2)~~ Records, documents, and information in the possession of the lottery received pursuant to an intelligence-sharing, reciprocal use, or restricted use agreement entered into by the lottery with a federal department or agency, any law enforcement agency, or the lottery regulation or gaming enforcement agency of any jurisdiction shall be considered investigative records of a law enforcement agency not subject to Iowa Code chapter 22 and shall not be released under any condition without the permission of the person or agency providing the record or information. Additionally, the results of background investigations conducted pursuant to Iowa Code Supplement section 99G.10(8) shall not be considered public records.

—~~1.5(3)~~ The lottery shall maintain and make available for public inspection at its offices during regular business hours a detailed listing of the estimated number of prizes of each particular denomination that are expected to be awarded in any game that is on sale or the estimated odds of winning the prizes and, after the end of the claim period, shall maintain and make available a listing of the total number of tickets or shares sold in a game and the number of prizes of each denomination that were awarded.

—~~1.5(4)~~ Notwithstanding any statutory confidentiality provision, the lottery may share information with the child support recovery unit through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J or 598.

—~~1.5(5)~~ Copies of public lottery business records may be obtained upon a written request made to the Iowa Lottery Authority, 13001 University Avenue, Clive, Iowa 50325-8225. The lottery may charge reasonable fees, including staff research and copying time, for the processing of any public records production requests.

This rule is intended to implement Iowa Code sections 22.11 and 252J.2, Iowa Code Supplement sections 99G.9(3) and 99G.10(8) and Iowa Code chapter 598.

[~~ARC 1954C~~, IAB 4/15/15, effective 5/20/15]

531—~~1.6(99G) Specific game rules.~~ Specific game rules as authorized in Iowa Code Supplement section 99G.9(4) shall be made available by the lottery as necessary for the efficient conduct of specific lottery games. These rules may include, but are not limited to, descriptions of specific games, special promotions, and drawing procedures. Specific game rules shall be provided to board members as soon as is practical following issuance by the lottery. The promulgation of specific game rules is not subject to the requirements of Iowa Code chapter 17A.

This rule is intended to implement Iowa Code Supplement section 99G.9(4).

531—~~1.7(99G) Lottery contracting authority.~~ The chief executive officer shall enter into contracts necessary for day-to-day operations, including without limitation contracts for accounting services, security services, annuity purchases, equipment and production, communications, auditing services, legal services, space planning, and remodeling. The chief executive officer may enter into these contracts without presenting these contracts to the board for approval or ratification. Contracts for consulting services that are expected to cost in excess of \$25,000 and all contracts for major procurements as defined in Iowa Code Supplement section 99G.3(8), must be ratified by the board in order to be binding on the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(2), and 99G.21.

531—~~1.8(99G) Location of ticket sales by retailers.~~ Tickets may be sold on premises specified on a lottery license. Tickets may be sold on premises where alcoholic beverages, beer, or wine are sold or served pursuant to Iowa Code chapter 123. Tickets may not be sold by a retailer through the mail or by any technological means except as the lottery may provide or authorize.

This rule is intended to implement Iowa Code Supplement section 99G.30.

~~531—1.9(99G) Distribution of tickets by lottery authority.~~ The lottery itself may sell lottery tickets. Ticket sales may be made by the lottery at any location or event deemed appropriate by the lottery. The lottery may distribute lottery tickets or shares for promotional purposes.

This rule is intended to implement Iowa Code Supplement sections 99G.21 and 99G.30.

~~531—1.10(99G) Ticket purchase restrictions.~~ Tickets shall not be purchased by those persons designated in Iowa Code Supplement section 99G.31(2) “g” and “h” or by the assistant attorney general assigned to the lottery. The lottery may restrict the purchase of tickets by lottery contractors through contractual provisions if the lottery determines that restrictions are appropriate.

This rule is intended to implement Iowa Code Supplement sections 99G.2(3) and 99G.31(2).

~~531—1.11(99G) Employee incentive programs.~~ The lottery may design lottery employee incentive programs intended to increase lottery revenues. All employee incentive programs shall be approved by the board before implementation.

This rule is intended to implement Iowa Code Supplement section 99G.10(5).

~~531—1.12(99G) Advertising.~~ Advertising for lottery games may include but is not limited to print advertisements, Internet, radio and television advertisements, billboards, and point-of-purchase display materials. Promotional and advertising items may be produced and distributed to the public, vendors, and retailers.

This rule is intended to implement Iowa Code Supplement sections 99G.2, 99G.7, and 99G.21.

~~531—1.13(99G) Promotional agreements with businesses.~~ The chief executive officer may enter into agreements with business entities for the purpose of promoting any lottery game. Promotional agreements may require a business entity to fund or provide prizes or advertising.

This rule is intended to implement Iowa Code Supplement sections 99G.2, 99G.7, and 99G.21.

~~531—1.14(99G) Agreements for the sale of advertising.~~ The lottery may enter into agreements with other units of state government or with individuals, corporations, or other entities outside of state government for the purpose of selling advertising space on such items as lottery tickets or equipment and in lottery publications or promotional materials. The lottery may also enter into such agreements to sell lottery tickets or merchandise marked with the lottery logo.

This rule is intended to implement Iowa Code Supplement sections 99G.2, 99G.7, 99G.9, and 99G.21.

~~531—1.15 to 1.27 Reserved.~~

~~531—1.28(99G) 701—1100.1(99G) Promotional use of tickets by persons without lottery licenses.~~ Other than the lottery, no person, business, or other organization may sell lottery tickets unless licensed by the lottery. Tickets may, however, be given away for promotional purposes. Tickets may be given away for promotional purposes by persons without a lottery license in conjunction with the required purchase of a product or service or an admission fee without violating this provision provided that the actual cost of the product or service or admission fee is not calculated to include the ticket price, and the promotion is not designed, intended, or conducted to circumvent the lottery’s department’s licensing requirements.

This rule is intended to implement Iowa Code Supplement sections 99G.9, 99G.25, and 99G.30.

~~531—1.29(99G) Employee background investigation.~~ The lottery shall require a background investigation by the department of public safety division of criminal investigation in connection with the employment of lottery personnel. Background investigations to be conducted are as follows:

~~—1.29(1) Standard background investigations.~~ The lottery may require a standard division of criminal investigation background investigation of any prospective lottery employee, consisting of a state criminal history background check, work history, and financial review.

~~—1.29(2) Sensitive position background investigations.~~ The board shall identify those sensitive positions that require full background investigations. Such positions shall include, at a minimum, any officer of the lottery, and any employee with operational management responsibilities, security duties, or system maintenance or programming responsibilities related to the lottery's data processing or network hardware, software, communication, or related systems. In addition to a work history and financial review, a full background investigation may include a national criminal history record check through the Federal Bureau of Investigation. The screening of employees through the Federal Bureau of Investigation shall be conducted by submission of fingerprints through the state criminal history record repository to the Federal Bureau of Investigation.

~~—1.29(3) Alternative sources for investigations.~~ In lieu of a division of criminal investigation standard or full background investigation, or any component thereof, the chief executive officer, at the chief executive officer's discretion and in cooperation with the division of criminal investigation, may accept a report furnished by the division of criminal investigation based on information furnished by authorities in another state of a recent, comparable investigation conducted by said authorities communicated between law enforcement agencies, which may be updated with any information reflecting changes during the interim between the Iowa and the earlier investigations.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.10.

~~{Filed emergency 6/14/85—published 7/3/85, effective 6/14/85}
{Filed emergency 12/23/86—published 1/14/87, effective 12/26/86}
{Filed 11/3/88, Notice 8/10/88—published 11/30/88, effective 1/4/89}
{Filed 12/8/89, Notice 10/18/89—published 12/27/89, effective 2/1/90}
{Filed emergency 4/8/94—published 4/27/94, effective 4/8/94}
{Filed 2/10/95, Notice 8/31/94—published 3/1/95, effective 4/5/95}
{Filed 4/26/96, Notice 1/17/96—published 5/22/96, effective 6/26/96}
{Filed 8/1/96, Notice 5/22/96—published 8/28/96, effective 10/2/96}
{Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99}
{Filed 4/11/03, Notice 2/19/03—published 4/30/03, effective 6/4/03}
{Filed 6/6/03, Notice 4/30/03—published 6/25/03, effective 7/30/03}
{Filed emergency 8/28/03—published 9/17/03, effective 8/28/03}
{Filed 3/12/04, Notice 9/17/03—published 3/31/04, effective 5/7/04}
{Filed 4/7/06, Notice 12/21/05—published 4/26/06, effective 5/31/06}~~

531—2.16 (99G) 701—1100.2(99G) Background and informational statements.

~~2.16(1)1100.2(1) Criminal history and background checks.~~

~~a-~~ All prospective vendors bidders for major procurements, as defined in Iowa Code Supplement section 99G.3; and any other prospective vendor bidders that the chief executive officer, in the chief executive officer's sole discretion, may require as required by the department, (hereinafter "bidder") shall submit to lottery business entity criminal history checks and background investigations (hereinafter "bidder investigations") as conditions for submission of a bid. Any person identified as an officer, director, trustee, partner, sole proprietor, employee, or other person identified by the department as a key person in a sensitive position or relationship with a prospective vendor may also be required to submit to a criminal history and background investigation as required by the department.

Prospective vendors, and any individual identified as a key person, will comply with all requirements necessary for criminal history and background investigations, as determined by the department. Failure to comply with all requirements may result in bid disqualification.

~~—b.—~~ Bidders for major procurements shall be required to describe their organizational structure, identify key personnel, and subject key personnel to lottery bidder key personnel investigations.

~~—c.—~~ Bidders that are not bidders for major procurements may be required to describe their organizational structure, identify key personnel, and subject key personnel to lottery bidder key personnel investigations.

d. **1100.2(2)** For all bidders, any ~~Any~~ change in key personnel during the bidding process or during the contract term must be reported to the ~~lottery authority department~~ before the change occurs. Replacement personnel will be subject to investigation.

e. **1100.2(3)** If, during the course of any investigation, it is determined that either a prospective vendor bidder for a major procurement or any key personnel thereof persons employed by or associated with a bidder for a major procurement who are the subjects of key personnel investigations in accordance with subrule 2.16(3) is found to have been convicted of any state or federal felony related to the security or integrity of the lottery in Iowa or any other jurisdiction, the prospective vendor bidder will be automatically disqualified from the selection process without further investigation.

~~—2.16(2) Bidder investigations.~~

~~—a.—~~ *General provisions.* The Iowa lottery major procurement business entity background investigation form (Class L form) must be completed for each bid submitted in response to a lottery major procurement solicitation.

The Class L form shall be posted on the lottery's Web site and is intended to serve both as a vehicle for collection of information pertaining to bidders and as an overview of the scope of the bidder investigations to be conducted.

The department of public safety division of criminal investigation shall utilize the information provided in the Class L form as the basis for developing the initial scope of the bidder investigation and due diligence to be conducted with respect to a bidder. Should the division of criminal investigation desire to pursue avenues of inquiry beyond the parameters of the information requested by and furnished in the Class L form, the division of criminal investigation shall consult with the lottery chief executive officer, or the chief executive officer's designee, who shall determine the scope and extent of any further investigation to be pursued.

~~—b.—~~ *Class L form requirements.* The Class L form shall solicit the following information:

~~—(1)—~~ The names, addresses, and telephone numbers of all persons who gathered information and prepared the Class L form on behalf of the bidder; the name, address and type of business entity on whose behalf the Class L form is furnished; and the name and telephone number of a contact person for purposes of the procurement.

~~—(2)—~~ The location of the bidder's business records; the state and date of incorporation or establishment of the bidder; the federal and state employer identification numbers of the bidder; the names and addresses of any parent companies, subsidiaries, or affiliates of the bidder; whether the bidder's stock is publicly or closely held; and a copy of the articles of incorporation or charter, bylaws, organizational chart, corporate certificate, or partnership agreement of the bidder, as may be applicable.

~~—(3)—~~ The following information for each corporate officer and director and, if not a publicly held corporation, each partner (general or limited) or stockholder holding 5 percent or more of the outstanding stock of the bidder: name; positions held; business and residence addresses and telephone numbers; date of birth; social security number; percentage of stock held; amount of compensation received from the bidder in excess of \$10,000, including but not limited to salary or wages, director's fees, and stock options and dividends; and designation as to whether the named person will be empowered with signature authority to legally bind the bidder in the context of the procurement process with respect to which the disclosure of information is furnished.

~~—(4)—~~ The identity of any other persons not named in subparagraph (3) above who will be empowered with signature authority to legally bind the bidder in the context of the procurement process with respect to which the disclosure of information is furnished.

~~—(5)—~~ If the bidder is a publicly held corporation, a copy of the bidder's most recent annual report.

~~—(6)—~~ The name and address of each officer, director, partner or stockholder actively involved in the conduct of the day-to-day operation of the bidder.

~~—(7)—~~ The name and address of the internal certified public accountant employed by the bidder and the name, address, and telephone number of the external certified public accountant employed by the bidder.

~~—— (8) —— A list of all criminal proceedings and civil proceedings predicated in whole or part on alleged criminal activity involving the bidder during the ten-year period immediately preceding the submission date of the Class L form.~~

~~—— (9) —— Whether the bidder or any subsidiary, parent, intermediary, holding company or related corporation of the bidder is or has been the subject of a criminal or grand jury investigation, or has been indicted, convicted, or arrested for any criminal offense within the last seven years. An explanation of any such occurrence shall be furnished and shall include the dates of the occurrences, any governmental agencies involved, and descriptions of the nature and the dispositions of the investigations, indictments, convictions, or arrests.~~

~~—— (10) —— Whether any officer or director of the bidder or any subsidiary, parent, intermediary, holding company or related corporation of the bidder is or has ever been the subject of a criminal or grand jury investigation, or has been indicted, convicted, or arrested for any criminal offense. An explanation of any such occurrences shall be furnished and shall include the dates of the occurrences, any governmental agencies involved, and descriptions of the nature and the dispositions of the investigations, indictments, convictions, or arrests.~~

~~—— (11) —— A list of any proceedings within the last five years involving allegations against the bidder or its officers or directors of antitrust violations, trade regulation violations, security judgments, and insolvency proceedings.~~

~~—— (12) —— A list of any license denials, suspensions, or revocations within the last seven years involving any officers or directors of the bidder.~~

~~—— (13) —— Whether the bidder has sustained a loss within the last ten years in which an insurance payment of \$50,000 or more was received; if so, a detailed explanation listing the nature, date and disposition of the incident and the name and address of the insurance company that made the settlement.~~

~~—— (14) —— Whether the bidder sustained a loss by fire in which arson was suspected within the past ten years; if so, a detailed explanation listing circumstances surrounding the fire and the name and address of the investigating agency should also be included.~~

~~—— (15) —— A list of any application to or any permit, license, certificate or qualification from a licensing agency in Iowa or any other state or other jurisdiction in connection with any gambling venture in which the bidder or any subsidiary, parent, intermediary, holding company, or related corporation of the bidder has been involved. The list should include the date of application, the name and address of the licensing agency, the type and number of the license, and the disposition (approval, rejection, or withdrawal) of any such application. For purposes of this paragraph, “gambling venture” means all types of racing and gaming activities, including but not limited to dog track, horse track, greyhound racing, horse racing, lottery, casino, and pari-mutuel operations.~~

~~—— (16) —— Whether the bidder has ever petitioned for or declared bankruptcy or insolvency within the last seven years; if so, the filing date, docket number, and name and address of the court in which the petition or declaration was filed, and the name and address of the filing party and of the trustee should also be included.~~

~~—— (17) —— Copies of any audited financial statements and auditors’ reports for the bidder and any subsidiaries for each entity’s last fiscal year or, if the entity does not normally have its financial statements audited, copies of unaudited financial statements for the last two fiscal years.~~

~~—— (18) —— A list of all holding companies, business organizations, other business entities, or individuals that hold any financial interest of 5 percent or more in the bidder. This list shall describe the nature, type, terms, covenants, and priorities of any outstanding bonds, loans, mortgages, trust deeds, notes, debentures, or other forms of indebtedness issued or executed, which mature more than one year from the date of issuance.~~

~~—— (19) —— A list and copies of all notes and mortgages or other instruments of outstanding long-term debt of the bidder, with the name and address of the entity owed and the amount and purpose of each such mortgage or debt.~~

~~—— (20) —— A list of all dormant or shell company names used or owned by the bidder within the past ten years.~~

~~—— (21) —— A list of any financial or ownership interest in any gambling venture in any jurisdiction that the bidder and any parent or subsidiary owns or holds and a description of the nature and the percentage of each interest owned or held. For purposes of this paragraph, “gambling venture” means all types of racing and gaming activities, including but not limited to dog track, horse track, greyhound racing, horse racing, lottery, casino and pari-mutuel operations.~~

——— (22) ——— A list of all political contributions made by or on behalf of the bidder and any parent or subsidiary to any candidate for any office or position in any jurisdiction in the state of Iowa during the last two years. The list should include the candidate's name, the office or position for which the candidate is or was running, and the amount and date of the contribution.

——— (23) ——— A list of all Iowa lobbyists and political consultants utilized by the bidder and any parent or subsidiary of the bidder, the names of individuals employed by the bidder and any parent or subsidiary who act as liaisons with the lobbyists or political consultants, and descriptions of fee arrangements made with the lobbyists or political consultants. Also included should be a statement identifying any cash fund established with respect to an Iowa lobbyist or political consultant, any pledge of any items of monetary value to a lobbyist or political consultant as a reward for obtaining commission approval of a contract, and any cash transferred in any manner to an attorney's trust account for disbursement to an Iowa lobbyist or political consultant.

——— (24) ——— An organizational chart of the bidder showing its relationship to existing parent, subsidiary, and affiliated companies.

——— (25) ——— A list of all persons or business entities with which the bidder has contracts or agreements worth \$1 million or more that exceed one year in duration.

——— (26) ——— Authorization, in any form or forms approved by the division of criminal investigation and executed by a competent signatory of the bidder, for a review, full disclosure, and release of any and all records concerning the bidder, including but not limited to verification of filing and outstanding balance status of federal income tax returns.

——— **2.16(3) Bidder key personnel investigations.**

——— *a. General provisions.* The chief executive officer may require a full lottery Class L-1 department of public safety division of criminal investigation background investigation for any person identified as an officer, director, trustee, partner, sole proprietor, employee or other person by the lottery or the division of criminal investigation as a key person in a sensitive position or relationship with a bidder in a major procurement, as defined in rule 531—2.1(99G).

The lottery Class L-1 form shall be posted on the lottery's Web site, and is intended to serve as a vehicle for collection of background information and as an overview of the scope of the background investigations to be conducted.

The division of criminal investigation shall utilize the information provided in the lottery Class L-1 form as the basis for developing the initial scope of the key personnel investigation and due diligence to be conducted. Should the division of criminal investigation desire to pursue avenues of inquiry beyond the parameters of the information requested by and furnished in the lottery Class L-1 form, the division of criminal investigation shall consult with the chief executive officer, or the chief executive officer's designee, who shall determine the scope and extent of any further investigation to be pursued.

——— *b. Class L-1 form requirements.* The lottery Class L-1 form shall solicit the following information about key personnel selected to be investigated (hereinafter "subject"):

——— (1) ——— The subject's name, business and residence addresses and telephone numbers, date and place of birth, social security number, height, weight, eye color, sex, and any past or present aliases used.

——— (2) ——— The name and address of the subject's present employer, the subject's job title and a summary of duties, and the subject's supervisor.

——— (3) ——— The subject's citizenship or alien residence status.

——— (4) ——— A ten-year residential history of the subject, including addresses, dates, ownership or rental status, and landlord's or mortgage holder's name(s), address(es), and telephone number(s).

——— (5) ——— The subject's marital status and, if applicable, the subject's spouse's full name, including maiden (if applicable), business and residence addresses and telephone numbers, date and place of birth, occupation, and the name and address of the spouse's present employer.

——— (6) ——— Whether the subject has been divorced, legally separated, or had a marriage annulled and, if applicable, the name, birth date, and current address, if known, of the subject's spouse or former spouse, the date and place of any applicable judicial order, and the nature of the action.

- (7) —— The full names, including maiden (if applicable), dates of birth, and addresses of all the subject's children, including stepchildren and adopted children.
- (8) —— The full names, including maiden (if applicable), dates of birth, most recent occupations, or retired status (if appropriate), and addresses of all parents, parents-in-law, legal guardians, and siblings of the subject. If any such person is deceased, that person's date of death, last address, and last occupation should also be given.
- (9) —— The subject's educational background, including the names, types, and locations of any schools attended, dates of attendance, and graduation status, certificates, or degrees obtained. For purposes of this paragraph, "schools" includes all secondary, postsecondary, graduate, and professional educational institutions.
- (10) —— If applicable, information regarding the subject's military service, including dates of service, type of discharge, and details of any court-martial proceedings in which the subject was involved.
- (11) —— A list of all political contributions made by or on behalf of the subject to any candidate for any office or position in any jurisdiction in the state of Iowa during the last two years. Such list should include the candidate's name, the office or position for which the candidate ran or is running, and the amount and date of the contribution.
- (12) —— The state, license number, date of expiration, and name and address shown on the subject's current driver's license.
- (13) —— A list of three personal references, including a name, address, and telephone number for each reference as well as a brief statement describing the relationship between the subject and each reference and how long the subject has been acquainted with each reference.
- (14) —— A summary of the subject's employment record for the last ten years, including names, addresses, and telephone numbers of prior employers, dates of employment, and positions held.
- (15) —— A list of personal litigation during the last ten years other than divorce, legal separation, or annulment proceedings to which the subject has been a party.
- (16) —— A list of any litigation within the past ten years wherein a business entity owned by the subject, or in which the subject held an ownership interest or served as an officer or director, was a defendant and in which the defendant's conduct was allegedly criminal.
- (17) —— A description of any known criminal investigations and dispositions thereof regarding the subject or any business entity in which the subject holds or has held an ownership interest of 5 percent or more. The description should include the name and address of the investigating agency, the nature of the investigation, and the approximate dates on which the investigation commenced and concluded.
- (18) —— A list of any arrest, indictment, charge or conviction, or any naming as an unindicted party or coconspirator in a criminal offense involving the subject or any of the following family members of the subject: children, including stepchildren and adopted children; parents; parents-in-law; legal guardians; or siblings. The list should include the name of the family member (if applicable); the nature of the charge, conviction or proceeding; the name and address of the governmental agency or court involved; and the disposition.
- (19) —— A list of any pardon for any criminal offense in Iowa or any other jurisdiction pertaining to the subject or any of the following family members of the subject: children, including stepchildren and adopted children; parents; parents-in-law; legal guardians; or siblings. This list should include the name of the family member (if applicable), the offense, the reason for and date of the pardon, and the name and address of the pardoning authority.
- (20) —— A list of any personal or business loss within the past ten years involving an insurance payment of more than \$10,000.
- (21) —— A list of and explanation regarding any personal or business property owned by the subject that was destroyed by fire or an explosion.
- (22) —— A list of any application to and any permit, license, certificate, or qualification from a licensing agency in Iowa or any other state or other jurisdiction in connection with any gambling venture in which the subject is or has been involved. The list should include the date of application, the name and address of the licensing agency, the type and number of licenses, and the disposition (approval, rejection or withdrawal) of any such application, together with a description of any financial or ownership interest in any such gambling venture. For purposes of this paragraph, "gambling venture" means all types of racing and gaming activities, including but not limited to dog track, horse track, greyhound racing, horse racing, lottery, casino and pari-mutuel operations.

——— (23) ——— A description of the extent of involvement, if any, the subject has or anticipates having in participation in the management or operation of the bidder.

——— (24) ——— Information regarding the filing and status of state and federal income tax returns for the previous three years. Copies of said returns should also be included.

——— (25) ——— A statement regarding any financial or ownership interest of 5 percent or more that the subject has or had in any active or dormant companies and any failed or abandoned business projects in which the subject was invested in 5 percent or more of the business project or was a significant planner, to the extent that such interest or interests are within the scope of a gambling venture or with an Iowa lottery vendor.

——— (26) ——— Such sworn consents and authorizations as may be requested by the division of criminal investigation to gain access to records pertaining to the subject for use in investigating the information furnished by the subject in the lottery Class L-1 form and any derivation thereof, including without limitation the subject's federal and state tax records and any other records, public or private, including confidential and criminal history records.

——— **2.16(4)** *Alternative sources for business entity investigations.* In lieu of a division of criminal investigation lottery business entity investigation or any component thereof, the lottery chief executive officer, at the chief executive officer's discretion and in cooperation with the division of criminal investigation, may accept a report furnished by authorities in another state of a recent, comparable investigation conducted by said authorities communicated between law enforcement agencies, which may be updated with any information reflecting changes during the interim between the Iowa and the earlier investigations.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, 99G.22, and 99G.23.

CHAPTER 2 PURCHASING

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 5]

[Prior to 9/17/03, see 705—Ch 4]

531—2.1(99G) Applicability of competitive bidding. All “major procurements” shall be obtained as a result of competitive bidding, except in cases where a single vendor has an exclusive right to offer a particular product or service. Major procurements include consulting agreements and the major procurement contract with a business organization for the printing of tickets or for the purchase or lease of equipment or services essential to the operation of a lottery game.

Items, including goods or services, other than major procurements, that are expected to cost in the aggregate in excess of \$50,000 will be obtained as a result of a formal or informal competitive bidding process conducted by the lottery or through the department of administrative services whenever such procurement is in the best interests of the lottery. Items, including goods or services, other than major procurements, that are expected to cost in the aggregate \$50,000 or less may be obtained as a result of an informal competitive bidding process. Items, including goods or services, other than major procurements, expected to cost less than \$50,000 in the aggregate may be obtained in any manner deemed appropriate by the lottery.

Notwithstanding the foregoing, the lottery may exempt an item from competitive bidding if the item is noncompetitive or is purchased in quantities too small to be effectively purchased through competitive bidding; if there is an immediate or emergency need for the item; if the purchase of the item facilitates compliance with set-aside procurement provisions; or if the lottery determines that its best interests will be served by exemption from the bidding process and the item to be purchased is not a major procurement.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.2(99G) Methods of obtaining bids or proposals used by the lottery. Formal or informal bids or proposals are to be obtained by one of the following methods. If more than one method is applicable to the purchase of a particular item, the lottery shall choose the method of bidding to be utilized.

— **2.2(1)** Formal bids may be required for any item if cost is the major criterion for selection. If cost is the major criterion for selection, formal bids shall be required for all items costing in the aggregate more than \$50,000.

The lottery shall prepare a written invitation to bid document and shall send it via the United States Postal Service or electronic mail to selected vendors in the business of providing the goods or services sought by the lottery. Goods or services may also be obtained by the lottery using reverse auction methods via the lottery’s Internet Web site.

The invitation to bid shall contain the due date and time of the bid opening, a complete description of the item needed, and any other necessary or proper items.

Formal bids, other than major procurement sealed bids, received prior to the submission deadline set in the bidding document shall be made available to any interested party on the date and hour designated on the bid form. As the bids are opened they will be tabulated, and the results of the tabulation shall be made available to any interested party. The original bids and the tabulations will be maintained at the lottery for one year following the date on which the bids were opened.

An award shall be made within 60 calendar days from the date of the bid opening unless a different time frame is stated by the lottery in the invitation to bid or subsequently agreed to by the vendors. The price quoted by the vendors shall remain binding throughout the applicable time period. If an award is not made within the applicable time frame, all bids shall be deemed rejected.

— **2.2(2)** Informal bids may be required for any item if cost is the major criterion for selection and if the item is expected to cost in the aggregate \$50,000 or less. Informal bids may be obtained by the lottery through use of a written bid form, over the telephone, via facsimile transmission, or in electronic format, including over the Internet or through electronic mail. When requesting informal bids, the lottery shall contact selected vendors supplying the goods or services sought by the lottery and shall communicate to each vendor the date on which bids must be received, a complete description of the item to be purchased, and the time period during which the bid must remain valid. Goods or services may also be obtained by the lottery using reverse auction methods via the lottery’s Internet Web site.

Written informal bids shall be opened as received, and informal telephone, facsimile, or electronic bids shall be recorded as received. If a bid is received over the telephone, a telephone bid form shall be used to record the bid received. If an electronic bid is received, a screen print shall be used to record the bid received. Following the submission deadline, the lottery shall tabulate the bids received and make the award. The bids and the tabulations shall be available to interested parties after the submission deadline and shall be maintained by the lottery for one year following the submission deadline.

If an award is not made within the time frame indicated by the lottery when requesting bids, all bids shall be deemed rejected.

~~— 2.2(3) Whenever a requirement exists for an item or a major procurement and cost may not be the sole criterion for selection, the lottery may issue a request for proposals. The purpose of a request for proposals is to provide the vendor with sufficient information about the lottery's requirements and goals to allow the vendor to propose a solution to the lottery's requirements.~~

~~The lottery shall prepare a written request for proposals and shall send the proposal via the United States Postal Service or electronic mail to selected vendors in the business of supplying the goods or services sought by the lottery.~~

~~The lottery requires that bids submitted in response to a request for proposals in a major procurement for award of a contract for the printing of tickets or for the purchase or lease of equipment or services essential to the operation of a lottery game be submitted as sealed bids. The contents of sealed bids shall be made available to any interested party at the time designated in the request for proposals. A bidder shall identify with clear markings the pages, sections, or documents submitted as part of a proposal package that the bidder claims are exempt from disclosure because they contain sensitive business or trade secret information.~~

~~To ensure the fairness and integrity of the evaluation process, the lottery may elect to evaluate and score any of the technical, financial, security, and marketing components of major procurement sealed bid proposals prior to opening and integrating the scoring of the pricing component. When scoring has been completed, the evaluation team shall prepare a recommendation report for an award and, if applicable, for rejection of any or all proposals under consideration. The recommendation report shall be submitted to the chief executive officer and the lottery board for such action as the chief executive officer and board may deem appropriate. The report shall be made available to any interested person immediately upon transmittal to the chief executive officer and the board. Prior to making an award, the board and chief executive officer shall receive and consider the results of a background investigation conducted by the department of public safety division of criminal investigation.~~

~~An award shall be made within 60 calendar days from the date of the proposal opening unless a different time frame is stated by the lottery in the request for proposal or subsequently agreed to by the vendors. The terms quoted by the vendor shall remain binding throughout the applicable time frame. If an award is not made within the applicable time frame, all proposals shall be deemed rejected and not binding.~~

~~At a minimum, a request for proposals shall address the following criteria: the need for a proposal conference; the purpose and background of the request; important dates in the proposal and the award process including the submission deadline; administrative requirements for submitting the proposal and the format required by the lottery; the scope of the work to be performed and any specific requirements which the vendor must meet; and any contractual terms and conditions which the lottery anticipates may affect the terms of the vendor's proposal.~~

~~This rule is intended to implement Iowa Code section 72.3 and Iowa Code Supplement sections 99G.7, 99G.9, and 99G.21.~~

531—2.3(99G) Items purchased through the department of administrative services. Goods and services may be obtained by the lottery through the department of administrative services whenever procurement through administrative services is in the best interests of the lottery. Items procured through administrative services may be obtained by administrative services in any manner deemed appropriate by administrative services.

~~This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.~~

531—2.4(99G) Advertising solicitations. Formal bids and requests for proposals issued by the lottery shall be advertised in a daily paper in Iowa. The advertisement shall indicate that it is a notice to prospective bidders, contain the bid due date and time of opening, describe the items to be purchased, and provide the name, address and telephone number of the person to be contacted to obtain official bidding documents.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.5(99G) Contract purchases. The lottery may enter into contract purchase agreements for items, groups of items, or services. Contract purchase agreements are subject to the competitive bidding requirements previously outlined where applicable.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.6(99G) Blanket purchase agreements. If the lottery foresees a requirement for frequent purchases of off-the-shelf items, the lottery may establish blanket purchase agreements. A blanket purchase agreement is a formally approved charge account that is designed to reduce paperwork and the number of checks issued. Blanket purchase agreements are subject to the competitive bidding requirements previously outlined where applicable.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.7(99G) Prospective vendor selection:

— **2.7(1)** Any firm or business legally conducting business within Iowa may request placement on the approved vendor list for a particular service or commodity by filing a vendor application form with the lottery. The lottery may mail copies of solicitation documents to vendors on the list for a particular item or to any other vendor that the lottery chooses to contact. A vendor may be refused placement on the list or suspended or permanently removed from the list for any of the following reasons: failure to respond to three consecutive solicitations; failure to deliver within specified delivery dates; failure to deliver in accordance with specifications; attempts to influence the decision of any state employee involved in the procurement process; evidence of agreements by the vendor to restrain trade or impede competitive bidding; and any other activities of the vendor which the lottery determines would render the vendor unsuitable.

The lottery shall notify a vendor in writing prior to refusing placement on the list, suspending the vendor from the list, or permanently removing the vendor from the list. The vendor shall be provided a reasonable opportunity to explain and cure any misconduct identified by the lottery. If the lottery ultimately refuses placement on the list or removes the vendor from the list, the vendor may appeal the lottery's action to the lottery board pursuant to the criteria for vendor appeals contained in these rules.

— **2.7(2)** The lottery shall select vendors to receive solicitation documents based on the lottery's knowledge of the vendors in the particular market. The initial vendor selection shall be designed to promote the competitive bidding process, the set-aside procurement programs, and the best interests of the lottery. The lottery shall also provide solicitation documents to qualified vendors upon request when the request is made during the solicitation period. The vendor is solely responsible for ensuring that solicitation documents are received by the vendor.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.8(99G) Bids and proposals to conform with specifications. All bids and proposals must conform to the specifications indicated by the lottery. Bids and proposals that do not conform to the specifications stated may be rejected. The lottery reserves the right to waive deficiencies in the bids or proposals if in the judgment of the lottery its best interests would be served by the waiver.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.9(99G) Time of delivery. When evaluating bids or proposals, the lottery may consider the time of delivery when determining the successful vendor.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.10(99G) Cash discounts. When evaluating bids or proposals, the lottery may consider cash discounts.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.11(99G) Tie bids. The lottery shall resolve ties among bids or proposals which are equal in all respects by drawing lots unless only one of the tied bidders is an Iowa business. If only one of the bidders tied for an award is an Iowa business, the Iowa business shall be given preference over all tied out-of-state businesses.

If it is necessary to draw lots, the drawing shall be held in the presence of the vendors who submitted the tied bids or proposals whenever practical. If the tied vendors are not present, the drawing shall be held in front of at least two persons, and the lottery shall document the drawing.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.12(99G) Time of submission. All formal bids and proposals shall be submitted by the vendor in sufficient time to actually reach the lottery prior to the submission deadline specified in the bid document. All informal bids shall be submitted by the vendor in time to reach the lottery prior to the submission deadline indicated by the lottery. Formal bids and proposals shall be marked by the lottery with the date and time received by the lottery. Formal bids and proposals received after the submission deadline shall be returned to the vendor unopened. All vendors to whom invitations to bid or requests for proposals are sent shall be notified of any changes in submission deadline.

If a formal bid or request for proposals is canceled prior to the submission deadline, any responses already received shall be returned unopened. If an informal bid is canceled prior to the submission deadline, any bids already received shall be destroyed.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.13(99G) Modification or withdrawal of bids. Bids or proposals may be modified or withdrawn prior to the time and date set for the bid or proposal opening. Modifications or withdrawals shall be in writing and delivered in a sealed envelope that properly identifies the correct bid or proposal to be modified or withdrawn. A bid or proposal may be withdrawn after opening only with the approval of the lottery if the lottery finds that an honest error was made by the vendor that will cause undue financial hardship to the vendor and that will not cause undue financial hardship or inconvenience to the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.14(99G) Financial security. The lottery may require bid security, litigation security, and performance security on formal bids or proposals. When required, security may be by certified check, certificate of deposit, letter of credit made payable to the lottery, or any other form specified by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, 99G.22, and 99G.23.

531—2.15(99G) Rejection of bids and proposals. The lottery reserves the right to reject any or all bids or proposals. Bids and proposals may be rejected because of faulty specifications, abandonment of the project, insufficient funds, evidence of unfair or flawed bidding procedures, failure of a vendor to meet the lottery's requirements, or for any other reason if the lottery determines that its best interests will be served by rejecting any or all bids. Following the rejection of bids, new bids may be requested by the lottery at any time deemed convenient by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, 99G.22, and 99G.23.

531—2.16(99G) Background and informational statements.

— **2.16(1) Criminal history and background checks.**

— *a.* All bidders for major procurements, as defined in Iowa Code Supplement section 99G.3, and any other bidders that the chief executive officer, in the chief executive officer's sole discretion, may require (hereinafter "bidder") shall submit to lottery business entity criminal history checks and background investigations (hereinafter "bidder investigations") as conditions for submission of a bid.

— *b.* Bidders for major procurements shall be required to describe their organizational structure, identify key personnel, and subject key personnel to lottery bidder key personnel investigations.

— *c.* Bidders that are not bidders for major procurements may be required to describe their organizational structure, identify key personnel, and subject key personnel to lottery bidder key personnel investigations.

— *d.* For all bidders, any change in key personnel during the bidding process or during the contract term must be reported to the lottery authority before the change occurs. Replacement personnel will be subject to investigation.

— *e.* If, during the course of any investigation, it is determined that either a bidder for a major procurement or any persons employed by or associated with a bidder for a major procurement who are the subjects of key personnel investigations in accordance with subrule 2.16(3) have been convicted of any state or federal felony

related to the security or integrity of the lottery in Iowa or any other jurisdiction, the bidder will be automatically disqualified from the selection process without further investigation.

— **2.16(2) Bidder investigations.**

— *a. General provisions.* The Iowa lottery major procurement business entity background investigation form (Class L form) must be completed for each bid submitted in response to a lottery major procurement solicitation.

The Class L form shall be posted on the lottery's Web site and is intended to serve both as a vehicle for collection of information pertaining to bidders and as an overview of the scope of the bidder investigations to be conducted.

The department of public safety division of criminal investigation shall utilize the information provided in the Class L form as the basis for developing the initial scope of the bidder investigation and due diligence to be conducted with respect to a bidder. Should the division of criminal investigation desire to pursue avenues of inquiry beyond the parameters of the information requested by and furnished in the Class L form, the division of criminal investigation shall consult with the lottery chief executive officer, or the chief executive officer's designee, who shall determine the scope and extent of any further investigation to be pursued.

— *b. Class L form requirements.* The Class L form shall solicit the following information:

— (1) The names, addresses, and telephone numbers of all persons who gathered information and prepared the Class L form on behalf of the bidder; the name, address and type of business entity on whose behalf the Class L form is furnished; and the name and telephone number of a contact person for purposes of the procurement.

— (2) The location of the bidder's business records; the state and date of incorporation or establishment of the bidder; the federal and state employer identification numbers of the bidder; the names and addresses of any parent companies, subsidiaries, or affiliates of the bidder; whether the bidder's stock is publicly or closely held; and a copy of the articles of incorporation or charter, bylaws, organizational chart, corporate certificate, or partnership agreement of the bidder, as may be applicable.

— (3) The following information for each corporate officer and director and, if not a publicly held corporation, each partner (general or limited) or stockholder holding 5 percent or more of the outstanding stock of the bidder: name; positions held; business and residence addresses and telephone numbers; date of birth; social security number; percentage of stock held; amount of compensation received from the bidder in excess of \$10,000, including but not limited to salary or wages, director's fees, and stock options and dividends; and designation as to whether the named person will be empowered with signature authority to legally bind the bidder in the context of the procurement process with respect to which the disclosure of information is furnished.

— (4) The identity of any other persons not named in subparagraph (3) above who will be empowered with signature authority to legally bind the bidder in the context of the procurement process with respect to which the disclosure of information is furnished.

— (5) If the bidder is a publicly held corporation, a copy of the bidder's most recent annual report.

— (6) The name and address of each officer, director, partner or stockholder actively involved in the conduct of the day-to-day operation of the bidder.

— (7) The name and address of the internal certified public accountant employed by the bidder and the name, address, and telephone number of the external certified public accountant employed by the bidder.

— (8) A list of all criminal proceedings and civil proceedings predicated in whole or part on alleged criminal activity involving the bidder during the ten-year period immediately preceding the submission date of the Class L form.

— (9) Whether the bidder or any subsidiary, parent, intermediary, holding company or related corporation of the bidder is or has been the subject of a criminal or grand jury investigation, or has been indicted, convicted, or arrested for any criminal offense within the last seven years. An explanation of any such occurrence shall be furnished and shall include the dates of the occurrences, any governmental agencies involved, and descriptions of the nature and the dispositions of the investigations, indictments, convictions, or arrests.

— (10) Whether any officer or director of the bidder or any subsidiary, parent, intermediary, holding company or related corporation of the bidder is or has ever been the subject of a criminal or grand jury investigation, or has been indicted, convicted, or arrested for any criminal offense. An explanation of any such occurrences shall be furnished and shall include the dates of the occurrences, any governmental agencies involved, and descriptions of the nature and the dispositions of the investigations, indictments, convictions, or arrests.

— (11) A list of any proceedings within the last five years involving allegations against the bidder or its officers or directors of antitrust violations, trade regulation violations, security judgments, and insolvency proceedings.

- (12) A list of any license denials, suspensions, or revocations within the last seven years involving any officers or directors of the bidder.
- (13) Whether the bidder has sustained a loss within the last ten years in which an insurance payment of \$50,000 or more was received; if so, a detailed explanation listing the nature, date and disposition of the incident and the name and address of the insurance company that made the settlement.
- (14) Whether the bidder sustained a loss by fire in which arson was suspected within the past ten years; if so, a detailed explanation listing circumstances surrounding the fire and the name and address of the investigating agency should also be included.
- (15) A list of any application to or any permit, license, certificate or qualification from a licensing agency in Iowa or any other state or other jurisdiction in connection with any gambling venture in which the bidder or any subsidiary, parent, intermediary, holding company, or related corporation of the bidder has been involved. The list should include the date of application; the name and address of the licensing agency; the type and number of the license; and the disposition (approval, rejection, or withdrawal) of any such application. For purposes of this paragraph, “gambling venture” means all types of racing and gaming activities, including but not limited to dog track, horse track, greyhound racing, horse racing, lottery, casino, and pari-mutuel operations.
- (16) Whether the bidder has ever petitioned for or declared bankruptcy or insolvency within the last seven years; if so, the filing date, docket number, and name and address of the court in which the petition or declaration was filed, and the name and address of the filing party and of the trustee should also be included.
- (17) Copies of any audited financial statements and auditors’ reports for the bidder and any subsidiaries for each entity’s last fiscal year or, if the entity does not normally have its financial statements audited, copies of unaudited financial statements for the last two fiscal years.
- (18) A list of all holding companies, business organizations, other business entities, or individuals that hold any financial interest of 5 percent or more in the bidder. This list shall describe the nature, type, terms, covenants, and priorities of any outstanding bonds, loans, mortgages, trust deeds, notes, debentures, or other forms of indebtedness issued or executed, which mature more than one year from the date of issuance.
- (19) A list and copies of all notes and mortgages or other instruments of outstanding long-term debt of the bidder, with the name and address of the entity owed and the amount and purpose of each such mortgage or debt.
- (20) A list of all dormant or shell company names used or owned by the bidder within the past ten years.
- (21) A list of any financial or ownership interest in any gambling venture in any jurisdiction that the bidder and any parent or subsidiary owns or holds and a description of the nature and the percentage of each interest owned or held. For purposes of this paragraph, “gambling venture” means all types of racing and gaming activities, including but not limited to dog track, horse track, greyhound racing, horse racing, lottery, casino and pari-mutuel operations.
- (22) A list of all political contributions made by or on behalf of the bidder and any parent or subsidiary to any candidate for any office or position in any jurisdiction in the state of Iowa during the last two years. The list should include the candidate’s name, the office or position for which the candidate is or was running, and the amount and date of the contribution.
- (23) A list of all Iowa lobbyists and political consultants utilized by the bidder and any parent or subsidiary of the bidder, the names of individuals employed by the bidder and any parent or subsidiary who act as liaisons with the lobbyists or political consultants, and descriptions of fee arrangements made with the lobbyists or political consultants. Also included should be a statement identifying any cash fund established with respect to an Iowa lobbyist or political consultant, any pledge of any items of monetary value to a lobbyist or political consultant as a reward for obtaining commission approval of a contract, and any cash transferred in any manner to an attorney’s trust account for disbursement to an Iowa lobbyist or political consultant.
- (24) An organizational chart of the bidder showing its relationship to existing parent, subsidiary, and affiliated companies.
- (25) A list of all persons or business entities with which the bidder has contracts or agreements worth \$1 million or more that exceed one year in duration.
- (26) Authorization, in any form or forms approved by the division of criminal investigation and executed by a competent signatory of the bidder, for a review, full disclosure, and release of any and all records concerning the bidder, including but not limited to verification of filing and outstanding balance status of federal income tax returns.

~~— 2.16(3) Bidder key personnel investigations.~~

~~— a. General provisions.~~ The chief executive officer may require a full lottery Class L-1 department of public safety division of criminal investigation background investigation for any person identified as an officer, director, trustee, partner, sole proprietor, employee or other person by the lottery or the division of criminal investigation as a key person in a sensitive position or relationship with a bidder in a major procurement, as defined in rule 531—2.1(99G).

The lottery Class L-1 form shall be posted on the lottery's Web site, and is intended to serve as a vehicle for collection of background information and as an overview of the scope of the background investigations to be conducted.

The division of criminal investigation shall utilize the information provided in the lottery Class L-1 form as the basis for developing the initial scope of the key personnel investigation and due diligence to be conducted. Should the division of criminal investigation desire to pursue avenues of inquiry beyond the parameters of the information requested by and furnished in the lottery Class L-1 form, the division of criminal investigation shall consult with the chief executive officer, or the chief executive officer's designee, who shall determine the scope and extent of any further investigation to be pursued.

~~— b. Class L-1 form requirements.~~ The lottery Class L-1 form shall solicit the following information about key personnel selected to be investigated (hereinafter "subject"):

~~— (1) The subject's name, business and residence addresses and telephone numbers, date and place of birth, social security number, height, weight, eye color, sex, and any past or present aliases used.~~

~~— (2) The name and address of the subject's present employer, the subject's job title and a summary of duties, and the subject's supervisor.~~

~~— (3) The subject's citizenship or alien residence status.~~

~~— (4) A ten-year residential history of the subject, including addresses, dates, ownership or rental status, and landlord's or mortgage holder's name(s), address(es), and telephone number(s).~~

~~— (5) The subject's marital status and, if applicable, the subject's spouse's full name, including maiden (if applicable), business and residence addresses and telephone numbers, date and place of birth, occupation, and the name and address of the spouse's present employer.~~

~~— (6) Whether the subject has been divorced, legally separated, or had a marriage annulled and, if applicable, the name, birth date, and current address, if known, of the subject's spouse or former spouse, the date and place of any applicable judicial order, and the nature of the action.~~

~~— (7) The full names, including maiden (if applicable), dates of birth, and addresses of all the subject's children, including stepchildren and adopted children.~~

~~— (8) The full names, including maiden (if applicable), dates of birth, most recent occupations, or retired status (if appropriate), and addresses of all parents, parents-in-law, legal guardians, and siblings of the subject. If any such person is deceased, that person's date of death, last address, and last occupation should also be given.~~

~~— (9) The subject's educational background, including the names, types, and locations of any schools attended, dates of attendance, and graduation status, certificates, or degrees obtained. For purposes of this paragraph, "schools" includes all secondary, postsecondary, graduate, and professional educational institutions.~~

~~— (10) If applicable, information regarding the subject's military service, including dates of service, type of discharge, and details of any court-martial proceedings in which the subject was involved.~~

~~— (11) A list of all political contributions made by or on behalf of the subject to any candidate for any office or position in any jurisdiction in the state of Iowa during the last two years. Such list should include the candidate's name, the office or position for which the candidate ran or is running, and the amount and date of the contribution.~~

~~— (12) The state, license number, date of expiration, and name and address shown on the subject's current driver's license.~~

~~— (13) A list of three personal references, including a name, address, and telephone number for each reference as well as a brief statement describing the relationship between the subject and each reference and how long the subject has been acquainted with each reference.~~

~~— (14) A summary of the subject's employment record for the last ten years, including names, addresses, and telephone numbers of prior employers, dates of employment, and positions held.~~

~~— (15) A list of personal litigation during the last ten years other than divorce, legal separation, or annulment proceedings to which the subject has been a party.~~

— (16) A list of any litigation within the past ten years wherein a business entity owned by the subject, or in which the subject held an ownership interest or served as an officer or director, was a defendant and in which the defendant's conduct was allegedly criminal.

— (17) A description of any known criminal investigations and dispositions thereof regarding the subject or any business entity in which the subject holds or has held an ownership interest of 5 percent or more. The description should include the name and address of the investigating agency, the nature of the investigation, and the approximate dates on which the investigation commenced and concluded.

— (18) A list of any arrest, indictment, charge or conviction, or any naming as an unindicted party or coconspirator in a criminal offense involving the subject or any of the following family members of the subject: children, including stepchildren and adopted children; parents; parents-in-law; legal guardians; or siblings. The list should include the name of the family member (if applicable); the nature of the charge, conviction or proceeding; the name and address of the governmental agency or court involved; and the disposition.

— (19) A list of any pardon for any criminal offense in Iowa or any other jurisdiction pertaining to the subject or any of the following family members of the subject: children, including stepchildren and adopted children; parents; parents-in-law; legal guardians; or siblings. This list should include the name of the family member (if applicable), the offense, the reason for and date of the pardon, and the name and address of the pardoning authority.

— (20) A list of any personal or business loss within the past ten years involving an insurance payment of more than \$10,000.

— (21) A list of and explanation regarding any personal or business property owned by the subject that was destroyed by fire or an explosion.

— (22) A list of any application to and any permit, license, certificate, or qualification from a licensing agency in Iowa or any other state or other jurisdiction in connection with any gambling venture in which the subject is or has been involved. The list should include the date of application, the name and address of the licensing agency, the type and number of licenses, and the disposition (approval, rejection or withdrawal) of any such application, together with a description of any financial or ownership interest in any such gambling venture. For purposes of this paragraph, "gambling venture" means all types of racing and gaming activities, including but not limited to dog track, horse track, greyhound racing, horse racing, lottery, casino and pari-mutuel operations.

— (23) A description of the extent of involvement, if any, the subject has or anticipates having in participation in the management or operation of the bidder.

— (24) Information regarding the filing and status of state and federal income tax returns for the previous three years. Copies of said returns should also be included.

— (25) A statement regarding any financial or ownership interest of 5 percent or more that the subject has or had in any active or dormant companies and any failed or abandoned business projects in which the subject was invested in 5 percent or more of the business project or was a significant planner, to the extent that such interest or interests are within the scope of a gambling venture or with an Iowa lottery vendor.

— (26) Such sworn consents and authorizations as may be requested by the division of criminal investigation to gain access to records pertaining to the subject for use in investigating the information furnished by the subject in the lottery Class L-1 form and any derivation thereof, including without limitation the subject's federal and state tax records and any other records, public or private, including confidential and criminal history records.

— **2.16(4) *Alternative sources for business entity investigations.*** In lieu of a division of criminal investigation lottery business entity investigation or any component thereof, the lottery chief executive officer, at the chief executive officer's discretion and in cooperation with the division of criminal investigation, may accept a report furnished by authorities in another state of a recent, comparable investigation conducted by said authorities communicated between law enforcement agencies, which may be updated with any information reflecting changes during the interim between the Iowa and the earlier investigations.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, 99G.22, and 99G.23.

531—2.17(99G) Vendor appeals.

— **2.17(1) *Filing vendor appeal.*** Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the lottery may file a written notice of appeal of the procurement decision with the Iowa Lottery, 13001 University Avenue, Clive, Iowa 50325-8225, within five business days of the date of the award. The

notice of appeal must actually be received at this address within the time frame specified to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the lottery's award.

— **2.17(2) Presiding officer.** Upon receipt of a notice of a vendor appeal, the chief executive officer shall appoint an administrative law judge within the administrative hearings division of the department of inspections and appeals to serve as presiding officer, who would then issue a proposed ruling that the chief executive officer may hear on appeal.

— **2.17(3) Hearing.** Where feasible, vendor appeals shall be conducted in accordance with 531—Chapter 5. In the case of conflict, the rules and procedures set forth in Chapter 2 control for vendor appeals submitted to the lottery. The presiding officer shall send a written notice of the date, time and location of the appeal hearing to the aggrieved vendor or vendors. The presiding officer shall hold a hearing on the vendor appeal within 60 days of the date the notice of appeal was received by the lottery, except that the administrative law judge has the ability to extend this duration where the administrative law judge determines good cause necessitates an extension.

— **2.17(4) Discovery.** The parties shall serve any discovery requests upon the other parties at least 30 days prior to the date set for hearing. The parties must serve responses to discovery at least 20 days prior to the date set for the hearing.

— **2.17(5) Witnesses and exhibits.** The parties shall contact each other regarding witnesses and exhibits at least ten days prior to the time set for the hearing. The parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials.

— **2.17(6) Contents of decision.** The administrative law judge shall issue and serve upon all parties a written proposed decision that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the appeal and shall conform with the requirements of Iowa Code chapters 17A and 99G.

— **2.17(7) Status of ruling.** The ruling of the presiding officer constitutes a proposed ruling which may be appealed to the lottery's chief executive officer. The written decision of the chief executive officer on a vendor appeal constitutes a final decision of the lottery, which may be further appealed in accordance with Iowa Code section 17A.19.

— **2.17(8) Stay of agency action for vendor appeal.**

— *a.* Any party appealing the issuance of a notice of intent to award a contract may petition the presiding officer for a stay of the award pending its review. The petition for stay shall be filed with the notice of appeal and shall state the reasons justifying a stay. Any decision issued by a presiding officer regarding a stay may be appealed to the chief executive officer.

— *b.* Any party adversely affected by a final decision and order may petition the chief executive officer for a stay of the agency decision and order pending judicial review. The petition for stay shall be filed with the chief executive officer within ten days of receipt of the final decision and order and shall state the reasons justifying a stay.

— *c.* The presiding officer or chief executive officer may grant a stay upon a conclusion that the movant has satisfied the standards for the grant of a stay included in rule 531—5.29(17A) and Iowa Code section 17A.19(5).

This rule is intended to implement Iowa Code sections 99G.9, 99G.21, 99G.23, and 99G.37.

[ARC 1954C, IAB 4/15/15, effective 5/20/15; ARC 4814C, IAB 12/18/19, effective 1/22/20]

[Filed emergency 5/17/85—published 6/5/85, effective 5/17/85]

[Filed emergency 9/20/85—published 10/9/85, effective 9/20/85]

[Filed emergency 12/27/85—published 1/15/86, effective 12/30/85]

[Filed 12/27/85, Notice 11/6/85—published 1/15/86, effective 2/19/86 (Rule 5.8)]⁺

[Filed emergency 2/21/86—published 3/12/86, effective 2/21/86]

[Filed emergency 4/18/86—published 5/7/86, effective 4/21/86]

[Filed emergency 12/23/86—published 1/14/87, effective 12/26/86]

[Filed 11/3/88, Notice 8/10/88—published 11/30/88, effective 1/4/89]

[Filed 6/6/03, Notice 4/30/03—published 6/25/03, effective 7/30/03]

[Filed emergency 8/28/03—published 9/17/03, effective 8/28/03]

[Filed 3/12/04, Notice 9/17/03—published 3/31/04, effective 5/7/04]

[Filed ARC 1954C (Notice ARC 1847C, IAB 2/4/15), IAB 4/15/15, effective 5/20/15]

[Filed ARC 4814C (Notice ARC 4563C, IAB 7/31/19), IAB 12/18/19, effective 1/22/20]

CHAPTER ~~44~~ 1101
PRIZES

~~531—11.1(99G) 701—1101.1(99G)~~ Claiming prizes.

~~11.1(1) 1101.1(1)~~ A prize claim shall be entered in the name of a single individual or organization. A claim may be entered in the name of an organization only if the organization is a legal entity and possesses or has applied for a federal employer's identification number (FEIN) as issued by the Internal Revenue Service. Groups, family units, organizations, clubs, or other organizations that are not legal entities, do not possess a FEIN, or have not applied for a FEIN must designate one individual in whose name the claim will be entered.

~~11.1(2) 1101.1(2)~~ By submitting a claim, a player agrees that the state, the lottery ~~authority board commission~~, the lottery ~~authority division~~, ~~the department of revenue~~, and the officials, officers, and employees of each shall be discharged from all further liability upon payment of the prize.

~~11.1(3) 1101.1(3)~~ By submitting a claim, the player also agrees that the prizewinner's name may be used for publicity purposes by the lottery.

~~11.1(4) 1101.1(4)~~ An original ticket or share must be presented before payment of any prize will occur. No reproductions, facsimiles, or copies of any kind ~~will be~~ are allowed.

~~11.1(5) 1101.1(5)~~ The player must sign the original ticket or share prior to presenting the ticket to another party for the purpose of checking or validating the ticket. The lottery and retailers shall verify that there is a signature on any ticket(s) submitted for checking or validation.

This rule is intended to implement Iowa Code Supplement sections ~~99G.9(3) 99G.9(2)~~, 99G.21, and 99G.31.

~~531—11.2(99G) 701—1101.2(99G)~~ Claim period. A prize must be claimed within the time limit specifically designated in these rules or as specified ~~by the lottery~~ in the ~~specific game game specific~~ rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

~~531—11.3(99G) 701—1101.3(99G)~~ Invalid tickets not entitled to prize payment. If a ticket presented to the lottery ~~division~~ is invalid pursuant to the terms of these rules or the specific game rules, the ticket is not entitled to prize payment.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

~~531—11.4(99G) 701—1101.4(99G)~~ Ticket is a bearer instrument. A ticket is a bearer instrument until signed in the space designated on the ticket for signature if a signature space is provided. The person who signs the ticket is thereafter considered the owner of the ticket, unless circumstances indicate the person is not the rightful owner of the ticket. ~~All liability of the state, the lottery authority board, the lottery authority, the chief executive officer, and the employees of the lottery terminates upon payment.~~

This rule is intended to implement Iowa Code sections 99G.9(3), 99G.21, and 99G.31.

~~531—11.5(99G) 701—1101.5(99G)~~ Assignment of prizes. Payments of prizes ~~shall~~ will be made as follows:

~~11.5(1)~~ The lottery shall pay all prizes to only one person or one legal entity per winning ticket.

~~11.5(2) 1101.5(1)~~ If a prize is payable in installments, all future installments of the prize ~~must~~ will be made to the person or legal entity that received the initial installment of the prize or to a person designated by the court to receive payment following the prizewinner's death, unless otherwise assigned according to these rules.

~~11.5(3)~~ Payment of a prize may be made to the estate of a deceased prizewinner or to another person pursuant to an appropriate judicial order.

~~11.5(4) 1101.15(2)~~ The right to control receipt of a lottery prize ~~shall be~~ is substantially limited. See 26 U.S.C. 451(2019) and Treas. Reg. § 1.451-2(a)(1979). The right to receive payment of a lottery prize or a future installment of a lottery prize shall not be sold, assigned or otherwise transferred in any manner without an

appropriate judicial order or statutory authorization. An appropriate judicial order is an order of a court of competent jurisdiction.

~~11.5(5)~~**1101.15(3)** In the event that a legal entity other than an individual is entitled to a lottery prize won jointly by more than one individual, the individuals originally entitled to share the prize cannot sell, assign or otherwise transfer their interest in the legal entity receiving prize payment or their right to receive future payments from the legal entity without an appropriate judicial order or statutory authorization. An appropriate judicial order is an order of a court of competent jurisdiction.

This rule is intended to implement Iowa Code ~~Supplement~~ sections ~~99G.9(3)~~99G.9(2), 99G.21, and 99G.31.

~~531—11.6(99G)- 701—1101.6(99G)~~ **Prize payment to minors.** If the person entitled to a prize is under the age of 18, the payment of the prize may be made by delivery of cash or a check payable to the order of the minor or to a parent or legal guardian of the minor, or other payment methods as determined by the department. Claim forms and tickets submitted by minors must be signed by a parent or legal guardian of the minor.

This rule is intended to implement Iowa Code sections ~~99G.9(3)~~99G.9(2), 99G.21(2), 99G.30(3), and 99G.31.

~~531—11.7(99G)- 701—1101.7(99G)~~ **Time of prize payment.** ~~All prizes shall be paid~~ The lottery division will pay all prizes within a reasonable time after verifying a claim is ~~verified by the lottery and determining~~ a winner is ~~determined~~. The date of the first installment payment of any prize to be paid in installment payments ~~shall be~~ is the date the claim is validated and processed, unless these rules or applicable game specific rules specify a different date ~~is specified for a particular game in these rules or the specific game rules~~. Subsequent installment payments ~~shall will~~ be made approximately weekly, monthly, or annually, from the date the claim is processed and validated in accordance with the type of prize won and the rules applicable to the prize. The lottery division may, at any time, delay any prize payment ~~in order to review a change in circumstances relative to the prize awarded, the payee, or the claim.~~

This rule is intended to implement Iowa Code ~~Supplement~~ sections ~~99G.9(3)~~99G.9(2), 99G.21(2), and 99G.30.

~~531—11.8(99G)- 701—1101.8(99G)~~ **Prizes payable for the life of the winner.** If any prize is payable for the life of the winner, only an individual may claim and receive the prize for life. If a group, corporation, or other organization is the winner, the life of the winner shall be deemed to be 20 years.

This rule is intended to implement Iowa Code ~~Supplement~~ sections ~~99G.9(3)~~99G.9(2), 99G.21(2), and 99G.31.

~~531—11.9(99G)- 701—1101.9(99G)~~ **Prizes payable after death of winner.** All prizes and portions of prizes that remain unpaid at the time of the prizewinner's death ~~shall be~~ are payable to the court-appointed representative of the prizewinner's estate or to a single individual pursuant to the terms of a final order closing the estate.

The lottery division may withhold payment until it is satisfied that the proper payee has been identified, or it may petition the court to determine the proper payee. In making payment, the lottery division may rely ~~wholly~~ on the presentation of a certified copy of the letters of appointment as an administrator, executor, or other personal representative for the prizewinner's estate or on a certified copy of the final order closing the estate. Payment to the representative of the estate of the deceased owner of any prize winnings or to another individual pursuant to a final order closing the estate ~~shall absolve~~ absolves ~~the lottery authority and employees of the lottery authority of any further liability for payment of prize winnings state, the lottery commission, the lottery division, the department of revenue, and the officials, officers, and employees of each from all further liability for payment of prizewinnings.~~

If the winner received an annuitized prize funded through the Multi-State Lottery Association (MUSL) or any other multijurisdictional lottery organization in which the Iowa lottery participates as a member, the MUSL board or other organization board, as may be appropriate, in its sole discretion, upon the petition of the estate of the ~~lottery winner prizewinner (the “estate”)~~, may accelerate the payment of all of the remaining lottery proceeds to the estate of the prizewinner. If the winner received an annuitized prize funded solely through the sales from the Iowa lottery, the lottery ~~board~~ division, in its sole discretion, upon the petition of the estate of the ~~lottery winner prizewinner (the “estate”)~~, may accelerate the payment of all of the remaining lottery proceeds to the estate of the prizewinner. If such a determination is made, then securities or cash held for the deceased ~~lottery winner prizewinner~~, that represents the present value of that portion of the future lottery payments that are to be accelerated, ~~shall will~~ be distributed to the estate. ~~The valuation~~ Valuation of the securities and determination of the present value of the accelerated lottery payments ~~shall be~~ are at the sole discretion of the ~~board~~ entity granting the petition.

This rule is intended to implement Iowa Code ~~Supplement~~ sections ~~99G.9(3)~~ 99G.9(2), 99G.21(2), and 99G.31.

~~531—11.10(99G)~~ 701—1101.10(99G) Disability of prizewinner. The lottery division may petition any court of competent jurisdiction for a determination of the rightful payee for the payment of any prize winnings which are or may become due a person under a disability. For this rule’s purposes, a “disability” includes, because of, but is not limited to, ~~underage~~, mental deficiency, ~~or and~~ physical or mental incapacity.

This rule is intended to implement Iowa Code ~~Supplement~~ sections ~~99G.9(3)~~ 99G.9(2), 99G.21(2), and 99G.31.

~~531—11.11(99G)~~ 701—1101.11(99G) Stolen or lost tickets. The lottery division has no responsibility for paying prizes attributable to stolen or lost tickets.

This rule is intended to implement Iowa Code ~~Supplement~~ sections ~~99G.9(3)~~ 99G.9(2), 99G.21(2), and 99G.31.

~~531—11.12(99G)~~ 701—1101.12(99G) Effect of game rules. In purchasing a ticket, the player agrees to comply with Iowa Code ~~Supplement~~ chapter 99G, these rules, the ~~specific game~~ game specific rules, lottery division instructions and procedures, and the final decisions of the lottery division. The ~~lottery’s~~ lottery division’s decisions and judgments in ~~respect to the determination~~ determining of winning tickets, or any other dispute arising from the payment or awarding of prizes, ~~is shall be~~ final and binding upon all participants in the lottery. If a dispute between the lottery division and a player occurs as to whether a ticket is a winning ticket and the prize is not paid, the lottery division may, solely at the ~~lottery’s~~ lottery division’s option, replace the ticket with an unplayed ticket of equivalent price from any game or refund the price of the ticket. This ~~shall be~~ is the player’s sole and exclusive remedy ~~of the player~~. A player who wishes to challenge a determination by the lottery division under this subrule may request a contested case proceeding as described in Iowa Administrative Code rule chapter 701—6.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(3), 99G.21(2), and 99G.31.

~~531—11.13(99G)~~ 701—1101.13(99G) Disputed prizes. If there is a dispute, or it appears that a dispute may occur relative to the payment of any prize, the lottery division may refrain from making payment of the prize pending a final determination by the lottery division or by a court of competent jurisdiction as to the proper payment of the prize.

This rule is intended to implement Iowa Code ~~Supplement~~ sections ~~99G.9(3)~~ 99G.9(2), 99G.21(2), and 99G.31.

~~531—11.14(99G)~~ 701—1101.14(99G) Prize payment for prizes paid over a term exceeding ten years.

~~11.14(1)~~1101.14(1) A prizewinner who wins a prize that is payable over a term exceeding ten years may, not later than 60 days after the player became entitled to the prize, elect to have the prize paid in cash or by annuity consistent with 26 U.S.C. §451(2019). If the payment election is not made by the prizewinner at the time of purchase or is not made within 60 days after the prizewinner becomes entitled to the prize, then the prize ~~shall~~ will be paid as an annuity prize. An election for an annuity payment made by a prizewinner before the ticket purchase or by system default or design may be changed to a cash payment at the election of the prizewinner until the expiration of 60 days after the prizewinner becomes entitled to the prize. The election to take the cash payment may be made at ~~the earlier of the following dates:~~

- ~~a. The~~ the time of the prize claim; or
- ~~b. Within~~ within 60 days after the prizewinner becomes entitled to the prize, whichever is earlier.

An election made after the prizewinner becomes entitled to the prize is final and cannot be revoked, withdrawn or otherwise changed.

~~11.14(2)~~1101.14(2) In the event there is more than one prizewinner for a prize paid over a period exceeding ten years, the shares of the prize ~~shall be~~ are determined by dividing the cash available in the prize pool equally among all the winners of the prize. Winners who elect a cash payment ~~shall~~ will be paid their share in a single cash payment. The annuitized option prize ~~shall be~~ is determined by multiplying a winner's share of the prize pool by the annuity factor used by the lottery division. The ~~lottery's~~ lottery division's annuity factor is determined by the best price obtained through a competitive bid of qualified, preapproved brokers or insurance companies made after it is determined that the prize is to be paid as an annuity prize or after the expiration of 60 days after the prizewinner becomes entitled to the prize.

~~11.14(3)~~1101.14(3) The lottery division ~~is~~ shall not be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount of the prize value purchased from the time the player becomes eligible for the prize and the time the prizewinner claims the prize.

This rule is intended to implement Iowa Code Supplement sections ~~99G.9(3)~~99G.9(2), 99G.21(2), and 99G.31.

[Filed emergency 8/28/03—published 9/17/03, effective 8/28/03]

[Filed 3/12/04, Notice 9/17/03—published 3/31/04, effective 5/7/04]

[Filed emergency 6/29/04—published 7/21/04, effective 6/29/04]

[Filed emergency 2/20/08—published 3/12/08, effective 3/15/08]

[Filed 7/23/08, Notice 3/12/08—published 8/13/08, effective 9/17/08]

CHAPTER ~~12~~ 1102

LICENSING

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 3]

[Prior to 9/17/03, see 705—Ch 2]

~~531—12.3(99G)~~ ~~701—1102.1(99G)~~ **Applicant or person defined.** For purposes of determining whether an applicant or person is eligible for a license, the term “applicant” or “person” ~~shall~~ includes the owner of a sole proprietorship, all partners or participants in a partnership or joint venture, the officers of a fraternal organization, the officers and directors of a corporation, persons owning at least 10 percent or more of a corporation, persons owning at least 10 percent or more of a limited liability company, the manager or managers of a limited liability company, and any legal entity applying for a license.

This rule is intended to implement Iowa Code sections 99G.9(32) and 99G.24.

~~531—12.1(99G,252J,272D)~~ ~~701—1102.2(99G,252J,272D)~~ **License eligibility criteria:Effect of certain state debts. ¶**

~~12.1(1)~~ A person, partnership, unincorporated association, authority, or other business entity shall not be selected as a lottery retailer if the person or entity meets any of the following conditions:

a. Has been convicted of a criminal offense related to the security or integrity of the lottery in Iowa or any other jurisdiction:

b. Has been convicted of any illegal gambling activity, false statements, perjury, fraud, or a felony in Iowa or any other jurisdiction:

c. Has been found to have violated the provisions of Iowa Code chapter 99G, or any regulation, policy, or procedure of the lottery, unless either ten years have passed since the violation or the board finds the violation both minor and unintentional in nature:

d. Is a vendor or any employee or agent of any vendor doing business with the lottery:

e. Resides in the same household as an officer of the lottery:

f. If a natural person is less than 18 years of age:

g. Does not demonstrate financial responsibility sufficient to adequately meet the requirements of the proposed enterprise:

h. Has not demonstrated that the applicant is the true owner of the business proposed to be licensed and that all persons holding at least a 10 percent ownership interest in the applicant's business have been disclosed:

i. Has knowingly made a false statement of material fact to the lottery authority:

~~12.1(2)~~ The applicant shall be current in filing all applicable tax returns to the state of Iowa and in payment of all taxes, interest, and penalties owed to the state of Iowa, excluding items under formal appeal pursuant to applicable statutes:

~~12.1(3)~~ ~~1102.2(1)~~ The lottery department will deny a license to any applicant who is an individual if the lottery department has received a certificate of noncompliance from the Iowa child support recovery unit services with regard to the individual, until the unit furnishes the lottery department with a withdrawal of the certificate of noncompliance.

~~12.1(4)~~ ~~1102.2(2)~~ The lottery department will deny a license to any applicant defined by this chapter if the lottery department has received a certificate of noncompliance from the centralized collection unit of the department of revenue with regard to the individual, until the unit furnishes the lottery department with a withdrawal of the certificate of noncompliance applicant is substantially delinquent in paying any tax due, or the interest or penalty on the tax, administered by the department at the time of application or if the applicant has current or previous delinquent liabilities collected by the department. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent in paying any delinquent tax, penalty, or interest or if a partner has current or previous delinquent liabilities collected by the department. If the applicant is a corporation, a permit may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest or if any officer having a substantial legal or equitable interest in the ownership of the corporation has current or previous delinquent liabilities collected by the department.

This rule is intended to implement Iowa Code sections 99G.7(1), 99G.9(32), 99G.21(2), 99G.24, 252J.28, and 272D.8.

531—12.2(99G,252J)701—1102.3(99G,252J) Factors relevant to license issuance.

~~12.2(1)—1102.3(1)~~ The department's licensing authority under chapter 99G is discretionary. The ~~lottery~~ department may issue a license to any applicant to act as a licensed retailer who meets the eligibility criteria established by Iowa Code chapter 99G and these rules.

~~12.2(2)—1102.3(2)~~ In exercising its licensing discretion, ~~the~~ in addition to the license eligibility criteria described in Iowa Code section 99G.24, the ~~lottery shall~~ department will consider the following factors:

- a. ~~the~~ The background and reputation of the applicant in the community for honesty and integrity;¶
- ~~a.b.~~ ~~the~~ The financial responsibility and security of the person and business or activity;
- ~~b.c.~~ ~~the~~ The type of business owned or operated by the applicant to ensure consonance with the dignity of the state, the general welfare of the people, and the operation and integrity of the lottery;
- ~~c.~~ the accessibility of the applicant's place of business or activity to the public; the sufficiency of existing licenses to serve the public convenience; the volume of expected sales;
- d. ~~the~~ The accuracy of the information supplied in the application for a license;
- e. ~~the~~ The applicant's indebtedness to the state of Iowa, local subdivisions of the state, or the United States government; and, if the applicant is if an individual, the applicant's indebtedness owed for child support payments as indicated by a certificate of noncompliance from Iowa child support services;
- f. ~~and a~~ Any other criteria or information the department deems relevant to determining if a license should be issued.

This rule is intended to implement Iowa Code sections 99G.9(32), 99G.21(2), 99G.24(5), and 252J.28 and 272D.8.

531—12.16(99G) 701—1102.4(99G) Financial responsibility. ~~The lottery shall use the~~ The department will use the following guidelines when determining whether to determine financial responsibility for a retailer an applicant seeking a license to sell lottery products or a retailer exhibits adequate financial responsibility.

~~12.16(1)1102.4(1)~~ *Sole proprietorship.* The ~~lottery department~~ will not require a bond from generally consider a sole proprietor to exhibit adequate financial responsibility if the account history for the applicant for the past two years discloses no more than four accounts past due and no accounts over 90 days past due.

~~12.16(2)1102.4(2)~~ *Partnership.* If the license applicant is a partnership, 50 percent of the partners must meet the credit guidelines listed in subrule ~~12.16(1)1102.4(1)~~ to be considered to exhibit adequate financial responsibility. If the credit history discloses that the requirements of subrule 12.16(1) are satisfied, the lottery will not require a bond.

~~12.16(3)1102.4(3)~~ *Fraternal or civic associations.* If the license applicant is a fraternal association, civic organization or other nonprofit entity, the applicant must meet the credit guidelines set forth in subrule ~~12.16(1)1102.4(1)~~ to be considered to exhibit adequate financial responsibility. If the fraternal association, or civic association organization, or other nonprofit entity has no credit history or the credit history is incomplete ~~in the sole discretion of the lottery~~, then the officers of the fraternal association, or civic association organization, or other nonprofit entity must meet the requirements of subrule ~~12.16(1)1102.4(1)~~ to be considered to exhibit adequate financial responsibility. If the credit history discloses that the requirements of subrule 12.16(1) are satisfied, the lottery will not require a bond.

~~12.16(4)1102.4(4)~~ *Corporations and limited liability companies in existence two years or more if a credit risk appraisal is available through a financial and credit reporting entity.* If the license applicant is a corporation or a limited liability company and the corporation or the limited liability company has been in existence for more than two years from the date of the application and a credit risk appraisal is available through a financial and credit reporting entity, the license applicant must meet all of the following financial responsibility guidelines to be considered to exhibit adequate financial responsibility:

- a. The license applicant is paying 60 percent of its suppliers on time or within terms; and
- b. The license applicant ~~must have~~ possesses a credit risk appraisal provided by a financial and credit reporting entity that indicates the corporation's or limited liability company's financial condition is fair or better.

If the corporation or the limited liability company meets the guidelines described in this rule, the lottery will not require a bond from the license applicant.¶

~~12.16(5)1102.4(5)~~ *Corporations and limited liability companies in existence less than two years or if a credit risk appraisal is not available through a financial and credit reporting entity.* If a corporation has been in existence for

less than two years from the date of the application or a credit risk appraisal is not available through a financial and credit reporting entity, the ~~lottery department~~ will review the credit history of the corporate officers who hold 10 percent or more of the stock of the corporation. If a limited liability company has been in existence for less than two years or a credit risk appraisal is not available through a financial and credit reporting entity, the ~~lottery department~~ will review the credit history of the members of a limited liability company who have contributed 10 percent or more to the capital of the limited liability company. Fifty percent or more of the corporate officers or members of the limited liability company must meet the credit guidelines set forth in subrule ~~12.16(1)~~ 1102.4(1) ~~to be considered to exhibit adequate financial responsibility~~. If the corporate officers or the members of the limited liability company meet the requirements set forth in subrule ~~12.16(1)~~, the lottery will not require the corporation or the limited liability company to obtain a bond.

1102.4(6) Additional considerations. If information obtained by the department, when considered as a whole, indicates that the applicant, the retailer, or the applicant's or retailer's business practices are inconsistent with sound financial management or pose a risk to the operation or integrity of the lottery, the department may, in its discretion, determine that an applicant or retailer does not demonstrate the adequate financial responsibility for licensure notwithstanding the guidelines in subrules 1102.4(1) through 1102.4(5).

12.16(6) Bonding requirements. With respect to any license **701—1102.5(99G) Bonds.**

1102.5(1) In general. Any applicant or retailer whose credit history does not meet the guidelines described in subrules ~~12.16(1)~~ through ~~12.16(5)~~ 1102.4(1) through 1102.4(5), the applicant will be required to ~~must~~ obtain a bond from a surety company authorized to do business in Iowa or offer a cash bond in the amounts generally described herein. The department may require any other applicant or retailer to obtain a bond if the department determines a bond is necessary to ensure the applicant or retailer remains in compliance with Iowa Code chapter 99G and these rules.¶

1102.5(2) Bond amounts. The amount of the bond will vary depending on the type of lottery products sold by the license applicant, the sales history of the retail location or the average volume of sales of lottery products at the location, or a combination of the above factors. The ~~department's authority to require a bond is discretionary~~. When the department determines that a bond is necessary, the following minimum amounts will be required:

- a. Sale of pull-tab tickets only, ~~\$500~~ \$2,500.
- b. Sale of instant tickets and scratch tickets with or without pull-tab tickets, ~~\$1,500~~ \$5,000.
- c. Sale of on-line games with or without instant tickets, scratch tickets, and pull-tab tickets, ~~\$2,500~~ \$10,000.¶

Additional bond amounts or a new bond may be required by the department at any time if the department determines that an existing bond becomes insufficient or the surety thereon becomes unsatisfactory.¶

12.16(7)1102.5(3) Holding period for bond. The ~~lottery department~~ will hold the bond provided by license applicant for a minimum time period of one year. Thereafter, the ~~lottery department~~ will review the credit history of the licensed retailer. If the retailer's account history shows no delinquent payments, the lottery ~~will~~ may release the bond.

531—12.4(99G,252J,272D)701—1102.6(99G,252J,272D) Lottery licenses.

12.4(1)1102.6(1) A lottery license authorizes the licensee to sell only the types of lottery products specified on the license. The ~~lottery department~~ has discretion to license a qualified applicant to sell any one of the following lottery products or any combination of the following products: ~~instant scratch tickets; instaplay tickets; pull-tab tickets; and computerized game tickets, if available.~~ The department may condition the ability of a licensee to sell one or more types of lottery products on the applicant's agreement to sell any other lottery product. ~~The lottery may require an applicant to sell one or more lottery products as a condition of selling any other lottery product.~~ A lottery license authorizes the licensee to sell only the type of lottery products specified on the license.

12.4(2)1102.6(2) Any eligible applicant may apply for a license to act as a retailer by first filing with the ~~lottery department~~ an application form together with any supplements deemed necessary by the department required. Supplements may include, but are not limited to, authorizations to investigate criminal history, financial records and financial resources, and authorizations to allow the ~~lottery division~~ to conduct site surveys.

12.4(3)1102.6(3) ~~All lottery license applications must be accompanied by a nonrefundable fee of \$25. The application fee for a lottery retail license is \$25. The application fee is nonrefundable.~~

12.4(4)1102.6(4) Retailers who are currently licensed may apply for a license modification to allow the sale of additional lottery products. A current retailer may be required to complete an additional application or application supplements.

12.4(5)1102.6(5) The ~~lottery department~~ may waive the payment of any license fee to facilitate an experimental program or a research project.

~~12.4(6)~~**1102.6(6)** A limited number of retailers may be selected as licensees from applications received. The selection ~~shall will~~ be made based on criteria designed to produce the maximum amount of net revenue and serve public convenience. The ~~lottery department~~ may refuse to accept license applications for a period of time if the ~~lottery department~~ determines that the number of existing licensees is adequate to market any lottery product.

~~12.4(7)~~**1102.6(7)** The ~~lottery department~~ will grant, deny, or place on hold all applications within 60 days of acceptance of an application. Applications placed on hold ~~shall be~~ are considered denied for purposes of appeal.

~~a.~~ If an application is denied because the department has received a certificate of noncompliance from the ~~Iowa child support recovery unit services~~ in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice ~~required by~~ issued under Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

~~b.~~ If an application is denied because the department has received a certificate of noncompliance from the centralized collections unit of the department of revenue regarding an applicant or person as defined by this chapter ~~individual~~, the effective date of denial of the issuance of the license, as specified in the notice ~~required by~~ issued under Iowa Code section 272D.8, shall be 60 days following service of the notice upon the applicant ~~individual~~. ¶

This rule is intended to implement Iowa Code sections 99G.7, 99G.9(32), 99G.21(2), 99G.24, 99G.30, 252J.2, 252J.8, and 272D.8.

[ARC 2781C, IAB 10/26/16, effective 11/30/16; ARC 6608C, IAB 11/2/22, effective 12/7/22]

531—12.5(99G) Transfer of licenses prohibited. Lottery licenses may not be transferred to any other person or entity and do not authorize the sale of lottery products at any location other than the licensed premises specified on the license.

This rule is intended to implement Iowa Code sections 99G.9(3), 99G.21(2), 99G.24(3), 99G.25, and 99G.30.

~~**531—12.6(99G) Expiration of licenses.** A license is valid until it expires, is terminated by a change of circumstances, is surrendered by the licensee, or is revoked by the lottery. A license that does not have an expiration date will continue indefinitely until surrendered, revoked, or terminated by a change in circumstances.~~
This rule is intended to implement Iowa Code sections 99G.9(3), 99G.21(2), 99G.24(3), and 99G.27.

~~**531—12.7(99G,252J) 701—1102.7(99G,252J) Provisional licenses.** The ~~lottery department~~ may issue a provisional license to an applicant for a lottery license after receipt of a fully completed license application, the authorization for a complete personal background check, completion of a credit check, and completion of a preliminary background check. The provisional license ~~shall~~ expires at the time of issuance of the requested license or 90 days from the date the provisional license was issued, whichever occurs first, unless the provisional license is extended by the ~~lottery department~~.~~

Notwithstanding the foregoing, the ~~lottery department~~ will deny a provisional license to any applicant who is an individual if the ~~lottery department~~ has received a certificate of noncompliance from the ~~Iowa child support recovery unit services~~ with regard to the individual, ~~until unless the unit Iowa child support services~~ furnishes the ~~lottery department~~ with a withdrawal of the certificate of noncompliance. If an application is denied because the ~~lottery department~~ has received a certificate of noncompliance from the ~~Iowa child support recovery unit services~~ in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice ~~required by~~ issued under Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement Iowa Code sections 99G.9(32), 99G.21(2), 99G.24(3), 99G.27, 252J.2, and 252J.8.

~~**531—12.8(99G) 701—1102.8(99G) Off-premises licenses.** Any licensed retailer who has been issued a license or provisional license to sell tickets may apply for an off-premises license to sell tickets in locations other than that specified on the existing license. The ~~lottery department~~ must specifically approve the geographical area in which sales are to be made and the types of locations at which off-premises sales are to be made prior to issuance of an off-premises license. Additional instructions and restrictions may be specified by the ~~lottery department~~ to govern off-premises sales. An off-premises license ~~shall~~ expires at the time designated on the off-premises license. An off-premises license may be renewed at the ~~lottery department~~'s discretion. This rule is intended to implement Iowa Code sections 99G.9(32), 99G.21(2), and 99G.30.~~

~~**531—12.9(99G) 701—1102.9(99G) Duplicate licenses.** Upon the loss, mutilation, or destruction of any license issued by the ~~lottery department~~, application for a duplicate ~~shall be made~~ a retailer may apply for a duplicate permit. A statement signed by the retailer which details the circumstances under which the license was lost, mutilated, or destroyed may be required by the ~~lottery department~~. This rule is intended to implement Iowa Code sections~~

99G.9(32), 99G.21(2), 99G.24, and 99G.30.

~~531—12.10(99G)—701—1102.10(99G)~~ Reporting changes in circumstances of the retailer. Every change of business structure of a licensed business, such as from a sole proprietorship to a corporation, and every change in the name of a business must be reported to the lottery department prior to the change. Substantial changes in the ownership of a licensed business must also be reported to the lottery department prior to the change. A substantial change of ownership is defined as the transfer of 10 percent or more equity in the licensed business from or to another single individual or legal entity. If a change involves the addition or deletion of one or more existing owners or officers, the licensee shall submit a license application reflecting the change and any other documentation the lottery department may require. All changes will be reviewed by the lottery department to determine if the existing license should be continued.

This rule is intended to implement Iowa Code sections 99G.9(32), 99G.21(2), and 99G.27(1).

~~531—12.11(99G)701—1102.11(99G)~~ License not a vested right. The possession of a lottery retailer license issued by the lottery department to ~~any person~~ to act as a retailer in any capacity is a privilege personal to that ~~person~~ licensee and is not a legal right. The possession of a lottery license issued by the lottery department to ~~any person~~ to act as a retailer in any capacity does not automatically entitle that ~~person~~ licensee to sell tickets or obtain materials for any particular game.

This rule is intended to implement Iowa Code sections 99G.7, 99G.9(32), and 99G.21(2), ~~and 99G.27.~~

~~531—12.12(99G,252J,272D)—701—1102.12(99G,252J,272D)~~ Suspension or revocation of a license.

~~12.12(4)1102.11(1)~~ In addition to the criteria for suspension or revocation described in Iowa Code section 99G.27, ~~the~~ The lottery department may suspend or revoke any license issued pursuant to these rules for one or more of the following reasons:

a. Failing to meet or maintain the eligibility criteria for license application and issuance established by Iowa Code chapter 99G or these rules.

~~b. Violating any of the provisions of Iowa Code chapter 99G, these rules, or the license terms and conditions.~~

~~e. b.~~ Failing to file any return or report or to keep records required by the lottery division;

~~c. Failing to maintain an acceptable level of financial responsibility as evidenced by the financial condition of the business, or by incidents of failure to pay taxes or other debts, or by the giving of financial instruments that are dishonored or electronic funds transfers that are not paid; fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery.~~

~~d. c.~~ If public convenience is adequately served by other licensees.

~~e. Failing to sell a minimum number of tickets as established by the lottery.~~

~~f. d.~~ A history of thefts or other forms of losses of tickets or revenue from the business.

~~g. e.~~ Violating federal, state, or local law or allowing the violation of any of these laws on premises occupied by or controlled by any person over whom the retailer has substantial control.

~~h. f.~~ Obtaining a license by fraud, misrepresentation, concealment or through inadvertence or mistake.

~~i. g.~~ Making a misrepresentation of fact to the board commission or lottery department on any report, record, application form, or questionnaire ~~required to be that is~~ submitted to the board commission or lottery department.

~~j. h.~~ Denying the lottery division or its authorized representative, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted.

~~k. i.~~ Failing to promptly produce for inspection or audit any book, record, document, or other item required to be produced by law, these rules, or the terms of the license.

~~l. j.~~ Systematically pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is inimical to the proper operation of an authorized lottery.

~~m. k.~~ Failing to follow the instructions or security procedures of the lottery division for the management of personnel, handling of tickets, or the conduct of any particular game or special event.

~~n. Failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event.~~

~~o. l.~~ Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event.

~~p. m.~~ For a licensee who is an individual, when the lottery department receives a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

~~q.11.~~ Allowing activities on the licensed premises that could compromise the dignity of the state.
~~r.~~ Failing to accurately or timely account or pay for lottery products, lottery games, revenues, or prizes as required by the lottery.
~~s.~~ Filing for or being placed in bankruptcy or receivership.
~~t.~~ Engaging in any conduct likely to result in injury to the property, revenue, or reputation of the lottery.
~~u.~~ Making any material change, as determined in the sole discretion of the lottery, in any matter considered by the lottery in executing the contract with the retailer.

~~v.~~ When the lottery department receives a certificate of noncompliance from the centralized collection unit of the department of revenue in regard to nonpayment of a state debt, unless the unit furnishes the lottery department with a withdrawal of the certificate of noncompliance. This paragraph applies both to sole proprietorships and to persons with the requisite ownership interest in or relation to any other organized business entity as set forth in 531—12.3(99G). This paragraph applies in addition to the procedures set forth in Iowa Code chapter 272D.¶

~~12.12(2)1102.12(2)~~ The effective date of revocation or suspension of a license, ~~or denial of the issuance or renewal of a license~~, as specified in the notice required by ~~issued under~~ Iowa Code section 252J.8, shall be ~~is~~ 60 days following service of the notice upon the licensee. The effective date of revocation or suspension of a license, or denial of the issuance or renewal of a license, for nonpayment of state debt, as specified in the notice required by ~~issued under~~ Iowa Code section 272D.8, shall be ~~is~~ 60 days following service of the notice upon the licensee. The effective date for all other notices of revocation or suspension shall be ~~is~~ 20 days following service upon a licensee.

~~12.12(3)1102.12(3)~~ If a retailer's license is suspended for more than 180 days from the effective date of the suspension, the lottery department will revoke the retailer's license upon 15 days' notice served in conformance with ~~531—12.13(99G,252J,272D)701—1102.11(99G,252J,272D).~~

~~12.12(4)1102.12(4)~~ Upon suspicion that a retailer has sold a ticket to an underage player, the lottery department will investigate and provide a written warning to the retailer describing the report of the event and of the potential violation of Iowa Code section 99G.30(3). In the event a retailer sells a ticket to an underage player and the lottery department can substantiate the claim, the ~~lottery may department will~~ suspend the retailer's license for 7 days. When a retailer sells a ticket to an underage player and the lottery department can substantiate the claim a second time in a period of one year from the date of the first event, the ~~lottery may department will~~ suspend the retailer's license for a period of 30 days. When a retailer sells a ticket to an underage player and the lottery department can substantiate the claim a third time in a period of one year from the date of the first event as described in this rule, the retailer's license ~~may will~~ be suspended for one year.

~~12.12(5)1102.12(5)~~ Upon revocation or suspension of a retailer's license of 30 days or longer, the retailer shall ~~will~~ surrender to the lottery department, by a date designated by the lottery department, the license, lottery identification card, and all other lottery property. The lottery department will settle the retailer's account as if the retailer had terminated its relationship with the lottery department voluntarily.

This rule is intended to implement Iowa Code sections 99G.9(32), 99G.21(2), 99G.24, 99G.27, 99G.30(3), 99G.35, 252J.8, and 272D.8(2).

[ARC 1462C, IAB 5/14/14, effective 6/18/14; ARC 6608C, IAB 11/2/22, effective 12/7/22]

~~531—12.13(99G,252J,272D)701—1102.13(99G,252J,272D)~~ **Methods of service.**

~~12.13(1)1102.13(1)~~ The notice required by ~~issued under~~ Iowa Code section 252J.8 shall ~~will~~ be served upon the licensee by ~~restricted~~ certified mail restricted delivery, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

~~12.13(2)1102.11(2)~~ The notice required by ~~issued under~~ Iowa Code section 272D.8 shall ~~will~~ be served upon the licensee by certified mail, return receipt requested; by personal service in accordance with Iowa Rule of Civil Procedure 1.305; or through authorized counsel. Alternatively, the licensee may accept service personally or through authorized counsel.

~~12.13(3)1102.13(2)~~ Notice of a license revocation or a suspension for the reasons described in Iowa Code section 99G.27 or rule ~~531—12.12(99G,252J,272D)701—1102.12(99G,252J,272D)~~ shall ~~will~~ be served upon the licensee by ~~restricted~~ certified mail restricted delivery, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel. The notice shall ~~will~~ set forth the reasons for the suspension or revocation and provide for an opportunity for a hearing. If requested by the licensee, a hearing on the suspension or revocation shall ~~will~~ be held within 180 days ~~or less~~ after the notice has been served.

This rule is intended to implement Iowa Code sections 99G.9(32), 99G.21(2), 99G.24, 252J.8, and 272D.8.
[ARC 6608C, IAB 11/2/22, effective 12/7/22]

~~531—12.14(99G,252J,272D)—701—1102.14(99G,252J,272D)~~ **Licensee's obligation.** Licensees and license applicants must keep the lottery informed of all court actions and all child support recovery unit actions ~~or centralized collection unit actions~~ taken under or in connection with Iowa Code chapter 252J ~~or 272D~~. Licensees and applicants must also provide the ~~lottery~~ department with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9 or 272D.9, all any final court orders entered in such actions, and any withdrawals of certificates of noncompliance by the child support recovery unit ~~or centralized collections unit~~.

This rule is intended to implement Iowa Code sections 99G.9(32), 99G.21(2), 252J.8, and 272D.8. [ARC 6608C, IAB 11/2/22, effective 12/7/22]

~~531—12.15(99G,252J,272D)—701—1102.15(99G,252J,272D)~~ **Calculating the effective date.** In the event a licensee or applicant files a timely district court action following service of a ~~lottery~~ notice pursuant to Iowa Code sections 252J.8 and 252J.9 ~~or sections 272D.8 and 272D.9~~, the ~~lottery shall~~ department will continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the ~~lottery~~ department to proceed. For purposes of determining the effective date of a revocation or suspension of a license, or a denial of the issuance or renewal of a license, the ~~lottery shall~~ department will count the number of days before the action was filed and the number of days after the action was disposed of by the court. This rule is intended to implement Iowa Code sections 99G.9(32), 99G.21(2), 252J.8, 252J.9, 272D.8, and 272D.9. [ARC 6608C, IAB 11/2/22, effective 12/7/22]

~~531—12.17(99G)~~ **Monitor vending machine retailers.** Unless specifically noted in ~~531—Chapter 14~~, the rules contained in this chapter do not apply to entities holding licenses pursuant to ~~531—Chapter 14~~. This rule is intended to implement Iowa Code sections 99G.7(1) and 99G.26.

[Filed emergency 6/14/85—published 7/3/85, effective 6/14/85]
[Filed emergency 7/12/85—published 7/31/85, effective 7/12/85]
[Filed emergency 9/20/85—published 10/9/85, effective 9/20/85]
[Filed emergency 12/27/85—published 1/15/86, effective 12/30/85]
[Filed emergency 2/21/86—published 3/12/86, effective 2/21/86]
[Filed emergency 4/18/86—published 5/7/86, effective 4/21/86]
[Filed emergency 12/23/86—published 1/14/87, effective 12/26/86]
[Filed 4/15/88, Notice 1/27/88—published 5/4/88, effective 6/8/88]
[Filed 11/3/88, Notice 8/10/88—published 11/30/88, effective 1/4/89]
[Filed 12/8/89, Notice 10/18/89—published 12/27/89, effective 2/1/90]
[Filed 2/10/95, Notice 8/31/94—published 3/1/95, effective 4/5/95]
[Filed 4/26/96, Notice 1/17/96—published 5/22/96, effective 6/26/96]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]
[Filed 1/6/00, Notice 10/6/99—published 1/26/00, effective 3/1/00]
[Filed emergency 1/31/03—published 2/19/03, effective 1/31/03]
[Filed emergency 4/11/03—published 4/30/03, effective 4/11/03]
[Filed 4/11/03, Notice 2/19/03—published 4/30/03, effective 6/4/03]
[Filed emergency 8/28/03—published 9/17/03, effective 8/28/03]
[Filed 3/12/04, Notice 9/17/03—published 3/31/04, effective 5/7/04]
[Filed 4/7/06, Notice 12/21/05—published 4/26/06, effective 5/31/06]
[Filed ARC 1462C (Notice ARC 1283C, IAB 1/8/14), IAB 5/14/14, effective 6/18/14] [Filed ARC 2781C (Notice ARC 2660C, IAB 8/3/16), IAB 10/26/16, effective 11/30/16] [Filed ARC 6608C (Notice ARC 6445C, IAB 8/10/22), IAB 11/2/22, effective 12/7/22]

CHAPTER ~~13-1103~~
~~LICENSED RESPONSIBILITIES OF RETAILERS~~

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 4]
[Prior to 9/17/03, see 705—Ch 3]

~~531—13.1(99G)701—1103.1(99G)~~ **Licensed retailers.** All lottery-retailers shall be licensed in the manner provided in Iowa Code ~~Supplement~~ chapter 99G and these rules. Retailers shall abide by all applicable laws and administrative rules, the terms and conditions of the license, and all other directives and instructions issued by the lottery.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(~~32~~), 99G.24, 99G.25, 99G.27, 99G.30, and 99G.31.

~~531—13.2(99G)701—1103.2(99G)~~ **Requirements for the sale of tickets.**

~~13.2(1)1103.2(1)~~ Retailers shall be knowledgeable about the lottery and lottery products and may be required to take training in the operation of lottery games. Retailers shall make the purchase of tickets convenient to the public.

~~13.2(2)~~ Tickets shall be sold at the price designated by the lottery. Retailers shall not sell tickets for a price other than that specified by the lottery.

~~13.2(3)1103.2(2)~~ No retailer or any employee or member of a retailer shall attempt to identify a winning ticket prior to the sale of the ticket.

~~13.2(4)1103.2(3)~~ Retailers shall pay all prizes that the ~~lottery department~~ requires retailers to pay during normal business hours at the location designated on the license.

~~13.2(5)1103.2(4)~~ Retailers shall not purchase tickets previously sold by the retailer.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(~~32~~), 99G.30, and 99G.31.

~~531—13.3(99G)701—1103.3(99G)~~ **Display and availability of ~~lottery license certificates, rules and promotional materials provided by the lottery.~~**

~~13.3(1)~~ Retailers shall display the lottery license certificates or a facsimile thereof in an area visible to the general public wherever tickets are being sold.

~~13.3(2)1103.3(1)~~ Retailers shall display brochures, flyers, or similar items provided by the lottery that are designed to provide the rules of lottery games near the point at which tickets are sold.

~~13.3(3)1103.3(2)~~ Retailers shall display point-of-sale material provided by the lottery in a manner that is readily seen by and available to the public. The lottery may require the removal of objectionable material or the discontinuance of objectionable advertising that may have an adverse impact on the lottery. This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(~~32~~), 99G.24, and 99G.27.

~~531—13.4~~ Reserved.

~~531—13.5(99G)701—1103.4(99G)~~ **Ownership of tickets and other property.** All instant tickets and pull-tab tickets accepted by a licensed retailer are the property of the licensed retailer. Tickets that are erroneous or mutilated when received by a retailer may be returned to the ~~lottery department~~ for credit. After confirmation of delivery, the retailer is responsible for the condition and security of the tickets and for any losses resulting from tickets which become lost, stolen, or damaged. The ~~lottery department~~ may credit retailers for lost, stolen, or damaged instant tickets if the ~~lottery department~~ determines that the best interests of the lottery will be served by issuing a credit.

Unless otherwise indicated in writing, all ~~lottery department~~ property provided to a licensed retailer for use in selling products, as opposed to property and tickets sold to a retailer, remains the property of the ~~lottery department~~. The retailer shall deliver ~~lottery department~~ property to the ~~lottery department~~ upon request.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.7, 99G.9(~~32~~), 99G.24, and 99G.27.

~~531—13.6(99G)701—1103.5(99G)~~ **Retailer costs and compensation.**

~~13.6(1)1103.5(1)~~ Retailers shall purchase p Pull-tab tickets are available for purchase by a retailer for a price equal to the retail price of the tickets less the value of prizes that the retailer is ~~required-obligated~~ to pay and any discounts or commissions authorized by the lottery.

~~13.6(2)1103.5(2)~~ Retailers shall purchase s Scratch tickets are available for purchase by a retailer at retail

price and ~~shall be the department will credited the retailer's account~~ for validations and commissions.

~~13.6(2)1103.5(3)~~ The ~~lottery department~~ may impose a service fee on retailers to cover operational costs.

~~13.6(3)1103.5(4)~~ The ~~lottery department~~, with ~~board-commission~~ approval, shall set the base amount of retailer compensation. The base amount of compensation shall be specified in the agreement between the retailer and the ~~lottery department~~. The ~~lottery department~~ may increase the total amount of retailer compensation by implementing sales incentive programs.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(32), 99G.21, and 99G.24.

531—13.7(99G)701—1103.6(99G) Retailer payment methods. Retailers are required to pay for lottery tickets or shares by means of an electronic funds transfer from the retailer's account. Generally, electronic funds transfer from a retailer's account is the only permitted method of payment for lottery tickets or shares purchased by a retailer. The ~~lottery department~~ may allow a retailer to make payments by another method if the retailer can show that the electronic funds transfer system imposes a significant hardship on the retailer or if the ~~lottery department~~ determines that the retailer's payment history justifies use of an alternative payment method.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.7, 99G.9(32), ~~99G.27, 99G.28, and 99G.40.~~

531—13.8(99G)701—1103.7(99G) Dishonored checks and electronic funds transfers. Any payment made to the lottery by an applicant for a license or by a licensed retailer either by a check which is dishonored or by an electronic funds transfer (EFT) which is not paid by the depository shall be grounds for immediate denial of the application for a license or for the suspension or revocation of an existing license. The ~~lottery department~~ may assess a surcharge up to the maximum allowed by applicable state law for each dishonored check or unpaid EFT ~~unpaid electronic funds transfer (EFT)~~. The ~~lottery department~~ may also alter the payment terms of a retailer's license and require a retailer to reimburse the lottery for costs which occur as a result of a dishonored check or unpaid EFT.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(32), 99G.24, and 99G.27.

531—13.9(99G)701—1103.8(99G) Inspection of lottery materials and licensed premises. Retailers shall allow the ~~lottery department~~ to enter upon the licensed premises in order to inspect lottery materials, tickets, equipment and the premises. All books and records pertaining to the retailer's lottery activities shall be available to the ~~lottery department~~ for inspection and copying during the normal business hours of the retailer and between 8 a.m. and 5 p.m., Monday through Friday. All books and records pertaining to the retailer's lottery activities are subject to seizure by the ~~lottery department~~ without prior notice.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(32), 99G.24, 99G.27, ~~and 99G.28, and 99G.35.~~

531—13.10(99G)701—1103.9(99G) Individuals who may sell lottery tickets. ~~Lottery tickets may be sold only by a licensed retailer or an employee of a licensed retailer who is authorized to sell lottery tickets. If the retailer is a nonprofit organization, members of the organization may also sell lottery tickets if authorized by the organization. The retailer is responsible for the conduct of its employees and members that is within the scope of the retailer's lottery license. If the retailer is a nonprofit organization, members of the organization may also sell lottery tickets if authorized by the organization.~~

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(32), 99G.24, ~~99G.25, and 99G.30.~~

531—13.11(99G)701—1103.10(99G) Ticket sales restrictions. The lottery reserves the right to limit or terminate the sale of computerized game tickets at any licensed retail location if such sales may compromise the operation and integrity of the lottery, reflect conduct prejudicial to the public confidence in the lottery or reflect activity of an illegal nature under local, state or federal laws.

~~13.11(1)1103.10(1)~~ Plays may only be entered manually using the lottery terminal keypad or touch screen or by means of a play slip provided by the lottery and hand-marked by the player or by such other means approved by the lottery. Retailers ~~shall are not permitted to connect any device to be connected to a lottery terminal to enter plays,~~ except as approved by the ~~lottery department~~.

~~13.11(2)1103.10(2)~~ A ticket or combination of tickets which would guarantee such purchaser a jackpot win ~~shall may~~ not directly and knowingly be sold to any person or entity.

~~13.11(3)1103.10(3)~~ An offer to buy and an offer to sell a ticket ~~shall are only permitted be made only at a~~ location and only by a method which is licensed by the ~~lottery department~~.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(32), 99G.21, 99G.24, ~~and 99G.27;~~

and 99G.31.

~~531—13.12(99G)701—1103.11(99G)~~ Placement of lottery equipment. The department, in its sole discretion, chief executive officer shall will determine the need for, and type of, and placement of any lottery equipment to be installed at licensee sales outlet locations. ~~Decisions regarding placement of lottery equipment shall be at the sole discretion of the department chief executive officer.~~ In the exercise of discretion, the department chief executive officer may consider any of the following:

1. The availability of equipment.
2. The suitability of the type of equipment for the specific retail outlet under consideration.
3. The location, equipment, business type, and proximity of other extant retail outlets compared with an outlet under consideration.
4. The sufficiency of existing licensed outlets to serve the public convenience.
5. Such minimum sales criteria as may be appropriate based on current market conditions.
6. The cost of equipment and potential return on ~~lottery~~ investment.
7. Such other factors as the department chief executive officer may deem appropriate to the exercise of prudent business judgment in reaching a decision.

The decision of the department chief executive officer regarding placement of equipment is solely discretionary and final.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(32), 99G.7, 99G.12 and 99G.21.

~~531—13.13(99G)~~ Monitor vending machine retailers. Unless specifically noted in ~~531—Chapter 14~~, the rules contained in this chapter do not apply to entities holding licenses pursuant to ~~531—Chapter 14~~. This rule is intended to implement Iowa Code ~~Supplement~~ section 99G.9(3).

[Filed emergency 6/14/85—published 7/3/85, effective 6/14/85]
[Filed emergency 7/12/85—published 7/31/85, effective 7/12/85]
[Filed emergency 9/20/85—published 10/9/85, effective 9/20/85]
[Filed emergency 11/27/85—published 12/18/85, effective 12/2/85]
[Filed emergency 12/27/85—published 1/15/86, effective 12/30/85]
[Filed emergency 4/18/86—published 5/7/86, effective 4/21/86]
[Filed emergency 11/26/86—published 12/17/86, effective 11/26/86]
[Filed emergency 12/23/86—published 1/14/87, effective 12/26/86]
[Filed 3/6/87, Notice 12/17/86—published 3/25/87, effective 4/29/87]
[Filed emergency 3/30/88—published 4/20/88, effective 3/30/88]
[Filed 4/15/88, Notice 1/27/88—published 5/4/88, effective 6/8/88]
[Filed 11/3/88, Notice 8/10/88—published 11/30/88, effective 1/4/89]
[Filed 12/8/89, Notice 10/18/89—published 12/27/89, effective 2/1/90]
[Filed 6/2/93, Notice 2/3/93—published 6/23/93, effective 7/28/93]
[Filed emergency 8/12/94—published 8/31/94, effective 9/1/94]
[Filed 8/2/96, Notice 5/22/96—published 8/28/96, effective 10/2/96]
[Filed 4/11/03, Notice 2/19/03—published 4/30/03, effective 6/4/03]
[Filed emergency 8/28/03—published 9/17/03, effective 8/28/03]
[Filed 3/12/04, Notice 9/17/03—published 3/31/04, effective 5/7/04]

CHAPTER 14
MONITOR VENDING MACHINES

531—14.1(99G,252J) License eligibility criteria. An applicant shall be eligible to hold a monitor vending machine (MVM) retailer license only if the applicant meets the requirements set forth in rule 531—12.1(99G,252J). An applicant shall be eligible to hold an MVM premises license only if the applicant meets the requirements set forth in rule 531—14.5(99G).

This rule is intended to implement Iowa Code section 252J.2 and Iowa Code Supplement sections 99G.7(1); 99G.9(3); 99G.21(2); and 99G.24.

531—14.2(99G,252J) Factors relevant to license issuance. The lottery may issue an MVM license to any applicant who meets the eligibility criteria established by Iowa Code Supplement chapter 99G and these rules. In exercising its licensing discretion the lottery shall consider the factors identified in rule 531—12.2(99G,252J).

This rule is intended to implement Iowa Code section 252J.2 and Iowa Code Supplement sections 99G.9(3); 99G.21(2); and 99G.24(5).

531—14.3(99G) Definitions. For purposes of this chapter, the following definitions shall apply:

“*Applicant*” and “*person*” shall have the definition set forth in rule 531—12.3(99G).

“*Monitor vending machine*” means a vending machine that dispenses or prints and dispenses lottery tickets that have been determined to be winning or losing tickets by a predetermined pool drawing machine prior to the dispensing of the tickets. Each monitor vending machine shall have a video monitor for display of ticket symbols and audio capabilities to aid in play of a game.

“*MVM*” means monitor vending machine.

“*MVM distributor*” means a person or entity, other than an MVM manufacturer or an MVM retailer, that possesses an MVM license and that purchases or leases MVMs and leases or sells MVMs to MVM retailers.

“*MVM license*” means either an MVM retailer license or an MVM premises license issued pursuant to these rules, or both.

“*MVM premises*” means a business establishment or other location where one or more MVMs are located or are proposed to be located.

“*MVM premises operator*” means the person who owns the primary business or enterprise conducted at the MVM premises.

“*MVM retailer*” means a person or entity that possesses an MVM retailer license and sells lottery products from one or more lottery-approved MVMs that are owned or leased by the person or entity and that are located on premises owned or managed by the MVM retailer or by an MVM premises operator.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21(2).

531—14.4(99G,252J) MVM retailer licenses.

—**14.4(1)** Any MVM retailer or MVM distributor must possess an MVM retailer license before purchasing, selling, or leasing any MVMs in the state of Iowa.

—**14.4(2)** No MVM retailer license will be issued to an MVM manufacturer or any parent, subsidiary, or affiliated company or entity thereof.

—**14.4(3)** The lottery has discretion to license a qualified applicant to sell lottery products from MVMs. An MVM retailer license authorizes the licensee to sell only the type of lottery products specified on the license and only from MVMs that have been certified by the chief executive officer of the lottery pursuant to rule 14.19(99G). MVM retailer licenses also allow the licensees to distribute lottery-certified MVMs. The lottery shall maintain a list of MVMs that have been certified by the chief executive officer as meeting lottery requirements.

—**14.4(4)** An MVM retailer license is not limited to a specific location, but MVMs may only be used to sell lottery products on premises that have been licensed pursuant to rule 14.5(99G).

—**14.4(5)** Any eligible applicant may apply for an MVM retailer license by first filing with the lottery an application form together with any supplements required. Supplements may include, but are not limited to, authorizations to investigate criminal history, financial records and financial resources, and authorizations to allow the lottery to conduct site surveys.

- ~~—14.4(6) All lottery MVM license applications must be accompanied by a nonrefundable fee of \$25.~~
- ~~—14.4(7) The lottery may waive the payment of any license fee to facilitate an experimental program or a research project.~~
- ~~—14.4(8) A limited number of MVM retailers may be selected from applications received. The selection shall be made based on criteria designed to produce the maximum amount of net revenue and serve the public convenience. The lottery may refuse to accept MVM retailer license applications for a period of time if the lottery determines that the number of existing MVM retailer licensees is adequate to market lottery products.~~
- ~~—14.4(9) The lottery will grant, deny, or place on hold all applications within 60 days of acceptance of an application. Applications placed on hold shall be considered denied for purposes of appeal. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.~~
- ~~—14.4(10) A lottery licensee holding a lottery license pursuant to the rules contained in 531—Chapters 12 and 13 may sell lottery products from MVMs only if that licensee possesses a separate MVM license. Any premises on which MVMs will be located must be licensed pursuant to rule 14.5(99G), even if the premises operator holds a lottery license pursuant to the rules contained in 531—Chapters 12 and 13.~~
- ~~—14.4(11) Notwithstanding any of the foregoing, licensees of the Iowa racing and gaming commission making application for an MVM retailer license will not be required to submit to the lottery's criminal background check.~~

~~This rule is intended to implement Iowa Code sections 252J.2 and 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.30.~~

531—14.5(99G) MVM premises license.

- ~~—14.5(1) Before an MVM may be used to vend lottery products, the premises on which the MVM is to be located must be licensed by the chief executive officer of the lottery. An MVM premises shall be licensed only after all of the following requirements have been met:~~
- ~~—1. The MVM premises operator shall have passed a criminal background check.~~
 - ~~—2. The MVM premises shall have been demonstrated to be compatible with the dignity of the state.~~
 - ~~—3. The chief executive officer shall have determined that the MVM premises is an age-controlled environment. Examples of age-controlled environments are premises where the age of patrons is monitored by the employees of the establishment.~~
 - ~~—4. All lottery MVM premises license applications must be accompanied by a nonrefundable fee of \$25.~~
- ~~—14.5(2) The MVM premises operator shall post its MVM license, or a facsimile, at the MVM premises. The license or a facsimile thereof may be affixed to the MVM.~~
- ~~—14.5(3) Any premises on which MVMs will be located must be licensed pursuant to rule 14.5(99G), even if the premises operator holds a lottery license pursuant to the rules contained in 531—Chapters 12 and 13.~~
- ~~—14.5(4) MVM premises licenses shall be issued in accordance with the lottery's MVM business plan.~~

~~This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.30, and 99G.31.~~

531—14.6(99G) Transfer of MVM licenses prohibited. MVM licenses may not be transferred to any other person or entity and do not authorize the sale of lottery products at any location other than those permitted by lottery rules.

~~This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24(3), 99G.25, and 99G.30.~~

531—14.7(99G) Expiration of MVM licenses. An MVM license is valid until it expires, is terminated by a change of circumstances, is surrendered by the licensee, or is revoked by the lottery. An MVM license that does not have an expiration date will continue indefinitely until it is surrendered, revoked, or terminated by a change in circumstances.

~~This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24(3), and 99G.27.~~

531—14.8(99G,252J) Provisional MVM licenses. The lottery may issue a provisional MVM license to an applicant after receipt of a fully completed license application, the authorization for a complete personal background check, completion of a credit check, if applicable, and completion of a preliminary background check. The provisional MVM license shall expire at the time of issuance of the requested MVM license or 90 days from the date the provisional MVM license was issued, whichever occurs first, unless the provisional MVM license is extended by the lottery.

Notwithstanding the foregoing, the lottery will deny a provisional MVM license to any applicant who is an individual if the lottery has received a certificate of noncompliance from the child support recovery unit with regard to the individual, until the unit furnishes the lottery with a withdrawal of the certificate of noncompliance. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the MVM license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement Iowa Code sections 252J.2 and 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.25, and 99G.27.

531—14.9(99G) MVM placement and operation. Licensed MVM retailers shall locate their MVMs at their discretion, subject to the following requirements:

- 1. All MVMs shall be located only on licensed MVM premises.
- 2. No MVM shall be located in any establishment that is incompatible with the dignity of the state.
- 3. Only MVMs certified by the lottery's chief executive officer pursuant to rule 14.19(99G) may be placed in licensed MVM premises. A list of such certified MVMs may be obtained from the lottery.
- 4. Only graphics displays and audio authorized by the lottery shall be used on MVMs. MVM retailers shall make no changes, alterations, or additions to the lottery-authorized graphics displays, the lottery-authorized audio played by the MVMs, or to the cabinet exteriors of MVMs.
- 5. In cases where an MVM is located on an MVM premises not owned by the MVM retailer, the MVM retailer shall be solely responsible for securing the rights necessary to locate the MVM on such premises and shall provide proof of such rights to the lottery upon request. Under no circumstances shall the lottery be responsible to the MVM premises operator or owner as a consequence of the placement of an MVM by an MVM retailer.
- 6. Under no circumstances shall the lottery be responsible for the expense of installing electrical circuits or telecommunications lines or for any power or telecommunications services necessary to operate an MVM.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(3), and 99G.21.

531—14.10(99G) Duplicate licenses. Upon the loss, mutilation, or destruction of any MVM license issued by the lottery, application for a duplicate shall be made. A statement signed by the MVM retailer, distributor, or premises operator that details the circumstances under which the license was lost, mutilated, or destroyed may be required by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.30.

531—14.11(99G) Reporting changes in circumstances of the MVM licensee. Every change in business structure of an MVM licensee, such as from a sole proprietorship to a corporation, and every change in the name of a business must be reported to the lottery prior to the change. Substantial changes in the ownership of an MVM licensee must also be reported to the lottery prior to the change. A substantial change of ownership is defined as the transfer of 10 percent or more equity in the licensed business from or to another single individual or legal entity. If a change involves the addition or deletion of one or more existing owners or officers, the licensee shall submit a license application reflecting the change and any other documentation the lottery may require. All changes will be reviewed by the lottery to determine if the existing license should be continued.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.27(1).

531—14.12(99G) MVM license not a vested right. The possession of an MVM license issued by the lottery to any person or entity to act as an MVM retailer, MVM distributor, or MVM premises operator is a privilege

personal to that person or entity and is not a legal right. The possession of an MVM license issued by the lottery does not automatically entitle that person or entity to lease or purchase an MVM or to sell tickets or obtain materials for any particular game.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.7.

531—14.13(99G,252J) Suspension or revocation of an MVM retailer license.

— **14.13(1)** The lottery may suspend or revoke any MVM retailer license issued pursuant to these rules for one or more of the following reasons:

— *a.* Failing to meet or maintain the eligibility criteria for MVM retailer license application and issuance established by Iowa Code Supplement chapter 99G or these rules.

— *b.* Violating any of the provisions of Iowa Code Supplement chapter 99G, these rules, or the MVM license terms and conditions.

— *c.* Failing to file any return or report or to keep records required by the lottery; failing to maintain an acceptable level of financial responsibility as evidenced by the financial condition of the business, incidents of failure to pay taxes or other debts, or by the giving of financial instruments which are dishonored or electronic funds transfers that are not paid; fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery.

— *d.* If public convenience is adequately served by other licensed MVM retailers.

— *e.* Failing to sell a minimum number of tickets as established by the lottery.

— *f.* The MVM retailer has a history of thefts or other forms of losses of tickets or revenue.

— *g.* Violating federal, state, or local law or allowing the violation of any of these laws in connection with the operation of MVMs.

— *h.* Obtaining a license by fraud, misrepresentation, concealment or through inadvertence or mistake.

— *i.* Making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery.

— *j.* Denying the lottery or its authorized representative, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted.

— *k.* Failing promptly to produce for inspection or audit any book, record, document, or other item required to be produced by law, these rules, or the terms of the license.

— *l.* Systematically pursuing economic gain in an occupational manner or context that is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is detrimental to the proper operation of an authorized lottery.

— *m.* Failing to follow the instructions of the lottery for the conduct of any particular game or special event.

— *n.* Failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event.

— *o.* Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event.

— *p.* For a licensee who is an individual, when the lottery receives a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

— **14.13(2)** Advertising by MVM retailers.

— *a.* When referring to MVMs or their associated games in advertisements, signage, promotional materials, or any other similar items, MVM retailers shall not use any false or misleading terms or statements including, but not limited to, “casino,” “slot machine,” “slots,” “video lottery,” “VLTs,” “video slots,” “video poker,” or any other related terms.

— *b.* Upon suspicion that an MVM retailer has violated 14.13(2) “a,” the lottery shall investigate and provide a written warning to the MVM retailer describing the report of the event and of the potential violation of 14.13(2) “a.” In the event the lottery can substantiate the claim that an MVM retailer has violated 14.13(2) “a,” the lottery shall suspend the license of the MVM retailer in question for 7 days. If the lottery can substantiate the claim that an MVM retailer has violated 14.13(2) “a” a second time in a period of one year from the date of the first event, the lottery shall suspend the MVM retailer license for a period of 30 days. If the lottery can substantiate the claim that an MVM retailer has violated 14.13(2) “a” at a given MVM premises a third time in

a period of one year from the date of the first event as described in this rule, the lottery shall suspend the license of the MVM retailer in question for one year.

—~~14.13(3)~~ The effective date of revocation or suspension of an MVM retailer license, or denial of the issuance or renewal of an MVM retailer license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee. All other notices of revocation or suspension shall be 20 days following service upon a licensee.

—~~14.13(4)~~ If an MVM retailer license is suspended for more than 180 days from the effective date of the suspension, the lottery will revoke the license upon 15 days' notice served in conformance with rule 531—12.13(99G,252J).

—~~14.13(5)~~ Upon revocation or suspension of an MVM retailer license of 30 days or longer, the MVM retailer shall surrender to the lottery, by a date designated by the lottery, the MVM license, lottery identification card, and all other lottery property. The lottery will settle the MVM retailer's account as if the MVM retailer had terminated its relationship with the lottery voluntarily.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, 99G.27, 99G.30(3), and 99G.35.

531—14.14(99G,252J) Suspension or revocation of an MVM premises license.

—~~14.14(1)~~ The lottery may suspend or revoke any MVM premises license issued pursuant to these rules for one or more of the following reasons:

—~~a.~~ Failing to meet or maintain the eligibility criteria for MVM premises license application and issuance established by Iowa Code Supplement chapter 99G or these rules.

—~~b.~~ Violating any of the provisions of Iowa Code chapter 99G, these rules, or the MVM premises operator license terms and conditions.

—~~c.~~ Fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery.

—~~d.~~ Violating federal, state, or local law or allowing the violation of any laws in connection with the production or operation of MVMs.

—~~e.~~ Obtaining an MVM premises license by fraud, misrepresentation, concealment or through inadvertence or mistake.

—~~f.~~ Making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery.

—~~g.~~ Systematically pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is detrimental to the proper operation of an authorized lottery.

—~~h.~~ Failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event.

—~~i.~~ Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event.

—~~j.~~ When the lottery receives a certificate of noncompliance from the child support recovery unit in regard to the MVM premises operator who is an individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

—~~k.~~ A history of thefts or other forms of losses of tickets or revenue occurs at the MVM premises.

—~~l.~~ Conduct or business activities on the premises which would undermine the public confidence in the lottery.

—~~m.~~ Substantiated instances of purchases of lottery tickets by underage persons on the MVM premises.

—~~14.14(2)~~ Advertising by MVM premises operators:

—~~a.~~ When referring to MVMs or their associated games in advertisements, signage, promotional materials, or any other similar items, MVM premises operators shall not use any false or misleading terms or statements including, but not limited to, "casino," "slot machine," "slots," video lottery," "VLTs," "video slots," "video poker," or any other related terms.

—~~b.~~ Upon suspicion that an MVM premises operator has violated 14.14(2) "~~a.~~" the lottery shall investigate and provide a written warning to the MVM premises operator describing the report of the event and of the potential violation of 14.14(2) "~~a.~~" In the event the lottery can substantiate the claim that an MVM premises

~~operator has violated 14.14(2)“a,” the lottery shall suspend the license of the MVM premises operator in question for 7 days. If the lottery can substantiate the claim that an MVM premises operator has violated 14.14(2)“a” a second time in a period of one year from the date of the first event on the same MVM premises, the lottery shall suspend the MVM premises operator license for a period of 30 days. If the lottery can substantiate the claim that an MVM premises operator has violated 14.14(2)“a” at a given MVM premises a third time in a period of one year from the date of the first event as described in this rule, the lottery shall suspend the license of the MVM premises operator in question for one year.~~

~~—14.14(3) The effective date of revocation or suspension of a certification, or denial of the issuance or renewal of a certification, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice. All other notices of revocation or suspension shall be 20 days following service upon a licensee.~~

~~—14.14(4) Upon suspicion that an underage player has purchased one or more lottery products from an MVM, the lottery will investigate and provide a written warning to the MVM retailer and the MVM premises operator describing the report of the event and of the potential violation of Iowa Code Supplement section 99G.24(9). In the event the lottery can substantiate the claim that an underage player has purchased a product from an MVM, the lottery shall suspend the license of the MVM premises in question for 7 days. If the lottery can substantiate the claim that an underage player has purchased a product from an MVM a second time in a period of one year from the date of the first event on the same MVM premises, the lottery shall suspend the MVM premises license for a period of 30 days. If the lottery can substantiate the claim that an underage player has purchased a product from an MVM at a given MVM premises a third time in a period of one year from the date of the first event as described in this rule, the lottery shall suspend the license of the MVM premises in question for one year.~~

~~This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.27.~~

~~**531—14.15(99G,252J) Methods of service.** Notice required by Iowa Code section 252J.8 and notice of a license revocation or a suspension for the reasons described in rules 14.13(99G,252J) and 14.14 (99G,252J) shall be as set forth in rule 531—12.13(99G,252J). The notice shall set forth the reasons for the suspension or revocation and provide for an opportunity for a hearing. A hearing on the suspension or revocation shall be held within 180 days or less after the notice has been served.~~

~~This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.24.~~

~~**531—14.16(99G,252J) Licensee’s obligation.** MVM retailers, distributors, premises operators, and license applicants shall keep the lottery informed of all court actions and all relevant child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the lottery with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.~~

~~This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3) and 99G.21(2).~~

~~**531—14.17(99G,252J) Calculating the effective date.** In the event an MVM licensee or applicant files a timely district court action following service of a lottery notice pursuant to Iowa Code sections 252J.8 and 252J.9, the lottery shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the lottery to proceed. For purposes of determining the effective date of revocation or suspension, or denial of the issuance or renewal of an MVM license, the lottery shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.~~

~~This rule is intended to implement Iowa Code sections 252J.8 and 252J.9 and Iowa Code Supplement sections 99G.9(3) and 99G.21(2).~~

~~**531—14.18(99G) Financial responsibility of MVM retailers and MVM distributors.** The lottery shall use the following guidelines to determine financial responsibility for a person seeking an MVM retailer license.~~

—**14.18(1) Sole proprietorship.** The lottery will not require a bond from a sole proprietor if the account history for the applicant for the past two years discloses no more than four accounts past due and no accounts over 90 days past due.

—**14.18(2) Partnership.** If the MVM license applicant is a partnership, 50 percent of the partners must meet the credit guidelines listed in subrule 14.18(1). If the credit history discloses that the requirements of subrule 14.18(1) are satisfied, the lottery will not require a bond.

—**14.18(3) Fraternal or civic associations.** If the MVM license applicant is a fraternal association, civic organization or other nonprofit entity, the applicant must meet the credit guidelines set forth in subrule 14.18(1). If the fraternal or civic association or other nonprofit entity has no credit history or the credit history is incomplete as determined in the sole discretion of the lottery, then the officers of the fraternal or civic association or other nonprofit entity must meet the requirements of subrule 14.18(1). If the credit history discloses that the requirements of subrule 14.18(1) are satisfied, the lottery will not require a bond.

—**14.18(4) Corporations and limited liability companies in existence two years or more if a credit risk appraisal is available through a financial and credit reporting entity.** If the MVM license applicant is a corporation or a limited liability company and the corporation or the limited liability company has been in existence for more than two years from the date of the application and a credit risk appraisal is available through a financial and credit reporting entity, the MVM license applicant must meet the following financial responsibility guidelines:

—*a.* The MVM license applicant is paying 60 percent of its suppliers on time or within terms; and

—*b.* The license applicant must have a credit risk appraisal provided by a financial and credit reporting entity that indicates the corporation or limited liability company's financial condition is fair or better. If the corporation or the limited liability company meets the guidelines described in this rule, the lottery will not require a bond from the license applicant.

—**14.18(5) Corporations and limited liability companies in existence less than two years or if a credit risk appraisal is not available through a financial and credit reporting entity.** If a corporation has been in existence for less than two years from the date of the application or a credit risk appraisal is not available through a financial and credit reporting entity, the lottery will review the credit history of the corporate officers who hold 10 percent or more of the stock of the corporation. If a limited liability company has been in existence for less than two years or a credit risk appraisal is not available through a financial and credit reporting entity, the lottery will review the credit history of the members of a limited liability company who have contributed 10 percent or more to the capital of the limited liability company. Fifty percent or more of the corporate officers or members of the limited liability company must meet the credit guidelines set forth in subrule 14.18(1). If the corporate officers or the members of the limited liability company meet the requirements set forth in subrule 14.18(1), the lottery will not require the corporation or the limited liability company to obtain a bond.

—**14.18(6) Bonding requirements.** With respect to any MVM license applicant whose credit history does not meet the guidelines described in subrules 14.18(1) through 14.18(5), the applicant will be required to obtain a bond from a surety company authorized to do business in Iowa or offer a cash bond in the amount of \$250 per MVM to be operated by the MVM license applicant; provided, however, that the total amount of such bond shall not exceed \$50,000.

—**14.18(7) Holding period for bond.** The lottery will hold the bond provided by the license applicant for a minimum time period of one year. Thereafter, the lottery will review the credit history of the licensed retailer. If the retailer's account history shows no delinquent payments, the lottery will release the bond.

This rule is intended to implement Iowa Code Supplement sections 99G.7(1) and 99G.26.

531—14.19(99G) MVM certification. Before an MVM may be used to vend lottery products, it must be certified by the chief executive officer of the lottery. No MVM shall be placed in an MVM premises prior to being certified by the lottery. An MVM shall be certified only after all of the following requirements have been met:

—**14.19(1)** The manufacturer of the MVM shall have passed a criminal background check pursuant to rule 531—2.16(99G).

—**14.19(2)** The manufacturer shall have passed a financial responsibility background check.

- ~~14.19(3)~~ The manufacturer shall demonstrate to the lottery’s satisfaction that the MVM can perform all of the following:
 - ~~a.~~ Reliably vend lottery-approved tickets, either preprinted or printed on demand from a predetermined electronic “pack” of tickets.
 - ~~b.~~ Display, in the process of vending tickets, lottery-approved graphics and sound, indicating whether the vended ticket is a winner.
 - ~~c.~~ Communicate reliably with a central computer system, as described below, in order to transmit data.
 - ~~d.~~ Disable itself if it fails to communicate with the central computer system for a period not to exceed 50 hours.
 - ~~e.~~ Keep lottery tickets and cash receipts secure.
 - ~~f.~~ Account for the number of tickets sold and prizes awarded.
- ~~14.19(4)~~ The manufacturer shall demonstrate the ability to securely, reliably, and consistently produce either preprinted tickets or electronic “packs” of tickets that meet the lottery’s specifications as set forth in the game rules.
- ~~14.19(5)~~ The manufacturer shall demonstrate that the MVM can operate reliably with a central computer system capable, at a minimum, of all of the following:
 - ~~a.~~ Communicating with MVMs located in all parts of the state.
 - ~~b.~~ Retrieving data from MVMs.
 - ~~c.~~ Transmitting data to MVMs.
 - ~~d.~~ Storing data received from MVMs.
 - ~~e.~~ Allowing secure access to data by the lottery and MVM retailers.
 - ~~f.~~ Producing printed reports in a format usable by the lottery.
 - ~~g.~~ Performing security checks on MVMs.
 - ~~h.~~ Consistently and reliably operating at least 16 hours per day.
- ~~14.19(6)~~ The MVM manufacturer must commit contractually to provide the lottery with the data required by the lottery in a timely manner. The lottery may negotiate directly with manufacturers of certified MVMs for these services.
- ~~14.19(7)~~ The manufacturer shall pay a fee of \$25, plus all actual costs incurred by the lottery in performing the necessary criminal background and financial responsibility checks. The lottery may require a manufacturer to pay the estimated cost of the criminal background and financial responsibility checks in advance.
- ~~14.19(8)~~ As a condition of certification, the manufacturer shall provide to the lottery a working example of each model of MVM it proposes to have certified for testing and troubleshooting purposes. The lottery may keep the working example for such time as the model remains certified.
- ~~14.19(9)~~ The certification process, including the financial responsibility background check, is solely for the use of the lottery. The lottery does not warrant the financial stability of any MVM manufacturer, and lottery certification of an MVM model shall not be considered to constitute a representation or a warranty that a particular MVM of that model is merchantable, fit for any particular purpose, or free of defects. MVM retailers and distributors shall conduct their own due diligence, including financial responsibility, prior to purchasing or leasing an MVM.
- ~~14.19(10)~~ No MVM manufacturer or any parent, subsidiary, or affiliated company or entity thereof shall be licensed as an MVM retailer or an MVM premises operator.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.30, and 99G.31.

531—14.20(99G,252J) Suspension or revocation of certification of an MVM.

- ~~14.20(1)~~ The lottery may suspend or revoke any certification made pursuant to these rules for one or more of the following reasons:
 - ~~a.~~ Failing to meet or maintain the certification criteria established by Iowa Code Supplement chapter 99G or these rules.
 - ~~b.~~ Violating any of the provisions of Iowa Code Supplement chapter 99G or these rules.
 - ~~c.~~ Fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery.
 - ~~d.~~ Violating federal, state, or local law or allowing the violation of any laws in connection with the production or operation of MVMs.

- ~~e.~~ Obtaining a certification by fraud, misrepresentation, concealment or through inadvertence or mistake.
- ~~f.~~ Making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery.
- ~~g.~~ Systematically pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is detrimental to the proper operation of an authorized lottery.
- ~~h.~~ Failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event.
- ~~i.~~ Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event.
- ~~j.~~ Repeated failure or inability of the MVM or the associated central computer system to operate properly.
- ~~k.~~ The occurrence of any event or the existence of any state of facts that would cause the MVM manufacturer to fail a criminal background check or a financial responsibility check.
- 14.20(2)** The effective date of revocation or suspension of a certification, or denial of the issuance or renewal of a certification, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.27.

531—14.21(99G) Requirements for the sale of tickets.

- 14.21(1)** Prior to the vending of any lottery products by an MVM retailer, the lottery and the MVM retailer shall enter into a written agreement specifying the share of revenue to be remitted to the lottery, providing for the provisioning of tickets and paper stock, and other matters as the parties shall agree upon.
- 14.21(2)** Tickets shall be sold at the price designated by the lottery unless the lottery specifically authorizes their sale at a different price.
- 14.21(3)** No MVM retailer or any employee, member, or agent of an MVM retailer shall attempt to identify a winning ticket prior to the sale of the ticket.
- 14.21(4)** MVM retailers shall arrange for the MVM premises operator or agent(s) or employees of the MVM premises operator to pay all prizes of \$600 or less during normal business hours at the MVM premises where the prize-winning ticket was vended. Prizes in excess of \$600 shall be paid at a lottery regional office or at lottery headquarters in Des Moines. Prizes to be claimed from an MVM premises operator must be claimed prior to the MVM premises' first close of business following the vending of the winning ticket. Prizes to be claimed from a lottery regional office or at lottery headquarters must be claimed within 90 days of the date of sale of the ticket.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, 99G.30, and 99G.31.

531—14.22(99G) Ownership of tickets and other property. All tickets or electronic “packs” of tickets accepted by a licensed MVM retailer are the property of the MVM retailer. After confirmation of delivery, the retailer is responsible for the condition and security of the tickets and for any losses resulting from tickets that become lost, stolen, or damaged. The lottery may credit MVM retailers for lost, stolen, or damaged tickets if the MVM retailer licensee has been billed for the lost, stolen, or damaged tickets and only if the lottery determines that the best interests of the lottery will be served by issuing a credit.

Unless otherwise indicated in writing, all lottery property provided to an MVM retailer for use in selling products, as opposed to property and tickets sold to an MVM retailer, remains the property of the lottery. The retailer shall deliver lottery property to the lottery upon request.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(3), 99G.24, and 99G.27.

531—14.23(99G) MVM retailer compensation. The lottery, with board approval, shall set the amount of MVM retailer compensation.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.24.

531—14.24(99G) MVM retailer payment methods. MVM retailers are required to pay for lottery tickets or shares by means of an electronic funds transfer (EFT) from the MVM retailer's account. The lottery may allow

an MVM retailer to make payments by another method if the MVM retailer can show that the electronic funds transfer system imposes a significant hardship on the MVM retailer or if the lottery determines that the MVM retailer's payment history justifies use of an alternative payment method.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(3), 99G.27, 99G.28, and 99G.40.

531—14.25(99G) Dishonored checks and electronic funds transfers. Any payment made to the lottery by an applicant for a license or by a licensed MVM retailer either by a check which is dishonored or by an electronic funds transfer which is not paid by the depository shall be grounds for immediate denial of the application for a license or for the suspension or revocation of an existing license. The lottery may assess a surcharge up to the maximum allowed by applicable state law for each dishonored check or EFT. The lottery may also alter the payment terms of an MVM retailer's license and require an MVM retailer to reimburse the lottery for costs that occur as a result of a dishonored check or EFT. The lottery may disable all MVMs associated with the licensed MVM retailer until such time as the lottery receives certified funds to compensate for the dishonored item.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.24, and 99G.27.

531—14.26(99G) Inspection of lottery materials and licensed premises. MVM retailers and MVM premises operators shall allow the lottery to inspect lottery materials, tickets, and the premises. All books and records pertaining to the MVM retailer's and the MVM premises operator's lottery activities shall be available to the lottery for inspection and copying during the normal business hours of the MVM retailer or the MVM premises operator and between 8 a.m. — and 5 p.m., Monday through Friday. All books and records pertaining to the MVM retailer's and MVM premises operator's lottery activities are subject to seizure by the lottery without prior notice.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.24, 99G.27, and 99G.28.

531—14.27(99G) Payment of MVM ticket prizes. Prizes won by MVM tickets may be paid only by an agent or employee of the MVM premises operator where the winning ticket was vended or by an agent or employee of the Iowa lottery authority, as specified in subrule 14.21(4). If the MVM premises operator is a nonprofit organization, members of the organization may also pay prizes if authorized by the organization. The MVM retailer shall be responsible for ensuring that prizes up to \$600 are paid.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, 99G.30, and 99G.31.

531—14.28(99G) Ticket sales restrictions.

— **14.28(1)** The lottery reserves the right to limit or terminate the sale of tickets from any MVM or at any MVM premises if such sales may compromise the operation and integrity of the lottery, reflect conduct prejudicial to the public confidence in the lottery or reflect activity of an illegal nature under local, state or federal laws.

— **14.28(2)** No officer, employee, agent, or subcontractor of any MVM manufacturer, or any spouse, child, sibling, or parent residing in such a person's household, shall purchase tickets from MVMs produced by that particular manufacturer. However, tickets may be purchased by the aforementioned persons from MVMs produced by other manufacturers. No officer, employee, agent, or subcontractor of any MVM retailer or distributor, or any spouse, child, sibling, or parent residing in such a person's household, shall purchase tickets from MVMs owned, distributed, serviced, or otherwise under the care, custody, or control of that MVM retailer or distributor. However, tickets may be purchased by the aforementioned persons from MVMs owned, distributed, serviced, or otherwise under the care, custody, or control of other MVM retailers or manufacturers.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, 99G.27, 99G.30, and 99G.31.

531—14.29(99G) Transfer of MVMs. MVMs may only be transferred to authorized entities.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.27.

531—14.30(99G) Tax reporting. MVM retailers are responsible for tax reporting requirements related to MVM premises locations.

~~This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21(2).~~

~~[Filed emergency 8/28/03—published 9/17/03, effective 8/28/03]~~

~~[Filed 3/12/04, Notice 9/17/03—published 3/31/04, effective 5/7/04]~~

~~[Filed emergency 6/29/04—published 7/21/04, effective 6/29/04]~~

~~[Filed emergency 3/15/05—published 4/13/05, effective 3/15/05]~~

CHAPTER 18 1104
SCRATCH TICKET AND INSTAPLAY TICKET GENERAL RULES

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 8]
[Prior to 11/30/88, Instant Game General Rules[705] Ch 8]
[Prior to 9/17/03, see 705—Ch 8]

531—18.1(99G)701-1104.1(99G) Authorization of instant ticket games. The lottery authority board commission authorizes the sale of ~~instant~~scratch tickets and instaplay tickets that meet the criteria set forth in this chapter.

This rule is intended to implement Iowa Code ~~Supplement~~ section 99G.9(32).
[ARC 2781C, IAB 10/26/16, effective 11/30/16]

531—18.2(99G)701-1104.2(99G) Definitions.

“Instant ticket” means a ~~scratch~~ ticket or an instaplay ticket as defined in this chapter.

“Instaplay ticket” means an ~~instant~~ ticket printed on ~~lotto~~lottery terminal paper with play symbols that are not concealed by a removable covering.

“Play symbols” means the numbers or symbols appearing under the removable covering on a scratch ticket or on the face of an instaplay ticket.

“Scratch ticket” as used in this chapter means the same as “instant ticket” as defined in Iowa Code section 99G.3(8), an instant lottery ticket that is played by removing a rub-off covering on the ticket.

“Validation number” means the characters or numbers found on a ticket or ticket stub used by the department to determine whether a ticket or ticket stub is authentic.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.3 and 99G.9(32).
[ARC 2781C, IAB 10/26/16, effective 11/30/16]

531—18.3(99G) Instant ticket price. The lottery shall will specify the price of scratch tickets and instaplay tickets in the specific game rules for each game.¶

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(3) and 99G.21.¶
[ARC 2781C, IAB 10/26/16, effective 11/30/16]¶

531—18.4(99G)701-1104.3(99G) Method of play. Winners of a prize may be determined by such activities as locating, matching, or adding the play symbols on the tickets or by any other play action approved by the lottery division. The exact method of ~~designating~~ determining a winning ticket shall will be determined by the lottery division and shall be set forth in the specific game game specific rules.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(32) and 99G.21.

531—18.5(99G)701-1104.4(99G) Prizes.

18.5(1)1104.4(1) The number and amount of prizes shall in any specific scratch ticket or instaplay ticket game will be determined by the lottery division and set forth in the specific game game specific rules applicable to that game.

18.5(2)1104.4(2) At the ~~lottery’s~~ lottery division’s discretion, a scratch ticket game or an instaplay ticket game may include a special prize event. The number of prizes and the amount of each prize in the prize event shall will be determined by the lottery division. The dates and times, as well as the procedures for conducting any ~~elimination drawings or~~ prize events, shall will be determined by the lottery division in the specific game game specific rules. Finalists for prize events shall will be selected in the manner stated in the specific game game specific rules.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(32), 99G.21, and 99G.31.
[ARC 2781C, IAB 10/26/16, effective 11/30/16]

531—18.6(99G)701-1104.5(99G) Annuity prizes. If a prize offered in a scratch ticket game or an instaplay ticket game is an annuity, the prize shall will consist of an initial prize payment followed by yearly installments as described in the specific game game specific rules. If the current cash value of an annuity prize attributable to a single ticket or entry is less than \$100,000, the lottery division may elect to pay the current cash value of the prize in one lump-sum payment.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(32), 99G.21, and 99G.31.
[ARC 2781C, IAB 10/26/16, effective 11/30/16]

531—18.7(99G)701-1104.6(99G) Disclosure of odds. The overall probability of purchasing a winning ticket

~~shall~~ will be displayed on the ~~Iowa lottery lottery division's Web site~~website and in game literature made available by the lottery division.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(32) and 99G.21.
[ARC 1954C, IAB 4/15/15, effective 5/20/15]

531—~~18.8(99G)701-1104.7(99G)~~ Claiming prizes.

~~18.8(1)1104.7(1)~~ *Claim period.* Scratch ticket prizes must be claimed within 90 days of the announced end of the scratch ticket game. Instaplay ticket prizes must be claimed within 90 days of the date of sale of the instaplay ticket.

~~18.8(2)1104.7(2)~~ *Prizes claimed at retailer.* The ~~specific game game specific~~ rules shall specify prizes that shall be claimed from the retailer. To claim a prize from a retailer, the winner shall sign the back of the winning ticket and fill out a claim form if required by the ~~specific game game specific~~ rules. If a retailer can verify the claim, the retailer shall pay the prize. If a retailer cannot verify the claim, the player shall submit the ticket and a completed claim form to the lottery division. If the claim is validated by the lottery division, a draft shall be forwarded to the player in payment of the amount due. If the claim is not validated by the lottery division, the claim shall be denied and the player shall be promptly notified.

~~18.8(3)1104.7(3)~~ *Prizes claimed at a lottery division office.* The ~~specific game game specific~~ rules shall may specify prizes that may be claimed only from the lottery division. To claim a prize from the lottery division, the player may personally present the completed claim form obtained from a licensed retailer or any lottery office and the ticket to any lottery office or may mail the ticket and claim form to the Iowa Lottery Division's main office, as defined in rule 701-2.3 ~~Authority, 13001 University Avenue, Clive, Iowa 50325-8225~~. If the claim is validated by the lottery, the prize or a check, warrant, or draft shall will be forwarded to the player in payment of the amount due less any applicable state or federal income tax withholding and less any applicable setoff withheld under Iowa Code section 99G.41. If the claim is not validated by the lottery, the claim ~~shall~~ is may be denied and the player shall will be promptly notified.

~~18.8(4)~~ *Prizes in special events.* The ~~specific game~~ rules shall will set forth the manner in which prizes won in special events or drawings may be claimed.

~~18.8(5)1104.7(4)~~ *Variation by specific game game specific rules.* The ~~specific game game specific~~ rules may vary the terms of this rule in respect to the manner in which prizes are claimed or the claim period applicable to any scratch ticket game or instaplay ticket game or special event.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(32), 99G.21, and 99G.31.

531—~~18.9(99G)701-1104.8(99G)~~ Ticket validation requirements.

~~18.9(1)1104.8(1)~~ To be a valid scratch ticket, a ticket must meet all of the following validation requirements. A ticket must:

- a. Have been issued in an authorized manner as determined by the lottery division.
- b. Not be altered, unreadable, reconstructed, or tampered with in any manner.
- c. Not be counterfeit in whole or in part.
- d. Not be stolen or appear on any list of omitted tickets on file with the lottery division.
- e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.
- f. Have play symbols and captions as described in the ~~specific game game specific~~ rules. All symbols, numbers, and codes must be present in their entirety, legible, right side up, and not reversed in any manner.
- g. Have the appropriate bar code, pack-ticket number, retailer verification code, and security code.
- h. Have a validation number that appears on the lottery division's official list of validation numbers of winning tickets. A ticket with that validation number shall not have been previously paid.
- i. Pass all additional validation requirements stated in the ~~specific game game specific~~ rules and any confidential validation requirements established by the lottery.

~~18.9(2)1104.8(2)~~ To be a valid instaplay ticket, a ticket must meet all of the following validation requirements. A ticket must:

- a. Have been issued in an authorized manner as determined by the lottery division.
- b. Not be altered, unreadable, reconstructed, or tampered with in any manner.
- c. Not be counterfeit in whole or in part.
- d. Not be stolen, canceled, or appear on any list of omitted or test tickets on file with the lottery division.

e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.

f. Have play symbols and captions as described in the ~~specific game game specific~~ rules. All symbols, numbers, and codes must be present in their entirety, legible, right side up, and not reversed in any manner.

g. The information on the ticket or share must correspond precisely with the lottery division's computer record.

h. The ticket or share serial number must appear in its entirety, and correspond, using a computer validation file, to the winning game play or plays printed on the ticket or share.

i. A ticket or share shall be void unless the ticket or share is printed on a paper stock roll that was validly issued to and used, at the time of the play, by the retailer from whom the ticket or share was purchased.

j. Pass all additional validation requirements stated in the ~~specific game game specific~~ rules and any confidential validation requirements established by the lottery division.

18.9(3)1104.8(3) Any ticket not passing all applicable validation requirements is invalid and is ineligible for any prize. The ~~lottery division's administrator's chief executive officer's~~ determination that a ticket is invalid is ~~final binding on all participants in the lottery~~. The ~~lottery division administrator chief executive officer, in the chief executive officer's sole discretion,~~ may choose to pay an amount equal to the prize that would have been won on an invalid ticket if the lottery division is able to determine the prize which would have been won by use of a symbol, number, color code, or other mechanism. The ~~lottery division administrator's chief executive officer's~~ decision as to whether to pay a player the sum equal to the prize on an invalid ticket is ~~final binding on all participants in the lottery~~. A player who wishes to challenge a determination by the lottery division under this subrule may request a contested case proceeding as described in Iowa Administrative Code rule chapter 701—6.

If an invalid ticket is purchased by a player, the only responsibility or liability of the lottery division ~~shall~~ will be to replace the invalid ticket with an unplayed ticket from the same game or any other game or issue a refund of the sale price.

This rule is intended to implement Iowa Code Supplement sections 99G.9(32), 99G.21, and 99G.31.
[ARC 2781C, IAB 10/26/16, effective 11/30/16]

531—18.10(99G)701-1104.9(99G) Official end of game. The lottery division ~~shall~~ will announce the official end of each scratch ticket game and each instaplay ticket game. Retailers may continue to sell tickets for each game up to the cutoff date specified by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.
[ARC 2781C, IAB 10/26/16, effective 11/30/16]

531—18.11(99G) Board Commission approval of games. The lottery ~~shall will~~ provide board commission members with a written description of each specific scratch ticket game and each specific instaplay ticket game. The chairperson or a quorum of the board commission may call a special meeting to review the instant game selection. The board commission ~~shall not~~ may contest the selection of a scratch ticket game or an instaplay ticket game ~~within more than five days after receiving written notice of the selection~~.

This rule is intended to implement Iowa Code Supplement sections 99G.9(32) and 99G.21.¶
[ARC 2781C, IAB 10/26/16, effective 11/30/16]¶

[Filed emergency 7/12/85—published 7/31/85, effective 7/12/85]

[Filed emergency 12/27/85—published 1/15/86, effective 12/30/85]

[Filed emergency 2/21/86—published 3/12/86, effective 2/21/86]

[Filed emergency 4/18/86—published 5/7/86, effective 4/21/86]

[Filed emergency 12/23/86—published 1/14/87, effective 12/26/86]

[Filed 11/3/88, Notice 8/10/88—published 11/30/88, effective 1/4/89]

[Filed emergency 9/29/89—published 10/18/89, effective 10/1/89]

[Filed emergency 8/12/94—published 8/31/94, effective 9/1/94]

[Filed 8/12/94, Notice 6/8/94—published 8/31/94, effective 10/5/94]

[Filed 4/11/03, Notice 2/19/03—published 4/30/03, effective 6/4/03]

[Filed emergency 8/28/03—published 9/17/03, effective 8/28/03]

[Filed 3/12/04, Notice 9/17/03—published 3/31/04, effective 5/7/04]

[Filed ARC 1954C (Notice ARC 1847C, IAB 2/4/15), IAB 4/15/15, effective 5/20/15]

[Filed ARC 2781C (Notice ARC 2660C, IAB 8/3/16), IAB 10/26/16, effective 11/30/16]

CHAPTER 49 1105
PULL-TAB TICKET GENERAL RULES

[Prior to 9/17/03, see 705—Ch 11]

~~531—19.1(99G)701—1105.1(99G)~~ Authorization of pull-tab games. The lottery authority commission board authorizes the lottery to sell pull-tab tickets ~~which meeting the criteria of specified in this chapter.~~

This rule is intended to implement Iowa Code ~~Supplement~~ section 99G.9(32).

~~531—19.2(99G)701—1105.2(99G)~~ Definitions. As used in this chapter the following definitions are applicable.

“Low-tier prizes” are prizes which are included in the guaranteed low-end prize structure of a pull-tab game.

“Pull-tab tickets” means the same as “pull-tab ticket” or “pull-tab” as defined in Iowa Code section 99G.3(15). ~~are instant lottery tickets that are played by opening tabs to reveal if a prize was won. “Pull-tab tickets” do not include “scratch tickets” that are played by removing a rub-off covering from the play area or instaplay tickets that are played using the play symbols printed on lotto terminal paper.~~

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.3 and 99G.9(32).

[ARC 2781C, IAB 10/26/16, effective 11/30/16]

~~531—19.3(99G)~~ Pull-tab ticket price. The lottery shall specify the price of pull-tab tickets in the specific game rules for each game.¶

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(3) and 99G.21.

~~531—19.4(99G)701—1105.3(99G)~~ Method of play. Each pull-tab ticket ~~has shall~~ have tabs under which play symbols ~~shall appear.~~ A winning ticket ~~is shall~~ be determined by matching, aligning, adding, or locating symbols or numbers under the tabs.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(32) and 99G.21.

~~531—19.5(99G)701—1105.4(99G)~~ Ticket validation requirements.

~~19.5(1)1105.4(1)~~ Winning ticket requirements. Winning tickets ~~are shall~~ be validated by use of a symbol, number, or color-coded marking. A ticket is not valid if it fails to meet any of the following requirements. The ticket must:

- a. Have been issued by the Iowa lottery division authority in an authorized manner.
- b. Not be altered, unreadable, reconstructed, or tampered with in any manner.
- c. Not be counterfeit in whole or in part.
- d. Not be stolen or appear on any list of omitted tickets on file with the lottery division.
- e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.
- f. Have the exact play symbols and captions specified in the specific game game specific rules.
- g. Pass all validation tests including confidential validation tests.

1105.4(2) Lottery responsibility. If a ticket is invalid when sold, it is not eligible to receive any prize, and the purchaser’s sole remedy is to submit the ticket to the lottery headquarters division’s main office for a ~~to obtain a~~ refund of the retail sale price. The lottery ~~shall have has~~ no liability or responsibility for tickets invalidated after the time of sale.

The ~~chief executive officer lottery division~~ may, ~~in the chief executive officer’s sole discretion,~~ choose to pay a sum equal to the prize on an invalid ticket if the lottery division is able to determine the prize that would have been won on the invalid ticket by use of a symbol, number, color code, or other mechanism. The ~~chief executive officer’s lottery division’s determinations determination~~ that a ticket is valid or invalid, that a ticket was valid when sold and was subsequently invalidated, and whether a sum equal to the prize on an invalid ticket will be paid ~~shall be final~~ are binding on all participants in the lottery. A player who wishes to challenge a determination by the lottery division under this subrule may request a contested case proceeding as described in Iowa Administrative Code rule chapter 701—6.

~~—~~ **19.5(2) Reserved.**¶

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(23), 99G.21, and 99G.31.

~~531—19.6(99G)701—1105.5(99G)~~ Prizes. The number and the amount of prizes for any specific pull-tab ticket game ~~will shall~~ be determined by the lottery division and set forth by the specific game game specific rules.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(32), 99G.21, and 99G.31.

~~531—19.7(99G) 701—1105.6(99G)~~ Disclosure of odds. The overall probability of purchasing a winning ticket shall be stated on the Iowa lottery’s Web site lottery division’s web-site and in game literature made available by the lottery division.

This rule is intended to implement Iowa Code Supplement sections 99G.9(32) and 99G.21.

531—19.8(99G)701—1105.7(99G) Claiming prizes.

~~19.8(1)~~**1105.7(1)** *Claim period.* Prizes must be claimed within 90 days of the announced end of the pull-tab ticket game.

~~19.8(2)~~**1105.7(2)** *Prizes claimed at retailer.* The ~~specific game game specific rules~~ shall specify prizes that shall be claimed from the retailer. To claim a prize from a retailer, the winner shall sign the back of the winning ticket and fill out a claim form if required by the ~~specific game game specific rules~~. If a retailer can verify the claim, the retailer ~~shall pay~~ pays the prize. If a retailer cannot verify the claim, the player shall submit the ticket and a completed claim form to the lottery division. If the claim is validated by the lottery division, a draft shall be forwarded to the player in payment of the amount due. If the claim is not validated by the lottery division, the claim shall be denied and the player shall be promptly notified.

~~19.8(3)~~**1105.7(3)** *Prizes claimed at a lottery division office.* The ~~specific game Game specific rules~~ shall specify prizes that may be claimed only from the lottery division. To claim a prize from the lottery division, the player may personally present the completed claim form obtained from a licensed retailer or any lottery office and the ticket to any lottery office or may mail the ticket and claim form to the Iowa Lottery Authority Division main office, as defined in rule 701—2.3(17A), 13001 University Avenue, Clive, Iowa 50325-8225. If the claim is validated by the lottery division, the prize or a check, warrant, or draft ~~shall will~~ be forwarded to the player in payment of the amount due less any applicable state or federal income tax withholding and less any applicable setoff withheld under Iowa Code section 99G.41. If the claim is not validated by the lottery division, the claim ~~shall be is~~ denied and the player ~~shall will~~ be promptly notified.

~~19.8(4)~~ *Prizes in special events.* The ~~sSpecific game rules~~ shall set forth the manner in which prizes won in special events or drawings may be claimed.¶

~~19.8(5)~~**1105.7(4)** *Variation by specific game game specific rules.* The ~~specific game Game specific rules~~ may vary the terms of this rule in respect to the manner in which prizes are claimed or the claim period applicable to any pull-tab game or special event.

This rule is intended to implement Iowa Code sections 99G.9(32), 99G.21, and 99G.31.

[ARC 1954C, IAB 4/15/15, effective 5/20/15]

531—19.9(99G) Owner of ticket. Retailers shall pay prizes only to persons who present winning tickets. The person in physical possession of a pull-tab ticket ~~is shall~~ be deemed to be the owner of the ticket who is entitled to prize payment regardless of any signature or other writing that may have been placed on the ticket after purchase.¶

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.¶

531—19.10(99G)701—1105.8(99G) Disputed claim. If a purchaser and a retailer cannot agree as to whether a prize should be paid on a any ticket, the purchaser may submit the ticket to any lottery office. The lottery division's chief executive officer's determination as to whether a prize ~~should shall~~ be awarded is ~~final~~ binding on all participants in the lottery. A player who wishes to challenge a determination by the lottery division under this subrule may request a contested case proceeding as described in Iowa Administrative Code rule chapter 701—6..

This rule is intended to implement Iowa Code Supplement sections 99G.9(23), 99G.21, and 99G.31.

531—19.11(99G)701—1105.9(99G) Lottery logo. All pull-tab tickets sold by the Iowa lottery division authority ~~are to shall~~ be conspicuously marked with the logo of the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(23), 99G.21, and 99G.31.

531—19.12(99G)701—1105.10(99G) End of game. The lottery ~~chief executive officer division~~ will ~~shall~~ announce the end of any pull-tab ticket game or games.

This rule is intended to implement Iowa Code Supplement sections 99G.9(32) and 99G.21.

531—19.13(99G) Board Commission approval of game. After selection of a particular pull-tab game, the lottery shall provide board ~~commission~~ members with written notification that a particular game has been selected. The chairperson of the board ~~commission~~ or a quorum of the board ~~commission~~ may call a meeting to review the game selection. If the lottery board ~~commission~~ does not disapprove of the game within five working days following receipt of notice that the game has been selected, the board ~~commission~~ may not later disapprove of the game.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.¶

[Filed emergency 9/18/87—published 10/7/87, effective 9/18/87]

[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]
[Filed 11/3/88, Notice 8/10/88—published 11/30/88, effective 1/4/89]
[Filed emergency 8/12/94—published 8/31/94, effective 9/1/94]
[Filed 4/11/03, Notice 2/19/03—published 4/30/03, effective 6/4/03]
[Filed 6/6/03, Notice 4/30/03—published 6/25/03, effective 7/30/03]
[Filed emergency 8/28/03—published 9/17/03, effective 8/28/03]
[Filed 3/12/04, Notice 9/17/03—published 3/31/04, effective 5/7/04]
[Filed 6/14/07, Notice 5/9/07—published 7/4/07, effective 8/8/07]
[Filed ARC 1954C (Notice ARC 1847C, IAB 2/4/15), IAB 4/15/15, effective 5/20/15]
[Filed ARC 2781C (Notice ARC 2660C, IAB 8/3/16), IAB 10/26/16, effective 11/30/16]

CHAPTER 20 1106
COMPUTERIZED GAMES—GENERAL RULES

[Prior to 10/12/94, see 705—Chapters 9, 10, 12, 13, 14, 15]

[Prior to 9/17/03, see 705—Ch 13]

~~531—20.1(99G)701—1106.1(99G)~~ Authorization of computerized lottery games. The lottery authority commission board authorizes the sale of computerized games to be played in compliance with the criteria set forth in this chapter.

This rule is intended to implement Iowa Code Supplement section 99G.9(23).

~~531—20.2(99G)701—1106.2(99G)~~ Computerized lottery definitions. As used in this chapter: For the purposes of interpreting this chapter, the following definitions are applicable unless the context requires a different meaning:

“*Central computer*” or “*central computer system*” is means a computer system designated to control, monitor, and communicate with the lottery terminals and self-service kiosks and to record the transactions processed by the terminals that lottery equipment.

“*Drawing*” means the that process that is used to randomly select a winning combination numbers or entries for the game plays.

“*Drawing machine*” means a computer or other device that determines the outcome of the drawing process of selection of winning and losing tickets or shares in a lottery.

“*Easy pick*” means the random selection by the computer terminal or self-service kiosk of a valid play for the game that was selected.

“*Electronic ticket*” or “*e-ticket*” means a lottery ticket or share for which an electronic visual facsimile on a computer is available from the lottery.

“*Game*” shall means any computerized game conducted by the lottery.

“*Game ticket*” or “*ticket*” means a ticket or share produced by a terminal or manufacturing process that is the tangible evidence to prove participation in a game.

“*Gaming machine*” means a drawing machine that upon winning dispenses coins, currency, or a ticket, credit, or token that is redeemable for cash or a prize.

“*Instant ticket vending machine*” or “*ITVM*” means a vending machine or self-service kiosk that dispenses printed paper lottery tickets, with or without a scratch-off area.

“*Lotto terminal*” means a vending machine that prints and dispenses tickets or shares that will be determined to be winning or losing tickets or shares either by a predetermined pool drawing machine or by a drawing machine at some time subsequent to the dispensing of the tickets or shares.

“*Monitor vending machine*” means a vending machine that dispenses or prints and dispenses lottery tickets or shares that have been determined to be winning or losing tickets or shares by a predetermined pool drawing machine prior to the dispensing of the tickets or shares.

“*On-line vending machine*” means a vending machine that prints and dispenses lottery tickets or shares that have been determined to be winning or losing tickets or shares by a predetermined pool drawing machine prior to the dispensing of the tickets or shares.

“*Panel*” or “*game panel*” means that area of a play slip that contains marked squares that may be played.

“*Play(s)*” or “*game plays*” means the selection of an appropriate number of available variables that constitutes a valid entry in the game or the purchase of a ticket or share with a sequentially-generated variable appearing on the face of the ticket or share that constitutes a valid entry in a pool exhaustion game.

“*Play slip*” means a card used by the player in marking a player’s game plays.

“*Pool exhaustion game*” means a game where a predetermined pool of plays is established.

“*Predetermined pool drawing machine*” means a computer or other device external to a ~~lotto~~ lottery terminal, instant ticket vending machine, self-service kiosk or on-line vending machine, or monitor vending machine that predetermines winning and losing tickets or shares, assigns them to preprogrammed and prepackaged sequential electronic pool files and subsequently utilizes the files in production and distribution of electronic game cards and paper game tickets or shares produced in manufactured packs or through lotto terminals or vending machines.

“*Retailer*” means the person or entity licensed by the Iowa lottery to sell game plays.

“*Specific game rules*” means the rules promulgated by the lottery pursuant to Iowa Code Supplement section 99G.9(4) that contain the features of a particular computerized game or promotion.

“*Terminal*” means a device that is authorized by the lottery division to function with a central computer

system for the purpose of issuing, entering, receiving, and processing lottery transactions.

“Vending machine” means a lottery ticket or share dispensing machine either with a mechanical operating mechanism or with computer components that perform accounting functions and activate the ticket or share dispensing mechanism.

“Winning numbers” means the selection of an appropriate number of the variables, randomly selected at each drawing, which ~~are shall~~ be used to determine winning plays contained on a game ticket or share.

This rule is intended to implement Iowa Code Supplement sections 99G.3 and 99G.9(23).

[ARC 2781C, IAB 10/26/16, effective 11/30/16]

531—20.3(99G)701—1106.3(99G) Method of play. If ~~mandated~~ required by the ~~game specific rules~~ specific game rules, a player ~~must select~~ selects an appropriate number of the available game variables. A player may select each game variable by marking a play slip and submitting the play slip to a retailer, by asking a retailer to manually enter the game variables, or by purchasing an “easy pick” ticket from a retailer. Players may also purchase game plays from player-activated terminals by use of a touch screen if player-activated terminals are available. A drawing is held in which an appropriate number of the game variables are drawn on a random basis.

This rule is intended to implement Iowa Code sections 99G.9(23) and 99G.21.

[ARC 5991C, IAB 10/20/21, effective 11/24/21]

531—20.4(99G)701—1106.4(99G) Cancellation by a player. A ticket or share may be canceled by returning the ticket or share to the selling retailer provided that the ticket or share is returned to the retailer the same day it was purchased in time to permit canceling to be fully completed prior to the closing time for that drawing. In the event that a ticket or share is canceled, the player will be entitled to receive from the retailer a refund ~~from the retailer~~ equal to the purchase price of the ticket or share.

Cancellations will not be allowed in certain games as outlined in the ~~game specific rules~~ specific game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(23) and 99G.21.

531—20.5(99G)701—1106.5(99G) Prizes and odds. The amount of prizes and the odds of winning ~~are shall~~ be set forth in the ~~specific game game specific~~ specific game Game specific rules. ~~Specific game Game specific~~ rules may allow alternative prize structures.

This rule is intended to implement Iowa Code Supplement sections 99G.9(23), 99G.21, and 99G.31.

531—20.6(99G)701—1106.6(99G) Payment of annuity jackpot prizes. The lottery division may offer cash prizes, annuitized installment prizes, and prizes with cash or annuity payment options available to the winners. If the jackpot prize or share of the jackpot prize will be paid as an annuity, it will consist of the initial payment followed by such number of yearly installments as may be provided in the ~~specific game game specific~~ specific game game specific rules for the game unless the cash value of the annuity prize attributable to a single play is less than \$100,000. If the cash value of the annuity prize attributable to a single play is under \$100,000, the lottery division may elect to pay the cash value of the prize in one lump-sum prize payment. This rule does not apply to multistate or other multijurisdictional lottery games. Provision for payment of prizes for multistate and other multijurisdictional games shall be outlined in the ~~specific game game specific~~ specific game game specific rules for such games.

This rule is intended to implement Iowa Code Supplement sections 99G.9(23), 99G.21, and 99G.31.

531—20.7(99G)701—1106.7(99G) Unclaimed prizes. Unclaimed jackpot prizes, shares of the jackpot prize, and other lotto prizes do not increase a prize simultaneously won by any other player in the game. Unclaimed jackpot shares ~~are shall~~ be added to future jackpot prize pools at times determined by the lottery division. Other unclaimed prizes ~~are shall~~ be added to future prize pools for any lottery game. This rule ~~shall also applies~~ apply to such games offered in Iowa, except as may otherwise be provided in the ~~game specific rules~~ specific game rules of a multistate lottery or other multijurisdictional lottery with which the Iowa lottery may be affiliated.

This rule is intended to implement Iowa Code Supplement sections 99G.9(23), 99G.21, and 99G.31.

531—20.8(99G) Disclosure of odds. The overall probability of purchasing a winning ticket or share shall be stated on the Iowa lottery’s website and in the game literature made available by the lottery.¶

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.¶

[ARC 1954C, IAB 4/15/15, effective 5/20/15]

531—20.9(99G)701—1106.8(99G) Price. The price of a game play ~~shall will~~ be outlined in the ~~specific game game specific~~ specific game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(23) and 99G.21.

531—20.10(99G)701—1106.9(99G) Changes for special promotions. The lottery division may alter the price of the tickets or shares, features, or prizes of the game or drawings to accommodate special promotions.

Alterations made by the lottery division shall be contained in the game specific rules ~~specific rules for the promotion~~.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(23), and 99G.21.

531—20.11(99G)701—1106.10(99G) Ticket or share ownership and prize entitlement.

~~20.11(1)~~**1106.10(1)** A ticket or share is owned by its physical possessor until a signature is placed on the back of a ticket in the area designated for signature. When a signature is placed on the back of the ticket or share in the designated space, the person whose signature appears in the designated space is the owner of the ticket or share and is entitled to any prize attributable to the ticket or share.

~~20.11(2)~~**1106.10(2)** Notwithstanding any name or names submitted on a claim form, the lottery division ~~will~~ shall make payment to the person whose signature appears on the back of the ticket or share in the designated space. If the signatures of more than one person appear in that space, the lottery division ~~will~~ shall make payment to the person identified on the winner's claim form to receive payment, which designation ~~is~~ shall be made by all persons whose signatures appear on the reverse side of the ticket or share. In the event that all persons whose signatures appear in the appropriate space cannot identify one person to whom payment should be made, the lottery division may withhold payment until the proper payee is determined. ~~In no event may shall more than one person be entitled to a particular prize.~~

This rule is intended to implement Iowa Code Supplement sections 99G.9(32), 99G.21, and 99G.31.

531—20.12(99G)701—1106.11(99G) Ticket validation requirements.

~~20.12(1)~~**1106.11(1)** All claims for prizes are subject to validation by the lottery division. ~~To be a~~ A valid ticket or share ~~and eligible to receive a prize; will satisfy~~ will satisfy all of the following requirements ~~must be satisfied~~.

a. The ticket or share ~~was~~ must have been issued by the lottery division directly or through a retailer, via a terminal, in an authorized manner.

b. The information on the ticket or share ~~must corresponds~~ precisely with the lottery division's computer record.

c. The ticket or share serial number ~~must appears~~ in its entirety, and ~~corresponds~~ using a computer validation file, to the winning game-play or plays printed on the ticket or share.

d. A ticket or share ~~shall be void unless the ticket or share is printed on a paper stock roll that was validly issued to and used, at the time of the play, by the retailer from whom the ticket or share was purchased.~~

e. The ticket or share ~~is~~ must not be produced in error, counterfeit in whole or in part, altered, mutilated, unreadable, tampered with in any manner, incomplete, blank or partially blank, miscut, or defective.

~~f. The ticket or share must pass all other security criteria determined by the lottery.~~

~~g. f.~~ The ticket or share ~~is~~ must not be stolen ~~or~~ .

~~h.~~ The ticket or share ~~must not be~~ canceled.

~~i. g.~~ The ticket or share ~~must passes~~ all additional validation requirements that may be stated in the game specific rules ~~specific game rules and other security criteria determined by the lottery division~~.

~~20.12(2)~~**1106.11(2)** In the event that a ticket or share fails to pass all of the validation criteria set forth in this rule, ~~and the specific game game specific rules or as determined by the lottery division, the ticket or share it is invalid and ineligible for any prize. The lottery division, in its sole discretion, may choose to pay a sum equal to the prize on an invalid ticket or share if the lottery division can determine the prize that would have been won by the ticket or share by use of a symbol, code number, color code, or other mechanism. The lottery's lottery division's decisions as to whether a ticket or share is invalid and whether a sum equal to the prize on an invalid ticket or share will be paid are final-binding on all participants in the lottery. If the lottery division determines that a ticket or share is not eligible to receive a prize or a sum equivalent to the prize amount, the lottery division may replace the invalid ticket or share with a ticket or share of equivalent sale price from any current lottery game or refund the purchase price of the ticket or share. Replacement of the ticket or share, or refund of the purchase price, shall be are the claimant's sole and exclusive remedy. A player who wishes to challenge a determination by the lottery division under this subrule may request a contested case proceeding as described in Iowa Administrative Code rule chapter 701—6.~~

This rule is intended to implement Iowa Code Supplement sections 99G.9(23), 99G.21, and 99G.31.

531—20.13(99G)701—1106.12(99G) All prizes for games not associated with another state's lottery must be claimed as directed within 90 calendar days of the drawing in which the prize was won, unless otherwise specified in the specific game game specific rules for the game. All prizes for games associated with another

state's lottery ~~must~~ are to be claimed as directed within the ~~specific game game specific~~ rules. For purposes of determining the claim period, the drawing date ~~shall not be~~ is not counted. If a prize is claimed by mail, the lottery division must actually receive the ticket or share and claim form within the claim period. Any prize not properly claimed within the specified period ~~shall be~~ is forfeited. The claim period for a game may be altered by the lottery division in the ~~specific game game specific~~ rules.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(23), 99G.21, and 99G.31.

~~531—20.14(99G)701—1106.13(99G)~~ Manner of claiming prizes.

~~20.14(1)1106.13(1)~~ To receive payment for a prize or prizes on any single game ticket or share that total \$600 or less, the winner may take the signed ticket or share directly to any lottery retailer authorized to sell and validate the game, or to any lottery division office, or mail the signed ticket or share, along with a completed claim form, to the Iowa Lottery Authority Division's main office, as defined in rule 701—2.3, 13001 University Avenue, Clive, Iowa 50325-8225.

If there is any alteration, mutilation, tear, or other ambiguity on the ticket or share, the retailer is not authorized to make direct payment of a prize and a claim form and the ticket or share ~~must~~ is to be submitted to the lottery division.

~~20.14(2)1106.13(2)~~ To receive payment for a prize or prizes on any single game ticket or share that total more than \$600, the winner may submit the signed ticket or share and a completed claim form directly to any lottery division office. The winner may also mail the signed ticket or share and claim form to the Iowa Lottery Division's main office, as defined in rule 701—2.3 Authority, 13001 University Avenue, Clive, Iowa 50325-8225.

~~20.14(3)1106.13(3)~~ Claim forms are available at all computerized lottery division retailers and lottery offices. The lottery division or, at the ~~lottery's lottery division's~~ direction, a lottery retailer may require the person claiming a prize of any amount to fill out a claim form.

~~20.14(4)1106.13(4)~~ If a prize is claimed by mail, the ticket or share and the claim form must actually be received by the lottery division within the claim period.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(32), 99G.21, and 99G.31.

~~531—20.15(99G)701—1106.14(99G)~~ Presentation of ticket. No prize payments ~~will~~ shall be made unless the player submits a valid, uncanceled ticket or share. A play slip has no pecuniary or prize value and is not evidence of ticket purchase or of numbers selected.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(23), 99G.21, and 99G.31.

~~531—20.16(99G)701—1106.15(99G)~~ One prize per game play. The holder of a winning ticket or share may win only one prize per game play in connection with the winning numbers drawn and ~~is~~ shall be entitled only to the prize won by those numbers in the highest matching prize category.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(23), 99G.21, and 99G.31.

~~531—20.17(99G)701—1106.16(99G)~~ Corrections. The lottery division reserves the right to correct and adjust, up or down, the amount of any prize or prizes, whether all or part of the prize or prizes has been paid, if it is determined that one or more players are entitled to a portion of a prize and were not included in the prize calculations or were included in the prize calculations by mistake.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(23), 99G.21, and 99G.31.

~~531—20.18(99G)701—1106.17(99G)~~ Risk of error. The placing of plays is done at the player's own risk. It is solely the player's responsibility to verify the accuracy of game plays and all other data printed on the ticket. In the event of any error, the player's only remedy is cancellation of the ticket or share according to the procedure specified in this chapter. The lottery division and lottery retailers have no other responsibility for tickets or shares printed in error.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(23), 99G.21, and 99G.31.

~~531—20.19(99G)701—1106.18(99G)~~ Multidraw plays and advance plays. Multidraw plays and advance plays may be available.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(23) and 99G.21.

~~531—20.20(99G)701—1106.19(99G)~~ Drawings. Drawings will be held as specified in the ~~game specific game specific~~ rules.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(23) and 99G.21.

~~531—20.21(99G)701—1106.20(99G)~~ Cancellation or delay of play. The lottery division reserves the right to

cancel or delay drawings or sales of tickets or shares ~~sales~~ in the event of technical difficulties, and on days of special importance or on days the drawings would be impractical or inappropriate.

This rule is intended to implement Iowa Code Supplement sections 99G.9(23) and 99G.21.

531—20.22(99G)701—1106.21(99G) Pool exhaustion game—method of play.

20.22(1)1106.21(1) Players may purchase tickets or shares for a specific game. Each ticket or share sold for a pool exhaustion game will be generated separately. Tickets or shares will ~~shall~~ be sold against the pool until the pool of plays is exhausted or until the game ends in accordance with the game specific rules ~~specific game rules~~.

20.22(2)1106.21(2) Each ticket or share will bear a sequentially generated variable on the face of the ticket or share.

20.22(3)1106.21(3) Drawings for the prizes for a specific game will ~~shall~~ randomly select a winner or winners from the tickets or shares actually sold. The drawing method is ~~shall be~~ described in the game specific rules ~~specific game rules~~.

20.22(4)1106.21(4) Prizes are ~~shall be~~ awarded as specified in the game specific rules ~~specific game rules~~.

This rule is intended to implement Iowa Code Supplement sections 99G.9(23) and 99G.21.

531—20.23(99G)701—1106.22(99G) Prize insurance fund.

20.23(1)701—1106.22(1) The lottery may provide that up to 10 percent of the funds designated for the jackpot prize level in the prize structure of the game specific rules ~~specific game rules~~ for a game or that any prize funding not awarded by the conclusion of the relevant claim period for a fixed-prize game will ~~shall~~ be transferred to a prize insurance fund.

20.23(2)701—1106.22(2) The prize insurance fund may be used for any of the following purposes:

- a. To pay prizes for any on-line game prize obligation if the amount available to fund an on-line game prize is insufficient;
- b. To support a special promotion to retire an on-line game, e.g., a television show or a second chance drawing;
- c. To transfer amounts to a successor game to pay prize obligations for a different on-line game.

This rule is intended to implement Iowa Code Supplement sections 99G.9(23) and 99G.21.

[Filed emergency 9/16/94—published 10/12/94, effective 9/23/94]

[Filed 2/10/95, Notice 10/12/94—published 3/1/95, effective 4/5/95]

[Filed emergency 4/26/96—published 5/22/96, effective 5/22/96]

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

[Filed 4/11/03, Notice 11/13/02—published 4/30/03, effective 6/4/03]

[Filed 4/11/03, Notice 2/19/03—published 4/30/03, effective 6/4/03]

[Filed emergency 8/28/03—published 9/17/03, effective 8/28/03]

[Filed 3/12/04, Notice 9/17/03—published 3/31/04, effective 5/7/04]

[Filed ARC 1954C (Notice ARC 1847C, IAB 2/4/15), IAB 4/15/15, effective 5/20/15]

[Filed ARC 2781C (Notice ARC 2660C, IAB 8/3/16), IAB 10/26/16, effective 11/30/16]

[Filed ARC 5991C (Notice ARC 5816C, IAB 7/28/21), IAB 10/20/21, effective 11/24/21]

CHAPTER ~~21~~1107
DRAWINGS AND CONTESTS

~~531—21.1(99G)701—1107.1(99G)~~ Authorization of drawings and contests. The lottery—~~authority commission board~~—authorizes drawings and contests that meet the criteria set forth in this chapter.

This rule is intended to implement Iowa Code section 99G.9(~~32~~).

[ARC 9611B, IAB 7/13/11, effective 6/22/11]

~~531—21.2(99G)701—1107.2(99G)~~ Definitions.

“*Contest*” means a lottery event that may ~~or may not~~ involve nonwinning tickets in which entries are selected as winners and prizes are valued at a total of \$5,000 or less. ~~If an individual prize is greater than \$600 or at the lottery’s discretion, a player must will need to fill out a claim form and the contest will have written rules informally posted at the event.~~

“*Drawing*” or “*second-chance drawing*” means a lottery event involving a random selection of an entry or entries for a prize(s) in which entrants may either use a nonwinning Iowa lottery ticket as an entry or, at the lottery division’s discretion, may enter the drawing using points earned from entering tickets through the Internet or an entry through an alternative method for which a purchase is not necessary.

“*Nonwinning ticket*” means a ticket that did not win in the original game for which it was printed.

“*Presentation*” of a drawing or contest entry, for purposes of this chapter and validation of the same, means entering the ticket into a drawing or contest ~~through the U.S. mail or Internet, as permitted by the rules of the drawing or the description of the contest.~~

This rule is intended to implement Iowa Code sections 99G.9(~~32~~) and 99G.21.

[ARC 9611B, IAB 7/13/11, effective 6/22/11]

~~531—21.3(99G)701—1107.3(99G)~~ Price for drawings or contests. There ~~shall be will be is~~ no cost to enter a drawing or contest beyond the original ticket price already paid. At the lottery divisions’s discretion, the lottery ~~may designate certain drawings that may be designated as accepting entries~~ ered with a designated number of points earned by entry of nonwinning tickets through the lottery division’s customer loyalty program ~~VIP club~~ or by ~~an~~ some other lottery-approved method.

This rule is intended to implement Iowa Code sections 99G.9(~~32~~) and 99G.21.

[ARC 9611B, IAB 7/13/11, effective 6/22/11]

~~531—21.4(99G)701—1107.4(99G)~~ Method of play. Contest or drawing winners may be determined from a computer-generated list of all the entries submitted during the eligibility period or by ~~any other method approved by the lottery division.~~ The secure drawing system will generate a list of winning entry numbers based on the prize levels. Alternates are will be drawn as determined by the lottery division. Other methods of choosing a winning entry may be determined by the lottery division and, if utilized, ~~shall will~~ be set forth in the specific drawing rules or contest description. ~~The lottery division will post written contest rules informally at any contest event.~~

This rule is intended to implement Iowa Code sections 99G.9(~~32~~) and 99G.21.

[ARC 9611B, IAB 7/13/11, effective 6/22/11]

~~531—21.5(99G)701—1107.5(99G)~~ Prizes.

~~21.5(1)1107.5(1)~~ The number and amount of prizes for a drawing or contest shall be determined by the lottery division and set forth in the specific drawing rules or contest description.

~~21.5(2)1107.5(2)~~ At the ~~lottery’s~~ lottery division’s discretion, a drawing or contest may include a special prize event. The number of prizes, the amount of each prize, the dates and times of the contests or drawings, as well as the procedures for conducting elimination drawings or prize events, ~~shall be are~~ determined by the lottery division and set forth in the specific drawing rules or contest description. Finalists for prize events ~~shall be are~~ selected in the manner stated in the specific drawing rules or contest description.

This rule is intended to implement Iowa Code sections 99G.9(~~32~~), 99G.21 and 99G.31.

[ARC 9611B, IAB 7/13/11, effective 6/22/11]

~~531—21.6(99G)701—1107.6(99G)~~ Disclosure of odds. Because ~~the odds will vary based on the number of entrants in each contest or drawing, the odds will are~~ not be posted.

This rule is intended to implement Iowa Code sections 99G.9(~~32~~) and 99G.21.

[ARC 9611B, IAB 7/13/11, effective 6/22/11]

~~531—21.7(99G)701—1107.7(99G)~~ Claiming prizes. The specific drawing rules or contest description shall will set forth the manner in which prizes won shall-should be claimed. If an individual prize is greater than \$600 or at the lottery division's discretion, a player will fill out a claim form.

This rule is intended to implement Iowa Code sections 99G.9(32), 99G.21 and 99G.31.

[ARC 9611B, IAB 7/13/11, effective 6/22/11]

~~531—21.8(99G)701—1107.8(99G)~~ Entry validation requirements. ~~To be a~~ A valid entry, ~~the entry must be~~ is a legally acquired nonwinning Iowa-lottery ticket identified as an entry for the particular ~~promotion-drawing or contest~~. At its discretion, the lottery division may include legally obtained winning and nonwinning Iowa lottery on-line tickets in promotions drawings and contests.

This rule is intended to implement Iowa Code sections 99G.9(32), 99G.21 and 99G.31.

[ARC 9611B, IAB 7/13/11, effective 6/22/11]

~~531—21.9(99G)701—1107.9(99G)~~ Owner of a ticket. The lottery division ~~and its VIP club vendor, if any,~~ shall ~~pay~~ pays prizes in an Internet-based drawing or contest only to persons who present the selected tickets by entering them into the drawing through the online entry form or other entry mechanism. Players ~~are encouraged to~~ should sign the original ticket to prevent entry of the ticket by another party into the drawings or contests. The signature on the ticket indicates the owner of the ticket. If no signature is present on the ticket, the owner of the ticket is the possessor of the ticket. If there is a question as to the ownership of a ticket, the ~~chief executive officer's~~ lottery division will make a determination as to whether and to whom a prize ~~shall will~~ be awarded and the lottery division's determination is binding on all participants in the drawing or contest ~~final~~. A player who wishes to challenge a determination by the lottery division under this subrule may request a contested case proceeding as described in Iowa Administrative Code rule chapter 701—6.

This rule is intended to implement Iowa Code sections 99G.9(32), 99G.21 and 99G.31.

[ARC 9611B, IAB 7/13/11, effective 6/22/11]

~~531—21.10(99G)701—1107.10(99G)~~ Official end of drawing or contest period. The ~~chief executive officer~~ shall ~~announce~~ lottery division announces the end of any drawing or contest period.

This rule is intended to implement Iowa Code sections 99G.9(32) and 99G.21.

[ARC 9611B, IAB 7/13/11, effective 6/22/11]

TITLE 701 — IOWA DEPARTMENT OF REVENUE

CHAPTER 6 2

ORGANIZATION

[Prior to 10/7/87, see Revenue Department[730] Ch 6]

~~701—6.1(17A)~~ **701—2.1(17A) Establishment of the department.** Iowa Code ~~section sections~~ 7E.5(1)(c) and 421.2 establishes establish a department of revenue to be administered by a director of revenue with primary responsibility for revenue collection and revenue law compliance, as well as administration of the Iowa lottery, and alcoholic beverage control.

~~701—6.2(17A)~~ **701—2.2(17A) Mission.** The mission of the department is to serve Iowans and support government services in Iowa by generating revenues for state causes and collecting all taxes required by law, but no more. The mission of the department is to serve Iowans through the responsible collection and generation of revenue to support the public good.

~~701—6.3(17A)~~ **701—2.3(17A) Office. Offices.** The office of the department headquarters is maintained at the seat of state government in the Hoover State Office Building, 1305 East Walnut Street, P.O. Box 10460, Des Moines, Iowa 50319. Office hours of the department are 8 a.m. to 4:30 p.m., Monday through Friday. Offices are closed on Saturdays, Sundays, and official state holidays designated in accordance with state laws.

~~6.3(1)~~ **2.3(1) Regional office of alcohol operations.** The office of alcohol operations is located at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021; telephone (515)281-7400 or 1-866-469-2223.

~~6.3(2)~~ **2.3(2) Offices of lottery operations.** The main office of the Iowa lottery division is located at 13001 University Avenue, Clive, Iowa 50325-8225. The lottery division has regional offices in Cedar Rapids, Mason City, and Storm Lake, which offer some of the services available at the lottery division's main office, and a central warehouse in Ankeny. The Iowa lottery commission may be contacted through the lottery division's main office. Prize-redemption hours at lottery division offices are 8 a.m. to 4 p.m. Monday through Friday, with lottery offices closed on weekends and official state holidays.

~~701—6.4(17A)~~ **701—2.4(17A) Department Internet website-websites.**

~~6.4(1)~~ **2.4(1) Main website of the Department.** The department's main Internet home page is tax.iowa.gov revenue.iowa.gov.

~~6.4(2)~~ **2.4(2) Website of lottery division.** The lottery division's Internet home page is www.ialottery.com. Information regarding the lottery's main and regional offices can be obtained on the lottery website, on point-of-sale game-play publications, and by contacting the main office of the Lottery.

~~701—6.5(17A)~~ **701—2.5(17A) Organization of the department.** The department consists of the director, the lottery division, and other such divisions as the director may from time to time create establish, abolish, or consolidate.

~~6.5(1)~~ **2.5(1) The office of the director.** The essential functions of the office of the director include but are not limited to:

- a. Overall management of the agency.
- b. Review of protest and revocation cases on appeal.
- c. Strategic planning and coordination of the future operations and goals of the department.
- d. Provision of financial checks and balances within the department.
- e. Facilitation of a working relationship between the public sector and the private sector.

~~6.5(2)~~ **2.5(2) Divisions.** For ease of administration, the director has organized the department into divisions and, in some instances, has organized those divisions into bureaus, sections, subsections, and units. Except for the lottery division, the director may from time to time reorganize establish, abolish, or consolidate the department department's into administrative divisions as the director deems necessary in order to more efficiently and effectively carry out the authority's department's responsibilities. Reorganization may include creating new divisions, eliminating existing divisions, or combining divisions as the director deems necessary. Such divisions may include but are not limited to:

- a. ~~Local government services.~~ Alcohol and tax operations.
- b. ~~Tax management.~~ Alcohol and tax compliance
- c. Financial services.
- d. ~~Research and policy.~~ Internal services.
- e. Legal services and appeals. Legal services and appeals.
- f. ~~Internal services.~~ Local government services.
- g. Lottery.
- h. Research and policy.

~~6.5(3)~~2.5(3) *Designee.* Unless otherwise delegated in statute, in rule, or otherwise in writing by the director, only the director, deputy director, or chief legal officer may enter into contracts or agreements on behalf of the department.

2.5(4) Organization of the alcoholic beverages commission. The alcoholic beverages commission consists of five commission members appointed by the governor and confirmed by the senate.

2.5(5) Organization of the lottery commission. The lottery commission consists of five members appointed by the governor and confirmed by the senate.

This rule is intended to implement Iowa Code sections 17A.3, 99G.5, 99G.8, 123.5, 123.6, 123.9, 123.10, 421.2, 421.9, 421.14, 421.17, 422.1 and 422.72.

CHAPTER 4

ORGANIZATION AND OPERATION

[Prior to 10/8/86, Beer and Liquor Control Department[150]]

~~185—1.1(123,17A) Purpose.~~ This chapter describes the organization and operation of the alcoholic beverages division, including the offices where and the means by which any interested person may obtain information and make submittals or requests.

~~185—1.2(123,17A) Scope and rules.~~ Promulgated under Iowa Code chapters 17A and 123, these rules shall apply to all matters before the alcoholic beverages division. No rule shall in any way relieve a certificate of compliance holder, manufacturer, native distiller, vintner, brewer, wholesaler, alcohol carrier, wine direct shipper, retail alcohol licensee or wine permittee or beer permittee, or an agent or employee thereof from any duty under the laws of this state.

This rule is intended to implement Iowa Code section 123.4.

[~~ARC 7073C~~, IAB 9/20/23, effective 10/25/23]

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

[~~ARC 0273C~~, IAB 8/8/12, effective 9/12/12]

~~185—1.4(123,17A) Organization.~~

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

—~~1.4(2) Administrator.~~ Subject to senate confirmation, the governor appoints an administrator who conducts the daily operations of the division as prescribed by Iowa Code chapter 123.

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

[~~ARC 0273C~~, IAB 8/8/12, effective 9/12/12]

~~185—1.5(123,17A) Central offices.~~ The central office is located at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021; telephone (515)281-7400 or 1-866-469-2223. The central office is responsible for the operational support of the division and is the principal custodian of all divisional orders, statements of law

or policy issued by the division, and other public documents on file with the division.

This rule is intended to implement Iowa Code section 123.4.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

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

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

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

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

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

These rules are intended to implement Iowa Code sections 123.4, 123.5, 123.6, 123.9, 123.10, and 17A.3.

[Filed 12/14/72]

[Filed 10/20/75, Notice 9/8/75—published 11/3/75, effective 12/9/75]

[Filed 2/16/79, Notice 12/27/78—published 3/7/79, effective 4/16/79]

[Filed without Notice 7/6/79—published 7/25/79, effective 8/29/79]

[Filed emergency 5/19/82—published 6/9/82, effective 5/19/82]

[Filed emergency 10/10/85—published 11/6/85, effective 10/10/85]

[Filed emergency 7/1/86—published 7/30/86, effective 7/1/86]⁺

[Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAB 7/30/86]

[Filed emergency 7/29/93—published 8/18/93, effective 7/29/93]

[Filed 10/20/93, Notice 8/18/93—published 11/10/93, effective 12/15/93]

[Filed 3/29/01, Notice 2/21/01—published 4/18/01, effective 5/23/01]

[Filed ARC 0273C (Notice ARC 0142C, IAB 5/30/12), IAB 8/8/12, effective 9/12/12]

[Filed ARC 7073C (Notice ARC 7049C, IAB 7/26/23), IAB 9/20/23, effective 10/25/23]

CHAPTER 1

GENERAL OPERATION OF THE LOTTERY

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 1]

[Prior to 9/17/03, see 705—Ch 1]

531—1.1(17A) Purpose. The Iowa lottery authority was established by Iowa Code Supplement chapter 99G to operate the state lottery.

This rule is intended to implement Iowa Code section 17A.3(1).

531—1.2(17A) Organization. The lottery is administered by the lottery authority board. The lottery is directed and supervised by the chief executive officer of the lottery. The lottery authority board has rule-making authority for the lottery.

This rule is intended to implement Iowa Code section 17A.3(1).

531—1.3(17A) Location. Lottery headquarters is located at 13001 University Avenue, Clive, Iowa 50325-

8225. The lottery has regional offices located throughout the state offering some of the services available at the headquarters office. Information regarding lottery headquarters and regional offices can be obtained on the lottery Web site, www.ialottery.com, on point-of-sale game-play publications, and by contacting the lottery headquarters. The lottery authority board may be contacted through lottery headquarters. Office hours at all offices are 8 a.m. to 4:30 p.m., Monday through Friday. Prize redemption operations close at 4 p.m.

This rule is intended to implement Iowa Code section 17A.3(1).
[ARC 1954C, IAB 4/15/15, effective 5/20/15]

531—1.4(17A) Board meetings. The lottery authority board shall meet at least quarterly and may meet more often if necessary. The chief executive officer, the chairperson of the board, or a majority of the board may call a special board meeting. Board meetings are generally held at lottery headquarters at 13001 University Avenue, Clive, Iowa 50325-8225. Board meetings may be held by teleconference.

This rule is intended to implement Iowa Code section 17A.3(1)“a.”
[ARC 1954C, IAB 4/15/15, effective 5/20/15]

CHAPTER 7.3
APPEALS, TAXPAYER REPRESENTATION, AND OTHER ADMINISTRATIVE PROCEDURES
RULEMAKING AND RULE WAIVER PROCEDURES

[Prior to 12/17/86, Revenue Department[730]]

701-3.1(99G, 123, 421, 17A) Applicability and scope of rules. These rules implement the Iowa administrative procedure Act and aid in the effective and efficient administration and enforcement of the laws of this state and other activities of the department. These rules govern the practice, procedure, and conduct of the rulemaking and requests for waiver of rules and certain other administrative procedures within the department's jurisdiction. See chapters 6 and 7 for rules on contested cases for all matters within the department's jurisdiction. See chapter 4 for rules on declaratory orders for all matters within the department's jurisdiction.

701-3.2(99G, 123, 421, 17A) Definitions. Terms not defined below have the same meaning as defined in Iowa Code chapter 17A. These definitions apply to this chapter, unless the text states otherwise:

"Department" or "IDR" means the Iowa department of revenue.

"Director" means the director of the department or the director's designee.

"GovConnectIowa" means the e-services portal of the department, govconnect.iowa.gov.

"Person" means the same as defined in Iowa Code section 17A.2(9).

"Provision of law" means the same as defined in Iowa Code section 17A.2(10).

"Rule" means the same as defined in Iowa Code section 17A.2(11).

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

701—7.253.3(99G, 123, 421, 17A) Department procedure for rule-making rulemaking.

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) 3.3(1) 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 rulemaking 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-rulemaking 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) 3.3(2) Public rule-making rulemaking docket. The department utilizes the public rule-making rulemaking docket available to all agencies on the Iowa legislature's website.

7.25(4) 3.3(3) Notice of proposed rule-making rulemaking.

a. Contents. Except for rules filed through emergency rule-making rulemaking, 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)3.3(11).

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 need to 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)~~ 3.3(4) *Public participation.*

a. *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit criticisms, arguments, proposed alternatives, 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~~ rulemaking 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, as decided by the department. 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 criticisms, arguments, proposed alternatives, data, and 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~~ has 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~~ do not need 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~~ No participant ~~shall be~~ is 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 the 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)3.3(5) 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.a. 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.b. 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.c. 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 An issued 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)3.3(6) 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)3.3(7) Time and manner of rule adoption.~~

~~a. Time of adoption. The department shall not may only adopt a rule until once 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)3.3(8) Variance between adopted rule and published notice of proposed rule adoption.~~

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

~~(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~~ rulemaking. The department shall commence a rule-making proceeding within 60 days of its receipt of a petition for ~~rule-making~~ rulemaking 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)~~3.3(9) *Exemptions from public rule-making procedures, emergency ~~rule-making~~ rulemaking.*

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 Rulemakings 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 3.3(9)“a.” ~~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 3.3(9)“a.” ~~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 3.3(9)“a.” ~~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)~~3.3(10) *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)3.3(11) *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~~ post the publication containing the standards on the department's internet site.

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~~ post the full text available for review at the state law library and may make the standards available electronically on the department's internet site. 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)3.3(12) *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)3.3(13) *Effectiveness of rules prior to publication, emergency ~~rule-making~~ rulemaking.*

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 3.3(13)"b." ~~7.25(15)"b."~~

7.25(16)3.3(14) *Review of rules by department.*

a. *Request for review.* Any interested person, association, agency, or political subdivision may submit a written request to the department's 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~~ sections 123.10 and 421.14.
[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 5940C, IAB 10/6/21, effective 11/10/21]

701-3.4(99G, 123, 421, 17A) *Docket.* All review requests, public inquiries, criticisms, petitions, and waivers coming within the purview of this chapter are assigned a docket number which is the official identification number of the matter for the purposes of identification. The parties will be notified of the docket number. The number will be placed by the parties on all documents thereafter filed in the proceeding.

making rulemaking records. The department maintains records in accordance with the State Records Manual and agency retention schedule described in 671—2.2(305) 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 rulemaking 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)701—X.6(99G, 123, 421, 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 3.6(99G, 123, 421, 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 in accordance with the State Records Manual and agency retention schedule described in 671—2.2(305).

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—7.293.7(99G, 123, 421, 17A) Petition for rule-making rulemaking.

7.29(1)3.7(1) Filing, form, and contents of petition.

a. *Filing.* Any person or agency may file a petition for rule-making rulemaking 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 revenue.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 use the following format to submit a petition for rulemaking:

DEPARTMENT OF REVENUE

Petition by (Name of Petitioner)	*	PETITION FOR
for the (adoption, amendment, or	*	<u>RULEMAKING</u>
repeal) of rules relating to (state	*	RULE-MAKING
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 rulemaking, 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)~~**3.7(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)~~**3.7(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)~~**3.7(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)~~**3.7(5)** *Status of petition.* Inquiries concerning the status of a petition for ~~rule-making~~ rulemaking 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)~~**3.7(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)~~**3.7(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 to the administrative rules review committee.

~~7.29(8)~~**3.7(8)** *New petition.* Denial of a petition because the petition does not substantially conform to the required form does not preclude the filing of a new petition on the same subject when the new petition contains the required information that was the basis for the original denial.

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

701—~~7.283.8(99G, 123, 421, 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)~~**3.8(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 a rules rule" 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)~~**3.8(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~~ governs 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)~~ 3.8(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)~~ 701—7.15(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)~~ 3.8(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)~~ 3.8(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)~~ 3.8(3) and 3.8(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)~~ 3.8(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)~~ 3.8(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)~~ 3.8(5).

~~7.28(8)~~ 3.8(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~~ revenue.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 ~~use~~ follow the following format to submit a petition for waiver:

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 or license affected by the proposed waiver, including audits, notices of assessment, refund claims, appeals, a description of each affected license held by the requester, any notices of violation, 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)~~**3.8(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)~~**3.8(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)~~**3.8(11)** *Notice of petition for waiver.* ~~The~~ If notice to others is required by law, 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)~~**3.8(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)~~**3.8(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)~~ **3.8(4)** and ~~7.28(5)~~ **3.8(5)** remain valid.

~~7.28(14)~~**3.8(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 to a longer period.

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)~~**3.8(15)** *When deemed denied.* Failure of the director to grant or deny a waiver within the 120-day period or the extended time period shall be deemed a denial of that petition.

~~7.28(16)~~**3.8(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)~~**3.8(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)~~**3.8(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)~~**3.8(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)~~**3.8(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)~~ **3.8(18)** and **3.8(19)** are applicable.

~~7.28(21)~~**3.8(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)~~ **701—7.27(17A)**).

b. The provisions of Iowa Code sections 17A.10 to 17A.18A and rule ~~701—7.19(17A)~~ **701—7.18(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)~~ **701—7.18(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]

CHAPTER 2

AGENCY PROCEDURE FOR RULE MAKING

[Ch 2, IAC 7/1/75 rescinded 3/7/79; see Ch 4]

[Prior to 10/8/86, Beer and Liquor Control Department[150]]

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

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the agency 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 agency by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

185—2.3(17A) Public rule-making docket.

— **2.3(1)** *Docket maintained.* The agency shall maintain a current public rule-making docket.

— **2.3(2)** *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the agency. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the administrator for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The agency may also include in the docket other subjects upon which public comment is desired.

— **2.3(3)** *Pending rule-making proceedings.* The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1) “a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- *a.* The subject matter of the proposed rule;
- *b.* A citation to all published notices relating to the proceeding;
- *c.* Where written submissions on the proposed rule may be inspected;
- *d.* The time during which written submissions may be made;
- *e.* The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- *f.* Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;
- *g.* The current status of the proposed rule and any agency determinations with respect thereto;
- *h.* Any known timetable for agency decisions or other action in the proceeding;
- *i.* The date of the rule’s adoption;
- *j.* The date of the rule’s filing, indexing, and publication;
- *k.* The date on which the rule will become effective; and
- *l.* Where the rule-making record may be inspected.

185—2.4(17A) Notice of proposed rule making.

— **2.4(1)** *Contents.* At least 35 days before the adoption of a rule the agency shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- *a.* A brief explanation of the purpose of the proposed rule;
- *b.* The specific legal authority for the proposed rule;
- *c.* Except to the extent impracticable, the text of the proposed rule;
- *d.* Where, when, and how persons may present their views on the proposed rule; and
- *e.* Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the agency 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 agency for the resolution of each of those issues:

— ~~2.4(2) 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 2.12(2) of this chapter.

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

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.5(17A) Public participation:

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

— ~~2.5(2) Oral proceedings.~~ The agency may, at any time, schedule an oral proceeding on a proposed rule. The agency shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the agency by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request shall also contain the following additional information:

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

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

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

— ~~2.5(3) Conduct of oral proceedings:~~

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

— ~~b. Scheduling and notice.~~ An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

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

— ~~d. 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 agency 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) Procedure. At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the agency decision to propose the rule. 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 other individuals as well as their own views.

— (2) Oral presentation. Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

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

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

— (5) Submissions. 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 agency.

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

— (7) Questions. 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; but no participant shall be required to answer any question.

— (8) Rebuttal statements. 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.

— ~~2.5(4) Additional information.~~ In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the agency may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

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

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.6(17A) Regulatory analysis:

— **2.6(1) Definition of small business.** A “small business” is defined in Iowa Code section 17A.4A(8) “a.”

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

— *a.* The name of the small business or organization of small businesses;

— *b.* Its address;

— *c.* The name of a person authorized to transact business for the applicant;

— *d.* 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.

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

~~— 2.6(3) Time of mailing.~~ Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail 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(2), the agency 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.

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

~~— a. The administrative rules coordinator;~~

~~— b. The administrative rules review committee.~~

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

~~— a. The administrative rules review committee;~~

~~— b. The administrative rules coordinator;~~

~~— c. At least 25 or more persons who sign the request provided that each represents a different small business;~~

~~— d. 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.~~

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

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

~~— 2.6(8) Contents of concise summary.~~ The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A(4), (5), and (6).

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

~~— 2.6(10) Regulatory analysis contents—rules review committee or rules coordinator.~~ When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2)“a” unless a written request expressly waives one or more of the items listed in the section.

~~— 2.6(11) Regulatory analysis contents—substantial impact on small business.~~ When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2)“b.”

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.7(17A,25B) Fiscal impact statement.

~~— 2.7(1) Fiscal impact statement.~~ A proposed rule that mandates additional combined expenditures

exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services shall be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement shall satisfy the requirements of Iowa Code section 25B.6.

— **2.7(2) Corrected fiscal impact statement.** If the agency determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the agency shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.8(17A) Time and manner of rule adoption.

— **2.8(1) Time of adoption.** The agency 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 agency 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.

— **2.8(2) Consideration of public comment.** Before the adoption of a rule, the agency shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

— **2.8(3) Reliance on agency expertise.** Except as otherwise provided by law, the agency may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

185—2.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

— **2.9(1) Rule different from proposed Notice of Intended Action.** The agency shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

— *a.* 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

— *b.* The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

— *c.* The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

— **2.9(2) Determining 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 agency shall consider the following factors:

— *a.* 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;

— *b.* 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; and

— *c.* The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

— **2.9(3) Commencement of rule-making proceeding.** The agency 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 agency 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 petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

— **2.9(4) Concurrent rule-making proceedings.** Nothing in this rule disturbs the discretion of the agency to initiate, concurrently, several different rule-making proceedings on the same subject with several

different published Notices of Intended Action.

185—2.10(17A) Exemptions from public rule-making procedures.

— **2.10(1) Omission of notice and comment.** To the extent the agency 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 agency 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 agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

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

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.11(17A) Concise statement of reasons.

— **2.11(1) General.** When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the agency shall issue a concise statement of reasons for the rule. Requests for such a statement shall be in writing and be delivered to the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

— **2.11(2) Contents.** The concise statement of reasons shall contain:

- *a.* The reasons for adopting the rule;
- *b.* 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 such change;
- *c.* The principal reasons urged in the rule-making proceeding for and against the rule, and the agency's reasons for overruling the arguments made against the rule.

— **2.11(3) Time of issuance.** After a proper request, the agency 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.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.12(17A) Contents, style, and form of rule.

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

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

rule if such reasons are required by Iowa Code section 17A.4(2) or the agency in its discretion decides to include such reasons; and

—g. The effective date of the rule.

—**2.12(2) Incorporation by reference.** The agency 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 agency finds that the incorporation of its text in the agency proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the agency 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 agency may incorporate such matter by reference in a proposed or adopted rule only if the agency 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 this agency, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The agency shall retain permanently a copy of any materials incorporated by reference in a rule of the agency.

If the agency 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.

—**2.12(3) 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 agency 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 agency. The agency 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 agency shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

—**2.12(4) Style and form.** In preparing its rules, the agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

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

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

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

—a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

—b. Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

—c. All written petitions, requests, and submissions received by the agency, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the agency and considered by the administrator, in connection with the

formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the agency is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the agency shall identify in the record the particular materials deleted and state the reasons for that deletion;

— *d.* Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

— *e.* A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

— *f.* A copy of the rule and any concise statement of reasons prepared for that rule;

— *g.* All petitions for amendment or repeal or suspension of the rule;

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

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

— *j.* A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

— *k.* A copy of any executive order concerning the rule.

— **2.13(3) *Effect of record.*** Except as otherwise required by a provision of law, the agency rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.

— **2.13(4) *Maintenance of record.*** The agency shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in paragraph 2.13(2) “g,” “h,” “i,” or “j.”

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.14(17A) Filing of rules. The agency shall file each rule it adopts in the office of the administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule shall have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement shall be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.15(17A) Effectiveness of rules prior to publication.

— **2.15(1) *Grounds.*** The agency 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 agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

— **2.15(2) *Special notice.*** When the agency makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b”(3), the agency 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 agency 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 agency 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”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 2.15(2).

185—2.16(17A) General statements of policy.

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

— **2.16(2)** *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the agency to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 2.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.17(17A) Review by agency of rules.

— **2.17(1)** *Written request for review.* Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the agency to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the agency 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 agency may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

— **2.17(2)** *Formal review process.* In conducting the formal review, the agency shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall include a concise statement of the agency’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the agency or granted by the agency. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the agency’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report shall also be available for public inspection.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

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

[Filed 2/16/79, Notice 12/27/78—published 3/7/79, effective 4/16/79]

[Filed without Notice 7/6/79—published 7/25/79, effective 8/29/79]

[Filed emergency 5/19/82—published 6/9/82, effective 5/19/82]

[Filed emergency 7/1/86—published 7/30/86, effective 7/1/86]⁺

[Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAB 7/30/86]

[Filed 4/28/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

[Filed ARC 0273C (Notice ARC 0142C, IAB 5/30/12), IAB 8/8/12, effective 9/12/12]

CHAPTER 19 WAIVERS FROM RULES

185—19.1(17A) Scope. This chapter outlines a uniform process for the granting of waivers from rules adopted by the division. The intent of this chapter is to allow persons to seek exception to the application of rules adopted by the division.

— **19.1(1) Definition.** For purposes of this chapter, a “waiver” means an action by the division that 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.

— **19.1(2) Authority.**

— *a.* A waiver from rules adopted by the division may be granted in accordance with this chapter if:

— (1) The division has the authority to promulgate the rule from which the waiver is requested or has final decision-making authority over a contested case in which a waiver is requested; and

— (2) No statute or rule otherwise controls the granting of a waiver from the rule from which the waiver is requested.

— *b.* No waiver may be granted from a requirement that is imposed by statute. All waivers must be consistent with statute.

[ARC 5393C, IAB 1/13/21, effective 2/17/21]

185—19.2(17A) Division discretion. The decision on whether the circumstances justify the granting of a waiver shall be made at the discretion of the division upon consideration of all relevant factors. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

— **19.2(1) Criteria.** The division may, in response to a completed petition, grant a waiver from a rule, in whole or in part, as applied to the circumstances of a specific situation if the division finds each of the following:

— *a.* Application of the rule would result in hardship or injustice to the person for whom the waiver is requested;

— *b.* Waiver from the rule on the basis of the particular circumstances would not prejudice the substantial legal rights of any person;

— *c.* Provisions of the rule subject to the request for a waiver are not specifically mandated by statute or another provision of law; and

— *d.* Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

— **19.2(2) Determination.** In determining whether a waiver should be granted, the division shall consider whether the underlying intent of the rule is substantially equivalent to full compliance with the rule. When the rule from which a waiver is sought establishes administrative deadlines, the division shall balance the special individual circumstances of the requester with the overall goal of uniform treatment of all licensees and other petitioners.

185—19.3(17A) Requester’s responsibilities.

— **19.3(1) Application.** All petitions for a waiver must be submitted in writing to the Alcoholic Beverages Division, 1918 SE Hulsizer Road, Ankeny, Iowa 50021. If the petition relates to a pending case, a copy of the petition shall also be filed in the contested case proceeding.

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

— *a.* Name, address, and telephone number of the entity or person for whom a waiver is being requested, and the case number of any related contested case.

— *b.* Description and citation of the specific rule from which a waiver is requested.

— *c.* Specific waiver requested, including the precise scope and duration.

— *d.* Relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition. Page 1 of 1, 26

statement of reasons that the petitioner believes will justify a waiver.

— *e.* History of any prior contacts between the division and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.

— *f.* Information known to the requester regarding the division's treatment of similar cases.

— *g.* Name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver.

— *h.* Name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

— *i.* Name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

— *j.* Signed releases of information authorizing persons with knowledge regarding the request to furnish the division with information relevant to the waiver.

— **19.3(3) *Burden of persuasion.*** When a petition is filed for a waiver from a division rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the division should exercise its discretion in the granting of the waiver.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—19.4(17A) Notice. The division shall acknowledge a petition upon receipt. The division shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the division may give notice to other persons. To accomplish this notice provision, the division may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the division attesting that notice has been provided.

185—19.5(17A) Division's responsibilities.

— **19.5(1) *Additional information.*** Prior to issuing an order granting or denying a waiver, the division may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the division may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the division.

— **19.5(2) *Hearing procedures.*** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in the following situations:

— *a.* To any petition for a waiver filed within a contested case;

— *b.* When the division so provides by rule or order; or

— *c.* When a statute so requires.

— **19.5(3) *Ruling.*** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

— **19.5(4) *Conditions.*** The division shall condition the granting of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

— **19.5(5) *Duration of waiver.*** A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the division, a waiver may be renewed if the division finds that grounds for a waiver continue to exist.

— **19.5(6) *Time for ruling.*** The division shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the division shall grant or deny the petition no later than

the time at which the final decision in that contested case is issued.

~~—19.5(7) *When deemed denied.* Failure of the division to grant or deny a petition within the required time period shall be deemed a denial of that petition by the division.~~

~~—19.5(8) *Service of order.* Within seven days of its issuance, any order issued under this chapter 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.~~

~~185—19.6(17A) **Public availability.** Subject to the provisions of Iowa Code section 17A.3, the division shall maintain a record of all orders granting or denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and available to members of the public at the Alcoholic Beverages Division, 1918 SE Hulsizer Road, Ankeny, Iowa 50021. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Orders containing information that the division is authorized or required to keep confidential shall be edited prior to public inspection.~~

~~185—19.7(17A) **Cancellation.** A waiver issued by the division pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the division issues an order finding any of the following:~~

- ~~—1. The petitioner or the person who was the subject of the waiver request withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or~~
- ~~—2. The alternative means for ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or~~
- ~~—3. The subject of the waiver order has failed to comply with all conditions contained in the order.~~

~~185—19.8(17A) **Violations.** Violation of a condition in a waiver order is equivalent to a violation of the rule for which the waiver is granted. The recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.~~

~~185—19.9(17A) **Defense.** After the division issues an order granting a waiver, the order is a defense within its 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.~~

~~185—19.10(17A) **Appeals.** Granting or denying a request for waiver is final agency action under Iowa Code chapter 17A.~~

~~[ARC 0273C, IAB 8/8/12, effective 9/12/12]~~

~~These rules are intended to implement Iowa Code sections 17A.9A and 17A.10 and Executive Order Number 11.~~

~~{Filed 3/29/01, Notice 2/21/01—published 4/18/01, effective 5/23/01}~~

~~{Filed ARC 0273C (Notice ARC 0142C, IAB 5/30/12), IAB 8/8/12, effective 9/12/12}~~

CHAPTER 3

PROCEDURE FOR RULE MAKING

~~{Prior to 9/17/03, see 705—Ch 14}~~

~~531—3.1(17A) **Applicability.** Except to the extent otherwise expressly provided by statute, all rules adopted by the Iowa lottery authority are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.~~

~~531—3.2(17A) **Advice on possible rules before notice of proposed rule adoption.** In addition to seeking information by other methods, the lottery 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 lottery by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.~~

531—3.3(17A) Public rule-making docket.

— **3.3(1)** *Docket maintained.* The lottery shall maintain a current public rule-making docket.

— **3.3(2)** *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the lottery. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the board for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the lottery of that possible rule. The lottery may also include in the docket other subjects upon which public comment is desired.

— **3.3(3)** *Pending rule-making proceedings.* The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1) “a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- *a.* The subject matter of the proposed rule;
- *b.* A citation to all published notices relating to the proceeding;
- *c.* Where written submissions on the proposed rule may be inspected;
- *d.* The time during which written submissions may be made;
- *e.* The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- *f.* Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed; whether such an analysis or statement or a fiscal impact statement has been issued; and where any such written request, analysis, or statement may be inspected;
- *g.* The current status of the proposed rule and any agency determinations with respect thereto;
- *h.* Any known timetable for agency decisions or other action in the proceeding;
- *i.* The date of the rule’s adoption;
- *j.* The date of the rule’s filing, indexing, and publication;
- *k.* The date on which the rule will become effective; and
- *l.* Where the rule-making record may be inspected.

531—3.4(17A) Notice of proposed rule making.

— **3.4(1)** *Contents.* At least 35 days before the adoption of a rule the lottery shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- *a.* A brief explanation of the purpose of the proposed rule;
- *b.* The specific legal authority for the proposed rule;
- *c.* Except to the extent impracticable, the text of the proposed rule;
- *d.* Where, when, and how persons may present their views on the proposed rule; and
- *e.* Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the lottery 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 lottery for the resolution of each of those issues.

— **3.4(2)** *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 3.12(2) of this chapter.

— **3.4(3)** *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by

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

531—3.5(17A) Public participation.

— ~~3.5(1) Written comments.~~ For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Iowa Lottery Authority, 13001 University Avenue, Clive, Iowa 50325-8225, or the person designated in the Notice of Intended Action.

— ~~3.5(2) Oral proceedings.~~ The lottery may, at any time, schedule an oral proceeding on a proposed rule. The lottery 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 lottery by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

— *a.* A request by one or more individual persons must be signed by each person and include the address and telephone number of each person.

— *b.* 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.

— *c.* A request by an 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 that request.

— ~~3.5(3) Conduct of oral proceedings.~~

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

— *b. Scheduling and notice.* An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

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

— *d. 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 lottery 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) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the lottery authority board's decision to propose the rule. 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 other individuals as well as their own views.

—(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 lottery.

—(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; but 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.

— **3.5(4) Additional information.** In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the lottery may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

— **3.5(5) Accessibility.** The lottery shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Iowa Lottery Authority, 13001 University Avenue, Clive, Iowa 50325-8225, telephone (515)281-7900 in advance to arrange access or other needed services.

[ARC 1954C, IAB 4/15/15, effective 5/20/15]

531—3.6(17A) Regulatory analysis.

— **3.6(1) Definition of small business.** A “small business” is defined in Iowa Code section 17A.4A(7).

— **3.6(2) Mailing list.** Small businesses or organizations of small businesses may be registered on the lottery's small business impact list by making a written application addressed to the Iowa Lottery Authority, 13001 University Avenue, Clive, Iowa 50325-8225. The application for registration shall state:

— *a.* The name of the small business or organization of small businesses;

— *b.* Its address;

— *c.* The name of a person authorized to transact business for the applicant;

— *d.* 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.

— *e.* 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 lottery 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 lottery may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

~~— 3.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the lottery 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(2), the lottery 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.~~

~~— 3.6(4) *Qualified requesters for regulatory analysis—economic impact.* The lottery shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2a), after a proper request from:~~

~~— a. The administrative rules coordinator;~~

~~— b. The administrative rules review committee.~~

~~— 3.6(5) *Qualified requesters for regulatory analysis—business impact.* The lottery shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2b), after a proper request from:~~

~~— a. The administrative rules review committee;~~

~~— b. The administrative rules coordinator;~~

~~— c. At least 25 or more persons who sign the request provided that each represents a different small business;~~

~~— d. 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.~~

~~— 3.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the lottery shall adhere to the time lines described in Iowa Code section 17A.4A(4).~~

~~— 3.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the lottery. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).~~

~~— 3.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A(4,5).~~

~~— 3.6(9) *Publication of a concise summary.* The lottery shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).~~

~~— 3.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2a), unless a written request expressly waives one or more of the items listed in the section.~~

~~— 3.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2b).~~

[ARC 1954C, IAB 4/15/15, effective 5/20/15]

531—3.7(17A,25B) Fiscal impact statement.

~~— 3.7(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must 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.~~

~~— 3.7(2) If the lottery determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the lottery shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.~~

531—3.8(17A) Time and manner of rule adoption.

~~— 3.8(1) *Time of adoption.* The lottery shall not adopt a rule until the period for making ^{Packet A} 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 lottery 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.

— **3.8(2) Consideration of public comment.** Before the adoption of a rule, the lottery shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

— **3.8(3) Reliance on agency expertise.** Except as otherwise provided by law, the lottery may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

531—3.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

— **3.9(1)** The lottery shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

— *a.* 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

— *b.* The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

— *c.* The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

— **3.9(2)** 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 lottery shall consider the following factors:

— *a.* 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;

— *b.* 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; and

— *c.* The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

— **3.9(3)** The lottery 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 lottery 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 petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

— **3.9(4) Concurrent rule-making proceedings.** Nothing in this rule disturbs the discretion of the lottery to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

531—3.10(17A) Exemptions from public rule-making procedures.

— **3.10(1) Omission of notice and comment.** To the extent the lottery 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 lottery 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 lottery shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

— **3.10(2) Categories exempt.** The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

— *a.* Rules relating to lottery games.

— *b.* Reserved.

— **3.10(3) *Public proceedings on rules adopted without them.*** The lottery may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 3.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the lottery shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 3.10(1). Such a 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 such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the lottery may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 3.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

531—3.11(17A) Concise statement of reasons.

— **3.11(1) *General.*** When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the lottery shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Iowa Lottery Authority, 13001 University Avenue, Clive, Iowa 50325-8225. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

— **3.11(2) *Contents.*** The concise statement of reasons shall contain:

— *a.* The reasons for adopting the rule;

— *b.* 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 such change;

— *c.* The principal reasons urged in the rule-making proceeding for and against the rule, and the lottery's reasons for overruling the arguments made against the rule.

— **3.11(3) *Time of issuance.*** After a proper request, the lottery 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.

[ARC 1954C, IAB 4/15/15, effective 5/20/15]

531—3.12(17A) Contents, style, and form of rule.

— **3.12(1) *Contents.*** Each rule adopted by the lottery shall contain the text of the rule and, in addition:

— *a.* The date the lottery adopted the rule;

— *b.* A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(1b) or the lottery in its discretion decides to include such reasons;

— *c.* A reference to all rules repealed, amended, or suspended by the rule;

— *d.* A reference to the specific statutory or other authority authorizing adoption of the rule;

— *e.* Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

— *f.* A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(1b), or the lottery in its discretion decides to include such reasons; and

— *g.* The effective date of the rule.

— **3.12(2) *Incorporation by reference.*** The lottery 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 lottery authority board finds that the incorporation of its text in the lottery's proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the lottery's 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 lottery may incorporate such matter by reference in a proposed or adopted rule only if the lottery 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 lottery, and how and where copies may be obtained from an agency of the United States, this state, another state, or the organization, association, or persons originally issuing that matter. The lottery shall retain permanently a copy of any materials incorporated by reference in a rule of the lottery.

If the lottery 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.

— **3.12(3) *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 lottery 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 lottery. The lottery 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 lottery shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

— **3.12(4) *Style and form.*** In preparing its rules, the lottery shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

531—3.13(17A) Agency rule-making record.

— **3.13(1) *Requirement.*** The lottery shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

— **3.13(2) *Contents.*** The lottery rule-making record shall contain:

— *a.* Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

— *b.* Copies of any portions of the lottery's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

— *c.* All written petitions, requests, and submissions received by the lottery, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the lottery and considered by the chief executive officer of the lottery, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the lottery is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the lottery shall identify in the record the particular materials deleted and state the reasons for that deletion;

— *d.* Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

— *e.* A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

- *f.* A copy of the rule and any concise statement of reasons prepared for that rule;
 - *g.* All petitions for amendments or repeal or suspension of the rule;
 - *h.* A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;
 - *i.* A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any agency response to that objection;
 - *j.* A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and
 - *k.* A copy of any executive order concerning the rule.
- **3.13(3) *Effect of record.*** Except as otherwise required by a provision of law, the lottery rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.
- **3.13(4) *Maintenance of record.***
- *a.* The lottery shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective or the date of the Notice of Intended Action.
 - *b.* The lottery will maintain a separate file of any written criticism received regarding any of its rules for a period of not less than five years from the date the first written criticism for a rule was received as described in 3.13(2) “*g.*,” “*h.*,” “*i.*,” or “*j.*”

531—3.14(17A) Filing of rules. The lottery shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the lottery shall use the standard form prescribed by the administrative rules coordinator.

531—3.15(17A) Effectiveness of rules prior to publication.

— **3.15(1) *Grounds.*** The lottery 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 lottery shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

— **3.15(2) *Special notice.*** When the lottery makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “*b*”(3), the lottery 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 lottery 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 lottery 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*”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 3.15(2).

531—3.16(17A) General statements of policy.

— **3.16(1)** *Compilation, indexing, public inspection.* The lottery shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10) “a,” “c,” “f,” “g,” “h,” and “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7) “f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

— **3.16(2)** *Enforcement of requirements.* A general statement of policy subject to the requirements of this rule shall not be relied on by the lottery to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 3.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

531—3.17(17A) Review by agency of rules.

— **3.17(1)** Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the lottery to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the lottery 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 lottery may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

— **3.17(2)** In conducting the formal review, the lottery shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the lottery’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the lottery or granted by the lottery. 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 lottery’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

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

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

[Filed emergency 8/28/03—published 9/17/03, effective 8/28/03]

[Filed 3/12/04, Notice 9/17/03—published 3/31/04, effective 5/7/04]

CHAPTER 4

WAIVER RULES

[Prior to 9/17/03, see 705—Ch 5]

531—4.1(99G) Waiver of rules. These rules outline a uniform process for the granting of waivers from rules adopted by the Iowa lottery authority.

[ARC 5991C, IAB 10/20/21, effective 11/24/21]

531—4.2(99G) Definition. For purposes of this chapter, “a waiver” means action by the lottery authority board that 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.

[ARC 5991C, IAB 10/20/21, effective 11/24/21]

531—4.3(99G) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the lottery authority board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall

supersede this chapter with respect to any waiver from that rule.

531—4.4(99G) Applicability of chapter. The lottery authority board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or imposed by statute.

531—4.5(99G) Criteria for waiver. In response to a petition completed pursuant to rule 531—5.6(17A), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

- 1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
- 2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- 3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
- 4. Substantially equivalent protection of public health, safety and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

[ARC 5991C, IAB 10/20/21, effective 11/24/21]

531—4.6(99G) Filing of petition. A petition for a waiver must be submitted in writing to the board, as follows:

- **4.6(1) License application.** If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.
- **4.6(2) Contested cases.** If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.
- **4.6(3) Other.** If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board's executive secretary.

531—4.7(99G) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

- 1. The name, address, and telephone number of the person or entity for which a waiver is being requested and the case number of any related contested case;
- 2. A description and citation of the specific rule from which a waiver is requested;
- 3. The specific waiver requested, including the precise scope and duration;
- 4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 531—4.5(99G). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver;
- 5. A history of any prior contacts between the board and the petitioner relating to the activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the activity or license within the last five years;
- 6. Any information known to the requester regarding the board's treatment of similar cases;
- 7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or 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 a petition;
- 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 regarding the petition to furnish the board with information relevant to the waiver.

~~531—4.8(99G) Additional information.~~ Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a quorum of the board.

~~531—4.9(99G) Notice.~~ The board shall acknowledge a petition upon receipt. The board shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided.

~~531—4.10(99G) Hearing procedures.~~ The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

~~531—4.11(99G) Ruling.~~ An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

— **~~4.11(1) Board discretion.~~** The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. The board shall evaluate each fact based on the unique, individual circumstances set out in the petition for waiver.

— **~~4.11(2) Burden of persuasion.~~** The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

— **~~4.11(3) Narrowly tailored exception.~~** A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

— **~~4.11(4) Administrative deadlines.~~** When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

— **~~4.11(5) Conditions.~~** The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

— **~~4.11(6) Time period of waiver.~~** A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

— **~~4.11(7) Time for ruling.~~** The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

— **~~4.11(8) When deemed denied.~~** Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

— **~~4.11(9) Service of order.~~** Within seven days of its issuance, any order issued under this chapter 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.

531—4.12(99G) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying waiver petitions are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

531—4.13(99G) Submission of waiver information. Within 60 days of granting or denying a waiver, the board shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.

[ARC 5991C, IAB 10/20/21, effective 11/24/21]

531—4.14(99G) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

- 1. The person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
- 2. The substantially equivalent means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
- 3. The subject of the waiver order has failed to comply with all conditions contained in the order.

531—4.15(99G) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

531—4.16(99G) Defense. After the board issues an order granting a waiver, the order is a defense within its 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.

531—4.17(99G) Judicial review. Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapters 17A and 99G and Executive Order Number 11.

[Filed 7/11/01, Notice 2/21/01—published 8/8/01, effective 9/12/01]

[Filed emergency 8/28/03—published 9/17/03, effective 8/28/03]

[Filed 3/12/04, Notice 9/17/03—published 3/31/04, effective 5/7/04]

CHAPTER 74

APPEALS, TAXPAYER REPRESENTATION, AND OTHER ADMINISTRATIVE PROCEDURES

DECLARATORY ORDERS

[Prior to 12/17/86, Revenue Department[730]]

701—7.14.1(99G, 123, 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 all other areas within the department's jurisdiction. The rules in this chapter apply to all informal proceedings, contested case proceedings, licensing, rule making, requests for waiver of rules, and declaratory orders pending or commenced on or after their effective date. See chapters 6 and 7 for rules on contested cases within the department's jurisdiction. See chapter 3 for rules on rulemaking and rule waivers for all matters 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; ARC 6988C, IAB 4/19/23, effective 5/24/23]

701—7.24.2(99G, 123, 421,17A) Definitions. These definitions and the definitions provided in Iowa Code chapter 17A 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 the same as defined in Iowa Code section 17A.2(5). 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 and these rules.

“Department” or *“IDR”* 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 designee.

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

“Entity” means any taxpayer person 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 person 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” means the same as defined in Iowa Rule of Civil Procedure 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 the same as defined in Iowa Code section 17A.2. 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 Iowa administrative procedure Act other than an agency" as used in that definition includes estates, trusts, or fiduciaries.

"Petition" means any of the following: an application for declaratory order; or 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 same as defined in Iowa Code section 17A.2(10).¶

"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 taxpayerpersons on tax matters.

"Rule" means the same as defined 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; ARC 6988C, IAB 4/19/23, effective 5/24/23]

701—7.34.3(99G, 123, 421, 17A) How to submit an appeal, petition declaratory orders or related documents; service. A person shall submit declaratory orders and related documents in accordance with 701—7.3(17A). 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, shallis 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 14, 2024, GovConnectIowa is available for filing petitions for declaratory order, petitions for rule making, and petitions for rule waiver for all tax types as well as for lottery and alcohol matters, but is only available for filing appeals for the following tax types: sales, consumers/retailers use, E911, withholding, motor vehicle one-time registration fee, cigarette, tobacco products, drug stamp, utility replacement, central assessments, statewide property, motor fuel, hotel/motel, local option sales, automobile rental, water service excise, individual income, fiduciary income, corporation income, S corporation income, partnership income, franchise, inheritance, moneys and credits, and tax credits and distributions associated with the 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 licensing 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 and licensing 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 or documents required or permitted 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 taxpayerperson has elected to receive communications exclusively through GovConnectIowa, pursuant to rule 701—8.6(421). For taxpayerspersons registered in GovConnectIowa, posting the document in the personstaxpayer's GovConnectIowa account constitutes service or notice of the document. For taxpayerthird-party representatives registered in GovConnectIowa, posting the document in the taxpayer representative's GovConnectIowa account constitutes service or notice of the document. For nonregistered taxpayers persons or nonregistered 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 taxpayerperson is notified electronically of the correspondence or the item is mailed, whichever is earlier.

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; ARC 6988C, IAB 4/19/23, effective 5/24/23]

701—7.44.4(99G, 123, 421, 17A) Time requirements for filings. Time filing procedures are set forth in rule 701—7.4(17A).

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 is 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—7.54.5(99G, 123, 421, 17A) Form and style of documents. Requirements for filings are set forth in rule 701—7.5(17A).

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 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.
- c. Include a signature.
- d. Include copies as required by this chapter 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]

701-4.6(99G, 123, 421, 17A) Docket. Every matter coming within the purview of this chapter is assigned a docket number which is the official identification number of the matter. The parties will be notified of the docket number. The number will be placed by the parties on all documents thereafter filed in the proceeding.

701—7.244.7(99G, 123, 421, 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)4.7(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. ~~a.~~ *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. ~~b.~~ *Department forms.* Petitioners may use the form provided on GovConnectIowa or the form provided on the department's website, tax.iowa.gov/forms, ~~revenue.iowa.gov/forms~~, to submit a petition.

d. ~~c.~~ *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 format:

DEPARTMENT OF REVENUE

Petition by (Name of Petitioner)	*	PETITION FOR
for a Declaratory Order on (Cite	*	DECLARATORY ORDER
provisions of law involved).	*	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, ~~the whose applicability of which~~ 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 the petitioner to be affected by, or interested in, the questions presented in the petition;

8. Any request by the petitioner for a meeting provided for by this rule;

9. Whether the petitioner is presently under audit or investigation 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.

d. Standing. The petitioner must be potentially aggrieved or adversely affected by the department action or failure to act.

e. 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.

~~7.24(2)~~4.7(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)~~4.7(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 paragraphs 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 format:

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)(6)~~ Whether the intervenor is presently under audit or investigation by the department; and
~~(8)(7)~~ A statement that the intervenor understands that if the department allows the intervention, the intervenor will consent of the intervenor to be bound by the declaratory order.

~~(9)(8)~~ 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 ~~show that they are potentially aggrieved or adversely affected by the department action or failure to act on the~~ 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.f.~~ *Factually distinct matters.* If a party seeks to have an issue determined by intervening in a declaratory order proceeding, 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)4.7(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)4.7(5)~~ *Inquiries.* Inquiries concerning the status of a declaratory order proceeding may be made to the Legal Services and Appeals 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)4.7(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) rule 701—7.3(17A).~~ 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)4.7(7)~~ *Department consideration.*

a. Informal meetings. Upon request by the 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(13)~~**4.7(8)** *Withdrawal of the petition.* The petitioner may voluntarily withdraw its petition by notifying the department in writing at any time before the order is issued. The petitioner may not withdraw the petition after the order is issued.

~~7.24(8)~~**4.7(9)** *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, or any other action described in Iowa Code section 17A.9(5).~~

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)~~**4.7(10)** *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~~ Questions or issues presented by the petition are also presented in a current audit or investigation, ~~current~~ rule-making, contested case, litigation, 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 the 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)~~**4.7(11)** *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 the 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)~~**4.7(12)** *Copies of orders.* A copy of all orders issued in response to a petition ~~for an~~ **for an**, 47

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)4.7(13)~~ *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~~rescinded by the department and cannot be withdrawn byat 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]

CHAPTER 3

DECLARATORY ORDERS

[Ch 3, IAC 7/1/75 rescinded 3/7/79; see Ch 4]

[Prior to 10/8/86, Beer and Liquor Control Department[150]]

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

ALCOHOLIC BEVERAGES DIVISION

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved):	}	PETITION FOR DECLARATORY ORDER
--	---	--------------------------------------

The petition shall 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 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 rule 185—3.7(17A).

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

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the alcoholic beverages division shall give notice of the petition to all persons not served by the petitioner pursuant to rule 3.6(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons.

185—3.3(17A) Intervention.

— **3.3(1) Qualified persons.** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 days of the filing of a petition for declaratory order (after time for notice under rule 3.2(17A) and before 30-day time for agency action under 3.8(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

— **3.3(2) Agency discretion.** 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 division.

— **3.3(3) Filing of petition.** A petition for intervention shall be filed at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021. Such a petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention shall be typewritten or legibly handwritten in ink and shall substantially conform to the following form:

ALCOHOLIC BEVERAGES DIVISION

Petition by (Name of Original Petitioner)
for a Declaratory Order on (Cite
provisions of law cited in original
petition).

PETITION FOR
INTERVENTION

The petition for intervention shall 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.

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

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

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

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—3.6(17A) Service and filing of petitions and other papers.

— **3.6(1)** *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

— **3.6(2)** *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

— **3.6(3)** *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by contested case rule 185—10.13(17A).

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—3.7(17A) Consideration. Upon request by petitioner, the alcoholic beverages division must schedule a brief and informal meeting between the original petitioner, all intervenors, and the division, a member of the division, or a member of the staff of the division, to discuss the questions raised. The division may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the division by any person.

185—3.8(17A) Action on petition.

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

— **3.8(2)** *Issuance of order.* The date of issuance of an order or of a refusal to issue an order is as defined in contested case rule 185—10.2(17A).

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—3.9(17A) Refusal to issue order.

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

— 1. 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 division to issue an order.

— 3. The division 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 agency 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 an agency 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 division to determine whether a statute is unconstitutional on its face.

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

—~~3.9(3) *Filing of new petition.*~~ Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

~~185—3.10(17A) *Contents of declaratory order—effective date.*~~ In addition to the order itself, a declaratory order shall contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

~~185—3.11(17A) *Copies of orders.*~~ A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

~~185—3.12(17A) *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. It is binding on the division, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the division. The issuance of a declaratory order constitutes final agency action on the petition.

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

[Filed 2/16/79, Notice 12/27/79—published 3/7/79, effective 4/16/79]

[Filed without Notice 7/6/79—published 7/25/79, effective 8/29/79]

[Filed emergency 10/10/85—published 11/6/85, effective 10/10/85]

[Filed emergency 7/1/86—published 7/30/86, effective 7/1/86]⁺

[Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAB 7/30/86]

[Filed 4/28/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

[Filed ARC 0273C (Notice ARC 0142C, IAB 5/30/12), IAB 8/8/12, effective 9/12/12]

CHAPTER 6

DECLARATORY ORDERS

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 7]

[Prior to 9/17/03, see 705—Ch 7]

~~531—6.1(17A) *Petition for declaratory order.*~~ Any person may file a petition with the lottery for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the lottery, at the Iowa Lottery Authority, 13001 University Avenue, Clive, Iowa 50325-8225. A petition is deemed filed when it is received by that office. The lottery shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the lottery an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

THE IOWA LOTTERY

Petition by (Name of Petitioner)
for a Declaratory Order on

†

PETITION FOR
DECLARATORY ORDER

(cite provisions of law involved).

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 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 531—6.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed. [ARC 1954C, IAB 4/15/15, effective 5/20/15]

531—6.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the lottery shall give notice of the petition to all persons not served by the petitioner pursuant to 531—6.6(17A) to whom notice is required by any provision of law. The lottery may also give notice to any other persons.

531—6.3(17A) Intervention.

- **6.3(1)** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 25 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.
- **6.3(2)** 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 lottery.
- **6.3(3)** A petition for intervention shall be filed at the Iowa Lottery Authority, 13001 University Avenue, Clive, Iowa 50325-8225. Such a petition is deemed filed when it is received by that office. The lottery 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:

THE IOWA LOTTERY

Petition by (Name of Petitioner)
for a Declaratory Order on
(cite provisions of law involved).

}

PETITION FOR
INTERVENTION

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.

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 intervenor's representative, and a statement indicating the person to whom communications should be directed.

[ARC 1954C, IAB 4/15/15, effective 5/20/15]

531—6.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The lottery may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

531—6.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Chief Executive Officer, Iowa Lottery Authority, 13001 University Avenue, Clive, Iowa 50325-8225.

[ARC 1954C, IAB 4/15/15, effective 5/20/15]

531—6.6(17A) Service and filing of petitions and other papers.

— **6.6(1) When service required.** Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

— **6.6(2) Filing when required.** All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa Lottery Authority, 13001 University Avenue, Clive, Iowa 50325-8225. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the lottery.

— **6.6(3) Method of service, time of filing, and proof of mailing.** Method of service, time of filing, and proof of mailing shall be as provided by 531—5.11(17A).

[ARC 1954C, IAB 4/15/15, effective 5/20/15]

531—6.7(17A) Consideration. Upon request by petitioner, the lottery must schedule a brief and informal meeting between the original petitioner, all intervenors, and the lottery, a member of the lottery authority board, or a member of the staff of the lottery, to discuss the questions raised. The lottery may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the lottery by any person.

531—6.8(17A) Action on petition.

— **6.8(1)** Within the time allowed by Iowa Code section 17A.9(5) after receipt of a petition for a declaratory order, the chief executive officer of the lottery or a designee shall take action on the petition as required by Iowa Code section 17A.9(5).

— **6.8(2)** The date of issuance of an order or of a refusal to issue an order is as defined in rule 531—5.2(17A).

531—6.9(17A) Refusal to issue order.

— **6.9(1)** The lottery shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

— 1. The petition does not substantially comply with the required form.

- 2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the lottery to issue an order.
- 3. The lottery 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 agency 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 an agency 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 lottery to determine whether a statute is unconstitutional on its face.
- 6.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.
- 6.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

531—6.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

531—6.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

531—6.12(17A) 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. It is binding on the lottery, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the lottery. The issuance of a declaratory order constitutes final agency action on the petition.

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

[Filed emergency 6/14/85—published 7/3/85, effective 6/14/85]

[Filed emergency 12/23/86—published 1/14/87, effective 12/26/86]

[Filed 8/12/94, Notice 6/8/94—published 8/31/94, effective 10/5/94]

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

[Filed emergency 8/28/03—published 9/17/03, effective 8/28/03]

[Filed 3/12/04, Notice 9/17/03—published 3/31/04, effective 5/7/04]

TITLE 701 – IOWA DEPARTMENT OF REVENUE

CHAPTER 5

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

701—5.1(17A,22,99G,123,421,422-454) Definitions. As used in this chapter:

“Confidential record” means a record that is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include but are not limited to records or information contained in records that the department is prohibited by law from making available for examination by members of the public; records or information contained in records that are specified as confidential by Iowa Code sections 22.7, 99G.34, 123.38A, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record; and confidential state tax information and federal tax information. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“Confidential state tax information” means information that is protected from disclosure by Iowa Code sections 422.20, and 422.72, 437A.14, 437B.10, 453B.10, 450.68, and 452A.63. Confidential state tax information includes but is not limited to state tax returns and return information. Confidential state tax information does not include federal tax information (FTI). If confidential state tax information is contained in a record, that record may also be considered a confidential record protected by Iowa Code chapter 22.

“Custodian” means the department, the director of revenue, the department’s public information officer, or a person lawfully delegated authority by the department to act for the department in implementing Iowa Code chapter 22.

“Department” means the department of revenue.

“Federal tax information” or “FTI” means return or return information received directly from the IRS or obtained through an authorized secondary source ~~such as Social Security Administration (SSA), federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS) or Centers for Medicare and Medicaid Services (CMS) or another entity~~ acting on behalf of the IRS pursuant to an IRC §6103(p)(2)(B) agreement. Copies of tax returns or return information provided to the department directly by a taxpayer or the taxpayer’s representative, including but not limited to tax returns or return information provided to the department through electronic filing as defined in 701—8.5(1), or obtained from public information files (e.g., federal tax liens on file with the county clerk, Offers in Compromise available for public inspection, court records) are not considered FTI ~~for the purposes of this chapter~~.

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

“IRC” means the Internal Revenue Code.

“IRS” means the Internal Revenue Service.

“Open record” means a record other than a confidential record.

“Personally identifiable information” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system. The term “personally identifiable information” includes “personal information” as defined in Iowa Code section 715C.1.

“Record” means the whole or a part of a “public record” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the department. Records include confidential records.

“Record system” means any group of records under the control of the department from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual. A record system is a “system,” as defined below.

“Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. “Routine use” includes disclosures required ~~to be made~~ by statute other than the public records laws codified at Iowa Code chapter 22.

“System” means any of the following:

1. Computer hardware or software;
2. Computerized processes and procedures;
3. Noncomputerized processes and procedures.

“Tax administration” means the administration, management, conduct, direction, and supervision of the execution and application of the state tax laws; means the development and formulation of state tax policy; and includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421-454, and ~~422~~.

[ARC 6583C, IAB 10/5/22, effective 11/9/22]

701—5.2(17A,22,99G,123,421-454,422) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. ~~It also seeks and~~ to facilitate sound department determinations with respect to the handling of confidential records and the implementation of the fair information practices Act Iowa Code section 22.11. ~~The department is committed to the policies set forth in Iowa Code chapter 22 as well as to the taxpayer confidentiality provisions in Iowa Code chapter 422. Department staff shall cooperate with members of the public in implementing the relevant provisions of Iowa Code chapters 22 and 422.~~

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421-454, and ~~422~~.

[ARC 6583C, IAB 10/5/22, effective 11/9/22]

701—5.3(17A,22,99G,123,421-454,422) Requests for public records.

5.3(1) Availability of records. Department records are open for public inspection and copying unless they are confidential or otherwise not subject to public inspection by rule or law. The department is not obligated to create a record if a requested record does not exist.

5.3(2) Methods for submitting a records request. Record requests shall be submitted using one of the following methods:

a. Mail. Requests by mail should be addressed to: Public Information Officer, Iowa Department of Revenue, P.O. Box 10457, Des Moines, Iowa 50306.

b. Electronic submission. Instructions for submitting requests electronically can be found on the department’s website, ~~taxrevenue.iowa.gov~~.

c. Hand delivery. Requests should be hand-delivered to the department of revenue office on the first floor of the Hoover State Office Building, 1305 East Walnut St., Des Moines, Iowa.

d. Telephone. Instructions for submitting requests by telephone can be found on the department’s websites, ~~taxrevenue.iowa.gov~~ or ialottery.com.

5.3(3) Content of a records request.

a. Requests shall identify the particular records sought by name or description and include the name, address, email, and telephone number of the person requesting the records.

b. ~~A person shall not be required to give a~~ No reason need be given for requesting an open record. ~~However, if a person requesting a record requests a fee waiver pursuant to paragraph 5.3(6)“f,” the department may require the requester to provide information to support granting a fee waiver, including the reason for the records request. Requests for confidential records must comply with this rule and rule 701—5.4(17A,22,421,422).~~ Department staff may request additional information from the requester for the purposes of clarification or identification of ~~appropriate documents~~responsive records.

5.3(4) Response to requests. Records ~~shall~~ will be provided as soon as feasible. ~~Release of an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The redaction and request for redaction process in Iowa Code sections 422.20(5) and 422.72(8) and rule 701—7.8(17A) shall be considered a determination of whether a government record is a public record or a confidential record under Iowa Code section 422.8(4)“e.”~~ The custodian ~~shall~~ will promptly give notice to the requester of the reason for any delay in providing an open record and an estimate of the length of that delay and, upon request, ~~shall~~ will promptly provide that notice to the requester in writing. ~~The custodian of a record may deny members of the public access to the record only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), that the record is a confidential record, or that its disclosure is prohibited by the order of the director or the director’s designee.~~ Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 701—5.4(17A,22,421,422) and other applicable provisions of law.

5.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from department files. Examination and copying of department records ~~shall~~ will be supervised by the custodian or a designee of the custodian. Records ~~shall~~ will be protected from damage and disorganization.

5.3(6) Fees.

a. When charged. ~~Pursuant to Iowa Code section 22.3, t~~The department may charge fees in connection with the search, retrieval, examination, and copying of requested records.

b. Copying and postage fees. Price schedules for published materials and for photocopies of records supplied by the department ~~shall~~ will be posted on the department’s websites. ~~Copies of records may be made for members of the public on department photocopy machines or from electronic storage systems at costs determined and posted on the department’s website.~~ When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Search, retrieval, and examination fee. An hourly fee may be charged for actual department expenses associated with the search, retrieval, and examination of requested records. The fee ~~shall be~~ is based upon the pay scale of the employee involved and other actual costs incurred. The department provides the first two hours of search, retrieval, and examination of responsive records free of charge.

d. Estimated fee. Within a reasonable time after a request is made, the department ~~shall~~ will provide to the requester an estimated fee of the actual costs expected to be incurred by the department in fulfilling the request.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

f. Fee waivers. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421-454.

[ARC 6583C, IAB 10/5/22, effective 11/9/22]

701—5.4(17A,22,99G,123,421-454,422) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. ~~The procedure governing the request and release of such confidential records is addressed below.~~

5.4(1) Procedure. In requesting the custodian to permit the examination and copying of such confidential records, the following procedures apply and are in addition to those specified for requests for access to records in rule 701—5.3(17A,22,421,422).

a. Form of request. A person requesting access to confidential records shall submit the request in writing. The department may require the requester to provide additional documentation, including but not limited to proof of identity and authority to secure access to the record. The department may also require the requester to sign a certified statement or affidavit listing the specific reasons justifying access to the record and provide any proof necessary to establish relevant facts.

b. Response to request. The department ~~must~~will notify the requester of approval or denial of the request for access. The notice ~~must~~will include:

- (1) The name and title or position of the person responding on behalf of the department; and
- (2) If the request for access is denied, a brief statement of the grounds for denial including a citation to the applicable statute or other provision of law.

c. Request granted. When the department grants a request for access to a confidential record to a particular person, the department ~~must~~will notify that person and indicate any lawful restrictions imposed by the department on that person's inspection and copying of the record.

d. Reconsideration of denial. A requester whose request is denied by the department may apply to the director for reconsideration of the request.

e. ~~Persons who must follow procedure. The procedure described in this subrule must be followed by any person requesting information on delinquent tax, interest, penalty or other confidential information under rule 701—202.12(423).~~

5.4(2) Notice to subject of record and opportunity to obtain an injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, or whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

5.4(3) Requesting a copy of a return. A taxpayer requesting a copy of the taxpayer's own tax return must do so via GovConnectIowa. There will be a \$5 charge for each return requested. Payment ~~must~~ will be received prior to release of the return.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421-454, and ~~422~~.

[ARC 6583C, IAB 10/5/22, effective 11/9/22]

~~701—5.5(17A,22,99G,123,421-454,422)~~ Requests for treatment of a record as a confidential record and its withholding from examination. The department may treat a record as a confidential record and withhold it from examination only ~~as to the extent that it is~~ authorized by Iowa Code sections 22.7, 99G.34, 123.38A, 422.20, and 422.72; other applicable provisions of law; or an order. ~~Persons may request that the department treat a document as a confidential record and withhold the document from public inspection. The procedures for making a request are described below.~~

5.5(1) Requests related to records submitted as part of an appeal or contested case. Any person who seeks to request confidential treatment for any document submitted as part of an appeal or contested case filed under 701—~~C~~chapter 6-7 must file a motion for redaction as described in rule 701—7.8(17A).

5.5(2) Requests for confidential treatment of any other record. Any person who seeks to request confidential treatment of any record that has not been submitted as part of an appeal or contested case filed under 701—~~C~~chapter 6-7 must follow the following procedure:

a. Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

b. Request. A request that a record be treated as a confidential record and be withheld from public inspection shall:

- (1) Be in writing; ~~and~~
 - (2) Be filed with the department using the one of the methods in subrule 5.3(2), excluding submission by telephone ~~listed in paragraph 5.3(2)“d”~~; ~~and~~
 - (3) Set forth the legal and factual basis justifying such confidential record treatment for that record; ~~and~~
 - (4) Include the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request.
- ~~(5) A person requesting treatment of a record as a confidential record may also be required to include a signed a-certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts.~~
- ~~(6) A person may request that a record be treated as confidential for a limited period of time. Requests for limited confidential record treatment shall also sSpecify the precise period of time for which that treatment is requested.~~

(5) ~~The requester shall, if possible, include a copy of the record for which confidential record treatment is being sought with the request.~~

c. Failure to request. Failure ~~of a person~~ to request confidential ~~record~~ treatment for a record does not preclude the custodian from treating it as a confidential record, unless otherwise provided by law.

However, if a person who has submitted information to the department that could be considered a confidential record under Iowa Code section 22.7(3) or 22.7(6) does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6) absent a request as outlined in this rule, the custodian of records containing that information may proceed as if that person has there is no objection to its ~~the record's~~ disclosure to members of the public.

d. Timing of decision. ~~A decision by~~ The custodian ~~about~~ may decide whether to disclose a record or a portion of a record to members of the public ~~may be made~~ when a request for confidential record treatment is filed, or when the custodian receives a request for access to the record by a member of the public.

e. Request granted or deferred. If a request for confidential record treatment is granted, or if action on a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. ~~If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection during the pendency of that subsequent request.~~

f. Request denied and opportunity to seek an injunction. If a request for confidential record treatment is denied, the custodian ~~shall~~ will notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record ~~shall~~ will not be withheld from public inspection for any period of time if the custodian determines that the requester has ~~no~~ reasonable grounds to justify the treatment of that record as a confidential record. The custodian ~~shall~~ will notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421-454, and 422.

[ARC 6583C, IAB 10/5/22, effective 11/9/22]

701—5.6(17A,22,99G,123,421-454,422) Consensual disclosure of confidential records.

5.6(1) Consent to disclosure by a subject. To the extent permitted by law, the subject may consent in writing to department disclosure of confidential records as provided in rules 701—5.7(17A,22,421,422) and 701—7.6(17A,22,421,422).

5.6(2) Complaints to public officials not an authorization—separate authorization required. A letter from the subject of a confidential record to a public official that seeks the official's intervention on behalf of the subject in a matter that involves the department ~~shall~~ is not, to the extent permitted by law, ~~be~~ treated as an authorization to release sufficient information about the subject to the official to resolve the matter. The subject of a confidential record filing a complaint ~~must~~ needs to submit a disclosure authorization as provided in rules 701—5.7(~~17A,22,421,422~~) and 701—7.6(~~17A,22,421,422~~).

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421-454, and 422.

[ARC 6583C, IAB 10/5/22, effective 11/9/22]

701—5.7(17A,22,99G,123,421-454,422) Tax information disclosure designation.

5.7(1) Powers authorized. A taxpayer may designate an individual to receive, inspect, and discuss the taxpayer's confidential state tax information from the department. Such designation does not authorize the designee to act or authorize any action on the taxpayer's behalf in any way other than to receive information and communicate with the department. For transfers of decision-making authority, see Iowa Code section 421.59 and rule 701—7.6(17A,22,421,422).

5.7(2) Contents of the tax information disclosure designation form. A taxpayer must use the department's tax information disclosure designation form, or other designated method authorized by the department, to designate an individual to receive, inspect, and discuss confidential state tax information. A tax information disclosure designation form must contain the following information to be valid:

- a. Legal name and address of the taxpayer;
- b. Identification number of the taxpayer (i.e., social security number ([SSN]), federal identification number ([FEIN]), or any federal- or Iowa-issued tax identification number);
- c. The designee's name, mailing address, and identification number (i.e., preparer's tax identification number ([PTIN]), FEIN, SSN, individual taxpayer identification number ([ITIN]), or Iowa department of revenue-issued account number ([IAN])). In lieu of a designee's identification number, a taxpayer may indicate that an IAN is being requested for the designee;
- d. Description of the matter(s) for which disclosure is authorized, which may include:
 - (1) The type of tax(es) involved or an indication that all tax types are within the scope of disclosure;
 - (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
 - (3) Business tax permit number or an indication that all tax types are within the scope of authority;
- e. 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 5.7(1);
- f. An authorized signature of an individual listed in subrule 5.7(4) meeting the requirements of rule 701—8.2(17A,421);
- g. Any other information required by the department.

5.7(3) Authorization period for a tax information disclosure designation.

- a. A tax information disclosure designation may not be used to authorize disclosure for tax periods that end more than three years after the date on which the tax information disclosure designation is signed by the taxpayer. A tax information disclosure designation may concern an unlimited number of tax periods that have ended prior to the date on which the tax information disclosure designation is received by the department; however, tax periods must be stated if the intention is to limit the periods. If the tax periods section is left blank, all tax periods, including those ending up to three years in the future, are included.
- b. A tax information disclosure designation continues to be effective for tax periods as defined in paragraph 5.7(3)"a" until revocation by the taxpayer, incapacity of the taxpayer, death of the taxpayer, or withdrawal, death, or incapacity of the tax information disclosure designee.

5.7(4) Individuals who may execute a tax information disclosure designation. The individual(s) who may execute a tax information disclosure designation depends on the type of taxpayer involved:

a. Individual. In matters involving an individual taxpayer, a tax information disclosure designation must be signed by the individual.

b. 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 a tax information disclosure designation form for the joint return.

c. Third parties. The tax information disclosure designation form may be signed by an individual who has been authorized to act on behalf of the taxpayer under Iowa Code section 421.59.

5.7(5) Revocation and withdrawal.

a. Revocation by the taxpayer.

(1) By written statement. By filing a statement of revocation with the department, a taxpayer may revoke a tax information disclosure designation without authorizing a new representative. The statement of revocation must include the following:

1. Name, address, and identification number of the taxpayer (i.e., SSN, FEIN, or any federal- or Iowa-issued tax identification number);

2. Name, address, and identification number (i.e., PTIN, FEIN, SSN, ITIN, or IAN) of the designee whose designation is to be revoked;

3. A clear statement to revoke the designee's disclosure designation; and

4. Signature of an authorized signatory as described in subrule 5.7(4).

(2) Does not automatically revoke. A new tax information disclosure designation for a particular tax type(s) and tax period(s) does not revoke a prior tax information disclosure designation for any tax type(s) and tax period(s), unless the taxpayer has indicated in a written submission to the department that a prior tax information disclosure designation is to be revoked.

b. Withdrawal by the designee. By filing a statement with the department, a designee may withdraw from the designation in a matter in which a tax information disclosure designation has been filed. The statement must include the following:

(1) Name, address, and identification number of the taxpayer (i.e., SSN, FEIN, or any federal- or Iowa-issued tax identification number);

(2) Name, address, and tax identification number (i.e., PTIN, FEIN, SSN, ITIN, or IAN) of the designee whose designation is to be withdrawn;

(3) A clear statement that the designee wishes to withdraw;

(4) Signature of withdrawing designee and signature date.

5.7(6) Submitting a form.

a. Submit separately. A tax information disclosure designation form may not be submitted as an attachment to a tax return except as provided by these rules. A tax information disclosure designation must be submitted separately to the department in accordance with the submission instructions on the form. However, the department may, at its discretion, provide a method for authorizing disclosure on the face of a tax return as defined in Iowa Code section 421.6.

b. Original or electronic forms accepted. The department will accept either the original, a copy, or an electronically scanned and transmitted form. A copy received by facsimile transmission (fax) or email will be accepted. All forms, whether original copy, received via fax, or 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~~ If the form is not submitted within six months of the date it is signed, ~~or~~ it will be considered invalid.

d. Evaluation of documentation provided. The department will evaluate the tax information disclosure designation form and any additional documentation to confirm authorization. Authorization to receive, inspect, and discuss confidential state tax information from the department shall only cover those matters and time frames covered by the submitted documentation. The party claiming authorization to receive, inspect, and discuss confidential state tax information from 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 authorization.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421-454, ~~and 422~~.

[ARC 6583C, IAB 10/5/22, effective 11/9/22]

701—5.8(17A,22,99G,123,421-454,422) Disclosures without the consent of the subject. Open records and certain confidential records may be disclosed by the department without the consent of the subject. ~~The guidelines governing such disclosures are described below.~~

5.8(1) Disclosure of ~~open~~non-confidential records. All ~~open~~non-confidential records may be disclosed without the consent of the subject.

5.8(2) Disclosure of confidential records that do not contain confidential state tax information. Certain confidential records that do not contain confidential state tax information may, ~~in limited circumstances~~, be disclosed without the consent of the subject. The following disclosures will generally occur without notice to the subject:

a. For routine use. The following non-exclusive list of uses are considered routine ~~uses~~:

(1) Disclosure to those officers, employees, and agents of the department who have a legitimate need for the record in the performance of their duties. The custodian of the record may, upon the request of any officer or employee, or upon the custodian's own initiative, determine what constitutes a legitimate need;

(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory action;

(3) Information released to ~~staff of~~ federal and state entities for audit purposes for purposes of determining whether the department is operating ~~a program~~ lawfully;

(4) Any disclosure specifically authorized by statute.

b. To a recipient who has provided the department with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has

submitted a written request pursuant to rule 701—5.4(17A,22,421,422) to the department specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual. Confidential information will be disclosed pursuant to this paragraph only after notice is sent by the department to the last-known address of the subject of the confidential information.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a lawful court order or subpoena.

5.8(3) Disclosure of confidential state tax information.

a. Permitted disclosures. Confidential state tax information may be disclosed without the consent of the subject only to the extent that it is expressly permitted by law. The following is a nonexclusive list of permitted disclosures:

(1) Disclosures to other agencies, employees, or officials of this state to the extent ~~required as part necessary for the performance of~~ their official duties and responsibilities pursuant to Iowa Code section 422.72(1)“b.” ~~Officers or employees of the state of Iowa may examine confidential state tax information belonging to the department to the extent that access to the information is required as part of their official duties and responsibilities.~~ Such information will only be disclosed upon the express written approval of the director of revenue or the director’s designee. Written approval will be granted in only those situations where the information obtained is used for a tax administrative purpose. ~~The written approval and~~ will cover the conditions and procedures under which specific information will be released.

(2) Disclosures permitted by statute for purposes other than tax administration. ~~Confidential state tax information may be disclosed without the consent of the subject when disclosure is expressly permitted by statute.~~ Such disclosures may be made without a tax administrative purpose, unless the authorizing statute provides otherwise.

(3) Disclosures to the federal government and agencies of other states. ~~The director of revenue or director’s designee may disclose confidential state tax information to tax officials of another state or the United States government without the consent of the subject~~ so long as the disclosures are made for a tax administrative purpose and are made only to officers of those jurisdictions which by agreement with this state limit the disclosure of the information as strictly as the laws of ~~this state~~Iowa protecting the confidentiality of returns and return information.

(4) Disclosure pursuant to subpoena. ~~The director of revenue or the director’s designee must provide confidential state tax information in response to a subpoena~~ as outlined in Iowa Code section 422.72(7).

(5) Disclosure pursuant to Iowa Code section 421.19. ~~The department may disclose confidential state tax information in exercising any power under Iowa Code section 421.19,~~ regardless of whether such disclosure is made for a tax administration purpose.

b. Penalties for unlawful disclosure of confidential state tax information. Any officer, employee, agent, former officer, former employee, or former agent of the state of Iowa who engages in any of the following activities commits a serious misdemeanor:

(1) Knowingly files a false affidavit with the department to secure confidential state tax information;

(2) Willfully or recklessly divulges, prints, publishes, inspects or permits unauthorized examination of confidential state tax information in violation of Iowa Code sections 422.20 and 422.72 or divulges information received under this rule in any manner prohibited by this rule.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421-454.

[ARC 6583C, IAB 10/5/22, effective 11/9/22]

701—5.9(17A,22,99G,123,421-454,422) Release to subject or owner of record.

5.9(1) The subject of a record may request to review the subject's own records by following the procedures in rules 701—5.3(~~17A,22,421,422~~) and 701—5.4(~~17A,22,421,422~~). However, the department need not release the following records to the subject:

- a. Communications to the department that are protected from disclosure under Iowa Code section 22.7(18). Such protected communications include responses to questionnaires solicited by the department that relate to tax administration.
- b. Records that are work product of an attorney or are otherwise privileged.
- c. Peace officer's investigative reports, except when disclosure is required by law.
- d. Any other records that may be withheld by law.

5.9(2) Where a requested record contains information on multiple subjects, the department may take reasonable steps to protect confidential information relating to the subject or subjects that did not make the request when releasing the record to the requesting subject.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421-454, and 422.

[ARC 6583C, IAB 10/5/22, effective 11/9/22]

701—5.10(17A,22,99G,123,421-454,422) Personally identifiable information collected and stored by the department. The department collects and maintains both open records and confidential records that contain personally identifiable information. This rule describes the nature, extent, retrieval, storage, and processing of personally identifiable information within the department's record systems.

5.10(1) Nature and extent. All record systems maintained by the department may contain personally identifiable information concerning matters such as income; property holdings; exchanges; financial transactions; licensing; contested case matters; waivers of rule and declaratory rulings; procurement and leases; bailment shipments; lottery prize claims; lottery sales commission payments; audit and examination; litigation; personnel; and demographic information such as address and number of dependents.

5.10(2) Retrieval. Personal identifiers are used to retrieve information from any of the record systems that the department maintains that contain personally identifiable information.

5.10(3) Means of storage. Paper, microform, and various electronic means of storage are used to store records containing personally identifiable information.

5.10(4) Comparison. Electronic or manual data processing may be used to match, to collate, or to compare personally identifiable information in one system with personally identifiable information in another system of records or with personally identifiable information within the same system.

5.10(5) Comparison with data from outside the department. Personally identifiable information in systems of records maintained by the department may be compared with information from outside the

department when specified by law. Permitted comparisons include, but are not limited to, comparisons for the purpose of setoffs.

5.10(6) Records containing personally identifiable information.

a. Personally identifiable information is collected from documents, returns, and any other record filed with the department, as well as from outside sources, including state and federal agencies. Authority to collect this information is found throughout Iowa Code chapters 8A, ~~and 17A, 19G, and 123, as well as and~~ Title X of the Iowa Code, ~~including Iowa Code section 421.17(35). Such information is stored within the department, in electronic or physical format.~~ The chart below describes department records that contain personally identifiable information and identifies which records are open records, confidential records, partially open or partially confidential. A single record may contain information from several categories in the chart. This information is compiled for the purposes of Iowa Code section 22.11.

Code.....Meaning

O.....The records are open for public inspection.

C.....The records are confidential and are not open to public inspection.

O/C.....The record is partly open and partly confidential.

Description of Record	Type of Record	Legal Authority for Confidentiality
State tax returns, return information, permit records, tax liability and penalty records, tax policy, tax research records, and all related records	O/C	Iowa Code Title X, including Iowa Code sections 422.20 and 422.72
Nontax collection records	O/C	Iowa Code Title X, including Iowa Code sections 422.20 and 422.72, and contractual authority
Federal tax returns and return information	C	26 U.S.C. § <u>section</u> 6103
Department personnel records, communication records, budget records, and payroll records	O/C	Iowa Code sections 22.7, <u>99G.34(2)</u>
Minutes of closed meetings of a government body	C	Iowa Code section 21.5(4)
Records that constitute attorney work product or attorney-client communications or are otherwise privileged	C	Iowa Code section 22.7(4), Iowa Rule of Civil Procedure 1.503, Federal Rule of Civil Procedure 26(b)(3), and case law
<u>Sealed bids</u>	<u>O/C</u>	<u>Iowa Code section 72.3</u>
<u>Final orders, decisions, and opinions</u>	<u>O/C</u>	<u>Iowa Code section 17A.3(1)(d)</u>
<u>License and permit records</u>	<u>O/C</u>	<u>Iowa Code section 99G.24, chapter 123, and title X</u>

<u>Investigation, audit, and examination records</u>	<u>O/C</u>	<u>Iowa Code sections 99G.34(4), 99G.35, 123.38A, 422.20, 422.72</u>
<u>Lottery player and winner lists</u>	<u>O/C</u>	<u>Iowa Code sections 99G.34(2), (5), 99G.41(3)</u>
<u>Lottery retailer compensation payments</u>	<u>O/C</u>	<u>Iowa Code sections 99G.24(2), 99G.34(2), 99G.41(5)</u>

- b. The procedure for public records request may be found in rule 701—5.3(~~17A, 22, 421, 422~~).
- c. The procedure for allowing a person to have additions, dissents, or objections entered in the record will be determined on a case-by-case basis.
- d. The subject of the confidential record may either request the record independently and give it to the named third party or authorize the third party to request the subject's confidential information under Iowa Code sections 421.59, 422.20(7), or 422.72(9).
- e. The department will utilize information, including confidential information, in executing its duties under the Iowa Code. Subjects of the information will not be notified when the information is used. Persons outside of the department receiving confidential information are held to the same confidentiality standard as departmental employees. Whether information is required or optional will be indicated along with the request for information. Failing to provide required information may result in penalties or interest being charged.
- f. The department utilizes more than one data processing system, and information is matched between systems.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421-454, ~~and 422~~.

[ARC 6583C, IAB 10/5/22, effective 11/9/22]

701—5.11(~~17A, 22, 99G, 123, 421-454, 422~~) Retention of submitted documents. When the subject or owner of a record has submitted a document to the department, the department will store the document in the same manner that it stores other records of a similar nature. Documents submitted to the department may be destroyed by the department at the conclusion of the applicable time period detailed in the department's record retention schedules, unless destruction is otherwise prohibited by law. The department discourages submitting original documents in situations where an original is not required. If an original document must be submitted, the person submitting the document shall indicate conspicuously that the document is an original and shall also indicate whether that person requests that the original be returned at the conclusion of its use by the department.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421-454, ~~and 422~~.

[ARC 6583C, IAB 10/5/22, effective 11/9/22]

701—5.12(~~17A, 22, 99G, 123, 421-454, 422~~) Limited applicability. This chapter does not:

1. ~~Require~~ Mandate that the department ~~to~~ index or retrieve records that contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records that would otherwise not be available under Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of, or access to records in possession of the department that are governed by regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the department in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings ~~shall~~are be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the department.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421-454, and ~~422~~.

[ARC 6583C, IAB 10/5/22, effective 11/9/22]

[Filed 4/27/88, Notice 3/9/88—published 5/18/88, effective 6/22/88]

[Filed emergency 5/26/88—published 6/15/88, effective 6/22/88]

[Filed 10/9/92, Notice 9/2/92—published 10/28/92, effective 12/2/92]

[Filed 11/24/99, Notice 10/20/99—published 12/15/99, effective 1/19/00]

[Filed 10/24/03, Notice 9/17/03—published 11/12/03, effective 12/17/03]

[Filed 3/26/04, Notice 2/18/04—published 4/14/04, effective 5/19/04]

[Filed ARC 1545C (Notice ARC 1469C, IAB 5/28/14), IAB 7/23/14, effective 8/27/14]

[Filed ARC 5532C (Notice ARC 5398C, IAB 1/27/21), IAB 3/24/21, effective 4/28/21]

[Filed ARC 6583C (Notice ARC 6452C, IAB 8/10/22), IAB 10/5/22, effective 11/9/22]

TITLE 185—ALCOHOLIC BEVERAGES DIVISION

CHAPTER 18

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

~~The alcoholic beverages division hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules on Agency Procedure relating to public records and fair information practices, which are published at www.legis.iowa.gov/does/Rules/Current/UniformRules.pdf on the general assembly's website.~~

~~185—18.1(123,22) Definitions. As used in this chapter:~~

~~“Agency.” In lieu of the words “(official or body issuing these rules)”, insert “alcoholic beverages division”.~~

~~185—18.3(123,22) Requests for access to records:~~

~~———18.3(1) Location of record. In lieu of the words “(insert agency head)” insert “Chief, Licensing Bureau, Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021”; and in lieu of the words “(insert agency name and address)”, insert “alcoholic beverages division at the above-stated address”.~~

~~———— 18.3(2) Office hours. In lieu of the words “(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)”;~~
~~insert “8 a.m. — to 4:30 p.m. — daily, excluding Saturdays, Sundays and legal holidays”.~~

~~———— 18.3(7) Fees.~~

~~———— c. ——— Supervisory fee. In lieu of the words “(specify time period)”;~~ insert “thirty minutes”.

~~185—18.9(123,22) Disclosures without the consent of the subject.~~

~~———— 18.9(1) Open records are routinely disclosed without the consent of the subject.~~

~~———— 18.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:~~

~~———— a. ——— For a routine use as defined in rule 185—18.10(123,22) or in any notice for a particular record system.~~

~~———— b. ——— To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided, that, the record is transferred in a form that does not identify the subject.~~

~~———— c. ——— To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.~~

~~———— d. ——— To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.~~

~~———— e. ——— To the legislative services agency under Iowa Code section 2A.3.~~

~~———— f. ——— Disclosures in the course of employee disciplinary proceedings.~~

~~———— g. ——— In response to a court order or subpoena.~~

~~185—18.10(123,22) Routine use.~~

~~———— 18.10(1) Defined. “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.~~

~~———— 18.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:~~

~~———— a. ——— Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.~~

~~———— b. ——— Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.~~

~~———— c. ——— Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.~~

~~———— d. ——— Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.~~

~~———— e. ——— Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.~~

~~———— f. ——— Any disclosure specifically authorized by the statute under which the record was collected or maintained.~~

~~———— g. ——— The following records are routinely disseminated to members of the public:~~

~~———— (1) ——— Information collected and maintained concerning ownership and location of establishments licensed under Iowa Code chapter 123.~~

~~———— (2) ——— Information collected and maintained on licensees' dramshop liability insurance.~~

~~———— (3) ——— Information collected and maintained concerning the status of contested case matters in which disciplinary action has been taken against a licensee or permittee.~~

~~———— (4) ——— Information collected and maintained identifying the names of distillers, vintners, and brewers, their employees, agents, representatives, and designated wholesalers.~~

~~———— (5) ——— Information identifying the name and address of a licensee's, permittee's, wholesaler's, or certificate of compliance holder's registered agent for service of process.~~

~~———— (6) ——— Information provided to the agency which identifies the names, addresses and telephone numbers of board members of organizations of interest to licensees and permittees.~~

~~———— (7) ——— Information identifying the names and addresses of nonliquor related vendors (i.e., landlords) and the names and addresses of the agency's sublessees.~~

~~[ARC 7073C, IAB 9/20/23, effective 10/25/23]~~

~~185—18.11(123,22) Consensual disclosure of confidential records.~~

~~———— 18.11(1) Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 185—18.7(123,22).~~

~~———— 18.11(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.~~

~~185—18.12(123,22) Release to subject.~~

~~———— 18.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 185—18.6(123,22). However, the agency need not release the following records to the subject:~~

~~———— a. ——— The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.~~

~~———— b. ——— Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.~~

~~———— c. ——— Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5))~~

~~———— d. ——— As otherwise authorized by law.~~

~~———— 18.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.~~

~~185—18.13(123,22) Availability of records.~~

~~———— 18.13(1) General. Agency records are open for public inspection and copying unless otherwise provided by rule or law.~~

~~———— 18.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.~~

~~———— a. ——— Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)~~

~~———— b. ——— Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)~~

~~———— c. ——— Records which are exempt from disclosure under Iowa Code section 22.7.~~

~~———— d. ——— Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))~~

~~———— e. ——— Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“d.”~~

~~———— f. ——— Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:~~

~~———— (1) ——— Enable law violators to avoid detection;~~

~~———— (2) ——— Facilitate disregard of requirements imposed by law; or~~

~~———— (3) ——— Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3)~~

~~———— g. ——— Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.~~

~~———— h. ——— Any other records made confidential by law.~~

~~———— 18.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law.~~

~~Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 185—18.4(123,22). If the agency initially~~

determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 18.4(3).

185—18.14(123,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 185—18.1(123,22). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the agency are:

———18.14(1) Licensing records. Licensing records include, but are not limited to, information identifying ownership, location, form of business entity and statements concerning eligibility of applicants to hold retail alcohol licenses and permits. These records are collected and maintained pursuant to Iowa Code sections 123.23, 123.29, 123.30, 123.33, 123.42, 123.49, 123.124, 123.125, 123.127, 123.135, 123.173, 123.175, 123.176, and 123.180. Licensing records are stored on microfiche, in an automated data processing system, and in extant form. The information stored in the automated data system does not match, collate or permit comparison with other data processing systems. The information contained in licensing records is public information.

———18.14(2) Contested case matters. These records are collected and maintained pursuant to Iowa Code sections 17A.12, 17A.3(1)“d,” 17A.3(2), 123.24, 123.39, 123.49, and 123.50. Contested case matters are stored on microfiche, and in extant form. The information stored does not match, collate or permit comparison with other data processing systems. The information contained in contested case matters is public information. Contested case matters include all pleadings, motions, briefs, orders, transcripts, exhibits, and physical evidence utilized in the resolution of the matter.

———18.14(3) Waivers of rule and declaratory rulings. Waivers of rule and declaratory rulings may contain information which identifies individuals. These records are maintained pursuant to Iowa Code section 17A.9 and rule 185—1.3(123,17A). Waivers of rule and declaratory rulings are stored on microfiche and in extant form. The method of storage does not match, collate or permit comparison with other data processing systems. The information contained in waivers of rule and declaratory rulings is public information.

———18.14(4) Purchase orders, invoices, account numbers and personal identification numbers. Purchase orders and invoices include, but are not limited to, records of purchases of alcoholic liquor made by class “E” retail alcohol licensees from the agency and related shipping and transmittal documents. Account numbers and personal identification numbers identify individual class “E” retail alcohol licensees and provide the agency with a method of filling orders, shipping and obtaining payment for liquor from telephone orders by class “E” retail alcohol licensees. These records are collected and maintained pursuant to Iowa Code sections 123.16, 123.24 and 123.30. Purchase orders are stored in extant form and in automated data processing systems. The automated data processing systems used to store these records do not match, collate, or permit comparison with other data processing systems except to the extent that such records may be used by warehouse personnel for inventory control, movement of alcoholic liquor within the warehouse, and filling and shipping orders to class “E” retail alcohol licensees. The information contained in these records which identifies purchases made by individual class “E” retail alcohol licensees is confidential pursuant to Iowa Code section 22.7.

———18.14(5) Bailment shipments. Records of bailment shipments include, but are not limited to, information derived from suppliers concerning shipments of alcoholic liquor into the state warehouse facility, information generated internally concerning alcoholic liquor received from suppliers, information generated by the agency for accounting purposes concerning liquor purchases from suppliers, and information generated by the agency for purposes of inventory control. Records of bailment shipments may contain personally identifiable information on class “E” retail alcohol licensees, and to the extent that such record contains

information on purchases of liquor by individual class “E” retail alcohol licensees, the record is confidential. These records are collected and maintained pursuant to Iowa Code section 123.30. Records of bailment shipments are stored in extant form and in automated data processing systems. The method of storage does not match, collate, or permit comparison with other data processing systems, except that comparisons may be made for purposes of agency tracking or auditing liquor inventory.

——— 18.14(6) Nonliquor related vendors. Nonliquor related vendors include, but are not limited to, records of purchases of office supplies, warehouse supplies, trucks, trucking equipment and repairs, used in the internal operation of the agency. These records may contain personally identifiable information, and are collected and maintained pursuant to Iowa Code section 123.20. The information contained in these records is public information. These records are stored in extant form, and do not match, collate or permit comparison with automated data processing systems.

——— 18.14(7) Leases. Leases include records related to agency subleasing of former state liquor stores, the names and addresses of sublessees and landlords, and information concerning the buildings. This information is collected and maintained pursuant to Iowa Code section 123.20, and is public information. The records are stored in extant form and do not match, collate or permit comparison with automated data processing systems.

——— 18.14(8) Inspections and audits of licensees’ books and records. Inspections and audits of licensees’ books and records contain personally identifiable information relating to the operation of licensed establishments and beer and wine wholesalers’ operations. These records are collected and maintained pursuant to Iowa Code sections 123.33 and 123.138. These records are stored in extant form, and the manner of storage does not permit comparison with automated data processing systems. The information is public information, except to the extent that the records concerning purchases of liquor made by class “E” retail alcohol licensees from the agency are confidential. To the extent that these records may be used in anticipation of formal administrative proceedings, criminal or civil proceedings against a licensee or permittee, this chapter does not apply to these records.

——— 18.14(9) Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorneys’ notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

——— 18.14(10) Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—18.15(123,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 185—18.1(123,22). These records are routinely available to the public. However, the agency’s files of these records may contain confidential information as discussed in rule 185—18.13(123,22). The records listed may contain information about individuals.

———18.15(1) Rule making. Rule-making records may contain information about individuals making written or oral comments or proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

———18.15(2) Commission records. Agendas, minutes, and materials presented to the alcoholic beverages commission are available at the central offices of the alcoholic beverages division, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Council and commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored in an automated data processing system.

———18.15(3) Publications. News releases, annual reports, project reports, agency newsletters, etc., are available at the central offices of the alcoholic beverages division. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not stored in an automated data processing system.

———18.15(4) Statistical reports and compilations. Periodic reports of alcoholic liquor sales, statistics concerning statewide and regional consumption of liquor, wine, and beer, and lists of active and inactive licensees and permittees are available at the central offices of alcoholic beverages division.

———18.15(5) Policy manuals. The agency employees' manual, containing the policies and procedures for programs administered by the agency, is available in every office of the agency. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to Chief, Licensing Bureau, Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021. Policy manuals do not contain information about individuals.

———18.15(6) Other records. All other records that are not exempted from disclosure by law.

185—18.16(123,22) Other records. The agency maintains a variety of records which do not generally contain information pertaining to named individuals. The agency maintains the following records, not heretofore listed, which do not generally contain personally identifiable information: inventory control reports, records of purchases by the agency from vendors, auditing data, budgetary information, reports of total licensing fees generated by class of licensee or permittee, reports of total number of licenses and permits issued, reports of total number of bottles sold or purchased, reports of gallons of alcoholic liquor sold or purchased, bills of lading, and manifests.

185—18.17(123,22) Applicability. This chapter does not:

———1. ——— Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

———2. ——— Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

———3. ——— Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the rules of another agency.

———4. ——— Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

———5. ——— Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code section 22.11.

[Filed 5/2/88, Notice 3/23/88 — published 5/18/88, effective 6/22/88]

[Filed ARC 7073C (Notice ARC 7049C, IAB 7/26/23), IAB 9/20/23, effective 10/25/23]

TITLE 531 — LOTTERY AUTHORITY

531—1.5 (17A,22,99G,252J) Public records and fair information practices.

~~1.5(1)~~ In general, the business records of the lottery shall be public to the extent described in Iowa Code chapter 22. However, under Iowa Code Supplement section 99G.34, the following records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

~~a.~~ Marketing plans, research data, and proprietary intellectual property owned or held by the lottery under contractual agreements.

~~b.~~ Personnel, vendor, and player social security or tax identification numbers.

~~c.~~ Computer system hardware, software, functional and system specifications, and game play data files.

~~d.~~ Security records pertaining to investigations and intelligence-sharing information between lottery security officers and those of other lotteries and law enforcement agencies, the security portions or segments of lottery requests for proposals, proposals by vendors to conduct lottery operations, and records of the security division of the lottery pertaining to game security data, ticket validation tests, and processes.

~~e.~~ Player name and address lists, provided that the names and addresses of prize winners shall not be withheld.

~~f.~~ Operational security measures, systems, or procedures and building plans.

~~g.~~ Security reports and other information concerning bids or other contractual data, the disclosure of which would impair the efforts of the lottery to contract for goods or services on favorable terms.

~~h.~~ Information that is otherwise confidential obtained pursuant to investigations.

~~1.5(2)~~ Records, documents, and information in the possession of the lottery received pursuant to an intelligence-sharing, reciprocal use, or restricted use agreement entered into by the lottery with a federal department or agency, any law enforcement agency, or the lottery regulation or gaming enforcement agency of any jurisdiction shall be considered investigative records of a law enforcement agency not subject to Iowa Code chapter 22 and shall not be released under any condition without the permission of the person or agency providing the record or information. Additionally, the results of background investigations conducted pursuant to Iowa Code Supplement section 99G.10(8) shall not be considered public records.

~~1.5(3)~~ The lottery shall maintain and make available for public inspection at its offices during regular business hours a detailed listing of the estimated number of prizes of each particular denomination that are expected to be awarded in any game that is on sale or the estimated odds of winning the prizes and, after the end of the claim period, shall maintain and make available a listing of the total number of tickets or shares sold in a game and the number of prizes of each denomination that were awarded.

~~1.5(4)~~ Notwithstanding any statutory confidentiality provision, the lottery may share information with the child support recovery unit through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J or 598.

~~1.5(5)~~ Copies of public lottery business records may be obtained upon a written request made to the Iowa Lottery Authority, 13001 University Avenue, Clive, Iowa 50325-8225. The lottery may charge reasonable fees, including staff research and copying time, for the processing of any public records production requests.

This rule is intended to implement Iowa Code sections 22.11 and 252J.2, Iowa Code Supplement sections 99G.9(3) and 99G.10(8) and Iowa Code chapter 598.

CHAPTER 10 6

CONTESTED CASES RELATED TO ALCOHOL AND LOTTERY PROCEEDINGS

[Ch 10, IAC 11/3/75 rescinded see Ch 11]

[Prior to 10/8/86, Beer and Liquor Control Department[150]]

~~185—10.1701—6.1(99G, 123, 17A)~~ Scope and applicability. This chapter applies to contested case proceedings conducted pursuant to the department's authority under Iowa Code chapters 99G or 123 by the alcoholic beverages division.

~~185—10.2701—6.2(99G, 123, 17A)~~ Definitions. Except where otherwise specifically defined by law:

~~“Administrator” means the administrator of the alcoholic beverages division of the department of commerce.~~

~~“Appeal” means a dispute of a notice of assessment, refund denial, or other department action which may culminate in a contested case proceeding.¶~~

~~“Contested case” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case pursuant to Iowa Code section 17A.10A.~~

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

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

~~“Division” means the alcoholic beverages division of the department of commerce or the lottery division of the department, as applicable. divisions within the department's jurisdiction related to alcohol and lottery as indicated.~~

~~“Hearing complaint” means a statement in writing filed by, or on behalf of, the alcoholic beverages division department, a local authority having jurisdiction, or the department of public safety that sets forth the acts or omissions with which the respondent is charged, including the statute(s) and rule(s) which are alleged to have been violated under Iowa Code chapter 123. The hearing complaint shall be in sufficient detail to enable the preparation of the respondent's defense.~~

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

~~“Local authority” means “local authority” as defined in Iowa Code section 123.3(30).¶~~

~~“Motion” means the same as defined in Iowa Rule of Civil Procedure 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.~~

~~“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 administrator director, the administrator director's designee, or an administrative law judge from the department of inspections, and appeals, and licensing.~~

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

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

~~185—10.3701—6.3(99G, 123, 17A)~~ Time requirements. Time requirements for the department are provided in rule 701—7.4(17A).

~~10.3(1) Computation.~~ Time shall be computed as provided in Iowa Code section 4.1(34).¶

~~10.3(2) Time extended or shortened.~~ For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.¶

~~185—10.4(123,17A) Statute of limitations.~~ Requests for a contested case proceeding alleging a violation of Iowa Code chapter 123 must be filed with the division department or the local authority within three years from the date of the alleged violation or the date of conviction for the violation, whichever is later.

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

~~185—10.5701—6.4(99G, 123, 17A)~~ Requests for a contested case proceeding.

~~10.5(1)6.4(1)~~ Any person claiming an entitlement to a contested case proceeding shall file a written request within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

~~10.5(2)~~**6.4(2)** The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action which is disputed and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.
[ARC 5392C, IAB 1/13/21, effective 2/17/21]

~~185—10.6701—6.5(99G, 123, 17A)~~ Notice of hearing.

~~10.6(1)~~**6.5(1)** *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. Publication, as provided in the Iowa Rules of Civil Procedure.
- d. In accordance with rules provide by the department of inspections and appeals and licensing, as provided for by Iowa Code section 10A.802(4).

~~10.6(2)~~**6.5(2)** *Contents.* The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the ~~agency~~ department or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

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

f. Reference to the procedural rules governing conduct of the contested case proceeding.
[ARC 5392C, IAB 1/13/21, effective 2/17/21]

~~185—10.7701—6.6(99G, 123, 17A)~~ Presiding officer.

~~10.7(1)~~**6.6(1)** *Administrative law judge.* The ~~administrator~~ director may appoint an administrative law judge as presiding officer in all contested case hearings pursuant to Iowa Code chapters 99G or 123 ~~sections 123.32 and 123.39~~.

~~10.7(2)~~**6.6(2)** *Appeal.* 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 ~~administrator~~ director. A party must seek any available intra-agency appeal ~~in order~~ to exhaust adequate administrative remedies.

~~10.7(3)~~**6.6(3)** *Administrator/Director's review.* Unless otherwise provided by law, the director ~~administrator~~, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of, and shall comply with the provisions of, this chapter which apply to presiding officers.
[ARC 5392C, IAB 1/13/21, effective 2/17/21]

~~185—10.8701—6.7(99G, 123, 17A)~~ Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the ~~agency~~ department in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

~~185—10.9701—6.8(99G, 123, 17A)~~ Telephone or video proceedings. The presiding officer may resolve preliminary procedural motions by telephone or video conference in which all parties have an opportunity to participate. Other telephone or video proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone or video hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

~~185—10.10(17A)~~ Disqualification.

~~10.10(1)~~ *Withdrawal.* A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually

related controversy that may culminate in a contested case involving the same parties;

e. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

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

10.10(2) Personally investigated. The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency 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 this chapter subrules 10.10(3) and 10.23(9).

10.10(3) Statement of reasons for nonwithdrawal. 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.

10.10(4) Motion asserting disqualification.

a. If a party asserts disqualification on any appropriate ground, including those listed in subrule 10.10(1), 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.

b. 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.

c. If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under this chapter rule 185—10.25(17A) and seek a stay under rule 185—10.29(17A)this chapter.

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

185—10.11701—6.9(99G, 123, 17A) Consolidation—severance. Consolidation and severance procedures for the department are provided in subrule 701—7.18(12).

10.11(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

10.11(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

185—10.12701—6.10(99G, 123, 17A) Pleadings.

10.12(1) 6.10(1) Pleadings. Pleadings may be required by rule, by the notice of hearing, or by order, 78

of the presiding officer.

~~10.12(2)6.10(2)~~ *Hearing—Alcohol-related hearing complaint.*

a. The ~~alcoholic beverages division department~~, a local authority having jurisdiction, or the department of public safety may give written notice of the cause for action in the form of a hearing complaint and an opportunity for a hearing to a licensee, permittee, or holder of a certificate of compliance for any of the following:

- (1) A violation of Iowa Code chapter 123.
- (2) A violation of the ~~division's department's~~ administrative rules.
- (3) Failure to comply with an order issued by the ~~division department~~.
- (4) Failure to fully cooperate during an investigation, audit, or inspection of the licensee, permittee, or certificate holder, including failure to respond to an inquiry within ten business days of the date of mailing by certified mail, return receipt requested, of a written request for information or records directed to the licensee's, permittee's, or certificate holder's last address on file with the agency.

b. A hearing complaint shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the hearing complaint is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address, and telephone number of the petitioner and the petitioner's attorney, if any.

c. A hearing complaint alleging a violation of Iowa Code chapter 123 must be filed with the department or the local authority within three years from the date of the alleged violation or the date of conviction for the violation, whichever is later.

~~10.12(3)6.10(3)~~ *Answer.*

a. An answer shall be filed within 20 days of service of the hearing complaint unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

b. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

c. An answer shall state the name, address, and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

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

~~10.12(4)6.10(4)~~ *Amendment.* Any notice of hearing, hearing complaint, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.
[ARC 5392C, IAB 1/13/21, effective 2/17/21]

~~185—10.13701—6.11(99G, 123, 17A)~~ *Service and filing of pleadings and other papers.*

~~10.13(1)6.11(1)~~ *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

~~10.13(2)6.11(2)~~ *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address or by electronic service as permitted by the presiding officer and the Iowa Rules of Civil Procedure. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order, so long as there is proof of mailing.

~~10.13(3)6.11(3)~~ *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the presiding officer~~Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941~~. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the ~~division~~presiding officer.

~~10.13(4)6.11(4)~~ *Filing—when made.* Except where otherwise provided by law, a document ~~may~~ shall be filed ~~with the presiding officer~~ with the presiding officer. Packet A, 79

deemed filed at the time it is delivered to the ~~division~~presiding officer, delivered to an established courier service for immediate delivery to ~~that office~~the presiding officer, or mailed by first-class mail or state interoffice mail to ~~the presiding officer~~that office, so long as there is proof of mailing. Parties may file documents with the ~~division~~ by electronic transmission. Filing by electronic transmission is complete upon transmission unless the party making the filing learns that the attempted filing did not reach the ~~division~~presiding officer.

~~10.13(5)~~6.11(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the ~~Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941~~(department or presiding officer and address), and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

~~10.13(6)~~ *Faecsimile.* In appropriate cases, a faecsimile copy may be filed with approval of the division with subsequent mailing of the original.
[ARC 5392C, IAB 1/13/21, effective 2/17/21]

~~185—10.14701—6.12(99G, 123, 17A)~~ Discovery.

~~10.14(1)~~6.12(1) Discovery procedures. Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

~~10.14(2)~~6.12(2) Discovery motions. Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. ~~Discovery M~~otions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in ~~subrule 10.13(1)~~this chapter. The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

~~10.14(3)~~6.12(3) Evidence. Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

~~185—10.15701—6.13(99G, 123, 17A)~~ Subpoenas.

~~10.15(1)~~6.13(1) Issuance.

a. Agency-Department subpoenas. ~~An agency~~ A department subpoena shall be issued to a party on request. Subpoenas may compel the attendance of witnesses at deposition or hearing and the production of books, papers, records, and other real evidence unless they are otherwise expressly exempt from disclosure by ~~Constitution or statute~~law. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or each command may be issued separately. Subpoenas shall be issued by the presiding officer upon a written request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

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

~~10.15(2)~~6.13(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.
[ARC 5392C, IAB 1/13/21, effective 2/17/21]

~~185—10.16701—6.14(99G, 123, 17A)~~ Motions.

~~10.16(1)~~6.14(1) Rehearing-Prehearing motions. No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

~~10.16(2)~~6.14(2) Written responses. Any party may file a written response to a motion within ten

days after the motion is served, unless the time period is extended or shortened by applicable administrative rules of the division or by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

~~10.16(3)~~**6.14(3)** *Oral argument*. The presiding officer may schedule oral argument on any motion.

~~10.16(4)~~**6.14(4)** *Service*. Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by an applicable rule of the division-department or an order of the presiding officer.

~~10.16(5)~~**6.14(5)** *Motions for summary judgment*.

a. Motions for summary judgment ~~shall comply with the requirements~~ are subject to of Iowa Rules of Civil Procedure 1.981, 1.982, and 1.983 ~~and shall be subject to disposition according to the requirements of those rules, but only~~ to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

b. Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion ~~shall~~may file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission ~~shall~~will be ~~not less than~~at least 20 days after the filing of the motion, unless the presiding officer orders a shorter time is ordered by the presiding officer.

c. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 185—~~10.28(17A)~~ and appeal in accordance with this chapter~~pursuant to rule 185—10.27(17A)~~.
[ARC 5392C, IAB 1/13/21, effective 2/17/21]

701—6.15(99G, 123, 17A) Prehearing conference. Requirements are set forth in 701—7.17(17A).

~~185—10.17~~**701—6.16(99G, 123, 17A) Continuances.** Unless otherwise provided, applications for continuances ~~shall be~~ are made to the presiding officer.

~~10.17(1)~~**6.16(1)** *Application for continuance*. A written application for a continuance ~~shall~~should:

a. Be made at the earliest possible time and no less than three days before the hearing except for a good cause showing;

b. State the specific reasons for the request; and

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

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless the presiding officer waives that requirement ~~is waived by the presiding officer~~. No application for continuance ~~shall~~may be made or granted without notice to all parties except in an emergency where notice is not feasible. The ~~agency~~department may waive notice of such requests for a particular case or an entire class of cases.

~~10.17(2)~~**6.16(2)** *Issuing of continuance*. In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance. Notwithstanding the foregoing, each party ~~shall be~~is entitled to one continuance without the need of a good cause showing, unless a continuance would cause the contested case proceeding to exceed a time limit set forth in another applicable statute or rule.

~~185—10.18~~**701—6.17(99G, 123, 17A) Withdrawals.** A party requesting a contested case proceeding may withdraw that request prior to the hearing ~~without prejudice~~.

~~185—10.19701—6.17(99G, 123, 17A)~~ Intervention.

~~10.19(1)6.17(1)~~ *Motion.* A motion for leave to intervene in a contested case proceeding ~~shall state~~ the grounds for the proposed intervention, ~~as well as the position and interest of the proposed intervenor,~~ and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

~~10.19(2)6.17(2)~~ *When filed.* Motion for leave to intervene ~~shall~~ should be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor ~~shall be~~ is bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

~~10.19(3)6.17(3)~~ *Grounds for intervention.* The movant ~~shall~~ should demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

~~10.19(4)6.17(4)~~ *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

~~185—10.20701—6.18(99G, 123, 17A)~~ Hearing procedures.

~~10.20(1)6.18(1)~~ *Role of presiding officer.* The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

~~10.20(2)6.18(2)~~ *Objections.* All objections shall be timely made and stated on the record.

~~10.20(3)6.18(3)~~ *Representative of parties.* Parties have the right to participate or to be represented in all hearings related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

~~10.20(4)6.18(4)~~ *Role of parties.* Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

~~10.20(5)6.18(5)~~ *Decorum of hearing.* The presiding officer ~~shall maintain~~ maintains the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

~~10.20(6)6.18(6)~~ *Sequestering of witnesses.* Witnesses may be sequestered during the hearing.

~~10.20(7)6.18(7)~~ *Conduct of hearing.* The presiding officer ~~shall conduct~~ conducts the hearing in the following manner:

- a. The presiding officer ~~shall give~~ gives an opening statement briefly describing the nature of the proceedings;
- b. The parties ~~shall be~~ are given an opportunity to present opening statements;
- c. Parties ~~shall present~~ present their cases in the sequence determined by the presiding officer;
- d. Each witness ~~shall be~~ is sworn or affirmed by the presiding officer or the court reporter, and ~~be~~ is subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;
- e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

~~185—10.21701—6.19(99G, 123, 17A)~~ Evidence.

~~10.21(1)6.19(1)~~ *Admissibility.* The presiding officer ~~shall rule~~ rules on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of

law.

~~10.21(2)~~6.19(2) *Stipulation of facts.* Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

~~10.21(3)~~6.19(3) *Scope of evidence.* Evidence in the proceeding ~~shall~~should be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

~~10.21(4)~~6.19(4) *Admission and examination.* The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

~~10.21(5)~~6.19(5) *Objection.* Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

~~10.21(6)~~6.19(6) *Offer of service.* Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

~~185—10.22(701—6.20(99G, 123, 17A) Default.~~ Default procedures for the department are set forth in subrule 701—7.18(7).

~~10.22(1)~~X.22(1) *Default.* 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.

~~10.22(2)~~X.22(2) *Motion for default.* Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

~~10.22(3)~~X.22(3) *Motion to vacate.* Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated under this chapter within the time provided by rule 185—10.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

~~10.22(4)~~X.23(4) *Appeal.* 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.

~~10.22(5)~~X.23(5) *Good cause showing.* Properly substantiated and timely filed motions to vacate shall may only 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 may 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.

~~10.22(6)~~X.22(6) *Good cause defined.* "Good cause" for purposes of this rule shall have ~~has the~~ same meaning as "good cause" for setting aside a default judgment under the Iowa Rules of Civil Procedure 1.971.

~~10.22(7)~~X.22(7) *Interlocutory appeal.* A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 185—10.25(17A).

~~10.22(8)~~X.22(8) *Resumption of hearing.* If a motion to vacate is granted and no timely interlocutory appeal is filed, the hearing shall resume on the issues presented by the motion to vacate.

appeal has been taken, the presiding officer shall issue ~~issues~~ another notice of hearing and the contested case shall proceed ~~proceeds~~ accordingly.

~~10.22(9)~~**X.22(9)** *Relief.* A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

~~10.22(10)~~**X.22(10)** *Effect of decision.* A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 185—10.29(17A).
[ARC 5392C, IAB 1/13/21, effective 2/17/21]

~~185—10.23701—6.21(99G, 123, 17A)~~ **Ex parte communication and disqualification.** Ex parte communication and disqualification matters requirements are set forth in 701—7.22(17A).

~~10.23(1)~~ *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 division ~~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 subrule 10.10(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

~~10.23(2)~~ *Length of prohibitions.* 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.

~~10.23(3)~~ *Forms of ex parte communication.* Written, oral, or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

~~10.23(4)~~ *Notice.* 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~~ rule 185—10.13(17A) and may be supplemented by telephone, facsimile, electronic mail, or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

~~10.23(5)~~ *Communication between 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.

~~10.23(6)~~ *Deliberations.* The administrator ~~director~~ or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 10.23(1).

~~10.23(7)~~ *Scheduling or procedural matters.* Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 185—10.17(17A).

~~10.23(8)~~ *Disqualification of presiding officer.* 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.

10.23(9) *Disclosure of prohibited communications.* Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

10.23(10) *Sanctions.* The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the division ~~department~~. Violation of ex parte communication prohibitions by division ~~department~~ personnel shall be reported to the administrator or the administrator's designee director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

185—10.24701—6.22(99G, 123, 17A) Recording costs. Recording cost requirements are provided in rule 701—7.20(17A). Upon request, the division ~~department~~ shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

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

185—10.25701—6.23(99G, 123, 17A) Interlocutory appeals. Interlocutory appeal procedures for the department are set forth in subrule 701—7.18(11). Upon written request of a party or ~~sua sponte~~ on the administrator's own motion, the administrator ~~director~~ may review an interlocutory order of the presiding officer. In determining whether to do so, the administrator ~~director~~ shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

185—10.26701—6.24(99G, 123, 17A) Final decision.

10.26(1)6.24(1) *Administrator's/Director's final decision.* When the administrator ~~director~~ presides over the reception of evidence at the hearing, the administrator's ~~director's~~ decision is a final decision.

10.26(2)6.24(2) *Proposed decision.* When the administrator ~~director~~ does not preside at the reception of evidence, the presiding officer ~~shall make~~ makes a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the administrator ~~director~~ within the time provided in rule 185—10.27(17A)701—6.25(99G, 123, 17A).

185—10.27701—6.25(99G, 123, 17A) Appeals and review.

10.27(1)6.25(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the administrator ~~director~~ within 30 days after issuance of the proposed decision.

10.27(2)6.25(2) *Review.* The administrator ~~director~~ may initiate review of a proposed decision on the administrator ~~director~~'s own motion at any time within 30 days following the issuance of such a decision.

10.27(3)6.25(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the ~~division~~ department. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

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

~~10.27(4)~~**6.25(4)** *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The ~~administrator~~director may remand a case to the presiding officer for further hearing or the ~~administrator~~ director may preside at the taking of additional evidence.

~~10.27(5)~~**6.25(5)** *Scheduling.* The ~~administrator~~director shall issue a schedule for consideration of the appeal.

~~10.27(6)~~**6.25(6)** *Briefs and arguments.* Unless otherwise ordered, within 30 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 30 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The ~~administrator~~director may resolve the appeal on the briefs or provide an opportunity for oral argument. The ~~administrator~~ director may shorten or extend the briefing period as appropriate.

~~185—10.28701—6.26(99G, 123, 17A)~~ **Applications for rehearing.** Procedures to apply for rehearing for the department are set forth in 701—7.21(17A).

~~10.28(1)~~ *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.¶

~~10.28(2)~~ *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 10.27(4), the applicant requests an opportunity to submit additional evidence.

~~10.28(3)~~ *Time of filing.* The application shall be filed with the division within 20 days after issuance of the final decision.

~~10.28(4)~~ *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the division shall serve copies on all parties.¶

~~10.28(5)~~ *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.¶

~~185—10.29701—6.27(99G, 123, 17A)~~ **Stays of agency actions.**

~~10.29(1)~~**6.27(1)** *When available.*

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

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

~~10.29(2)~~**6.27(2)** *When granted.* In determining whether to grant a stay, the ~~administrator~~director shall consider the following factors:

a. The extent to which the applicant is likely to prevail when the court finally disposes of the matter.

b. The extent to which the applicant will suffer irreparable injury if relief is not granted.

c. The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.

d. The extent to which the public interest relied on by the agency is sufficient to justify the agency's action in the circumstances.

~~10.29(3)~~**6.27(3)** *Vacation.* A stay may be vacated by the issuing authority upon application of the ~~division or any other party~~.

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

185—10.30701—6.28(99G, 123, 17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity of an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions found under rule 701—6.14(5).

185—10.31701—6.29(99G, 123, 17A) Emergency adjudicative proceedings.

~~10.31(1)~~**6.29(1) Necessary emergency action.** To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the agency department may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency department by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall department shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety, or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety, or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and
- e. Whether the specific action contemplated by the division is necessary to avoid the immediate danger.

~~10.31(2)~~**6.29(2) Issuance of order.**

- a. Contents. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the division's department's decision to take immediate action.
- b. Service. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:
 - (1) Personal delivery; or
 - (2) Certified mail, return receipt requested, to the last address on file with the agency; or
 - (3) ~~Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.~~
- c. Delivery. To the degree practicable, the agency shall department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

~~10.31(3)~~**6.29(3) Oral notice.** Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall department shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

~~10.31(4)~~**6.29(4) Completion of proceedings.** A written emergency adjudicative order should include notification of the date on which agency proceedings are scheduled for completion. After the issuance of an emergency adjudicative order, the agency shall department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger. After issuance of an emergency adjudicative order, continuance of further agency proceedings will be granted only in compelling circumstances upon application in writing.
[ARC 5392C, IAB 1/13/21, effective 2/17/21]

185—10.32701—6.30(99G, 123, 17A) Informal settlement. A party to a controversy that may culminate or has culminated in contested case proceedings may attempt informal settlement by complying with the procedures set forth in this rule. No party ~~shall be~~ is required to settle the controversy or contested case by submitting to informal settlement procedures.

~~10.32(1)~~**6.30(1)** Parties desiring informal settlement ~~shall is are to~~ set forth in writing the various points of a proposed settlement, including findings of facts.

~~10.32(2)~~**6.30(2)** When signed by the parties and approved by the ~~administrator or the administrator's designee-director~~, a settlement shall represent final disposition of the matter.

~~10.32(3)~~**6.30(3)** A proposed settlement which is not accepted or signed by the parties and the ~~administrator or the administrator's designee-director~~ shall not be admitted as evidence in the record of a contested case proceeding. Evidence of conduct or statements made in settlement negotiations likewise are not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

This rule is intended to implement Iowa Code section 17A.10.
[ARC 5392C, IAB 1/13/21, effective 2/17/21]

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

[Filed 10/20/75, Notice 9/8/75—published 11/3/75, effective 12/9/75]

[Filed 2/16/79, Notice 12/27/79—published 3/7/79, effective 4/16/79]

[Filed without Notice 7/6/79—published 7/25/79, effective 8/29/79]

[Filed 8/15/80, Notice 5/28/80—published 9/3/80, effective 10/8/80]

[Filed emergency 5/19/82—published 6/9/82, effective 5/19/82]

[Filed 5/3/85, Notice 2/13/85—published 5/22/85, effective 6/26/85]

[Filed emergency 10/10/85—published 11/6/85, effective 10/10/85]

[Filed 10/10/85, Notice 7/31/85—published 11/6/85, effective 12/11/85]

[Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAB 7/30/86]

[Filed emergency 7/29/93—published 8/18/93, effective 7/29/93]

[Filed 10/20/93, Notice 8/18/93—published 11/10/93, effective 12/15/93]

[Filed 9/26/94, Notice 6/22/94—published 10/26/94, effective 11/30/94]

[Filed 4/28/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

[Filed ARC 5392C (Notice ARC 5242C, IAB 11/4/20), IAB 1/13/21, effective 2/17/21]¶

~~TITLE 531—LOTTERY AUTHORITY~~

~~CHAPTER 5~~

~~CONTESTED CASES~~

[Prior to 8/31/94, see 705—Ch 7]

[Prior to 9/17/03, see 705—Ch 6]

531—5.1(17A) Scope and applicability. This chapter applies to contested case proceedings related to lottery licensees and lottery licenses.

531—5.2(17A) Definitions. Except where otherwise specifically defined by law:

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

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

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

“*Presiding officer*” means the administrative law judge.

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

[ARC 4814C, IAB 12/18/19, effective 1/22/20]

531—5.3(17A) Hearing board. Rescinded ARC 4814C, IAB 12/18/19, effective 1/22/20.

531—5.4(17A) Time requirements.

—**5.4(1)** Time shall be computed as provided in Iowa Code subsection 4.1(34).

—**5.4(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except, 88

~~as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.~~

531—5.5(17A) Requests for contested case proceeding. ~~Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.~~

~~The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.~~

531—5.6(17A) Notice of hearing.

~~— 5.6(1) Delivery.~~ Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- ~~— a. Personal or electronic service as permitted in the Iowa Rules of Civil Procedure; or~~
- ~~— b. Certified mail, return receipt requested; or~~
- ~~— c. First-class mail; or~~
- ~~— d. Publication, as provided in the Iowa Rules of Civil Procedure.~~

~~— 5.6(2) Contents.~~ The notice of hearing shall contain the following information:

- ~~— a. A statement of the time, place, and nature of the hearing;~~
- ~~— b. A statement of the legal authority and jurisdiction under which the hearing is to be held;~~
- ~~— c. A reference to the particular sections of the statutes and rules involved;~~
- ~~— d. A short and plain statement of the matters asserted. If the lottery or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;~~
- ~~— e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the lottery or the state and of parties' counsel where known;~~
- ~~— f. Reference to the procedural rules governing conduct of the contested case proceeding; and~~
- ~~— g. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer.~~

[ARC 4814C, IAB 12/18/19, effective 1/22/20]

531—5.7(17A) Presiding officer.

~~— 5.7(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing that identifies or describes the presiding officer as the agency head or members of the agency.~~

~~— 5.7(2) The chief executive officer of the lottery may deny the request only upon a finding that one or more of the following apply:~~

- ~~— a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.~~
- ~~— b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.~~
- ~~— c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.~~
- ~~— d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.~~
- ~~— e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.~~
- ~~— f. The request was not timely filed.~~

—g. The request is not consistent with a specified statute.

—**5.7(3)** The chief executive officer of the lottery shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge, the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

—**5.7(4)** 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 lottery. A party must seek any available appeal with the lottery in order to exhaust adequate administrative remedies.

—**5.7(5)** Unless otherwise provided by law, the chief executive officer or a designee, when reviewing a proposed decision upon appeal to the lottery, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

[ARC 4814C, IAB 12/18/19, effective 1/22/20]

531—5.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

531—5.9(17A) Disqualification.

—**5.9(1)** A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

—a. Has a personal bias or prejudice concerning a party or a representative of a party;

—b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

—c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

—d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

—e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

—f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

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

—**5.9(2)** The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information 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 agency 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 subrules 5.9(3) and 5.23(9).

—**5.9(3)** 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.

— **5.9(4)** If a party asserts disqualification on any appropriate grounds, including those listed in subrule 5.9(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code subsection 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

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

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under 531—5.25(17A) and seek a stay under rule 531—5.29(17A).

531—5.10(17A) Consolidation and severance.

— **5.10(1) Consolidation.** The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

— **5.10(2) Severance.** The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

531—5.11(17A) Pleadings.

— **5.11(1) Requirement.** Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

— **5.11(2) Petition.**

— *a.* Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

— *b.* A petition shall state in separately numbered paragraphs the following:

— (1) The persons or entities on whose behalf the petition is filed;

— (2) The particular provisions of statutes and rules involved;

— (3) The relief demanded and the facts and laws relied upon for such relief; and

— (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

— **5.11(3) Answer.** An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

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

— **5.11(4) Amendment.** Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

531—5.12(17A) Service and filing of pleadings and other papers.

— **5.12(1) When service required.** Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person,

designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code subsection 17A.16(2), the party filing a document is responsible for service on all parties.

— **5.12(2) Service—how made.** Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address or by electronic service as permitted by the presiding officer and the Iowa Rules of Civil Procedure. Service by paper or electronic mail is complete upon mailing, except where otherwise specifically provided by statute, rule or order.

— **5.12(3) Filing—when required.** After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the presiding officer. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the presiding officer.

— **5.12(4) Filing—when made.** Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the presiding officer, delivered to an established courier service for immediate delivery to the presiding officer, delivered via electronic mail or fax, or mailed by first-class mail or state interoffice mail to the presiding officer, so long as there is proof of mailing.

— **5.12(5) Proof of mailing.** Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

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

(Date)

(Signature)

[**ARC 1954C**, IAB 4/15/15, effective 5/20/15; **ARC 4814C**, IAB 12/18/19, effective 1/22/20]

531—5.13(17A) Discovery.

— **5.13(1)** Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be provided in the Iowa Rules of Civil Procedure.

— **5.13(2)** Any motion relating to discovery shall allege that the moving party has previously made a good faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 5.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

— **5.13(3)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

531—5.14(17A) Subpoenas.

— **5.14(1) Issuance.**

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

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

— **5.14(2) Motion to quash or modify.** The presiding officer may quash or modify a subpoena ~~for any~~ 92

lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

531—5.15(17A) Motions.

— **5.15(1)** No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

— **5.15(2)** Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the lottery or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

— **5.15(3)** The presiding officer may schedule oral argument on any motion.

— **5.15(4)** Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the lottery or an order of the presiding officer.

— **5.15(5)** Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 531—5.28(17A) and appeal pursuant to rule 531—5.27(17A).

531—5.16(17A) Prehearing conference.

— **5.16(1)** Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than 15 days prior to the hearing date. A prehearing conference shall be scheduled not less than 10 business days prior to the hearing date. Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

— **5.16(2)** Each party shall bring to the prehearing conference:

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

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

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

— **5.16(3)** In addition to the requirements of subrule 5.16(2), the parties at a prehearing conference may:

— *a.* Enter into stipulations of law or fact;

— *b.* Enter into stipulations on the admissibility of exhibits;

— *c.* Identify matters which the parties intend to request be officially noticed;

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

— *e.* Consider any additional matters which will expedite the hearing.

— **5.16(4)** Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

531—5.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

— **5.17(1)** A written application for continuance shall:

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

— *b.* State the specific reasons for the request; and

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

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The agency may waive notice of such requests for a particular case or an entire class of cases.

— **5.17(2)** In determining whether to grant a continuance, the presiding officer may consider:

— *a.* Prior continuances;

— *b.* The interests of all parties;

— *c.* The likelihood of informal settlement;

— *d.* The existence of an emergency;

— *e.* Any objection;

— *f.* Any applicable time requirements;

— *g.* The existence of a conflict in the schedules of counsel, parties, or witnesses;

— *h.* The timeliness of the request; and

— *i.* Other relevant factors.

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

531—5.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with agency rules. Unless otherwise provided, a withdrawal shall be with prejudice.

531—5.19(17A) Intervention.

— **5.19(1) Motion.** A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

— **5.19(2) When filed.** Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

— **5.19(3) Grounds for intervention.** The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

— **5.19(4) Effect of intervention.** If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

531—5.20(17A) Hearing procedures.

— ~~5.20(1)~~ The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

— ~~5.20(2)~~ All objections shall be timely made and stated on the record.

— ~~5.20(3)~~ Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

— ~~5.20(4)~~ Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

— ~~5.20(5)~~ The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

— ~~5.20(6)~~ Witnesses may be sequestered during the hearing.

— ~~5.20(7)~~ The presiding officer shall conduct the hearing in the following manner:

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

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

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

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

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

531—5.21(17A) Evidence.

— ~~5.21(1)~~ The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

— ~~5.21(2)~~ Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

— ~~5.21(3)~~ Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

— ~~5.21(4)~~ The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

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

— ~~5.21(5)~~ Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

— ~~5.21(6)~~ Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

531—5.22(17A) Default.

— **5.22(1)** 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.

— **5.22(2)** Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

— **5.22(3)** Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 531—5.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

— **5.22(4)** 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.

— **5.22(5)** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

— **5.22(6)** "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

— **5.22(7)** A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 531—5.25(17A).

— **5.22(8)** If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

— **5.22(9)** A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues; but unless the defaulting party has appeared, it cannot exceed the relief demanded.

— **5.22(10)** A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 531—5.29(17A).

531—5.23(17A) Ex parte communication.

— **5.23(1)** 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 communications, 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 lottery or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 5.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

— **5.23(2)** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

— **5.23(3)** Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

— **5.23(4)** To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 531—5.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

— **5.23(5)** Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

— **5.23(6)** The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 5.23(1).

— **5.23(7)** Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 531—5.17(17A).

— **5.23(8)** 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.

— **5.23(9)** Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(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.

— **5.23(10)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the lottery. Violation of ex parte communication prohibitions by agency personnel shall be reported to the chief executive officer of the lottery for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

531—5.24(17A) Record costs. Upon request, the Iowa lottery shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

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

531—5.25(17A) Interlocutory appeals. Upon written request of a party or sua sponte, the chief executive officer may review an interlocutory order of the presiding officer. In determining whether to do so, the chief executive officer shall weigh the extent to which the chief executive officer’s granting of the

interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

[ARC 4814C, IAB 12/18/19, effective 1/22/20]

531—5.26(17A) Final decision.

— **5.26(1)** When the chief executive officer presides over the reception of evidence at the hearing, the chief executive officer's decision is a final decision.

— **5.26(2)** When the chief executive officer does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the chief executive officer within the time provided in rule 531—5.27(17A).

[ARC 4814C, IAB 12/18/19, effective 1/22/20]

531—5.27(17A) Appeals and review.

— **5.27(1)** *Appeal by party.* Any adversely affected party may appeal a proposed decision to the chief executive officer of the lottery within 30 days after issuance of the proposed decision.

— **5.27(2)** *Review.* The chief executive officer may initiate review of a proposed decision on the chief executive officer's own motion at any time within 30 days following the issuance of such a decision.

— **5.27(3)** *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the Iowa lottery. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

— *a.* The parties initiating the appeal;

— *b.* The proposed decision or order appealed from;

— *c.* The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

— *d.* The relief sought;

— *e.* The grounds for relief.

— **5.27(4)** *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a non-appealing party, within 14 days of service of the notice of appeal. The chief executive officer may remand a case to the presiding officer for further hearing or may personally preside at the taking of additional evidence.

— **5.27(5)** *Scheduling.* The chief executive officer shall issue a schedule for consideration of the appeal.

— **5.27(6)** *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The chief executive officer may resolve the appeal on the briefs or provide an opportunity for oral argument. The chief executive officer may shorten or extend the briefing period as appropriate.

[ARC 4814C, IAB 12/18/19, effective 1/22/20]

531—5.28(17A) Applications for rehearing.

— **5.28(1)** *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

— **5.28(2)** *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether,

on the basis of the grounds enumerated in subrule 5.27(4), the applicant requests an opportunity to submit additional evidence:

— **5.28(3) Time of filing.** The application shall be filed with the Iowa lottery within 20 days after issuance of the final decision.

— **5.28(4) Notice to other parties.** A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the Iowa lottery shall serve copies on all parties.

— **5.28(5) Disposition.** Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

531—5.29(17A) Stays of agency actions.

— **5.29(1) When available.**

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

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

— **5.29(2) When granted.** In determining whether to grant a stay, the chief executive officer or presiding officer shall consider the factors listed in Iowa Code section 17A.19(5).

— **5.29(3) Vacation.** A stay may be vacated by the issuing authority upon application of the lottery or any other party.

[ARC 4814C, IAB 12/18/19, effective 1/22/20]

531—5.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

531—5.31(17A) Emergency adjudicative proceedings.

— **5.31(1) Necessary emergency action.** To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the lottery may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the lottery by emergency adjudicative order. Before issuing an emergency adjudicative order the lottery shall consider factors including, but not limited to, the following:

— *a.* Whether there has been a sufficient factual investigation to ensure that the lottery is proceeding on the basis of reliable information;

— *b.* Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

— *c.* Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

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

— *e.* Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

~~— 5.31(2) Issuance of order.~~

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

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

~~— (1) Personal delivery;~~

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

~~— (3) Certified mail to the last address on file with the agency;~~

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

~~— (5) Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.~~

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

~~— 5.31(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.~~

~~— 5.31(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.~~

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

531—5.32(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

These rules are intended to implement Iowa Code chapter 17A and Iowa Code Supplement section 99G.27(3).

[Filed emergency 6/14/85—published 7/3/85, effective 6/14/85]

[Filed emergency 12/23/86—published 1/14/87, effective 12/26/86]

[Filed 8/12/94, Notice 6/8/94—published 8/31/94, effective 10/5/94]

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

[Filed emergency 8/28/03—published 9/17/03, effective 8/28/03]

[Filed 3/12/04, Notice 9/17/03—published 3/31/04, effective 5/7/04]

[Filed ARC 1954C (Notice ARC 1847C, IAB 2/4/15), IAB 4/15/15, effective 5/20/15]

CHAPTER 7
TAX 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 certain other administrative procedures areas within the department's jurisdiction.~~ The rules in this chapter apply to all informal proceedings, contested case proceedings, licensing ~~proceedings, rule making, requests for waiver of rules, and declaratory orders pending or commenced on or after their effective date; however chapter 6 applies to appeals and contested case proceedings for matters under Iowa Code chapters 123 and 99G. See chapter 4 for rules on declaratory order for all matters within the department's jurisdiction. See chapter 3 for rules on rulemaking for all matters 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; ARC 6988C, IAB 4/19/23, effective 5/24/23]

701—7.2(421,17A) Definitions. Terms not defined below have the same meaning as defined in Iowa Code chapter 17A. 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 tax 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 the same as defined in Iowa Code section 17A.2(5). 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” or “IDR” 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 designee.

“Division of administrative hearings” means the division of the department of inspections and appeals and licensing 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, govconnect.iowa.gov.

“Informal stage” means the procedures of the appeals process described in rule 701—~~7.11(17A)~~701—7.10(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)701—7.23(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” means the same as defined in Iowa Rule of Civil Procedure 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. ~~Party~~ means the same as defined in 17A.2(8) and includes intervenors.

~~“Person” means the same as defined in Iowa Code section 17A.2, 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” as used in that definition includes estates, trusts, or fiduciary.~~

~~“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, as described in Iowa Code section 17A.15.~~

~~“Provision of law” means the same as defined in Iowa Code section 17A.2(10).¶~~

~~“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 the same as defined 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 “taxpayer’s authorized taxpayer’s representative” means an individual authorized to practice before the department on behalf of a taxpayer 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; ARC 6988C, IAB 4/19/23, effective 5/24/23]~~

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~~headquarters of the department in the Hoover State Office Building in Des Moines, Iowa, ~~shall~~will 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 124, ~~2022-2024~~, GovConnectIowa is available for filing petitions for declaratory order, petitions for rule making, and petitions for rule waiver for all tax types as well as for lottery and alcohol matters, but is only available for filing appeals for the following tax types: sales, ~~consumers/retailers use~~, E911, withholding, motor vehicle one-time registration fee~~for new registration, vehicle lease, cigarette, tobacco products, alternative nicotine, vapor device, and vapor products, drug stamp, utility replacement, central assessments, statewide~~

property, motor fuel, hotel/motel, local option sales, automobile rental, water service excise, individual income, fiduciary income, -corporation income, S corporation income, partnership income, composite, franchise, inheritance, moneys and credits, 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 ~~division of administrative hearings~~department of inspections, and appeals, and licensing 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, and licensing~~ 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 or documents required or permitted 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 nonregistered 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.

[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; ARC 6988C, IAB 4/19/23, effective 5/24/23]

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. In computing time in accordance with 421.9A, the first day shall be excluded and the last included.

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 revenue.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 tax claim, tax appeal, or other tax matter before the department or in any communication with, ~~or 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 in compliance with~~ of this rule and Iowa Code section 421.59 ~~is first filed with the department.~~ 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 IDR power of attorney form, as described in subrule 7.6(5), authorizing that individual to do so. ~~This applies~~ 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, or other form~~ designated by the department, 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 or~~ collect, checks made payable to the taxpayer in payment of ~~any~~ a refund of Iowa taxes, penalties, or interest. Certain representatives with a valid ~~refund claim representative certification form, as designed by the department,~~ refund claim representative certification form, as designed by the department, 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~~ necessary 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.

(9) To waive, withdraw, or dismiss any claims or defenses or amend a pleading, to the extent permitted by rule 7.9(7).

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 may not expand 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 ~~are is not accepted~~ 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.

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 an authorized representative.

e. *Signature.* The signature on the form must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.

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

7.6(5) Powers of attorney. ~~Individuals appointed by a taxpayer to represent the taxpayer must file an IDR power of attorney form~~ Taxpayers must ensure that all required fields of the IDR power of attorney form are properly completed.

a. *Individuals who may execute an IDR power of attorney form.* Individuals who are permitted to execute an IDR power of attorney form are as follows:

(1) *Individual.* In matters involving an individual taxpayer, an IDR power of attorney form must be signed by the ~~individual taxpayer~~ or the taxpayer's 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~~ their 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 one 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.* A valid 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~~, or other number as approved by the department;

(3) Name, mailing address, and identification number of the representative (i.e., preparer's tax identification number (PTIN), SSN, centralized authorization file (CAF) number, ~~or any federal- or Iowa-issued tax identification number~~, or other number as approved by the department) ~~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. ~~If the tax type field is left blank, all tax types will be included within the scope of the representative's 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), ~~or an indication that all tax types are within the scope of authority~~;

3. Iowa tax permit number;

4. No limitation on tax type, year/period, or permit will allow the authorized representative to act for any tax type/year/period/permit.

(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 signature on the form, which ~~must~~may be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.

(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~~ within 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~~ authorized representative.

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 covers~~ 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~~has 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~~ 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~~ power of attorney authority for ~~that the same~~ 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 authorized entity representatives under subrule 7.6(9).

(2) Withdrawal by the authorized representative. By filing a statement with the department, an authorized 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 any third party access authority, including those appointed via the IDR power of attorney form or representative certification authority form.

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

a. Individuals with the authority to act on behalf of a taxpayer granted outside of IDR, 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~~ should 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, or other number as approved by the department);

(3) Name, mailing address, and identification number (i.e., SSN, CAF number, ~~or any federal- or Iowa-~~ issued tax identification number, or other number as approved by the department) 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;~~

54. 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;

65. Parent or guardian of minor taxpayer: a copy of the return signed by the parent or guardian or proof of status as parent or guardian, such as birth certificate or equivalent document, stating parent and minor taxpayer’s names, as well as the minor taxpayer’s date of birth. By submitting a copy of a return signed by the parent or guardian, the parent or guardian will only have authority in relation to that return. Without other authorization, such as a court-ordered guardianship, a parent’s right to access a minor taxpayer’s account will cease when the minor taxpayer reaches majority;

~~7. Governmental representative: affirmation of authority to act on behalf of the government entity on the form designated by the department;~~

86. Executor or personal representative: a copy of the will or court order appointing the individual;

97. 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;~~

8. The following categories of authorized representative do not require documentation:

- Individual holding one of the following titles within a corporation, association, partnership, or other entity:
 - Officer/employee of corporation/association;
 - Designated partner authorized to act on behalf of a partnership;
 - Individual authorized to act on behalf of a limited liability company in tax matters;
- Governmental representative
- Successor of a very small estate under Iowa Code section 633.356(2)

(5) Affirmation of authority to act on behalf of the taxpayer, and agreement to only act within that authority. Affirmation will be signed under penalty of perjury.

(6) A signature of the representative on the form, which must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization;

(67) Any other information ~~required~~ requested 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~~ has 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 state~~ 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 attach 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, a corporation or S corporation return filed under Iowa Code section 422.36 or 422.37, a partnership return filed under Iowa Code section 422.15, a franchise tax return filed under Iowa Code section 422.62, a moneys and credits return filed under Iowa Code section 533.329, 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~~ is 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 person~~ Individuals 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 ~~s~~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~~ comply with 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~~ comply with paragraph 7.6(8)“b” or “c”;
- g. ~~Fiduciaries.~~ Fiduciaries, including 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 ~~§section~~ 10.6(2011) for practice before the Internal Revenue Service, representing a taxpayer in proceedings under ~~division H 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.
 - (1) 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~~ is solely ~~be~~ the responsibility of the entity and the entity’s employees, agents, or contractors. The department ~~shall~~ is not ~~be~~ liable for any acts or omissions of the entity or the entity’s employees, agents, or contractors.
 - (2) The taxpayer’s consent must be in writing, in a form specified by the department, including a signature and date. The signature must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.
- 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~~ is 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~~will be used to identify the individual employee when contacting the department. The authorized entity representative ~~shall~~will 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~~will 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~~is 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~~limit the authorized entity representative as described therein and by tax type. If the tax type field is left blank, all tax types are included within the scope of the authorized entity representative's authority.

e. Contents of form. A valid IDR authorized entity representative form ~~must~~contains 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~~IDR power of attorney form 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.

~~701—7.7(17A)~~**701—7.6(17A) Docket.** Every matter coming within the purview of this chapter ~~shall be~~is assigned a docket number which ~~shall be~~is the official identification number of the matter for the purposes of identification. The parties will be notified of the docket number. The number ~~shall~~will 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~~will be placed by the parties on all documents thereafter filed in the proceeding.

~~701—7.8(17A)~~**701—7.7(17A)** **Identifying details, requests for redaction.**

~~7.8(1)~~**7.7(1)** *Information redacted by the department, subject to certain exceptions.* Prior to being made available for public inspection, the department ~~shall~~will redact from an appeal or contested case the information required ~~to be redacted in by~~ 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)~~**7.7(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~~comply with 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 appeal described in subrule 7.9(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~~is 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 be~~is not grounds for redaction.

~~7.8(3)~~**7.7(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) “e”~~7.8(2) “c” and subrule ~~7.17(5)~~7.19(5). The department ~~shall have~~has 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)~~**7.7(4)** *Rulings.* Motions filed with the clerk of the hearings section will be ruled on by the director or may be referred by the director to an administrative law judge. 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. Oral argument, including a hearing, may be held at the discretion of the presiding officer. The presiding officer may choose to close a hearing or other proceeding that may otherwise be open to the public due to the confidential nature of information covered by the motion during the pending motion.

~~7.8(5)~~**7.7(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)~~**7.7(6)** *Handling of the file while the motion is pending.* ~~During the pendency of~~While a motion is pending, 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).

~~701—7.9(17A)~~**701—7.8(17A)** **Tax a 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)~~**7.8(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)~~**7.8(2)** *Paying an assessment in order to appeal refund claim denial which is divisible.* 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 When an 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 attributable to that specific type of transaction would be canceled. 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~~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)~~**7.8(3)** *Types of 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, partnership income, S corporation income, composite, 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)~~**7.8(4)** *Who may be named in an appeal.* The appeal shall be brought in the name of the aggrieved taxpayer. Each aggrieved taxpayer may protest more than one agency action in a single appeal, subject to the applicable statutory appeal period for each protested agency action. ~~Individuals~~ or entities required to file separate tax returns or those choosing to file separate tax returns may not combine appeals with any other individual or entity. Taxpayers who are not named in the Department action under appeal are not aggrieved taxpayers and may not be included in the appeal. The appeal may be filed by and in the name of the aggrieved taxpayer or by 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)~~**7.8(5)** *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. anA taxpayer may only allege errors related to specific audit determinations made by the Department or related to issues presented for audit determinations by the Department. Thus, for instance, if a taxpayer did not present for a determination by the Department a particular exemption claim in the taxpayer's sales tax refund return, the taxpayer may not allege error related to such exemption claim when the taxpayer appeals the denial of the requested refund.
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)~~701—7.12(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”~~7.8(5)“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)~~7.8(6) *Amendments.*

A. Subject to the statutory appeal period. ~~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 by the presiding officer, subject to the statutory appeal period, with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance.~~

b. The department may request that the taxpayer amend the appeal for purposes of clarification or to comply with format requirements. If the taxpayer fails to amend the appeal within the time provided for in the department’s request, the department may move to dismiss the appeal under paragraph ~~7.12(3)“a.”~~7.11(3)“a.” Requests by the department to the taxpayer to amend the appeal after a responsive pleading has been filed may be allowed by the presiding officer, subject to the statutory appeal period, with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance.

~~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.~~

~~7.8(7) Alcohol and lottery appeals.~~ This chapter does not apply to appeals and contested case proceedings for matters under the Iowa Alcoholic Beverage Control Act, Iowa Code chapter 123, or the Iowa Lottery Act, Iowa Code chapter 99G. For appeals under those chapters, see [insert rule numbers]. [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; ARC 6988C, IAB 4/19/23, effective 5/24/23]

~~701—7.10(17A)~~701—7.9(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~~has~~ 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)~~701—7.10(17A) **Informal stage of the tax 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)~~701—7.12(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)~~7.10(1) *Appeals section review.* After 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)~~ 701—7.8(17A) and request any amendments to the appeal or additional information.

~~7.11(2)~~7.10(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)~~7.10(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)~~7.10(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)~~7.10(5) *Settlements.* Only the director, ~~the~~ a deputy director, ~~or the~~ division administrator of the legal services and appeals division, or another person designated in writing by the director 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; ARC 6988C, IAB 4/19/23, effective 5/24/23]

~~701—7.12(17A,421)~~701—7.11(17A,421) **Dismissal of tax appeals.**

~~7.12(1)~~7.11(1) *Appeals filed after expiration of statutory deadline.* Appeals that are not filed by the ~~applicable statutory deadline described in statute~~ shall be dismissed by the director or the director's designee in accordance with the procedure outlined in paragraph ~~7.12(1)“a.”~~ 7.11(1)“a.”

a. *Procedures for motions to dismiss.* The department 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 in writing 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. Once such dismissal order is entered, the director or the director's designee shall close the appeal. If a resistance is filed, the department 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)~~ 701—7.15(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the appeal was filed within the statutory appeal period. Thereafter, rule ~~701—7.19(17A)~~ 701—7.18(17A) pertaining to contested case proceedings shall apply in such dismissal proceedings.

b. *Grounds for denying the department's motion.* The department's motion shall be granted unless the taxpayer can prove that it filed the appeal prior to the expiration of the statutory appeal deadline because the department failed to:

- (1) Mail or personally deliver the notice of assessment, refund denial, or other notice of department action to the taxpayer's last-known address; or

(2) If applicable, also mail the notice of assessment, refund denial, or other notice of department action to the taxpayer's authorized representative; or

(3) Comply with the requirements of Iowa Code section 421.60(2) "b."

For purposes of this rule, "last-known address" and "personal delivery" mean the same as described in rule ~~701—7.33(421)~~ 701—7.23(421).

~~7.12(2)~~7.11(2) *Appeals not authorized by statute.* Appeals that are not authorized by statute or otherwise are inconsistent with the statutory requirements for an appeal shall be dismissed by the director in accordance with the procedure outlined in paragraph ~~7.12(1)"a,"~~ 7.11(1)"a," except that the issue shall be limited to the question of whether the appeal is authorized by statute and consistent with statutory appeal requirements.

~~7.12(3)~~7.11(3) *Failure to pursue the appeal at the informal stage.* If the appeal was filed timely and informal procedures were initiated, the failure of the taxpayer to provide documents or information requested by the department, including the failure to respond to a position letter or an information request, shall constitute failure to pursue the appeal and is grounds for the department to dismiss the appeal in accordance with the procedure outlined in paragraph ~~7.12(3)"a,"~~ 7.11(3)"a," For purposes of this subrule, an evasive or an incomplete response will be treated as a failure to pursue the appeal~~provide documents or information.~~

a. Procedures for motions to dismiss. If the department seeks to dismiss the appeal, the department 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 department 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)~~701—7.15(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the taxpayer failed to pursue the appeal, as that term is defined in this subrule. Thereafter, rule ~~701—7.19(17A)~~ 701—7.18(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. 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. Supporting documentation must be supplied. The department shall review and notify the taxpayer whether the application is granted or denied.

d. Denial of the application. If the department 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)~~701—7.15(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the taxpayer has good cause to reinstate the dismissed appeal. Thereafter, rule ~~701—7.19(17A)~~ 701—7.18(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 director or the director's designee will issue an order closing the appeal.

e. Failure to file timely application for reinstatement. If an application for reinstatement is filed after the 30-day deadline, the application shall not be accepted by the director or director's designee.

~~7.12(4)~~7.11(4) *Dismissal of appeals during contested case proceedings.* Once contested case proceedings have been commenced, 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)~~ 701—7.16(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 6988C, IAB 4/19/23, effective 5/24/23]

~~701—7.13(17A,421)~~**701—7.12(17A,421)** ~~Expedited hearings and demands for contested case 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)~~**701—7.13(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)~~**701—7.13(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)~~ **701—7.12(17A,421)**, the department shall file an answer to the appeal with the clerk. Subject to the limitations in rule ~~701—7.13(17A,421)~~ **701—7.12(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)~~**7.13(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)~~**7.13(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)~~**7.13(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 in response to the filing of an amended appeal or to assert a new matter or an affirmative defense. The presiding officer has discretion to grant a continuance to avoid prejudice to the taxpayer or the department.

~~7.14(4)~~**7.13(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)~~7.13(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)~~7.13(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)~~ 7.18(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)~~7.13(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)~~ 701—7.18(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)~~701—7.14(17A) **Subpoenas.** Prior to the commencement of a contested case, the department ~~shall have~~has the authority to subpoena books, papers, and records and ~~shall have~~has 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)~~701—7.15(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." Alternatively, a taxpayer that has a GovConnectIowa account may notify the clerk by using the Manage Appeal option in GovConnectIowa. The demand must be made no sooner than six months ~~or more~~ after the filing of the ~~protest~~appeal. 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)~~7.15(1) When requesting a contested case hearing with the ~~department of inspections and appeals~~division of administrative hearings, the department shall complete a transmittal form consistent with rule 481—10.4(10A). The transmittal form is merely an administrative tool intended to facilitate the issuance of the notice of hearing.

~~7.16(2)~~7.15(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~~identifying the issues within the scope of the contested case, scheduling the hearing date, establishing discovery or other deadlines, and other procedural matters to be addressed in the notice of hearing. The notice of hearing shall be issued ~~by the later of the following:~~ within 30 days of the transmittal of the case from the department to the division of administrative hearings or one week after a mutually agreeable hearing date is selectedtelephone conference held under this subrule.

~~7.16(3)~~7.15(3) A c~~Contested case proceedings will be commenced when~~ by the presiding officer by delivery of the notice of hearing by ordinary mail or electronic 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)~~7.15(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 of hearing 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.
- e. The statement of the issues in the notice of hearing shall not include issues that are not presented in the appeal or the answer.

~~7.16(5)~~**7.15(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; ARC 6988C, IAB 4/19/23, effective 5/24/23]

~~701—7.17(17A)~~701—7.16(17A) Discovery.

7.16(1) 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 cases ~~proceedings~~.

7.16(2) 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.

7.16(3) 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.

7.16(4) Identifiable department 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; ARC 6988C, IAB 4/19/23, effective 5/24/23]

~~701—7.18(17A)~~701—7.17(17A) Prehearing conference.

~~7.18(1)~~**7.17(1)** ~~Following the commencement of the contested case and~~ 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 cases ~~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, subject to the applicable statute of limitations and the applicable statutory appeal period ~~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)~~**7.17(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)~~7.17(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)~~7.17(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)~~7.18(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)~~701—7.18(17A) **Contested case proceedings.**

~~7.19(1)~~7.18(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 cases ~~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, and Licensing, 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)~~7.18(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)~~701—7.13(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)~~701—7.15(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. ¶

b.c. 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)~~(1) One of the reasons listed in Iowa Code section 17A.11(1)(a).
- ~~(6)~~(2) The case involves an issue or issues the resolution of which would create important precedent;
- ~~(7)~~(3) The case involves complex or extraordinary questions of law or fact;
- ~~(8)~~(4) The case involves issues or questions of law or fact that, based on the director's discretion, should be retained by the director;
- ~~(9)~~ Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal;¶
- ~~(10)~~ The request was not timely filed;¶
- ~~(11)~~(5) The request is not consistent with a specified statute; or
- ~~(12)~~(6) 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)7.18(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.

e.d. 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.

e.f. 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"~~ 7.18(2)"c" 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.f. 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.g. 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)7.18(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 or video conference in which all parties have an opportunity to participate. Other telephone or video proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone or video 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. ~~The presiding officer may enter a default decision as described in subrule 7.18(7). 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. ~~The statement of the issues in the notice of hearing commencing the contested case shall not include issues that are not presented in the appeal or the answer. 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)7.18(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 of the taxpayer's liability. Evidence of a federal determination of the taxpayer's liability such as a treasury department ruling, regulation or determination letter issued to the taxpayer; a taxpayer's federal court decision; or an Internal Revenue Service assessment issued to the taxpayer relating to issues raised in the proceeding shall be ~~admissible~~ admissible, and the taxpayer shall be ~~be~~ 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 fact the parties to be used in contested case proceedings. In the event the parties file a stipulations of fact 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 official notice provisions of Iowa Code section 17A.14(4) apply to contested cases of the department. 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)~~ **7.18(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 will rule on such motions by issuing a written order. 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~~ served on 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. Resistance. The party opposing a motion, except in the case of motions for summary judgment, must file its resistance within 10 days of the date of filing of the motion unless a presiding officer otherwise orders a different deadline to file the resistance.¶

d.f. Reply. The movant may file a reply within 75 days of the date of filing of the resistance to the motion.

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

(1) 1 Motion for continuance. Motions for continuance should be filed no later than ~~ten~~ 10 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~~ 10 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~~ 10 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.

~~(1)~~(2) 2 Motion for dismissal.

~~(2)~~(3) 3 Motion for summary judgment.

~~(3)~~(4) 4 Motion for redaction of identifying details in the decision. For more information, see rule ~~701—7.9.7.8(17A)~~ 701—7.7(17A).

~~(4)~~(5) 5 Motion for default.

~~(5)~~(6) 6 Motion to vacate default.

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

~~g.~~h. 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~~ 60 days prior to the date ~~the case is set for the contested case hearing,~~ unless otherwise ordered by the presiding officer. Any party resisting the motion shall file the following within 30 days ~~from of the date of filing 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 movant may reply to the resistance within 15 days of the date of filing of 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)~~ 7.18(8).

7.19(6)7.18(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 conclusion of hearing, the parties should be prepared to make oral arguments as to the facts and law ~~at the conclusion of the hearing~~ if directed by 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. The parties may agree to a briefing schedule. If the parties agree to a briefing schedule and if the presiding officer adopts the agreed-upon briefing schedule by issuing an order to that effect 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)7.18(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)~~ 7.18(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 adversely affected party as provided in subrule ~~7.19(12)~~ 7.18(11).

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)7.18(8) Orders.

a. Proposed Decisions Submitted by Parties. 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 or with such changes that are supported by the record and law.

b. Preparing the Proposed Decision. 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. Decision on Motions to Redact Identifying Details. 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. Proposed and Final Decisions. 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 final and not subject to judicial review 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)~~ 701—7.27(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 to or review by the director 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 final and not subject to judicial review. 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. Application to Review Interlocutory Decisions. 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. Appeals to and Reviews by Director—Notice to Administrative Hearings Division. 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. Director's Authority in Appeals and Review of Proposed Decisions. On an appeal or review of a proposed decision, the director has all the power which the director would have in initially making the final decision except as it may limit the issues on notice to the parties. 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. Issuing Orders. 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, AEDMS as described in 481—Chapter 16, 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. Cross Appeals. 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)~~701—7.27(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. Transmission of Case from Administrative Hearings Division back to the Department. 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 authority~~ over the contested case, except to resolve taxpayer requests for awards of reasonable litigation costs. Thereafter, any further proceedings associated with or related to the contested case must occur before the director.

k. Exhaustion of Administrative Remedies Required. A party may not seek judicial review until the director has issued a final decision of the agency. If a party seeks judicial review of a proposed decision of an administrative law judge without appealing to the director or without review of the proposed decision by the director, the party ~~shall be~~ deemed to have failed to exhaust adequate administrative remedies.

7.19(9)7.18(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)~~7.18(10) 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)~~7.18(11) 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)~~7.18(12) 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.* On motion by a party, the presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed. If the presiding officer severs one or more issues from the remaining issues in the contested case, the contested case proceeds only on the issues that the presiding officer ordered for resolution. Once the decision on the issues that the presiding officer ordered for resolution becomes final and is not subject to further appeals, the parties may proceed, if necessary, with contested case on the issues that the presiding officer severed.

c. *Stipulations.* ~~Since stipulations of fact are encouraged, but no party can be required to stipulate to any facts. Stipulations as to the law are invalid, 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; ARC 6988C, IAB 4/19/23, effective 5/24/23]

~~701—7.20(17A)~~701—7.19(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)~~701—7.20(17A) Record and transcript.

~~7.21(1)~~7.20(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)~~7.20(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)~~7.20(3) 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. 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)~~7.20(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)~~701—7.21(17A) **Application for rehearing.** Any party to a contested case may file an application with the director for a rehearing in the contested case with the clerk in one of the manners described in 7.3(1), 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 served~~mailed~~ by the applicant ~~to on~~ 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)~~7.21(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	*	APPLICATION FOR REHEARING
designate type of proceeding, e.g., income tax	*	Docket No. _____
refund claim)	*	

~~7.22(2)~~7.21(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)~~7.21(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)~~701—7.22(17A) **Ex parte communications and disqualification.**

~~7.23(1)~~**7.22(1)** *Ex parte communication.* A party that has knowledge of a prohibited communication by any party or presiding officer should file a copy of the written prohibited communication or a written summary of the prohibited oral communication with the clerk. 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)~~7.22(2) *Disqualification of a presiding officer.* Request for disqualification of a presiding officer must be filed in the form of a motion supported by an affidavit asserting an appropriate ground for disqualification. A substitute presiding officer may be appointed by the division of administrative hearings if the disqualified presiding officer is an administrative law judge. If the disqualified presiding officer is the director, the governor must appoint a substitute presiding officer.

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

- (1) Has a personal bias or prejudice concerning a party or a representative of a party;
- (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.11~~7~~. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the

party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

(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 sections 17A.17 and 11.

~~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 under Iowa Code chapters 9C and 91C.

~~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 ~~is~~ 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 in accordance with Iowa Code section 91C.7(4). 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/Appeal of bond forfeiture.~~** The application of a nonlocal business entity for a hearing shall be written and substantially in the form set out for protest ~~appeals~~ 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. Rescinded ARC 7192C, IAB 12/13/23, effective 1/17/24.

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 State agency office than the office where the interview has been scheduled, the department normally will agree to transfer the interview to the closer department agency 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)701—7.23(421)~~ Mailing to the last-known address or personal delivery of notices of assessment and refund denial letters.

~~7.33(1)7.23(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)7.23(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)7.23(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)~~**7.23(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, or the most recent address on file;

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 ~~Unless otherwise indicated in this rule or required by the context, all words and phrases used in this rule that are defined under Iowa Code sections 421.62, 421.63, and 421.64, the following definitions apply: shall have the same meaning as provided to them under that Iowa Code section.~~

“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(e).

“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 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 ~~is subject to a penalty pursuant to Iowa Code section 421.62(2) 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) “e” 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 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.* ~~Only~~ All continuing education courses shall be on the topics of federal or state income tax or professional ethics are approved for credit.

— *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, or by completing the online Income Tax Preparer Continuing Education

~~form oin GovConnectIowa. 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, or by completing the online Income Tax Preparer Continuing Education form oin GovConnectIowa 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 calendar years, an individual, N, prepares prepared nine or fewer income tax returns or claims for refund described in this rule for a fee or other consideration. During the 2021 current 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 current 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 current calendar year. However, N also qualifies as a "new tax preparer" for the 2021 current 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 the prior calendar year to prepare returns in 2021 the current calendar year, but N will need to complete the minimum 15 hours of continuing education courses during the 2021 current calendar year to be eligible to prepare returns during the 2022 following calendar year if N will meet meets the definition of "tax return preparer" in the following calendar year 2022.~~

~~Example 2: An individual, B, prepares prepared ten income tax returns or claims for refund described in this rule during the 2019 a prior 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 current calendar year, but B only prepares a total of nine such tax returns throughout the entire 2020 current calendar year. B does not complete any hours of continuing education courses during the 2020 current 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 next calendar year because even though B did not prepare ten or more income tax returns or claims for refund in 2020 the current calendar year, B would have been classified as a tax return preparer in a prior calendar year 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 next 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 next calendar year to be eligible to prepare returns during in the 2022 following calendar year if P will meet the definition of "tax return preparer" in the following calendar year 2022. P's excess hours completed in 2020 a previous calendar year may not be applied toward the 15 hours of continuing education courses that P must complete in a future calendar year 2021 to be eligible to prepare returns in 2022.~~

~~Example 4: During the 2020 prior 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 current calendar year, regardless of the tax year of the returns P is preparing, because P has not completed a total of 15 continuing education hours during the 2020 prior calendar year. During the 2021 current 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 following calendar year, regardless of the tax years of the returns P prepares. However, P is still ineligible to prepare returns for the remaining duration of the 2021 current calendar year, regardless of the tax 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 income tax 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 a 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)~~701—7.24(441) Appeals of director's rejection of assessor appointment or reappointment.

~~7.37(1)~~7.24(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)~~ subrule 701—10.15(4) or reappointment of an assessor under ~~701—subrule 72.16(3)~~ subrule 701—103.16(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)~~7.24(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)~~ 701—7.6(17A);
- c. Rule ~~701—7.8(17A)~~ 701—7.7(17A);
- d. The introductory paragraph of rule ~~701—7.9(17A)~~ 701—7.8(17A) and subrule ~~7.9(7)~~ 7.8(6);
- e. Subrules ~~7.12(1), 7.12(2), and 7.12(4)~~ 7.11(1), 7.11(2), and 7.11(4);
- f. Subrule ~~7.13(1)~~ 7.12;
- g. Subrules ~~7.14(1) to 7.14(3)~~ 7.13(1) to 7.13(3);
- h. Rule ~~701—7.15(17A)~~ 701—7.14(17A);
- i. Rule ~~701—7.16(17A)~~ 701—7.15(17A);
- j. Rule ~~701—7.17(17A)~~ 701—7.16(17A);

- k. Rule 701—7.18(17A) 701—7.17(17A);
- l. Subrule 7.19(1) 7.18(1); subrules 7.19(3) 7.18(3) through 7.19(7) 7.18(7); subrule 7.19(8) 7.18(8), except paragraph 7.19(8)“b” 7.18(8)“b” related to costs shall not apply; additionally, Iowa Code section 421.60 shall not apply; subrules 7.19(9) 7.18(9) and 7.19(13) 7.18(12);
- m. Rule 701—7.20(17A) 701—7.19(17A);
- n. Rule 701—7.21(17A) 701—7.20(17A);
- o. Rule 701—7.22(17A) 701—7.21(17A); and
- p. Rule 701—7.23(17A) 701—7.22(17A).

7.37(3)7.24(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)7.24(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)7.24(5) Burden of proof. The burden of proof is on the party challenging the director’s decision under 701—subrule 72.15(4) subrules 701—10.15(4) or 72.16(3) 701—103.16(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; ARC 6988C, IAB 4/19/23, effective 5/24/23]

701—7.38(441)701—7.25(441) Appeals and hearings regarding the director’s intent to remove a member of the board of review.

7.38(1)7.25(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)7.25(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) 701—7.7(17A), excluding the first sentence of the introductory paragraph of 701—7.8(17A) 701—7.7(17A); and subrules 7.8(8) and 7.8(9) subrule 7.8(6);
- b. Subrules 7.9(1) and 7.9(2) Subrule 7.8(1);
- c. Rule 701—7.10(17A) 701—7.9(17A);¶
- d. Paragraphs 7.11(2)“d” and “e”;
- e. d. Subrules 7.12(2) to 7.12(4) 7.11(1) to 7.11(4);
- f. e. Rule 701—7.13(17A) 701—7.12(17A);
- g. f. Rule 701—7.14(17A) 701—7.13(17A);
- h. g. Rule 701—7.15(17A) 701—7.14(17A);
- i. h. Rule 701—7.16(17A) 701—7.15(17A);
- j. i. Subrule 7.17(1) 7.18(1); subrules 7.17(3) through 7.17(7) 7.18(3) through 7.18(7); subrule 7.17(8) 7.18(8), except paragraph 7.17(8)“b” 7.18(8)“b” related to costs shall not apply; additionally, Iowa Code section 421.60 shall not apply; subrules 7.17(9) 7.18(9), 7.17(10), and 7.17(14) 7.18(12);
- k. Rule 701—7.18(17A) 701—7.17(17A);
- l. Rule 701—7.19(17A) 701—7.18(17A);
- m. Rule 701—7.20(17A) 701—7.19(17A);
- n. Rule 701—7.21(17A) 701—7.20(17A); and

~~o. Rule 701—7.22(17A)701—7.21(17A).~~

~~7.38(3)7.25(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)7.25(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)7.25(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)701—7.27(17A)~~ Licenses and permit denials and revocations.

~~7.39(1)7.27(1)~~ *Specified license or permit denial and revocation processes.* For procedures related to alcohol and lottery license denials and revocations, see Iowa Administrative Code chapters 701—1000 and 1102. For procedures related to sales or use tax permit revocations, see Iowa Administrative Code chapter 701—201. For all other license and permit denials, this rule applies.

~~7.39(2)7.27(2)~~ *Denial of license or permit; refusal to renew license or permit.*

~~a. *Written notice in general.* 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, including a sales or use tax permit a notice, as prescribed in rule 701—7.16(17A), shall be served by the department will serve notice of intent to deny or refuse the license by restricted certified mail or by personal service as in a civil action regular mail. The notice will 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. The notice will provide the licensee or applicant with 30 days to request a hearing and information about how to contact the Department to make such a request.~~

~~b. *Requesting a hearing.* If a hearing is requested, the matter will be transferred to the administrative hearings office unless retained by the director.~~

~~c. *Notice of hearing.* A notice of hearing issued as described in rule 701—7.15 upon the licensee or applicant. Prior to the refusal or denial of a license, the department shall will 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.~~

~~d. *Licensee opportunity to file a petition.* If the licensee so desires, the licensee may file a petition as provided in subrule 7.39(3)7.27(4) 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)701—7.18(17A) governing contested case proceedings shall apply.~~

~~e. *Treatment of existing license while matter is pending.* 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(23)7.27(3)~~ *Revocation of license.*

~~a. *Written notice in general.* The department shall will not revoke, suspend, annul or withdraw~~

any license until written notice is served by ~~personal service or restricted certified mail or by personal service as in a civil case.~~ The notice will provide the licensee with the 30 days to request a hearing and information about how to contact the Department to make such a request. If a hearing is requested, the matter will be transferred to the division of administrative hearings unless retained by the director. A notice of hearing will be issued by the presiding officer as described ~~in~~ pursuant to rule 701—7.16(17A) 701—7.15(17A) within the time prescribed by the applicable statute and ~~the~~ The licensee whose license is to be revoked, suspended, annulled, or withdrawn, ~~will be~~ is given an opportunity to show at an evidentiary hearing conducted pursuant to rule 701—7.19(17A) 701—7.18(17A) compliance with all lawful requirements for the retention of the license.

- ~~1. Noticed in sales and use tax permit revocation.~~ 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. ¶

b. *Contents of notice.* In addition to the requirements of rule 701—7.16(17A) 701—7.15(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.

c. *Licensee opportunity to file petition.* A licensee whose license may be revoked, suspended, annulled, or withdrawn, may file a petition as provided in subrule ~~7.39(43)~~ 7.27(4) with the ~~clerk~~ department prior to the hearing. ~~The petition should be filed at the address provided on the notice to revoke, suspend, annul, or withdraw.~~ 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) 701—7.18(17A) governing contested case proceedings shall apply.

d. *Emergency proceedings.* Notwithstanding paragraph ~~7.39(32)~~ “a,” 7.27(3) “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(34)~~ 7.27(4) Petition.

a. When a person desires to file a petition as provided in subrules ~~7.39(21)~~ and ~~7.39(32)~~ 7.27(2) and 7.27(3), 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; ¶ _____

(2) ——— Clear, concise and complete statements of all relevant facts showing why petitioner's license should not be revoked, refused, or denied;

(3) Whether a similar license has previously been issued to or held by petitioner or revoked and if revoked the reasons therefor; and

(4) 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.