PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

[Created by Iowa Code chapter 455G]

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CHAPTER 1
GENERAL

591—1.1(455G) Description of Iowa comprehensive petroleum underground storage tank fund board. The Iowa comprehensive petroleum underground storage tank fund board is a five-member board consisting of the director of the department of natural resources or the director's designee, the treasurer of the state of Iowa or the treasurer's designee, the commissioner of insurance or the commissioner's designee, and two public members appointed by the governor and confirmed by the senate. The two public members shall have experience in either financial markets or insurance, or both, and shall serve staggered four-year terms, except that of the first public members appointed, one shall be appointed for a term of two years and one for a term of four years. The board staff shall consist of an administrator selected by the board, who shall also serve as the board secretary, and additional staff as approved by the board.

591—1.2(455G) Mission of the board. The mission of the board is to assist Iowa's owners and operators of petroleum underground storage tanks to comply with minimum technical and financial responsibility standards and to otherwise assist in fulfilling the goals and objectives of Iowa Code chapter 455G.

591—1.3(455G) General course and method of operations. Regular meetings of the board shall be held monthly on the fourth Thursday of each month at 10 a.m. in the Office of the Insurance Commissioner, 330 E. Maple, Des Moines, Iowa, unless another time and place are designated by the board. The board may also hold special meetings as it deems appropriate. The purposes of such meetings shall be to review progress in implementation and administration of board programs, to consider and act upon proposals, to establish policy as needed, and to take actions as necessary and appropriate.

591—1.4(455G) Location where public may submit requests for assistance or information. Requests for assistance or information should be directed to Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266, telephone number (515)225-9263. Requests may be made personally, by telephone, mail or any other medium available, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday. Special arrangements for accessibility of the board at other times will be provided as needed.

591—1.5(455G) Potential conflicts of interest. A conflict of interest exists when a member of the board participates in a way that directly affects the personal or financial interests of the board member or an immediate family member. Any board member who may have a personal or financial interest in an action shall abstain from voting and shall be disqualified from serving and participating in deliberations, evaluations and decisions in bringing forth the proposal to the board for consideration. The board member or members who have or think they may have a conflict of interest shall declare that there is or may be a conflict of interest. When a conflict of interest is determined to exist, the board member shall abstain from voting and shall be recorded as abstaining when votes are taken. A majority of a quorum is necessary for any substantive action taken by the board. A quorum may include any member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose.

Any member who has a conflict of interest shall not defeat the quorum and shall not be eligible to vote on the matter in conflict. Any vote by a member with a conflict shall be excluded.

These rules are intended to implement Iowa Code section 455G.4.

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◊ Two or more ARCs

CHAPTER 2
PETITIONS FOR RULE MAKING

591—2.1(17A) Petition for rule making. Any person or board may file a petition for rule making with the board at the following address: Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266. A petition is deemed filed when it is received by that office. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA COMPREHENSIVE PETROLEUM
UNDERGROUND STORAGE TANK FUND BOARD

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

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 board's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 2.4(17A).

2.1(1) 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.

2.1(2) The board may deny a petition because it does not substantially conform to the required form.

591—2.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

591—2.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266.

591—2.4(17A) Board consideration.

2.4(1) Within 14 days after the filing of a petition, the board must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board, to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board 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 board by any person.

2.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, deny the petition and notify petitioner of its action and the specific

grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the board mails or delivers the required notification to petitioner.

2.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

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

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CHAPTER 3
DECLARATORY ORDERS

591—3.1(17A) Petition for declaratory order. Any person may file a petition with the Iowa comprehensive petroleum underground storage tank fund board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board at the following address: Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA COMPREHENSIVE PETROLEUM
UNDERGROUND STORAGE TANK FUND BOARD

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

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 3.7(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.

591—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to 3.6(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

591—3.3(17A) Intervention.

3.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 30 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

3.3(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 board.

3.3(3) A petition for intervention shall be filed at Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266. Such a petition is deemed filed when it is received by that office. The board 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:

IOWA COMPREHENSIVE PETROLEUM
UNDERGROUND STORAGE TANK FUND BOARD

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

The petition for intervention must 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.

591—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

591—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266.

591—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 Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

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 591—17.13(17A).

591—3.7(17A) Consideration. Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the administrator to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the

Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266, by any person.

591—3.8(17A) Action on petition.

3.8(1) Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the board or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

3.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in 591—17.2(17A).

591—3.9(17A) Refusal to issue order.

3.9(1) The board 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 board to issue an order.
3. The board 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 board 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 board 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 board to determine whether a statute is unconstitutional on its face.

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

3.9(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.

591—3.10(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.

591—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.

591—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 board, 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 board. The issuance of a declaratory order constitutes final board action on the petition.

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

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CHAPTER 4
BOARD PROCEDURE FOR RULE MAKING

591—4.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the board are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

591—4.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the board 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 board by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

591—4.3(17A) Public rule-making docket.

4.3(1) *Docket maintained.* The board shall maintain a current public rule-making docket.

4.3(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 board. 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 board personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the board of that possible rule. The board may also include in the docket other subjects upon which public comment is desired.

4.3(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 board determinations with respect thereto;

h. Any known timetable for board 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.

591—4.4(17A) Notice of proposed rule making.

4.4(1) *Contents.* At least 35 days before the adoption of a rule the board 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 board 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 board for the resolution of each of those issues.

4.4(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 4.12(2) of this chapter.

4.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the board 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 board shall mail or electronically transmit a copy of that notice to subscribers who have filed with the board a written request for either mailing or electronic transmittal of 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.

591—4.5(17A) Public participation.

4.5(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, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266, or the person designated in the Notice of Intended Action.

4.5(2) *Oral proceedings.* The board may, at any time, schedule an oral proceeding on a proposed rule. The board 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 board by the administrative rules review committee, a governmental subdivision, a board, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional 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 board 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.

4.5(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 board, a member of the board, or another person designated by the board who will be familiar with the substance of the proposed rule shall preside at the oral proceeding on a proposed rule. If the 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 board 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 board 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 board.

(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.

4.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the board may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

4.5(5) *Accessibility.* The board shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266, in advance to arrange access or other needed services.

591—4.6(17A) Regulatory analysis.

4.6(1) *Definition of small business.* A "small business" is defined in Iowa Code section 17A.4A(7).

4.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the board's small business impact list by making a written application addressed to Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266. 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 board 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 board 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.

4.6(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 board 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 board 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.

4.6(4) *Qualified requesters for regulatory analysis—economic impact.* The board 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.

4.6(5) *Qualified requesters for regulatory analysis—business impact.* The board 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.

4.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the board shall adhere to the time lines described in Iowa Code section 17A.4A(4).

4.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the board. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

4.6(8) *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).

4.6(9) *Publication of a concise summary.* The board shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

4.6(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.

4.6(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).

591—4.7(17A,25B) Fiscal impact statement.

4.7(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.

4.7(2) If the board determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the board shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

591—4.8(17A) Time and manner of rule adoption.

4.8(1) *Time of adoption.* The board 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 board 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.

4.8(2) *Consideration of public comment.* Before the adoption of a rule, the board 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.

4.8(3) *Reliance on board expertise.* Except as otherwise provided by law, the board may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

591—4.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

4.9(1) The board 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.

4.9(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 board 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.

4.9(3) The board 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 board 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.

4.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the board to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

591—4.10(17A) Exemptions from public rule-making procedures.

4.10(1) *Omission of notice and comment.* To the extent the board 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 board 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 board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

4.10(2) *Public proceedings on rules adopted without them.* The board 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 4.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, a board, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the board shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 4.10(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 board may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 4.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

591—4.11(17A) Concise statement of reasons.

4.11(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 board shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266. 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.

4.11(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 board's reasons for overruling the arguments made against the rule.

4.11(3) *Time of issuance.* After a proper request, the board 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.

591—4.12(17A) Contents, style, and form of rule.

4.12(1) *Contents.* Each rule adopted by the board shall contain the text of the rule and, in addition:

a. The date the board 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(1)*"b"* or the board 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(1)*"b"* or the board in its discretion decides to include such reasons; and

g. The effective date of the rule.

4.12(2) *Incorporation by reference.* The board 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 board finds that the incorporation of its text in the board-proposed or board-adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the 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 board may incorporate such matter by reference in a proposed or adopted rule only if the board 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 board, 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 board shall retain permanently a copy of any materials incorporated by reference in a rule of the board.

If the board 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.

4.12(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 board 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 board. The board 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 board shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

4.12(4) *Style and form.* In preparing its rules, the board shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

591—4.13(17A) Board rule-making record.

4.13(1) *Requirement.* The board 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.

4.13(2) *Contents.* The board 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 board submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the board'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 board, 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 board and considered by the board chairperson, 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 board 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 board 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(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 board 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.

4.13(3) *Effect of record.* Except as otherwise required by a provision of law, the board rule-making record required by this rule need not constitute the exclusive basis for board action on that rule.

4.13(4) *Maintenance of record.* The board 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 4.13(2)*"g," "h," "i,"* or *"j."*

591—4.14(17A) Filing of rules. The board 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 board shall use the standard form prescribed by the administrative rules coordinator.

591—4.15(17A) Effectiveness of rules prior to publication.

4.15(1) *Grounds.* The board 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 board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

4.15(2) *Special notice.* When the board 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 board 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 board 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 board 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 4.15(2).

591—4.16(17A) General statements of policy.

4.16(1) *Compilation, indexing, public inspection.* The board 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 sections 17A.2(11)*"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(11)*"f,"* or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

4.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the board to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 4.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

591—4.17(17A) Review by board of rules.

4.17(1) Any interested person, association, board, or political subdivision may submit a written request to the administrative rules coordinator requesting the board to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the board 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 board 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.

4.17(2) In conducting the formal review, the board 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 board'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 board or granted by the board. 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 board'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.

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CHAPTER 5
DETERMINATION OR ADJUSTMENT OF COST FACTOR
[See also 701—Chapter 37]

591—5.1(455G) Public hearing. For purposes of the public hearing required by Iowa Code chapter 455G, the following procedures apply:

1. The date, time and place of the public hearing shall be set by the board, by the chairperson of the board or by the administrator.

2. A notice of the hearing setting forth the purposes thereof and specifying the date, time and place for the public hearing shall be published at least once not less than 4 nor more than 25 days prior to the date of the hearing in a newspaper having general circulation substantially throughout the state or a combination of newspapers which together ensure general circulation of the notice in the state.

3. The public hearing shall be conducted in accordance with the rules governing conduct of oral proceedings for rule making in subrule 591—4.5(3), paragraphs *"c"* and *"d."*

This rule is intended to implement Iowa Code section 424.3.

591—5.2(424) Cost factor. The board establishes the cost factor on each gallon of petroleum diminution to be $10 commencing October 1, 1991.

591—5.3(424) Credit permitted against charge. Iowa Code section 424.6(1) provides a credit against the charge otherwise due from a person operating an eligible underground bulk storage facility if all of the following requirements are met:

5.3(1) The person must operate an eligible underground bulk storage facility. An underground bulk storage facility is "eligible" only if (a) it includes loading and unloading racks designed to handle bulk quantities of petroleum separate and different from retail dispensing facilities; and (b) the facility was in operation on or before January 1, 1990; and

5.3(2) The person must be a depositor who is also a receiver responsible for self-assessment of the charge due on petroleum deposited into the underground bulk storage tank; and

5.3(3) The person must withdraw petroleum from the underground bulk storage tank and deliver the petroleum in bulk quantities for deposit into an exempt underground tank. To be considered delivered in "bulk quantities," delivery must be made in a portion of a standard tanker truck load. The tanker truck must have a minimum capacity of 1,000 gallons. The subsequent deposit into an "exempt underground tank" must be a tank described in Iowa Code sections 455G.1 and 455G.2(14). Examples of exempt underground tanks include, but are not limited to, the following: (a) a farm or residential tank with a capacity of 1,100 gallons or less used for storing motor fuel for noncommercial purposes, (b) a tank used for storing heating oil for consumptive use on the premises where stored, (c) a storage tank situated in an underground area, as in a basement, cellar, or tunnel, if the storage tank is situated upon or above the surface of the floor to permit inspection of its entire surface, and (d) an underground storage tank system whose capacity is 110 gallons or less.

Petroleum transferred, sold, and deposited in the manner described above shall be entitled to a credit calculated by multiplying the gallonage by the diminution rate times the current cost factor. The credit is claimed on the Environmental Protection Charge Quarterly Return (Form 87-002) as a reduction of the total gallonage on which the charge would otherwise be due. The credit is applicable to deposits made into exempt tanks on or after May 2, 1990.

This rule is intended to implement Iowa Code section 424.6(1).

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CHAPTER 6
ADMINISTRATION OF THE ENVIRONMENTAL PROTECTION CHARGE IMPOSED UPON PETROLEUM DIMINUTION

[See also 701—Chapter 37]

591—6.1(424) Definitions. When used in this chapter, unless the context otherwise requires:

"Board" means the Iowa comprehensive petroleum underground storage tank fund board.

"Certificate of noncompliance" means a document provided by the child support recovery unit certifying that the named obligor is not in compliance with a support order or with a written agreement for payment of support entered into by the unit and the obligor.

"Charge" means the environmental protection charge imposed upon petroleum diminution under Iowa Code section 424.3.

"Charge payer" means a depositor, receiver or tank owner or operator obligated to pay the charge.

"Child support recovery unit" means the child support recovery unit created by Iowa Code section 252B.2.

"Cost factor" is an amount per gallon of diminution as determined and adjusted from time to time in accordance with Iowa Code section 424.3.

"Department" means the department of revenue of the state of Iowa.

"Depositor" means any person holding title to petroleum who deposits or causes to be deposited petroleum into a tank and who transfers that title to a receiver. See below for definitions of "receiver" and "tank." Persons (such as common or contract carriers) who transfer possession of, but not title to, petroleum from depositors to receivers are not depositors for the purposes of this chapter. A person's status and responsibilities as a depositor are not altered by the fact that title to petroleum passes to a receiver before the petroleum is placed in a tank; however, see rule 591—6.8(424).

"Diminution" is the petroleum released into the environment prior to its intended beneficial use and equals the total volume of petroleum deposited in a tank multiplied by the diminution rate.

"Diminution rate" equals one-tenth of 1 percent.

"Director" means the director of the department of revenue.

"Fund" means the Iowa comprehensive petroleum underground storage tank fund.

"Obligor" means a natural person as defined in Iowa Code section 252B.1 who has been ordered by a court or administrative agency to pay support.

"Owner or operator" means owner or operator of a tank.

"Petroleum" means crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

"Receiver," if the owner and operator of a tank are not the same person, is the person who, under a contract between the owner and operator, is responsible for payment for petroleum deposited into a tank; and if the owner and operator of a tank are the same person, is the owner.

"Tank" means an underground storage tank subject to regulation under Iowa Code chapter 455G or an aboveground storage tank as defined in Iowa Code section 101.21 located at a retail motor vehicle fuel outlet if the aboveground storage tank is physically connected directly to pumps which dispense petroleum that is sold at the motor vehicle fuel outlet on a retail basis.

Upon application the board may exempt from this definition those petroleum gallons dispensed through loading and unloading racks designed to handle bulk quantities of petroleum separate and different from retail motorist vehicle sales provided the receiver retains adequate records to prove accurate payment of the environmental protection charge and may exempt from this definition an aboveground petroleum storage tank located at a retail motor vehicle fuel outlet which is used only to store petroleum for subsequent deposit in underground storage tanks subject to regulation under Iowa Code chapter 455G or in other aboveground tanks.

"Unit" means the child support recovery unit created in Iowa Code section 252B.2.

"Withdrawal of a certificate of noncompliance" means a document provided by the unit certifying that the certificate of noncompliance is withdrawn and that the licensing authority may proceed with issuance, reinstatement, or renewal of an obligor's license.

This rule is intended to implement Iowa Code section 424.2 and Iowa Code Supplement chapter 252J.

591—6.2(424) Division of responsibility. The board retains authority to amend or repeal these rules and also retains jurisdiction over any contested case the substance of which is a challenge to the diminution rate or cost factor. All other matters concerning the administration of this chapter shall be the responsibility of the department.

This rule is intended to implement Iowa Code section 424.1.

591—6.3(424) Imposition and collection of the charge. The charge is imposed upon petroleum diminution at the time petroleum is deposited into a tank. The amount of the charge is equal to the total volume of petroleum deposited into a tank (measured in gallons) multiplied by the diminution rate of one-tenth of 1 percent (.10%) multiplied by the cost factor. The charge is collected from the receiver by the depositor of petroleum and paid to the department.

This rule is intended to implement Iowa Code section 424.3.

591—6.4(424) Depositor's permit required. When used in this chapter or any other chapter relating to the charge for petroleum diminution, the word "permit" shall mean a "depositor's permit." On and after July 1, 1989, no person shall deposit petroleum in any tank in Iowa unless that person has procured a permit. There is no charge for a petroleum depositor's permit. If one person transports petroleum for deposit from more than one location, only one permit is required.

This rule is intended to implement Iowa Code section 424.5.

591—6.5(424) Application for permit. A depositor shall file with the department an application for a permit. The application shall be made upon a form prescribed by the board and shall set forth the name of the applicant, the applicant's current known address, the applicant's social security number, the name under which the applicant transacts or intends to transact business, the locations of the applicant's places of business and any other relevant information which the board may require. The application will be signed by the owner of the business if the owner is a natural person; by a member or partner in the case of an association or partnership respectively; and, in the case of a corporation, by an executive officer or other person authorized by the corporation to sign the application. A copy of the authorization shall be attached to the application as written evidence of the signer's authority.

The application shall be in the form provided at the end of this chapter.

This rule is intended to implement Iowa Code section 424.5 and Iowa Code Supplement chapter 252J.

591—6.6(424) Assignment, effectiveness and revocation of permits. A permit cannot be assigned. It is valid only for the person in whose name it is issued. The permit is valid for that person until canceled or revoked by the department. A permit holder selling the business shall request cancellation of the permit, and the purchaser shall apply for a new permit in the purchaser's own name. The department will deny a permit to any applicant who is an individual if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, until the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code section 424.5 and Iowa Code Supplement chapter 252J.

591—6.7(424) Permits—reasons for denial. The department may deny a permit to an applicant for the following nonexclusive reasons:

6.7(1) At the time of application, the applicant is substantially delinquent in paying a tax or charge which is due and administered by the department or substantially delinquent in paying the interest or penalty on this type of tax or charge; or

6.7(2) The applicant is a partnership and a partner or partners are substantially delinquent in paying any tax or charge administered by the department or the penalty or interest on this tax or charge.

6.7(3) The department will revoke a permit of an individual permit holder if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code section 424.5 and Iowa Code chapter 252J.

591—6.8(424) Payment of the charge. A depositor shall, as far as practicable, add the charge or the average equivalent of the charge to the sale price of the petroleum. When added, the charge is a part of the depositor's price and is a debt from the receiver to the depositor until paid. The depositor can recover the charge at law from the receiver in the same manner as other debts. The charge must be separately stated on the invoice.

Liability for paying the charge to the department is upon the depositor and upon the receiver unless the charge has been paid to the depositor in which case the depositor is liable. Liability for the charge is upon only the receiver if the depositor takes, in good faith from a receiver liable for the charge, a valid exemption certificate and, in addition, does the following: records the exemption certificate number and/or other information required by the director and submits this information as required by the director as part of the environmental protection charge return.

Liability for paying the charge to the department is upon the receiver alone if the receiver sends its own tanker truck or a common or contract carrier employed by the receiver to a distributor's facility and title to petroleum passes to a receiver there. If a person, upon the initial purchase of petroleum, causes that petroleum to be placed in a storage facility which is not a "tank" as defined in rule 591—6.1(424) and subsequently transfers the petroleum to a tank, that person becomes a receiver, and is liable for payment of the charge at the time petroleum is placed in the tank.

At one and the same time, a person can engage in a series of transactions in which it is a depositor and another series of transactions in which it is a receiver. If a person is involved in transactions in some of which it is a depositor and in some of which it is a receiver, it will, for the purposes of this chapter, have obligations both as a depositor and a receiver. In some circumstances the person will be obligated to collect the charge from another party and forward the charge to the department; in other circumstances it will be obligated to pay the charge to another party who is then obligated to forward that charge to the department. In other circumstances a receiver of petroleum rather than a depositor is obligated to pay the charge to the department. In the following examples which illustrate this, assume that A is a petroleum distributor with terminal rights, B is a petroleum distributor or wholesaler who also owns retail petroleum outlets, and that C is a petroleum retailer independent of B.

EXAMPLE A: B contacts A and asks A to transfer petroleum into a tank at B's retail facility. This is done. In this case, B is the receiver of the petroleum and A is its depositor.

EXAMPLE B: C orders petroleum from B, who contacts A who transports the petroleum to C's station and deposits it in C's tank. Title to the petroleum transfers from A to B to C. In this situation, B is the depositor who causes the petroleum to be deposited in the tank and who transfers title to C, who is the receiver.

EXAMPLE C: C contacts B asking that A transport a load of petroleum to C's exempt storage facility. This is done. Title to the petroleum is transferred first from A to B and then, when the petroleum enters the exempt storage facility, to C. Later, C pumps the petroleum into a tank. At the time C pumps the petroleum into the tank, C becomes a receiver of the petroleum who is obligated to forward the charge to the department.

EXAMPLE D: C owns a tank truck capable of transporting petroleum. C drives to A's facility and there accepts title to and possession of a load of petroleum. C then transports this petroleum back to

its retail station and places the petroleum in a tank. At the time the petroleum is placed in the tank, C becomes a receiver who is obligated to forward the charge to the department.

This rule is intended to implement Iowa Code sections 424.4 and 424.6.

591—6.9(424) Filing of returns. Every depositor shall file a return for any calendar quarter during which the depositor has become, is, or has ceased to be obligated to collect the charge from a receiver. The return shall be filed with the director on or before the last day of the month following the close of the calendar quarter.

6.9(1) *The form of the return.* The return shall be in the form provided at the end of this chapter.

6.9(2) *Signatures.* Returns shall be signed by the depositor or the depositor's duly authorized agent and must be duly certified by the depositor to be correct.

6.9(3) *Extension of time for filing.* Upon a proper showing of the necessity for extending the due date, the director may grant an extension of time in which to file a return. Extension will not be granted for a period longer than 30 days. The request for the extension must be received on or before the original due date of the return. It will be granted only if the person requesting the extension shall have paid, by the thirtieth day of the month following the close of the quarter, 90 percent of the estimated charge due.

6.9(4) *Filing of returns on other than a quarterly basis.* A depositor selling the business shall file a return within the month succeeding the sale. In cases of insolvency or assignment for the benefit of creditors by a depositor, the depositor shall immediately file a return. In other appropriate circumstances, when such action is necessary or advisable in order to ensure payment of the charge, the director may require that returns be filed for other than quarterly periods.

This rule is intended to implement Iowa Code section 424.7.

591—6.10(424) Payment of the charge. The charge is due and payable on or before the last day of the month following each quarterly period unless otherwise indicated in this chapter. For circumstances described in subrule 6.9(4) above, the charge must be paid when the return must be filed.

This rule is intended to implement Iowa Code section 424.8.

591—6.11(424) Charge not paid to depositor. If a receiver fails to pay a charge lawfully imposed on that receiver to a depositor required to collect the charge, then the receiver shall pay the charge directly to the department; and applicable provisions of this Chapter 6 and rules from other chapters incorporated into this chapter by reference apply to the receiver as if the receiver were a depositor.

This rule is intended to implement Iowa Code section 424.8.

591—6.12(424) Immediate successor liability for unpaid charge. A depositor selling the depositor's business or stock of petroleum or ceasing to do business is obligated to prepare a final return and pay all charges due within the succeeding month. Any immediate successor to the depositor who purchases the business or stock of petroleum is obligated to withhold a sufficient amount of the purchase price to pay the charge, interest and penalty which the depositor owes. Any immediate successor who intentionally fails to withhold enough of the purchase price to pay the delinquent charge, interest and penalty is personally liable for payment of the charge, interest and penalty. However, if the immediate successor's purchase of the depositor's business or stock of petroleum was made in the good faith belief that the depositor owed no charge, interest or penalty, then the department may waive the liability of the immediate successor. See rule 701—12.14(422,423) for further information regarding a depositor's immediate successor liability, except that the provisions of 701—subrule 12.14(4) regarding "good faith" are not applicable to this rule.

For the purposes of this rule, an immediate successor's belief that the immediate predecessor-depositor owed no charge, interest or penalty is made in good faith if the immediate successor has exercised that caution and diligence which honest persons of ordinary prudence exercise in handling their business affairs with regard to the purchase, and includes an honesty of intention and freedom from knowledge of circumstances which ought to put one on inquiry as to the facts. In order to establish that this belief is held in good faith, a depositor must exercise reasonable prudence to determine whether tax, penalty or interest is owed, and if any facts exist which would lead a reasonable

person to make further inquiry regarding this matter, then the immediate successor must conduct an inquiry concerning whether tax, penalty or interest is owed.

This rule is intended to implement Iowa Code sections 424.6 and 424.8.

591—6.13(424) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the charge, require any depositor to file with the department a bond in an amount which the director may fix, or in lieu of bond, securities or cash in an amount which the director prescribes. Pursuant to the statutory authorization in Iowa Code section 424.9, the director has determined that the following procedure will be instituted with regard to bonds:

6.13(1) *When required.*

a. New applications for depositor permits. An applicant for a depositor's permit will be required to post a bond if:

(1) It is determined upon a complete investigation of the applicant's financial status that the applicant would be unable to timely remit the charge, or

(2) The new applicant held a depositor's permit or another permit issued by the department for a current or prior business and the remittance record of the charge or tax under the permit falls within one of the conditions in paragraph *"b"* below, or

(3) The department experienced collection problems while the applicant was engaged in business under any prior or current permit, or

(4) The applicant is substantially similar to a person who would have been required to post a bond under the guidelines as set forth in *"b"* or the person had a previous depositor's permit which has been revoked. An applicant is "substantially similar" to the extent that the applicant is owned or controlled by persons who owned or controlled a previous permit holder. For example, X, a corporation, had a previous depositor's permit revoked. X is dissolved and its shareholders create a new corporation, Y, which applies for a depositor's permit. The persons or stockholders who controlled X control Y. Therefore, Y will be requested to post a bond or security.

b. Existing permit holders. Existing permit holders will be required to post a bond or security when they have two or more delinquencies in remitting the charge or filing timely returns during the last 24 months. Late filing of a return and late payment of a charge will count as two delinquencies. However, the late filing of the return or the late payment of the charge will not count as a delinquency if the depositor can satisfy one of the conditions set forth in Iowa Code section 421.27.

c. Waiver of bond. If a permit holder has been required to post a bond or security or if an applicant for a permit has been required to post a bond or security, upon the filing of the bond or security if the permit holder maintains a good filing and payment record for a period of two years, the permit holder may request that the department waive the continued bond or security requirement.

6.13(2) *Type of security or bond.* When it is determined that a permit holder or applicant for a depositor's permit is required to post collateral to secure the collection of the charge, the following types of collateral will be considered as sufficient: cash, surety bonds, securities or certificates of deposit. See 701—subrule 11.10(2) for characterizations of the security or bond necessary to be posted under this subrule.

6.13(3) *Amount of bond or security.* When it is determined that a permit holder or applicant for a permit is required to post a bond or security, the amount of bond or security required is an amount sufficient to cover nine months or three calendar quarters of charge liability. The department does not accept bonds for less than $100. If the bond amount is calculated to be less than $100, a $100 bond is required.

6.13(4) *Disposal of securities.* Securities may be sold by the director at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any charge, interest or penalty due.

This rule is intended to implement Iowa Code section 424.9.

591—6.14(424) Revocation of a permit. The department may revoke a permit if the permit holder has become substantially delinquent in paying any tax or charge which is administered by the department

or the interest or penalty on that tax or charge. The department may revoke a permit if the holder of the permit fails to comply with any of the provisions of 1989 Iowa Acts, chapter 131, or any order or rule of the department, or any order or rule of the board pursuant to that enactment. The department may also revoke a permit upon receipt of a certificate of noncompliance from the child support recovery unit. Concerning the characterization of the term "tax administered by the department," the local option sales and service tax is a tax administered by the department. Local vehicle, property, whether imposed on centrally assessed property or not, beer and liquor, and insurance premium taxes are nonexclusive examples of taxes which are not administered by the department. For a characterization of the term "substantially" delinquent in paying a tax or charge, see the third unnumbered paragraph of rule 701—13.16(422).

A notice of intent to revoke a permit, with a date to become effective no sooner than 30 days from the date of the notice, will be provided in advance of revocation upon receipt by the board/administrator of a certificate of noncompliance from the child support recovery unit.

This rule is intended to implement Iowa Code section 424.5 and Iowa Code chapter 252J.

591—6.15(424) Reinstatement of revoked permit. A revoked permit shall be reinstated only on such terms and conditions as the case may warrant. Terms and conditions shall include payment of any tax, charge, penalty or interest due to the department, or upon receipt by the department of a withdrawal of a certificate of noncompliance from the child support recovery unit. Pursuant to the director's statutory authority in Iowa Code section 424.5, to restore permits after a revocation, the director has determined that upon the revocation of a depositor's permit the permit holder will be required to pay all delinquent child support under Iowa Code chapter 252J; to pay all delinquent charges or taxes, file returns, post a bond and refrain from chargeable occurrences under Iowa Code section 424.3, prior to the reinstatement or issuance of a new depositor's permit.

As set forth above, the director may impose a waiting period not to exceed 90 days during which a permit holder must refrain from chargeable occurrences, before the director restores a permit or issues a new permit after a revocation. The department may require a sworn affidavit, subject to the penalty for perjury, stating that a permit holder has fulfilled all requirements of an order of revocation and stating the dates during which the permit holder refrained from chargeable occurrences. A permit revoked for nonpayment of child support will be reinstated upon receipt from the child support recovery unit of a withdrawal of the certificate of noncompliance.

6.15(1) Each of the following situations will be considered one offense, for the purpose of determining the waiting period to reinstate a revoked permit or issue a new permit after a revocation unless otherwise noted.

a. Failure to post a bond as required.

b. Failure to timely file a return.

c. Failure to timely pay the charge or any tax, interest or penalty administered by the department (including unhonored checks and late payments).

d. Failure to comply with any of the provisions of 1989 Iowa Acts, chapter 131, or any rule or order of the department or board.

6.15(2) An administrative law judge or the director may order a waiting period after revocation not to exceed:

a. Five days for one through five offenses.

b. Seven days for six through seven offenses.

c. Ten days for eight through nine offenses.

d. Thirty days for ten offenses or more.

6.15(3) An administrative law judge or the director may order a waiting period not to exceed:

a. Forty-five days if a second revocation occurs within 24 months of a first revocation.

b. Sixty days if a second revocation occurs within 18 months of the first revocation.

c. Ninety days if a second revocation occurs within 12 months of the first revocation.

d. Ninety days if a third or subsequent revocation occurs at any time after a second or other prior revocation.

This rule is intended to implement Iowa Code section 424.5 and Iowa Code chapter 252J.

591—6.16(424) Depositors required to keep records. The records required by this rule must be made available for examination upon request by the director or by a director's authorized representative. The records must include the normal books of account ordinarily maintained by a person engaged in the deposit of petroleum. The records must include copies of bills of lading or manifests, purchase invoices, copies of sales invoices, exemption certificates, purchase records, sales records, copies of filed distributor reports, Iowa export schedules, copies of credit memos, canceled checks and a check register.

The records required by this rule shall be preserved for a period of five years and open for examination by the department during this period of time. In the case of a false or fraudulent return made with the intent to evade the charge or in the case of a failure to file a return, the period for examining records is unlimited. If a charge liability has been assessed and an appeal is pending to the department, the state board of tax review or district or supreme court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

The records required by this rule may be kept on microfilm or related storage systems or through the use of an automatic data processing system provided the requirements of 701—subrule 11.4(2) are met with reference to microfilm or related record systems or 701—subrule 11.4(3) with reference to automatic data processing systems.

This rule is intended to implement Iowa Code section 424.12.

591—6.17(424) Claim for refund of charge. The charge shall be refunded only to whoever has actually paid the charge. A receiver who has actually paid the charge may designate a depositor who collects the charge as an agent for purposes of receiving a refund of the charge. Any person or persons who claim a refund of the charge shall prepare that claim on a prescribed form furnished by the department. A claim for refund shall be filed with the department within three years after the charge payment upon which the refund is claimed became due or one year after the charge payment was made, whichever time is the later. The claim shall state in detail the reasons why a refund is requested and facts supporting the claim and, if necessary, include attached documents which support the claim for refund. If the claim for refund is denied and the claimant wishes to protest the denial, that protest is timely if filed no later than 60 days following the date of the denial.

This rule is intended to implement Iowa Code section 424.15.

IOWA DEPARTMENT
OF REVENUE AND FINANCE ENVIRONMENTAL PROTECTION CHARGE QUARTERLY RETURN 87-002

	COMPUTATION	
	1. TOTAL GALLONS	
	2. EXEMPT GALLONS	
	3. GALLONS SUBJECT TO CHARGE	
PERMIT NO. FOR QTR ENDING DATE DUE	4. CHARGE DUE	
	5. PENALTY	
	6. INTEREST	
I declare that this return is correct and complete.	7. TOTAL AMOUNT DUE	

SIGNATURE TITLE DATE

INSTRUCTIONS

1. TOTAL GALLONS: ENTER THE TOTAL PETROLEUM GALLONAGE PLACED INTO ALL STORAGE TANKS FOR THE ENTIRE QUARTER.
2. EXEMPT GALLONS: SUBTRACT THE PETROLEUM GALLONAGE PUMPED INTO EXEMPT STORAGE TANKS FOR THE ENTIRE QUARTER.
3. GALLONS SUBJECT TO CHARGE: SUBTRACT LINE 2 FROM LINE 1.
4. CHARGE DUE: MULTIPLY THE GALLONAGE ON LINE 3 BY SEVEN -TENTHS OF ONE CENT ($.007).
5. PENALTY: IF AT LEAST 90 PERCENT OF THE CHARGE DUE IS NOT PAID BY THE DUE DATE OF THE RETURN A 15 PERCENT PENALTY WILL BE ADDED TO THE UNPAID PORTION OF THE CHARGE DUE.
6. INTEREST: INTEREST ACCRUES ON THE UNPAID PORTION OF THE CHARGE AT A RATE PRESCRIBED BY LAW.
7. TOTAL AMOUNT DUE: ADD THE AMOUNTS ON LINES 4, 5, AND 6 AND ENTER HERE.
   MAKE CHECK PAYABLE TO: TREASURER - STATE OF IOWA.

ENVIRONMENTAL PROTECTION CHARGE PERMIT APPLICATION

1. Owner's Name			Soc. Sec. No.	Federal ID No.	Telephone ( )	
2. Business/Trade Name				Federal ID No.	Telephone ( )	
3. Mailing Address of Business	Street or P.O. Box	City	State	Zip	County #	
4a. Location Address of Principle Place of Business (if different than above)	Street or P.O. Box	City	State	Zip	County #	
4b. Other business locations (attach additional sheet if needed)						

5. Type of ownership - ☐ Sole Proprietorship ☐ Partnership ☐ Corporation ☐ Association ☐ Government

6. Identify all general partners and corporate officers (attach separate sheet if necessary).

Name (last name first)	Soc. Sec. No.	Address	City	State	Zip	Title

7. If you are purchasing this business, complete the following: (read note 7 below)

Previous Owner Name

8. Have you previously operated a business in Iowa?

☐ Yes ☐ No. If "yes" provide prior business information.

Business Name

Withholding I.D. No.

Iowa Sales Tax Permit No.

Motor Vehicle Fuel Tax License No.

Has previous permit or license been revoked ☐ or cancelled ☐

9. Signature	Title	Date	Signature	Title	Date

ENVIRONMENTAL PROTECTION CHARGE PERMITS Any depositor of petroleum products into underground storage tanks in Iowa is required to obtain a permit and collect the Environmental Protection Charge from the receiver of the petroleum product each time that petroleum products are deposited into a tank not exempted from the Charge.

Each permit holder must file an Environmental Protection Charge return for each calendar quarter with remittance of the total Charges due for that period. Returns must be filed on or before the last day of the month following the close of the calendar quarter.

If you have questions regarding petroleum products upon which the Charge is imposed, or exemptions of tanks from the Charge, contact the Iowa Department of Natural Resources at 515/281-XXXX.

Questions regarding the Environmental Protection Charge and other depositor responsibilities should be directed to the Iowa Department of Revenue and Finance at 515/281-3114.

The entries on this application should be typewritten or printed plainly, and application returned to the Iowa Department of Revenue and Finance, Hoover Building, P.O. Box 10457, Des Moines, Iowa 50306. Incomplete applications will be returned for required information and may delay issuance of a permit.

INSTRUCTIONS

1. Enter the individual owner's name, partnership, corporation, organization's name, or government unit's name. If the owner is a sole proprietorship enter the social security number. Enter your federal identification number. If you are in the process of applying for a federal identification number, designate on the application. Enter owner's phone number.

2. If you have a business or trade name different than line 1, enter the name on line 2. Also, if different enter the federal identification number and telephone number on line 2. If you do not have a business or trade name different than line 1, leave line 2 blank.

3. Enter the address to which the tax forms will be sent. Also identify the county of the mailing address.

4a. If the location of the principle place of business is different than the mailing address, enter the location address and county.

4b. List other business locations from which you transport petroleum for delivery. Attach an additional sheet if needed, providing the location address and county of each additional business location.

5. Identify the ownership type of the business or organization.

6. Enter the names of all general partners and corporate officers, their social security numbers, addresses and titles.

7. Successor Liability - Provide name of previous owner. If you are purchasing this business, you may be liable for the previous owners unpaid tax.

8. Check whether you have previously operated a business in Iowa. If you check yes, enter the name of the business, former withholding number (generally federal I.D. number), former sales tax permit number, and former motor vehicle fuel tax license number.

9. The application must be signed by the owner of the business. If application is made by a partnership, the signature of at least one of the partners is required. In the case of a corporation, an executive officer or a person specifically authorized by the corporation must sign the application. If a person other than an executive is authorized to sign for the corporation, written evidence of his or her authority must be attached to the application.

County	Permit Number	Ownership

RECEIVER'S STATEMENT OF EXEMPTION FROM THE
IOWA ENVIRONMENTAL PROTECTION CHARGE
on Petroleum Diminution
(see reverse side for instructions)

Receiver			Depositor		
Address			Address		
City	State	Zip Code	City	State	Zip Code
Tank Registration Number			EPC Permit Number		

Receiver is claiming exemption from the Iowa Environmental Protection Charge on the petroleum deposit for the following reason:

- ☐ Aboveground storage tank (less than 10% of stored petroleum product in the tank and piping is underground).
- ☐ Tank is owned or operated by the State of Iowa or the federal government.
- ☐ Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for non-commercial purposes.
- ☐ Tank used for storing heating oil for consumptive use on premises where stored.
- ☐ Tank has a capacity of 110 gallons or less.
- ☐ Airport hydrant fuel system.
- ☐ Underground storage tank system with field constructed tanks.
- ☐ Other (specify) _____

Type of petroleum deposited (attach additional information if necessary): _____

Under penalty of perjury, I swear that the information on this form is true and correct.

Signature of Receiver _____ Title _____ Date _____

INSTRUCTIONS

THIS IS NOT AN UNDERGROUND STORAGE TANK EXEMPTION CERTIFICATE. Only the Iowa Department of Natural Resources has the authority to grant or deny an exemption from the Iowa Environmental Protection Charge (EPC) to an underground storage tank, and issue an exemption certificate.

This form is provided as a convenience for both the receiver and depositor of petroleum products when the receiver's tank falls within a class of underground storage tanks granted a blanket exemption from the Iowa EPC on petroleum diminution.

This "Statement of Exemption" must be maintained in the records of the depositor for five (5) years to verify the reason for non-collection of the Iowa EPC on qualifying deposits of petroleum products.

A separate "Statement of Exemption" is not necessary for each deposit of petroleum into an exempt tank. Once such a statement is on file with the depositor, the same type of petroleum products may be introduced into the receiver's underground storage tank without imposition of the Charge and without completion of a new "Statement of Exemption". Records of all deposits into exempt tanks must be maintained by the depositor and include: date of deposit, receiver's name and address, type of petroleum deposited, and gallonage deposited.

Depositors are required to periodically (at least annually) question each receiver who has filed a "Statement of Exemption" to determine if the information contained in the Statement is accurate and complete.

PENALTIES

Any receiver who submits an invalid "Statement of Exemption" may be held directly liable for the unpaid EPC, plus penalty and interest.

Depositors must exercise the caution and diligence which honest persons of ordinary prudence exercise in their business transactions in accepting a receiver's "Statement of Exemption" in lieu of an Iowa Department of Natural Resources tank EPC exemption number.

Any person who willfully attempts to evade the Iowa EPC, the payment of the Charge, or who makes or causes to be made a false or fraudulent return with the intent to evade the Charge is guilty of a class "D" felony (Iowa Code section 424.17).

IOWA ENVIRONMENTAL PROTECTION CHARGE PERMIT

For Petroleum Diminution

The permit holder named below is licensed to collect the Iowa Environmental Protection Charge on petroleum products deposited into underground storage tanks in Iowa. Petroleum products subject to this charge are defined by the Iowa Department of Natural Resources in accordance with Chapter 455G, Code of Iowa.

This permit is not transferrable and is valid until revoked or cancelled by the Iowa Department of Revenue.

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CHAPTERS 7 and 8
Reserved

CHAPTER 9
UST FUND BOARD AUTHORITY TO TRANSFER LIABILITIES TO A THIRD PARTY (LOSS PORTFOLIO TRANSFERS)

591—9.1(455G) Board authority for loss portfolio transfers. The board may enter into a transaction with a third party to transfer a portion or all of the board's liabilities. The board maintains the sole discretion to pursue such a transaction and may elect to pursue or not to pursue such a transaction based on whether or not the board deems such a transaction to be in the best interest of the program.

591—9.2(455G) Board liability subsequent to a loss portfolio transfer. Once a claim is transferred as part of a loss portfolio transfer transaction, the board, pursuant to Iowa Code Supplement section 455G.6(17), shall not reimburse any further costs associated with that claim.

591—9.3(455G) Minimum criteria to be evaluated. In order to determine whether or not a transfer of a portion or all of its liabilities is in the best interest of the program, the board will evaluate, at a minimum, the following criteria:

9.3(1) Effect on overall cost to reach closure on sites.

9.3(2) Effect on speed with which site closure will be accomplished.

9.3(3) Qualifications of the potential acquiring entity, including but not limited to:

a. Financial viability.

b. Experience with environmental claims.

c. Knowledge of corrective action guidelines.

9.3(4) Impact on claims not included in the proposed transfer, including but not limited to:

a. Ability to timely pay ongoing claims.

b. Delays in completing corrective action.

c. Board's ability to end liability for all claims in the future.

9.3(5) Impact the transfer will have on the statutory rights of the claimants.

591—9.4(455G) Proposal confidentiality. Any proposal submitted to the board will be handled in accordance with applicable Iowa law with regard to confidentiality.

591—9.5(455G) Requirement to seek bids. Any agreement to transfer liabilities shall be awarded on a competitive basis to the maximum extent practical. In those situations where it is determined that public bidding is not practical, the basis for the determination of impracticability shall be documented by the board or its designee.

591—9.6(455G) Proposal review. The board will review and respond within a reasonable time frame to any proposal submitted seeking a transfer of liabilities. Any board decision to enter into an agreement to transfer liabilities shall be completed consistent with public meeting laws in effect at that time. Work required by the department of natural resources at the site may not be delayed pending review of a proposal. Claims will continue to be handled in accordance with board policy during any pending proposal.

These rules are intended to implement Iowa Code Supplement section 455G.6(17).

[Filed 6/4/04, Notice 4/28/04—published 6/23/04, effective 7/28/04]

CHAPTER 10
RESTRUCTURING OF INSURANCE BOARD AND TRANSFER OF ASSETS AND LIABILITIES OF INSURANCE FUND

591—10.1(455G) Restructuring of insurance board. Effective March 15, 2000, or as soon thereafter as the board determines is reasonably practicable, the underground storage tank insurance board shall be restructured as Petroleum Marketers Mutual Insurance Company, a mutual insurance company, privately owned and operated by its insureds, organized to provide an allowable mechanism to demonstrate financial responsibility as required in 40 CFR Parts 280 and 281.

591—10.2(455G) Transfer of insurance fund assets and liabilities. Effective March 15, 2000, or as soon thereafter as the board determines is reasonably practicable, the comprehensive petroleum underground storage tank fund board shall transfer all assets and liabilities of the underground storage tank insurance fund to Petroleum Marketers Mutual Insurance Company (PMMIC). The method of transfer shall be pursuant to a memorandum of understanding by and between the board and Petroleum Marketers Mutual Insurance Company. Said memorandum of understanding shall be prepared by and executed no later than January 31, 2000, or as soon thereafter as a memorandum of understanding acceptable to both PMMIC and the board can be drafted and approved.

591—10.3(455G) Approval of new insurance fund. The transfer of all assets and liabilities of the insurance fund to be made pursuant to this chapter is contingent upon Petroleum Marketers Mutual Insurance Company receiving certification from the commissioner of insurance.

These rules are intended to implement Iowa Code section 455G.11.

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CHAPTER 11
CLAIMS

591—11.1(455G) Reserving and payment of claims pursuant to Iowa Code sections 455G.9 and 455G.21.

11.1(1) All claims shall be investigated and overall fund liability estimated. Claims shall be reserved for their estimated exposure to the fund on the specific site. The reserve shall reflect the estimated exposure less copayment or deductible obligations.

11.1(2) Reserves shall reflect estimated total cost to the program, regardless of actual funding provided.

11.1(3) Prioritization pursuant to Iowa Code section 455G.12 shall be accomplished with rules if required and as determined by the board.

11.1(4) An estimated reserve for incurred but not reported claims shall be developed.

11.1(5) Reserves may be changed to reflect changing knowledge on eligible claims.

11.1(6) Owner or operator compliance with regulatory and program requirements shall be evaluated as part of the investigation. Failure to meet regulatory and program requirements which exist at the time of payment may result in cost recovery claims as provided under Iowa Code section 455G.13.

11.1(7) Cause of loss and determination of responsible parties shall be ascertained as a part of the investigation process. Independent environmental consultants may be retained to assist in the determination of the cause of the release and for the application of coverage.

591—11.2(455G) Eligible claims. All claims eligible for benefits under Iowa Code sections 455G.9 and 455G.21 will be subject to available funding. In order to be eligible for reimbursement under any claim type, the claimant must prove either that the release was reported by October 26, 1990, or that the release occurred prior to October 26, 1990. Releases that cannot be proven to have occurred prior to October 26, 1990, must be addressed using the owners' or operators' chosen financial responsibility mechanism. Failure to carry an adequate financial responsibility mechanism, such as continuous insurance, is deemed to be self-insurance. The provisions of these rules do not confer a right upon any party.

11.2(1) *Financial responsibility required.* To be eligible for benefits under Iowa Code sections 455G.9 and 455G.21, any owner or operator applying for such benefits shall demonstrate that such owner or operator had continuous financial responsibility coverage in effect using a method provided for under 567—Chapter 136, beginning no later than October 26, 1990. If an owner or operator is unable to demonstrate financial responsibility coverage, or there is a lapse in the financial responsibility coverage for any period after October 26, 1990, the owner or operator will no longer be eligible for benefits if the site for which benefits are being requested had active tanks during the time the owner or operator was unable to demonstrate financial responsibility or if there is a lapse of financial responsibility coverage subject to the following limitation:

a. The financial responsibility coverage requirement shall not be required on temporarily closed tanks consistent with subrule 11.2(3).

b. An owner or operator who has had a lapse of financial responsibility coverage shall be allowed to remain eligible for remedial benefits if the following conditions are met:

(1) The owner or operator applies for reinstatement of remedial benefits and submits a reinstatement fee according to the following table:

Years for Which Financial Responsibility Not Demonstrated	Per-Tank Reinstatement Fee
July 1, 1991, through June 30, 1992	$330
July 1, 1992, through June 30, 1993	$415
July 1, 1993, through June 30, 1994	$495
July 1, 1994, through June 30, 1995	$575
July 1, 1995, through present	$450

For each fiscal year in which the owner or operator lacked financial responsibility coverage, such owner or operator shall pay the per-tank reinstatement fee for such fiscal year, as set forth above, for each active tank. The reinstatement fees above are for full years and shall be prorated on a per-month basis for each month or portion of a month for which there was a lapse of financial responsibility coverage. There is a minimum reinstatement fee of $500 per site per lapse of coverage.

(2) At the time of the application for reinstatement of remedial benefits, all active tanks must be in compliance with all state and federal technical and financial responsibility requirements.

(3) The owner or operator is in compliance with all other requirements of this chapter.

(4) An owner or operator is only eligible for reinstatement of remedial benefits one time per site. The one-time reinstatement may remedy multiple past lapses in financial responsibility. If there is subsequent lapse of financial responsibility coverage on any active tank on site after remedial benefits have been reinstated, the owner or operator will lose eligibility for remedial benefits and will be subject to cost recovery pursuant to Iowa Code section 455G.13.

c. A claim for benefits under any portion of 591—Chapter 11 that has been deemed ineligible due to a failure to maintain financial responsibility on a tank or tanks may be eligible, notwithstanding the failure to maintain financial responsibility, under the following conditions:

(1) The release for which the claim is made occurred prior to October 26, 1990; and

(2) The claimant is in compliance with all other requirements of this chapter; and

(3) The claimant pays a reinstatement fee equal to the reinstatement fee provided for in 591—paragraph 11.2(1)*"b."* The amount of $150 per tank shall be used to calculate the charge for reinstatement for the period from October 26, 1990, to July 1, 1991; and

(4) The application for reinstatement complies with 591—subparagraph 11.2(1)*"b"*(4).

11.2(2) *Impact of insurance on remedial account benefits.* If owners or operators have insurance to cover corrective action costs for their underground storage tanks after January 1, 1985, other than pursuant to Iowa Code section 455G.11 or other than pursuant to 40 CFR 280.95, 280.96, 280.99, 280.101, 280.102, and 280.103, the remedial account is available to eligible owners and operators only as follows:

a. The remedial account will pay the deductible amount applicable to such insurance for owners and operators who are eligible for remedial account benefits, subject to the applicable remedial account deductible and copayment provisions.

b. Except for payments made pursuant to 11.2(2)*"a,"* remedial account benefits are secondary to all such insurance.

c. Remedial account benefits shall not be used to reimburse insurance companies for proceeds paid by those companies pursuant to the terms of such insurance.

d. In the event of a dispute between the insurance company and the owner or operator or the board regarding insurance coverage, otherwise eligible owners and operators will receive remedial account benefits upon assigning their interest in such insurance to the board.

11.2(3) *Technical requirements.* An owner or operator eligible for remedial benefits who complied with 11.2(1) by using program insurance authorized pursuant to Iowa Code section 455G.11 will remain eligible for remedial benefits even though the insured tanks were not upgraded by December 22, 1998, under the following conditions:

a. The owner or operator temporarily closed the tanks in compliance with the closure requirements of the environmental protection commission 567—subrule 135.9(1) while the tanks were still insured under Iowa Code section 455G.11; and

b. The owner or operator certifies that the tanks continuously had financial responsibility coverage acceptable under 567—Chapter 136 from October 26, 1990, until the temporary closure; and

c. The owner or operator establishes that the tanks were empty and were not used during the entire period of the temporary closure. "Empty" means all materials have been removed from the tanks using commonly approved practices so that no more than 2.5 centimeters (1 inch) of residue, or 0.3 percent of weight of the total capacity of the tank system, remain in the tank system; and

d. The owner or operator establishes that, during the entire period of the temporary closure, vent lines were left open and functioning and all other lines, pumps, manways, and ancillary equipment were capped and secured; and

e. The owner or operator certifies that, within one year from the time the tanks were temporarily closed, the tanks were either permanently closed, removed and replaced, or upgraded; and

f. The owner or operator certifies that the upgraded tanks and replacement tanks meet the new tank or upgrade standards of the environmental protection commission rule 567—135.3(455B); and

g. Financial responsibility for the tanks, using a method provided for under 567—Chapter 136, was in effect; and

h. The owner or operator meets all other applicable requirements pertaining to remedial benefits. An owner or operator receiving remedial account benefits pursuant to this subrule will be subject to cost recovery pursuant to Iowa Code section 455G.13 in the event the owner or operator does not comply with all of the conditions of this subrule, the provisions of the certifications required by this subrule, and applicable statutes and rules of the environmental protection commission and the board.

11.2(4) *Compliance with report submittal deadlines.* To be eligible for remedial or innocent landowner benefits, claimants must comply with all department of natural resources (DNR) deadlines for submittal of Tier 1, Tier 2 and corrective action design report (CADR) requirements as published in 567—Chapter 135, and must, by June 30, 2000, or 180 days after confirmation of a release from the site, whichever is later, provide a copy of an executed contract with a certified groundwater professional, which contract must include a timetable that meets DNR deadlines for completion of a Tier 1 and Tier 2 if required.

11.2(5) *Tanks and sites not eligible.* The following underground storage tanks are not eligible for remedial account benefits:

a. Tanks that were taken out of use prior to January 1, 1974. For purposes of this rule, tanks taken out of use are tanks which have not actually been used by either depositing petroleum in the tanks or by pumping petroleum from the tanks.

b. Underground storage tanks which were removed from the ground prior to July 1, 1985.

c. Underground storage tanks which were closed prior to July 1, 1985.

d. Underground storage tanks which do not contain petroleum. For the purposes of this subrule, petroleum means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (60° F and 14.7 pounds per square inch absolute). The following two categories of substances are not petroleum:

(1) Substances which are regulated as hazardous waste under 42 U.S.C. 6921 et seq.

(2) Substances which would be regulated under 42 U.S.C. 9601 et seq., if the substance were to leak from a tank, related piping, other part of the system or from spills or releases into the environment, including lands, waters and air.

11.2(6) *Retroactive claims.*

a. Retroactive claims are:

(1) Claims which were filed with the board prior to January 31, 1990, for releases reported to the DNR after July 1, 1987, but prior to May 5, 1989; and

(2) If filed by a city or county, claims which were filed with the board prior to September 1, 1990, for releases reported to DNR after July 1, 1987, but prior to May 5, 1989; and

(3) Claims filed with the board prior to September 1, 1990, for releases reported to the DNR after January 1, 1984, but prior to July 1, 1987.

b. Retroactive claims shall be eligible for reimbursement if all of the following criteria are met:

(1) The claim has been verified and all supporting materials have been supplied to the administrator for review; and

(2) A signed and notarized claim form is submitted to the board; and

(3) The claimant is not a person whose method of showing proof of financial responsibility sufficient to comply with the federal Resource Conservation and Recovery Act or the Iowa environmental protection commission's underground storage tank financial responsibility rules,

567—Chapter 136, is one in which the ultimate financial responsibility for corrective action costs is not shifted from the owner or operator; and

(4) The claimant satisfies the copayment requirements of Iowa Code section 455G.9(4); and

(5) The claimant has not filed bankruptcy anytime after:

1. July 1, 1987, if the release was reported to DNR prior to May 5, 1989, but after July 1, 1987; or

2. January 1, 1985, if the release was reported to DNR prior to July 1, 1987, but after January 1, 1984.

11.2(7) *Remedial claims.* Remedial claims are claims filed with the board prior to February 26, 1994, for releases reported to DNR after May 5, 1989, and on or before October 26, 1990. Remedial claims shall be eligible for reimbursement if all of the following criteria are met:

a. A signed and notarized claim form is submitted to the board.

b. All bills and estimates pertinent to the submitted claim are received by the board, along with any contracts, any remedial plans and correspondence for budget approval on the work required by DNR.

c. The work is complete or, if ongoing, is approved by the administrator and in accordance with priority rules.

d. The owner or operator has met all relevant deadlines and DNR's technical requirements for cleanup. To be eligible, corrective action costs must be reasonable and necessary to complete the work required by DNR. The board shall reimburse or pay only those corrective action costs which will cover the work as mandated by Iowa Code sections 455B.471 to 455B.479.

e. The claimant satisfies the copayment requirements of Iowa Code section 455G.9(4).

11.2(8) *Innocent landowner claims.* Consistent with Iowa Code chapter 455G, the board may reimburse an owner of petroleum-contaminated property, or an owner or operator of an underground storage tank located on such property, who, but for this rule because of the date the release was reported, because of the date the claim was filed, because the tank(s) in question was removed from service prior to January 1, 1974, or because the tank(s) in question was removed or permanently closed prior to July 1, 1985, would not be eligible to receive benefits under Iowa Code section 455G.9. Eligible expenses shall not exceed the benefits such claimant would otherwise receive if such claimant were eligible under Iowa Code section 455G.9(1)*"a"*(1) to (3). All such reimbursements shall be subject to:

- The copayment requirements of Iowa Code section 455G.9(4),
- The requirements of 11.2(1), and
- The available funding and limitations of the innocent landowner fund created by Iowa Code section 455G.21(2)*"a"* for corrective action.

In the event the innocent landowner fund lacks sufficient funds to pay all claims submitted, innocent landowner claims shall be subject to the following priority:

a. Late filed retroactive claims. For releases reported to DNR on or after January 1, 1984, but prior to May 5, 1989:

(1) Claims must be filed with the board by February 26, 1994.

(2) All costs incurred on or after July 10, 1996, must be preapproved by the board to be eligible for reimbursement.

b. Preregulation claims. For releases from petroleum underground storage tanks (USTs) which are not eligible for remedial account benefits under Iowa Code section 455G.9(1)*"a"*(1) to (3) only because the USTs were taken out of use prior to January 1, 1974, or permanently closed or removed before July 1, 1985:

(1) Claims must be filed with the board by December 1, 1997.

(2) USTs must not have been operated on the site since the time the tanks were taken out of use or permanently closed.

(3) All costs incurred after July 10, 1996, must be preapproved by the board to be eligible for reimbursement.

(4) The owner cannot have claimed bankruptcy on or after the date of the reported release.

c. Late filed remedial claims. For releases reported by owners of petroleum-contaminated property as defined under Iowa Code section 455G.9(8) who did not comply with the reporting or filing

deadlines identified in this chapter, with priority to those owners who did not have knowledge of the USTs or did not have control over the property:

(1) Claims must be filed with the board by December 1, 1997.

(2) The owner or operator must have reported a known release to DNR consistent with DNR requirements.

(3) The owner did not have knowledge of the UST or of a release impacting the property prior to acquisition of the property if the property was acquired on or after October 26, 1990, or, if the owner did have such knowledge, the acquisition was necessary to protect a security interest.

(4) All costs incurred on or after July 10, 1996, must be approved by the board to be eligible for reimbursement.

(5) The owner cannot have claimed bankruptcy on or after the date of the reported release.

d. Acquired properties. For releases reported by owners of petroleum-contaminated property as defined under Iowa Code section 455G.9(8) who acquired the petroleum-contaminated property after October 26, 1990, and who did not comply with the reporting or filing deadlines identified in this chapter:

(1) Claims must be filed with the board by December 1, 1997.

(2) The owner or operator must have reported a known release to the DNR consistent with DNR requirements.

(3) The owner could not have been the owner or operator of the UST system which caused the release prior to acquiring the property after October 26, 1990.

(4) All costs incurred on or after December 1, 1996, must be preapproved by the board to be eligible for reimbursement.

(5) For claims submitted under this paragraph, the precorrective action value shall be the purchase price paid by the owner after October 26, 1990.

(6) For claims submitted under this paragraph, the purchase must have been an arm's-length transaction.

(7) The owner cannot have claimed bankruptcy on or after the date of the reported release.

e. Other innocent landowner claims. Claims for releases submitted to the board after December 1, 1997, which would have been eligible for benefits pursuant to paragraphs *"a"* through *"d"* of this subrule if filed by December 1, 1997, will be eligible for reimbursement subject to a first-in, first-out priority and the funding limitations of the innocent landowner fund. The owner must demonstrate that the owner has met all other requirements of this subrule in order to receive benefits.

11.2(9) *County tax deed claims.* The board shall pay 100 percent of the costs of corrective action and third-party liability for a release situated on property acquired by a county for delinquent taxes pursuant to Iowa Code chapters 445 through 448, for which a responsible owner or operator able to pay, other than the county, cannot be found. A county is not a "responsible party" for a release in connection with property which it acquires in connection with delinquent taxes, and does not become a responsible party by sale or transfer of property so acquired. Third-party liability specifically excludes any claim, cause of action, or suit for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

11.2(10) *Hardship funding claims.* The board shall pay 100 percent of corrective action costs and third-party liability not to exceed $1 million for a release for which the eligible claimant, pursuant to Iowa Code section 455G.9, is subject to financial hardship if all of the following conditions are met:

a. The claimant has completed the claim form, had it notarized, and submitted it to the board on or before December 1, 1996.

b. The claimant is a small business as defined in Iowa Code section 455G.2(18) and has submitted self-certification forms documenting small business status.

c. The claimant does not have a net worth of $15,000 or greater and has submitted documentation of net worth in accordance with Iowa Code section 455G.10(4) and 591—12.6(455G) or the claimant is an individual who is financially unable to pay copayments associated with the cost of corrective action as determined by using the DNR's evaluation of ability to pay found at 567—135.17(455B).

d. The release for which the claim has been made occurred prior to October 26, 1990.

e. The release for which the claim has been made was reported to DNR on or before December 1, 1996.

f. The site for which the claim is made is in compliance with all technical requirements of 567—Chapters 135 and 136.

g. The site for which the claim is made shall not be deeded or quitclaimed to the state or board in lieu of cleanup.

h. Property taxes shall not be delinquent, unpaid or otherwise overdue.

i. A responsible party with the ability to pay corrective action expenses cannot be found.

j. The release for which the claim is made is one for which the federal Underground Storage Tank Trust Fund or other federal moneys do not provide coverage.

k. The work is complete or, if ongoing, is approved by the administrator or the board pursuant to the cost containment provisions of Iowa Code section 455G.12A.

l. All claims and payments are subject to prioritization guidelines as may be published by the board at the time of payment.

11.2(11) *Governmental subdivision claims.* The board shall pay 100 percent of the costs of corrective action for a governmental subdivision in connection with a tank, where the release occurred, if the governmental subdivision did not own or operate the tank from which the release occurred, and the property was acquired pursuant to eminent domain after the release occurred. A governmental subdivision which acquires property pursuant to eminent domain in order to obtain benefits under this paragraph is not a responsible party for a release in connection with property which the governmental subdivision acquired, and does not become a responsible party by sale or transfer of property so acquired.

Also, the board shall pay 100 percent of the costs of corrective action for a governmental subdivision in connection with a tank which was in place on the date the release was discovered or reported if the governmental subdivision did not own or operate the tank which caused the release and if the governmental subdivision did not obtain the property upon which the tank giving rise to the release is located on or after May 3, 1991. Property acquired pursuant to eminent domain in connection with a United States Department of Housing and Urban Development-approved urban renewal project is eligible for payment of costs under this subrule whether or not the property was acquired on or after May 3, 1991.

11.2(12) *Inheritance claims.* The board may pay claims for corrective action for the costs of a release if the claimant proves that all of the following conditions are met:

a. The property upon which the tank causing the release was situated was transferred by inheritance, devise, or bequest.

b. The property upon which the tank causing the release was situated has not been used to store or dispense petroleum since December 31, 1975.

c. The person who received the property by inheritance, devise, or bequest was not the owner of the property during the period of time when the release which is the subject of the corrective action occurred.

d. The release was reported to the board by October 26, 1991.

11.2(13) *Financial institution claims.* Reserved.

11.2(14) *State agency or department claims.* Reserved.

11.2(15) *No further action claims.* The board shall pay for corrective action in response to a high-risk condition caused by a release from an underground storage tank located on a site for which the department of natural resources, after January 31, 1997, has issued a no further action certificate under Iowa Code section 455B.474. As a condition of receiving benefits under this subrule, the department of natural resources must determine that the condition necessitating the corrective action was not a result of a release that occurred after the issuance of the no further action certificate, and that the site qualified for remedial benefits under Iowa Code section 455G.9 prior to the issuance of the no further action certificate. No more than $100,000 per site may be used for the costs of a corrective action under this subrule. This subrule does not confer a legal right on an owner or operator of petroleum-contaminated property or on any other person to receive benefits under this subrule.

591—11.3(455G) Eligible costs.

11.3(1) Claims may be paid monthly. Claim payments will include all approved expenses, including tank and piping removal for active systems if the tank and piping removal occurred on or before March 17, 1999, and other costs as provided in Iowa Code chapter 455G. Replacement of excavated materials shall be a reimbursable expense. Contractors and groundwater professionals shall confirm that the work meets DNR requirements.

11.3(2) The board shall reimburse or pay eligible expenses only if those expenses have been approved prior to the commencement of work, as required by Iowa Code section 455G.12A. No corrective action costs shall be reimbursed unless reasonable, necessary and approved by the board or its designee.

11.3(3) When practical to do so, the board shall bid any work associated with this chapter with firms that have indicated to the administrator an interest to be on the board's list of firms supplying goods or services. Any firm supplying goods and services including, but not limited to, testing laboratories, cleanup equipment manufacturers and leak detection testing firms may also be included in the vendor list.

11.3(4) Reimbursement to the owner, operator or contractor under this chapter is subject to overall site cleanup report prioritization and classification. Sites which are classified as low risk are eligible for remedial account benefits for monitoring expenses required by Iowa Code section 455B.474(1)*"f"*(6), unless the tank is removed, upgraded, or replaced.

11.3(5) The board may reimburse expenses associated with tank systems described in paragraphs 11.2(5)*"a"* to *"c"* when all of the following conditions have been documented:

a. The release for which benefits are being requested is from tanks operated on a site which is otherwise eligible for benefits under Iowa Code section 455G.9(1); and

b. The release for which benefits are being requested is commingled with an on-site release which is eligible for benefits under Iowa Code chapter 455G; and

c. The site has had active underground storage tanks continuously from the date of the release for which benefits are being requested until the date on which the release for which the site is currently eligible for benefits was reported to DNR; and

d. The claimant certifies that the tanks for which benefits are being requested will be permanently closed within 90 days of notification of eligibility and does permanently close the tanks in compliance with rule 567—135.9(455B) within the 90 days; and

e. All other eligibility requirements have been met.

11.3(6) An owner or operator of a site which is eligible for benefits under Iowa Code section 455G.9 who discovered a tank on the site after October 26, 1990, shall maintain eligibility for benefits even if that tank does not meet the financial responsibility requirements continuous since October 26, 1990, if all of the following conditions have been met:

a. The tank was discovered after October 26, 1990; and

b. The tank has not been operated since the discovery and has never been operated by the claimant; and

c. The tank has been emptied of all product as soon as practicable after it was discovered; and

d. The tank was properly registered with DNR as soon as practicable after it was discovered; and

e. The tank is a regulated tank, pursuant to Iowa Code section 455G.1, which previously contained only petroleum products as defined in this chapter; and

f. The tank is permanently closed within 90 days of discovery or by July 1, 1995, whichever date is later.

11.3(7) Payments for conducting risk-based corrective action (RBCA) analysis on monitor-only sites. When reviewing applications for benefits for the cost of completing an RBCA analysis on a site which has an approved Site Cleanup Report (SCR) requiring monitoring only, or on a site with an SCR submitted between August 15, 1996, and January 31, 1997, the criteria in this rule shall apply when determining payment eligibility.

a. One hundred percent of the costs may be preapproved not to exceed $10,000 for all activities associated with the completion of the Tier 1, Tier 2, or Tier 3 analysis. Costs which exceed $10,000 will be subject to the limitations of Iowa Code section 455G.9(1)*"f."*

b. Sites receiving benefits pursuant to this rule must comply with the other requirements of board rules.

11.3(8) Ineligible costs and copayments.

a. The board shall pay any eligible claims subject to copayment requirements unless the payment of any copayment for the claim is specifically exempted in Iowa Code section 455G.9.

b. The claimant shall pay a copayment equal to the greater of either $5,000 or 18 percent of the first $80,000. All approved costs that exceed $80,000, up to the statutory benefit limit for the claim, will be paid by the board.

c. The first $20,000 of costs incurred for assessment of a site eligible to receive benefits will be exempted from the copayment requirement. Assessment includes, but is not limited to, risk-based corrective action Tier 1 and Tier 2 reports and site cleanup reports. Assessment does not include excavation of an underground storage tank for the purposes of repairing a leak or removal of a tank, removal of contaminated soil, cleansing of groundwaters or surface waters, actions taken to address contamination and its possible influence on a receptor or potential receptor or the preparation of a corrective action design report.

11.3(9) The board shall only reimburse eligible claimants for corrective action. "Corrective action" means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for the purposes of repairing a leak or removal of a tank, removal of contaminated soil, and cleansing of groundwaters or surface waters. Corrective action does not include replacement of an underground storage tank or other capital improvements to the tank. Corrective action specifically excludes third-party liability. Corrective action includes the expenses incurred to prepare a site cleanup report or risk-based corrective action tiered report for approval by the department of natural resources detailing the planned response to a release or suspected release, but not necessarily all actions proposed to be taken by a site cleanup report.

11.3(10) Expenses of cleanup not required. Any expenses incurred for cleanup beyond the level required by the department of natural resources are not covered under any of the accounts established under the fund. The cleanup expenses incurred for work completed beyond what is required are the responsibility of the person contracting for the excess cleanup.

11.3(11) Permanent closure of an underground storage tank system. Costs for the permanent closure of underground storage tank systems are eligible for reimbursement from the board if all of the following requirements are met:

a. The underground storage tank system to be permanently closed was already in place on the date an eligible claim was submitted to the board.

b. A claim for reimbursement from the board must have been made and must have been deemed eligible for the site, pursuant to Iowa Code section 455G.9 or 455G.21.

c. The permanent closure activities occurred on or after July 1, 2007. All costs must have been preapproved prior to the commencement of work.

d. For projects that include the removal of tank systems that are also associated with a larger scope of work, for example, the installation of a remediation system or expanded excavation or upgrading of a fuel delivery system, the budget for the entire scope of work must be submitted for any costs to be considered eligible for reimbursement.

e. The board may elect to provide for the direct removal of any tanks eligible through a board-contracted vendor. Any copayment shall be paid by the claimant upon removal of the tank system. The board will limit reimbursement for any removal to no more than the board would have paid had the board removed the tanks with any board-contracted vendor.

f. For claims submitted in situations where the tank owner and the eligible claimant are different parties, the board will reimburse costs under this subrule after invoices have been paid and only with

written acknowledgment consenting to the work completed by both parties and submitted with the invoices.

g. Claimants shall be responsible for ensuring that any persons performing work meet all applicable licensing or certification requirements or both that may exist at the time of completion of the work to be reimbursed. If the work is performed by a board-contracted vendor, the board shall ensure that licensing and certification requirements of the general contractor are met.

h. Claims made under this subrule are subject to Iowa Code chapter 455G copayment requirements and cost recovery enforcement.

i. The board may remove tanks at sites that fail to meet the requirements under paragraph "a" or "b" of this subrule through a board-contracted vendor. These sites shall be subject to cost recovery, which may include a lien on the property.

591—11.4(455B,455G) Tank and piping upgrades and replacements.

11.4(1) Definitions.

"Administrator" means the Iowa comprehensive petroleum underground storage tank fund board administrator as provided in Iowa Code section 455G.5.

"Automatic in-tank gauging" means a device used for leak detection and inventory control in tanks that meets DNR's standards as set out in 567—paragraph 135.5(4)*"d."*

"Board" or *"UST board"* means the Iowa comprehensive petroleum underground storage tank fund board as provided for in Iowa Code section 455G.4.

"DNR" means the Iowa department of natural resources.

"Environmentally sensitive site" means, as classified under the Unified Soil Classification System as published by the American Geologic Institute or ASTM designation: D 248785, any site where the native soils outside or under the tank zone are materials where more than half of the material is larger than no. 200 sieve size. As used herein, "tank zone" means the native soils immediately outside the excavation area or nearest native soil under the tank.

The following classifications of soil descriptions are considered environmentally sensitive:

1. Well-graded gravels, gravel-sand mixtures, little or no fines, classified using the group symbol "GW";
2. Poorly graded gravels, gravel-sand mixtures, little or no fines, classified using the symbol "GP";
3. Silty gravels, gravel-sand-clay mixtures, classified using the symbol "GM";
4. Clayey gravels, gravel-sand-clay mixtures, classified using the symbol "GC";
5. Well-graded sands, gravelly sands, little or no fines, classified using the symbol "SW";
6. Poorly graded sands, gravelly sands, little or no fines, classified using the symbol "SP";
7. Silty sands, sand-silt mixtures, classified using the symbol "SM".

In addition, environmentally sensitive sites include any site which is within 100 feet of a public or private well, other than a monitoring well on a site, and any site where the tank is installed in fractured bedrock or "Karst" formations. Any one of the above-specified conditions shall constitute an environmentally sensitive site under this rule.

A site shall be classified as environmentally sensitive when:

Fifty percent or more of the soils from a boring or a monitoring well are logged and classified as one or more of the areas noted in paragraphs "1" through "7" above and 50 percent of the total wells located on or immediately next to the property show the same or similar conditions. If no testing of the site has occurred and the soil condition as classified under the Unified Soil Classification System in or under the tank zone is one of the conditions as classified, the site shall be considered to be environmentally sensitive. Reports previously prepared on the site and available from DNR may be used to make the soil classification. At least three borings/wells must have been completed. If fewer than three have been completed, an additional well which triangulates the tank zone shall be completed to determine the types of soils present.

For the purposes of this definition, fractured bedrock or "Karst" formations appearing in the tank zone or piping run, or within a 25-foot diameter around the tank zone or piping run, or within 25 feet of the bottom of the tank excavation area shall be classified environmentally sensitive. Generally available

data, including that available from local utilities, may be used when specific drilling has not determined that conditions specified in this definition have not been identified on the site. If the site shows any surface condition which is fractured bedrock or "Karst," then the site shall be classified as being environmentally sensitive.

For the purposes of this definition, wells are those which are in use and the water is being used for human consumption. The well as developed shall generate a volume of two gallons per minute, unless a holding device or cistern is used for water pumped. An abandoned well, or a well being used for some other purpose, shall not be included in the definition, unless the end use may be for human consumption.

"Piping replacement" means any modernization or modification of piping at a site which includes the removal of the existing piping and the installation of new piping.

"Piping upgrade" means any modernization or modification of piping at a site which does not include the removal of the existing piping and the installation of new piping.

"System upgrade" or *"upgrading"* means the modernization or modification of underground storage tank system installations through tank and piping upgrades to comply with the rules of DNR under 567—subrule 135.3(2).

"Tank replacement" means any modernization or modification of a tank at a site which includes the removal of the existing tank and the installation of a new tank.

"Tank upgrade" means any modernization or modification of a tank at a site which does not include the removal of the existing tank and the installation of a new tank.

"Upgrade benefit" means the cost of board-approved systems specified in subrule 11.4(6). If the installation includes a board-approved secondary containment system, the upgrade benefit relates specifically to the cost difference attributable to the board-approved system specified in subrule 11.4(6). The upgrade benefit includes the following:

1. Cost of double walled tanks and pipes minus the cost of single wall tanks and piping, or
2. Cost of double walled steel tanks minus the cost of single wall steel tanks, or
3. Cost of nonmetallic double walled tanks minus the cost of nonmetallic single wall tanks.

In addition, the upgrade benefit shall include the cost of the additional labor, if any, to install the board-approved system which is in excess of the cost to install a single wall system. The upgrade benefit also includes the cost of automatic in-tank gauging equipment when installed in conjunction with secondary containment, but such costs shall be limited to the lowest expense for the system best suited to provide a reasonable degree of protection.

If the system does not include the approved secondary containment, no upgrade benefit is payable. Secondary containment as defined in subrule 11.4(6) is mandatory after March 25, 1992.

11.4(2) The maximum upgrade benefit payable from the remedial fund on any tank or system installed since January 1, 1985, to meet upgrading requirements shall be $10,000 for any one site, subject to applicable copayment requirements as specified in Iowa Code section 455G.9. Benefits payable under subrule 11.4(6) cover the additional cost of the tank system upgrade or replacement as set forth in the definition of upgrade benefits. Prior to installation, budgets shall be provided to the administrator outlining the cost and scope of work proposed and the cost differences between a single wall system and the board-approved system which is proposed. The cost of the original upgraded or new system without board-approved secondary containment as defined herein is not subject to these fund upgrade benefits for tank system upgrades or replacements.

11.4(3) The cost for system upgrading or replacement shall be separated from all other corrective action costs incurred on an individual site classified as high risk or low risk by DNR. The upgrade benefits are not payable on any site classified by DNR as a No Action Required site.

11.4(4) Upgrade benefit payments under subrule 11.4(6) shall be made upon evidence that the upgrade met standards in 567—Chapter 135 and DNR registration Form 148 has been completed and mailed to DNR and the administrator. These upgrade benefits shall be paid only if all requirements of 591—Chapter 15 have been met. If a site does not comply with the applicable provisions of 591—Chapter 15, the site is not eligible for these upgrade benefits unless installation or upgrade occurred prior to October 26, 1990. In that event, the individual reimbursement request will be reviewed to determine if other information is necessary before upgrade benefit payment can be made. In addition,

the completed work must be within the budget previously approved by the administrator pursuant to Iowa Code section 455G.12A.

11.4(5) Upgrades and replacements allowed at contaminated sites. Iowa Code section 455B.474(1)*"f"*(8) provides that the replacement or upgrade of tank systems on high- or low-risk sites must be equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures or other board-approved methodology. The following are the upgrade and replacement options which are board approved for purposes of Iowa Code section 455B.474(1)*"f"*(8):

a. Tank upgrades. The following options are allowed for tank upgrades on any contaminated site:

(1) The tank meets DNR's new tank standards set forth in 567—paragraph 135.3(1)*"a"*; or

(2) The tank meets DNR's upgrade standards set forth in 567—paragraphs 135.3(2)*"b"* and *"d."*

b. Tank replacements. The following options are allowed for tank replacements:

(1) On any contaminated site, a double walled tank or a tank equipped with a secondary containment system meeting DNR's new tank standards set forth in 567—subrule 135.3(1) and with monitoring of the space between the primary and secondary containment structures in accordance with DNR's standards set forth in 567—paragraph 135.5(4)*"g."*

(2) On any contaminated site which is not environmentally sensitive the following additional options are allowed:

1. Tanks meeting DNR's new tank standards set forth in 567—paragraph 135.3(1)*"a"* with automatic in-tank gauging acceptable under 567—subrule 135.5(4).

2. Tanks meeting DNR's new tank standards set forth in 567—paragraph 135.3(1)*"a"* with an electronic tank level monitor used in conjunction with a DNR-approved statistical reconciliation method acceptable under 567—subrule 135.5(4). The owner must have monthly records on premises which show that all requirements for statistical reconciliation have been met.

c. Piping upgrades. The following options are allowed for piping upgrades at any contaminated site:

(1) Double walled piping.

(2) Single walled piping installed in a barrier providing secondary containment between soil and the piping.

(3) Single wall piping meeting DNR's upgrade standards set forth in 567—paragraph 135.3(2)*"c"* and leak detection standards set forth in 567—paragraph 135.5(2)*"b."*

d. Piping replacements. The following options are allowed for piping replacements:

(1) For any contaminated site:

1. Double walled piping.

2. Single walled piping installed in a barrier providing secondary containment between soil and the piping.

3. On suction systems, single wall piping when only one check valve is on the line directly under the pump.

(2) For sites which are not environmentally sensitive, suction systems with single wall piping meeting DNR's upgrade standards set forth in 567—subrule 135.3(2) on pipes with leak detection are allowed if there is no more than one valve on the piping. All suction systems shall be installed with the slope of the pipe back to the tank and shall have only one check valve located directly under the suction pump.

e. Spill and overfill protection, cathodic protection, and leak detection. Nothing in this rule alters DNR's upgrade requirements for spill and overflow protection, cathodic protection, and leak detection.

11.4(6) Tank and piping upgrades and replacements eligible for upgrade benefits.

a. The following tank and piping upgrades or replacements are eligible for upgrade benefits if completed on or before March 17, 1999:

(1) Double walled tanks.

(2) Single walled tanks meeting DNR's requirements as specified in 567—paragraph 135.5(4)*"g,"* the tank zone providing an impermeable barrier between native soils and the tank, thus providing secondary containment.

(3) Double walled piping.

(4) Single wall piping installed in a barrier system, providing secondary containment between the soil and the piping. Nothing in this rule alters upgrade requirements for spill/overfill protection, cathodic protection and leak detection.

b. The following tank and piping upgrades and replacements are eligible for upgrade benefits when the tank upgrade or replacement occurred on or after March 25, 1992, and on or before March 17, 1999, on sites which are classified as being environmentally sensitive:

(1) Pressurized systems: Tanks and piping shall comply with one of the tank and piping options specified in 11.4(6)*"a."*

(2) Suction systems: Tanks and piping shall be installed with the slope of the pipe back to the tank on all suction systems. All suction system pipes shall have the check valve located at the suction pump. These systems shall meet one of the options specified in 11.4(6)*"a,"* except that piping may be single wall when one check valve is on the line, under the pump.

c. The following tank and piping upgrades and replacements are eligible for upgrade benefits when the tank upgrade or replacement occurred on or after March 25, 1992, and on or before March 17, 1999, on sites which are not classified as being environmentally sensitive:

(1) Pressurized systems: Piping shall comply with one of the pipe options specified in 11.4(6)*"a."* Tanks installed must be either one of the options specified in 11.4(6)*"a"* or be a DNR-approved tank with automatic in-tank gauging pursuant to 567—subrule 135.5(4) or, in lieu of automatic in-tank gauging, be a DNR-approved electronic tank level monitor in conjunction with a DNR-approved UST statistical inventory reconciliation method pursuant to 567—subrule 135.5(4). Should the statistical inventory reconciliation method be used, the owner shall have monthly records on premises showing that all requirements on the system have been met. If either the automatic in-tank gauging or the electronic level reconciliation device is used, the program shall pay only the cost of the system installed and not ongoing monthly or yearly expenses.

(2) Suction systems: Tanks and piping shall be installed with the slope of the pipe back to the tank on all suction systems. All suction system piping shall have the check valve located at the suction pump. These systems must be either one of the options specified in 11.4(6)*"a"* or:

1. Pipes: Single wall pipes meeting DNR's upgrade standards on the pipes with leak detection pursuant to 567—subrule 135.3(2). If more than one valve is on the pipe, this option is not available.

2. Tanks: Must be either one of the options specified in 11.4(6)*"a"* or be a DNR-approved tank with automatic in-tank gauging pursuant to 567—subrule 135.5(4) or, in lieu of automatic in-tank gauging, be a DNR-approved electronic tank level monitor in conjunction with a DNR-approved UST statistical inventory reconciliation method pursuant to 567—subrule 135.5(4). Should the statistical inventory reconciliation method be used, the owner shall have monthly records on premises showing that all requirements on the system have been met. If either the automatic in-tank gauging or the electronic level reconciliation device is used, the program shall pay only the cost of the system installed and not ongoing monthly or yearly expenses.

11.4(7) Any system upgrade or replacement installed prior to March 25, 1992, which complies with the provisions of this rule shall be eligible for upgrade benefits if the system has been fully upgraded or replaced in accordance with 567—Chapter 135.

11.4(8) The board reserves the right to establish cost controls on the purchase and installation of underground storage tank equipment and systems. Upgrade benefits are not equipment and capital improvements for purposes of Iowa Code section 455G.9(6).

11.4(9) Evidence of insurance or self-insurance shall be provided to DNR upon completion of the upgrade or replacement unless the Iowa UST program provides insurance coverage. If the Iowa UST program provides coverage, the administrator will notify DNR.

11.4(10) Failure to obtain approval or qualify for upgrade benefits may be appealed as provided in 591—Chapter 17.

This rule is intended to implement Iowa Code sections 455B.474(1)*"f"*(8) and 455G.9(1)*"a"*(5).

591—11.5(455G) Cost recovery and containment. The board, in addition to measures described to preapprove all costs, may take other actions to ensure costs are reasonable and to recover moneys spent at sites that become ineligible. Subrogation and cost recovery opportunities shall be pursued against any responsible party, as deemed appropriate by the board to do so.

11.5(1) *Definitions.* For purposes of this rule, the following terms shall have the meanings set forth below:

"Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified. Entities which have one or more officers or directors in common, whether simultaneously or otherwise, shall be rebuttably presumed to be affiliates.

"Control," "controlling," "controlled by" and *"under common control with"* means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies or day-to-day activities of a person, whether through ownership, by contract, or otherwise.

"Predecessor" means a person the major portion of whose business and assets another person acquired in a single succession or in a series of related successions in which the acquiring person acquired the major portion of the business and assets of the acquired person.

11.5(2) *Liens on tank sites.*

a. The board shall have a lien upon real property where an underground storage tank, which was the subject of corrective action, was or is situated and the board has incurred expenses related to the property.

b. The board's lien shall be in the amount the owner or operator of the underground storage tank is liable to the fund.

c. The liability of an owner or operator shall be no less than the full and total costs of corrective action and bodily injury or property damage to third parties, as specified in Iowa Code section 455G.13(1), if the owner or operator has not complied with the financial responsibility or other underground storage tank rules of DNR or the fund or with Iowa Code chapter 455G.

d. The liability of an owner or operator eligible for assistance under the remedial account shall be no less than the amount of any unpaid portion of the deductible or copayment.

e. A lien shall attach at the later of the following: the date the fund incurs an expense related to the property or the date the board mails a certified letter, return receipt requested, to the last-known address of the owner or operator demanding payment for fund expenses.

f. Liens under this rule shall continue for ten years from the time the lien attaches unless sooner released or otherwise discharged. The lien may be extended, within ten years from the date the lien attaches, by filing for record a notice with the appropriate county official of the appropriate county and from the time of such filing, the lien shall be extended to the property in such county for ten years, unless sooner released or otherwise discharged, with no limit on the number of extensions.

g. In order to preserve a lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the board shall file with the recorder of the county in which the property is located a notice of the lien. The county recorder of each county shall record such liens in the index of income tax liens. The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve the notice, and shall immediately index the notice in the index book and record the lien in the manner provided for recording real estate mortgages, and the lien shall be effective from the time of indexing.

h. The board shall pay a recording fee as provided in Iowa Code section 331.604 for the recording of the lien, or for its satisfaction.

i. Upon the payment of the lien as to which the board has filed notice with a county recorder, the board shall file with the recorder a satisfaction of the lien and the recorder shall enter said satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

11.5(3) *Fraud disqualification of contractors.* No contractor or subcontractor shall be eligible for payment with UST program funds, nor shall any owner or operator be reimbursed for payments to any contractor or subcontractor, nor shall any contract between an owner or operator and a contractor or subcontractor be approved if the administrator determines that such contractor or subcontractor or any

of its predecessors, affiliates, directors, officers, general partners, or beneficial owners of 10 percent or more of such contractor or subcontractor:

a. Has, within the preceding five years, pleaded guilty to, been convicted of, or received a suspended or deferred judgment for theft, fraud, or any other felony or misdemeanor involving deceit, attempted deceit, or falsification or alteration of documents;

b. Is subject to an order, judgment, or decree of a court of competent jurisdiction (including probation) or an administrative order of any state or federal administrative agency entered within the previous five years, which order, judgment, decree, or administrative order temporarily, preliminarily, or permanently enjoins or restrains the contractor or subcontractor from engaging in or continuing the performance of any services relating to underground storage tanks or the assessment or remediation of petroleum contamination as a consequence of the contractor's or subcontractor's own misconduct, negligence, or misfeasance; or

c. Has, within the previous five years, obtained, or attempted to obtain, UST fund benefits:

(1) By means of any intentional or reckless misrepresentation;

(2) By means of any falsified or altered document;

(3) For services which were not performed; or

(4) By other improper means.

11.5(4) *Waiver or modification of disqualification.* The administrator may, at the administrator's discretion, to avoid undue hardship to tank owners or operators, to the UST program, or to contractors or subcontractors, waive any disqualification under this rule as to work performed or to be performed for any or for specified owners or operators. The administrator may also condition or qualify the eligibility of a person or entity that is subject to disqualification hereunder to be paid with UST program funds upon such terms and conditions as the administrator shall, in the administrator's discretion, deem necessary to protect the integrity of the UST program. A disqualification under this rule shall cease to exist if:

a. The basis for the disqualification has been removed by the legislative body, court, or administrative agency creating it;

b. The court or administrative agency with primary jurisdiction over the disqualifying event issues a written waiver of the disqualification;

c. The court or administrative agency with primary jurisdiction over the disqualifying event declines in writing to enforce the disqualification; or

d. More than five years have elapsed since the occurrence of the disqualifying event.

11.5(5) *Notice of disqualification; reinstatement.* Following a determination that a contractor or subcontractor is disqualified pursuant to this rule, the administrator shall notify the contractor or subcontractor in writing that it is no longer eligible to be compensated with fund moneys. The administrator shall also, unless the disqualification has been waived as to existing clients of the contractor or subcontractor, notify in writing all known clients of the disqualified contractor or subcontractor who are participating in UST fund programs of the disqualification. A disqualified contractor or subcontractor may apply to the administrator for reinstatement of eligibility. If the disqualification has ceased to exist, the administrator, upon receiving such an application, shall reinstate the eligibility of the contractor or subcontractor to be compensated with fund moneys. If the disqualification has not ceased to exist, the administrator may, in the administrator's discretion, reinstate the eligibility of the contractor or subcontractor. The administrator shall notify the contractor or subcontractor who has applied for reinstatement of the administrator's decision within 45 days. The administrator may condition or qualify the reinstatement of a contractor's or subcontractor's eligibility to be compensated with UST fund moneys upon such terms and conditions as the administrator shall, in the administrator's discretion, deem necessary to protect the integrity of the UST program.

11.5(6) *Verification of eligibility.* For purposes of implementing this rule, the administrator may require that, prior to the approval by the board of any contract or budget for assessment or remedial work, the contractor specified in such contract or budget, and all subcontractors to perform work thereunder, certify that the contractor or subcontractor is not subject to disqualification for any of the reasons specified

in subrule 11.5(3). The administrator may develop, and revise as necessary, a form by which contractors and subcontractors may make such certification.

These rules are intended to implement Iowa Code section 455B.474 and chapter 455G.

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◊ Two or more ARCs

1 Effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held October 11, 1994.

[2] The December 26, 2007, effective date of 11.3(11)*"b"* was delayed until January 11, 2008, by the Administrative Rules Review Committee at its meeting held December 11, 2007.

CHAPTER 12
GUARANTEED LOAN PROGRAM

591—12.1(455G) General policies and loan terms. The following general policy issues and terms shall apply to guaranteed loans:

12.1(1) *Amount of loan.* There is no maximum amount of a loan subject to the UST fund's guaranty.

12.1(2) *Loan maturities.* The loan guaranty shall automatically terminate at loan maturity, unless the loan is in default or bankruptcy at that time, or on the date that the loan is paid in full, whichever occurs first.

12.1(3) *Variable rate or fixed rate loan.* Loans may have either a variable or fixed rate of interest that shall be mutually determined by the lender and borrower. Variable rate loans shall be adjusted according to the terms of the loan agreement and promissory note. However, variable rate loans shall not be adjusted upward more than 100 basis points per year or the maximum rate defined in subrule 12.1(4), whichever is lower.

12.1(4) *Interest rate structure.* The following interest rate structure represents the maximum allowable rate for all guaranteed loans:

a. 90% loan guaranty Local prime + 100 basis points
b. 80% loan guaranty Local prime + 125 basis points
c. 70% loan guaranty Local prime + 150 basis points
d. 60% loan guaranty Local prime + 175 basis points
e. 50% loan guaranty Local prime + 200 basis points

Local prime is defined as the interest rate charged the lender's most creditworthy customers. In no instance shall the local prime interest rate exceed the national prime interest rate, as published in the Wall Street Journal on the date that the guaranteed loan is approved, by more than 100 basis points.

Lenders charging interest rates in excess of this structure on any loan may have the loan guaranty terminated.

12.1(5) *Guaranty charges.* Guaranty charges are not permitted on loans guaranteed by the UST fund.

12.1(6) *Prepayment penalties.* Prepayment penalties are not permitted on loans guaranteed by the UST fund.

12.1(7) *Late penalty fees.* Additional penalty fees not to exceed 1.5 percent of the delinquent installment(s) may be charged monthly.

12.1(8) *Sale or participation of guaranteed loans.* Sale of loans guaranteed by the UST fund is not permitted.

12.1(9) *Collateral release.* The lender shall not release any collateral securing the loan without written permission from the UST fund administrator.

12.1(10) *Collateral subordination.* The lender shall not subordinate any collateral securing the loan without written permission from the UST fund administrator.

12.1(11) *Causes for termination of loan guaranty.* The loan guaranty may be canceled at any time for the following causes:

a. Failure to exercise due diligence in disbursing guaranteed loan proceeds per subrule 12.2(2).
b. Charging interest rates in excess of the maximum allowable per subrule 12.1(4).
c. Failure to notify the UST fund administrator in writing that a loan is in default per the loan default definition in 12.4(2)*"b."*
d. Failure to perform with due diligence in complying with any applicable loan closing requirements.
e. Failure to perform with due diligence in complying with the loan servicing responsibilities of rule 12.3(455G).
f. Fraud or misrepresentation by the lender regarding the policies, procedures, and forms of this program.

If the UST fund administrator has cause to terminate the loan guaranty, written notification outlining the cause of termination shall be given to the lender. The lender shall then have ten business days to respond to the termination notification. Should such response outline an acceptable resolution to the

condition causing termination, the administrator shall notify the lender of the administrator's approval of the plan to resolve the condition. Should the response, in the view of the administrator, not adequately address the condition, the guaranty shall be terminated. If no written response is received in ten business days, the guaranty is terminated. If the lender finds that the termination is unwarranted, the lender may pursue any administrative remedy as outlined in Iowa Code chapter 17A.

12.1(12) *Loan assumption.* Loans guaranteed by the UST fund shall not be assumed without prior written approval of the UST fund administrator.

591—12.2(455G) Eligibility requirements. Loan guarantees may be offered only for the following purposes:

1. To reimburse all or a portion of the expenses incurred by the applicant for its share of corrective action.
2. To pay for tank and monitoring equipment improvements necessary to satisfy federal and state standards to become insurable.
3. Capital improvements made on a tank site.
4. Purchase of a leaking underground storage tank site.

Determination that the lender has failed to exercise due diligence in disbursing the guaranteed loan proceeds may result in termination of the loan guaranty. Examples of satisfying the due diligence standards include, but are not limited to, loan proceeds issued jointly in the name of an owner or operator and the contractor or installer performing underground storage system upgrade services; or loan proceeds issued jointly in the name of the owner or operator and the environmental consulting firm or underground leak response contractor performing corrective action activities.

591—12.3(455G) Servicing responsibilities after loan funding. The following is a listing of servicing responsibilities and procedures that the lender must comply with after the loan is funded in order to maintain the guaranty:

12.3(1) Monitor monthly loan payments.

12.3(2) Provide written notification to the UST fund administrator of all loans that are 60 days delinquent.

12.3(3) If the loan is in default status, follow all procedures set out in rule 12.4(455G) of this loan policy.

12.3(4) Establish and maintain a basic loan file on each loan.

12.3(5) Establish procedures to ensure notification of UCC refiling dates, insurance expiration dates, financial statement due dates and similar events.

12.3(6) Obtain and review income tax returns of the borrowers and guarantors annually.

12.3(7) Obtain and review annual financial statements on all borrowers and guarantors. These statements must be available no later than 90 days after the borrower's fiscal year end. Copies of these statements are to be sent to the UST fund administrator upon receipt from the borrower/guarantor. Unusual items or trends on the financial statements or tax returns shall be analyzed and a determination made if the items should have an adverse financial impact on the borrower. Documentation shall be placed in the loan file to support conclusions.

12.3(8) Annual field visits shall be made to the borrower's place of business. A record of the visit shall be maintained in the loan file. A record of telephone contacts with the borrower or visits by the borrower to the lender's office shall be maintained in the loan file.

591—12.4(455G) Loan default definition and procedures.

12.4(1) "Loan default" means a loan guaranteed by the UST fund for which the loan payment(s) is delinquent 90 days or more.

12.4(2) Lenders that have UST fund guaranteed loans shall follow these specified procedures to ensure that the UST fund guaranty remains in effect:

a. Notify the UST fund administrator in writing when the loan payment(s) is delinquent 60 days.

b. Notify the UST fund administrator in writing when the loan payment(s) is delinquent 90 days. At this time the loan shall be deemed to be in default and the Defaulted Loan Status Report must be completed and sent to the UST fund administrator.

c. After the loan is deemed to be in default, a period of 30 days will be given to cure the default. "Cure" is defined for purposes of this chapter as bringing all delinquent payments current. The lender is responsible for delivering the notice to cure to the borrower.

d. If the loan is still in default after the cure period, the lender shall submit within the next ten business days in writing to the UST fund administrator an action plan on how the lender intends to handle the loan default. The action plan shall include procedures to either restructure the loan or move toward judgment and collection of the loan. The action plan shall be reviewed and approved by the UST fund administrator within ten business days of receipt of the plan. Action plans not approved by the UST fund administrator shall be returned to the lender submitting the plan, and a new action plan will be jointly developed by the lender and the UST fund administrator. If the lender and the UST fund administrator cannot develop and agree on a new action plan, the guaranty is terminated.

If in any case the lender feels such termination is unwarranted, the lender may pursue any administrative remedy as outlined in Iowa Code chapter 17A or as approved by the UST board.

e. The lender shall follow the procedures outlined in the approved action plan and inform the UST fund administrator in writing by the end of each calendar quarter of the status of the defaulted loan until such time as the loan is no longer deemed in default. A loan will be deemed to no longer be in default at that point in time when the loan is restructured according to the approved action plan or terminated.

f. At such time as the loan has been reduced to judgment and a UST fund lien has been filed or, alternatively, when the borrower files for reorganization under Chapter 11, 12 or 13 of the Bankruptcy Code, the lender shall submit to the UST fund administrator an estimated report of loss. The UST fund administrator will pay the lender the estimated loss on the guaranteed portion of the loan from the UST fund. Estimated loss payments must first be applied to the principal portion of the debt and then to the interest. Interest will continue to accrue on the unpaid guaranteed principal until such date of final settlement, provided that the lender proceeds expeditiously with the approved action plan. The lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in judgment and bankruptcy proceedings.

g. The property shall be sold to satisfy the judgment or bankruptcy order as expeditiously as possible.

h. Upon complete performance of an approved action plan for collection of the loan, the lender shall complete a final report of loss. Within 30 days of receipt of the final report of loss form from the lender, the UST fund will pay to the lender any remaining balance of the loan guaranty and the third-party costs as outlined in 12.4(2)*"i."*

i. Third-party costs incurred by the lender in collecting on guaranteed loans in default will be reimbursed to the lender on a percentage basis of the UST loan guaranty with a maximum cap of 10 percent of the principal loan guaranty. The reimbursement scale shall be as follows:

(1) 90% guaranty 90% third-party cost reimbursement*
(2) 80% guaranty 80% third-party cost reimbursement*
(3) 70% guaranty 70% third-party cost reimbursement*
(4) 60% guaranty 60% third-party cost reimbursement*
(5) 50% guaranty 50% third-party cost reimbursement*

*Not to exceed 10 percent of the principal loan guaranty.

j. After a loan has been liquidated and a final loss has been paid by the UST fund, any future funds which may be recovered by the lender shall be prorated between the UST fund and the lender in proportion to the guaranty percentage per the loan guaranty agreement.

591—12.5(455G) Participating lender program.

12.5(1) The participating lender program has been established to stimulate additional private capital for loans to qualifying borrowers under the UST fund guaranteed loan program. Participating lenders

will receive assistance in the following areas relative to underground storage tanks that they currently own:

a. UST fund payment up to 100 percent of the site cleanup.

b. UST fund payment up to 100 percent of the third-party liability expenses.

12.5(2) The following outlines the criteria necessary to qualify as a participating lender:

a. The lender shall at the time of application to become a participating lender be the owner of record of at least one underground storage tank site that requires a cleanup.

b. The lender agrees at no cost to the UST fund to assist the UST fund in marketing sites that the UST fund cleans up and takes possession of if the site is located in the lender's trade territory as defined by the lender's Community Reinvestment Act (CRA) statement.

12.5(3) The following options are available to participating lenders:

a. The UST fund will pay $1 of the financial institution's cleanup costs and third-party liability expenses in cleaning up a site for which the financial institution is the owner of record for each $4 in nonguaranteed loans made to owners/operators that qualify for the guaranteed loan program. Termination of the loan by the lender could only be made in the event of default by the borrower or other breach of the loan agreement by the borrower. Termination for any other reason by the lender shall result in repayment of the funds advanced to the lender plus interest at a rate of 10 percent per annum from the date the funds were advanced to cover the lender's cleanup and third-party liability costs.

b. The UST fund will pay $1 of the financial institution's cleanup costs and third-party liability expenses in cleaning up a site for which the financial institution is the owner of record for each $8 in guaranteed loans made to owners/operators that qualify for the guaranteed loan program.

591—12.6(455G) Guaranteed loan program—general provisions.

12.6(1) Calculation of the net worth requirement shall include all the assets and liabilities of the business entity and all equity of other assets of the owner(s) and shall be calculated using the fair market value of the tank site(s) and all equity of other net assets of the owner(s).

a. "Fair market value" is defined as the price at which an asset passes from a willing seller to a willing buyer through an arm's-length transaction. It is assumed that both the seller and the buyer are rational and have a reasonable knowledge of relevant facts.

b. When determining net worth, the fair market value of a site eligible for benefits pursuant to Iowa Code section 455G.9 shall include an adjustment for anticipated benefits pursuant to that section.

12.6(2) Financial institutions are prohibited from selling UST fund guaranteed loans to other financial institutions.

These rules are intended to implement Iowa Code chapter 455G.

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CHAPTER 13
COMMUNITY REMEDIATION

591—13.1(455G) Definitions. As used herein:

"Administrator" means the person or organization responsible for the day-to-day administrative activities of the program.

"Board" means the Iowa comprehensive petroleum underground storage tank fund board or its representatives.

"Community remediation" means a program of coordinated testing, planning or remediation involving two or more tank sites potentially connected with a continuous contaminated area.

"DNR" means the Iowa department of natural resources.

"Packaged community remediation" means the grouping together of more than one community remediation project in the overall request for proposal process developed by the board. The purpose of the packaged community remediation program is to provide for the efficient handling of multiple community remediation projects and to develop accurate environmental data to ensure correct site classification, appropriate corrective action design, monitoring and cleanup to DNR's standards. Each site in a packaged community remediation project shall meet the DNR's requirements relative to site cleanup reports and corrective action.

"Site cleanup report (SCR)" means a report that addresses the overall size and scope of contamination involving an underground storage tank site. The report is designed to advise DNR and the UST board of pertinent information concerning the release reported at that site. The report must address all pertinent requirements of Iowa Code section 455B.474, subsection 1, paragraphs *"d"* and *"f."*

591—13.2(455G) General requirements.

13.2(1) Qualification for remedial account benefits related to a community remediation project is subject to board approval based on the recommendations made to the board by interested parties.

13.2(2) A community remediation project must include at least two sites that have qualified for remedial account benefits under Iowa Code section 455G.9. The community, the DNR or the board may request that a community be considered for a community remediation or packaged community remediation project. More than one community remediation project may be included in a request for proposal if, in the opinion of the administrator, such inclusion will allow for a better response to environmental or public health concerns at a lower cost. Individual owners shall also have the right to request inclusion in the community remediation or packaged community remediation project or to develop, through a common consultant, a budget covering a release impacting only their site or impacting their site and other sites if all are in agreement on the consultant to use.

13.2(3) Sites within a community remediation or packaged community remediation project which have not qualified for account benefits under Iowa Code section 455G.9 may be included in the project by the board. The board may approve the payment of all or part of the expenses of such sites in community remediation or packaged community remediation projects based on the impact that the specific site, that otherwise had not qualified, has on the expense and success of the project as a whole. The DNR may participate in a project as Federal Lust Trust Fund rules allow. Nothing herein shall be deemed to limit the ability to receive additional federal financial assistance for UST releases.

a. Sites eligible for site cleanup report funding within the community remediation or packaged community remediation project are those sites:

(1) Eligible for benefits under Iowa Code section 455G.9.

(2) Underwritten which are required to have a site check performed.

(3) Not eligible for benefits under Iowa Code chapter 455G when requested by the DNR and approved by the board.

(4) Where prior budget approval was received or where a site cleanup report was submitted by another consultant but rejected by the DNR. Such sites shall be reviewed by the administrator

on a case-by-case basis for inclusion in the overall community remediation or packaged community remediation project.

(5) Owners or operators who have not qualified for benefits under Iowa Code section 455G.9 may participate in the community remediation or packaged community remediation project at their own expense.

(6) Owners or operators who are voluntarily participating in the community remediation or packaged community remediation project but have not qualified for benefits under Iowa Code section 455G.9 shall pay the average cost of completion in the project for the site cleanup report prior to work at their site being initiated. The average cost shall be determined by dividing the total amount bid on the community remediation or packaged community remediation project by the number of sites included. The final costs to participating owners/operators shall be their share of the total costs including the initial amount contracted for plus any change orders approved by the board or its designee in addition to any specific work for the owners/operators on their site, such as soil over excavation or tank removal which is unique to that site.

b. Owners or operators of sites which may opt out of the site cleanup report portion of the community remediation or packaged community remediation project are those:

(1) Sites where a verified real estate transaction is in process and time is of the essence. For the purpose of this rule, a verified real estate transaction is one in which an offer to purchase in writing has been made and reviewed by the board.

(2) On a case-by-case basis, the administrator determines that an owner may use its own consultant, with remedial benefits limited to the average per site cost of the community remediation or packaged community remediation project.

(3) Where, upon request, the DNR determines a delay would result in significant environmental damage or an administrative order requiring action has been issued by the DNR.

13.2(4) Except as specified in these rules, all program requirements apply to sites in community remediation projects, including, but not limited to, those requirements related to cost control.

13.2(5) Corrective action costs incurred prior to a community remediation project contract being awarded are subject to requirements under Iowa Code chapter 455G. The board will pay 100 percent of the cost of the site cleanup report only after the project has been approved. Expenses incurred on sites by owner/operators prior to approval of community remediation projects will not be included in the community remediation reimbursement, but will count toward overall copayment requirements on an individual claim. If the work occurred prior to the community remediation and is payable at 100 percent as part of the site cleanup report, the board may pay 100 percent of the cost incurred above the $20,000 SCR limit for the cost of the SCR at a site included in the project. The payments above $20,000 for SCR costs will reduce the next level of remediation expense paid by the amount of the payment in excess of $20,000.

a. Corrective action costs include the cost of work incurred during an off-site investigation to complete the site cleanup report, monitoring and remediation of the site, if necessary. Off-site work done as a part of the SCR will be paid for as outlined above.

b. Off-site costs which are specifically included are those costs related to off-site drilling and testing associated with the assessment of the extent of contamination as required by the DNR.

c. Costs associated with off-site activity will not qualify for remedial benefits if a site is otherwise ineligible.

13.2(6) All reports and correspondence covering any assessment activity, testing, monitoring, cleanup, remediation or other work completed on the site and submitted to the DNR shall be sent to the selected contractor or consultant for a community remediation or packaged community remediation project by each owner or the consultant completing the prior work on the eligible site and participating in the community remediation or packaged community remediation project. Failure to supply or disclose such information and materials may be cause for the denial of remedial account benefits and other program benefits for the individual site involved.

13.2(7) Any site receiving program benefits within a community remediation project area shall participate in the project if it is determined by the program administrator that the participation is

necessary for the successful completion of the community remediation project. An owner or operator or the representative of the owner or operator failing to respond to the administrator's requests may be denied remedial account and other program benefits for that failure to participate. A determination by the administrator that an owner failed to cooperate may be appealed.

591—13.3(455G) Contractor requirements.

13.3(1) Any site included in the community remediation or packaged community remediation project may be subject to a bidding process on the work to be done. Any contractor who is or has worked on a site included in the community remediation or packaged community remediation project but who is not chosen for that ongoing work is required to supply any and all records of any work performed on that site. Failure to supply documentation requested will terminate any future payments to that contractor on any other work until the information requested has been received. After a community remediation or packaged community remediation contract award to a contractor, no further work can be done by the prior contractor on any site within a community remediation or packaged community remediation project without prior written authorization from the administrator.

13.3(2) Contracts for community remediation or packaged community remediation projects may be required to be subject to a bidding process. Contracts for community remediation or packaged community remediation may be bid among the contractors expressing an interest to the board or administrator when it is deemed by the board to be in the best interest of the program. The board may charge a fee to anyone requesting a copy of the request for proposal to cover the expense of providing the request.

a. Corrective action design, construction, monitoring and remediation, as defined in Iowa Code section 455G.2, shall be subject to public bid as much as practical.

b. The request for proposals for corrective action design, construction, monitoring and remediation shall include only sites which have jointly contributed to a plume of contamination as indicated by the site cleanup report.

c. Sites included in the site cleanup report phase of activity but which have not contributed to a common plume of contamination may participate in the corrective action community remediation or packaged community remediation project subject to written request, but only upon written approval by the administrator. Locations which are not in a common plume may also complete necessary corrective action subject to budget approval as provided in 591—Chapter 11.

d. Corrective action for emergency conditions, free product recovery or abandoned tanks found during the completion of required site cleanup reports shall not require a separate bidding because this corrective action is within the terms of the contract for the community remediation or packaged community remediation project. Should free product or abandoned tanks be found during completion of a site cleanup report in a community remediation or packaged community remediation project, the contractor shall be authorized, upon administrator approval, to remove free product and abandoned tanks.

13.3(3) The board is not required to select a contractor based solely on the low cost bid. The board may accept or reject any bid or waive any technical difficulty when the board determines it to be in the best interest of the community remediation project. Bids shall be subject to contract negotiation after a contractor has been selected.

13.3(4) A contractor which contracts with the board for work on a community remediation project must obtain prior budget approval from the administrator prior to undertaking work on the project. The administrator or designee will review and approve expenses associated with the project. Work performed which exceeds the scope of the work approved will not be paid unless the contractor can justify the reasons for the additional work.

13.3(5) The site cleanup report for a community remediation project must detail the overall finding of the community remediation project investigation including recommendations of whether the sites within a community remediation project should be classified as "high," "low," or "no action required" site as specified in Iowa Code section 455B.474, subsection 1, paragraphs *"d"* and *"f."* There may be different

sites within the community remediation project that are classified differently based on the contractor's recommendation and DNR approval.

13.3(6) The selected contractor shall provide a bid bond, letter of credit or certified check equal to 10 percent of the bid on any community remediation or packaged community remediation project where 31 or more sites have been included in the proposal. The contractor may be required to provide the board with evidence of professional liability insurance as determined by the administrator. The contractor or consultant may be required to provide performance and payment bonds.

591—13.4(455G) Contracts, change orders and final costs.

13.4(1) Contracts shall be negotiated and finalized by the administrator after award by the board but prior to the signing of a contract, based on the most accurate scope of work covering eligible community remediation or packaged community remediation owner/operators.

13.4(2) Change orders may be negotiated for:

a. Extraordinary costs, including:

(1) Extensive rock drilling if not originally included in the request for proposal.

(2) Unexpected vapor analysis in caverns, caves and sinkholes.

(3) Confined space personal protection gear if required.

(4) Additional drilling if the depth to the aquifer greatly exceeded the estimates in the request for proposals.

(5) The completion of boreholes to monitoring wells when groundwater contamination is found during the project.

(6) Additional borings or monitoring wells to define transition zones as requested by the DNR.

(7) Any other situations where approved by the administrator or the board when authorized to do so.

b. A change in scope of work when:

(1) Additional sites are found to be eligible for the project.

(2) A site is found not to be eligible for benefits, except the board may include a site which was eligible at the start of the project but lost eligibility after the contract was initiated.

(3) A site which had previously tested clean or was underwritten as provided in Iowa Code section 455G.11 is determined to have contamination and the DNR requires completion of a site cleanup report.

(4) Free product or abandoned tanks are discovered during the course of completion of areawide site cleanup report.

(5) A site requires additional testing to ascertain the type of contamination present.

(6) A site requires testing different from the DNR normal testing requirements.

(7) Other situations are approved by the administrator or the board when authorized to do so.

13.4(3) The request for proposals defines the scope of work for borings, completed wells, testing, and areas similar to these. Costs provided by those bidding on the overall scope of work are on a per unit basis and subject to renegotiation if there has been a significant change in scope.

13.4(4) When the amount of time and costs for services are determined by the bidder in order to meet the requirements included in the request for proposal, the costs will be paid on a cost-not-to-exceed basis, as outlined in the bidder's proposal.

13.4(5) The administrator may approve any single change order not to exceed 15 percent of the negotiated cost, without prior board approval, as outlined in rule 13.8(455G). If the cumulative total of all change orders on a given project exceeds 25 percent of the total initial negotiated cost, board approval is required on all subsequent change orders for the project. Board approval is not required when an increase occurs as a result of the addition of an eligible site. Neither is board approval required when an owner/operator elects to join a community remediation or packaged community remediation project after the contract is awarded.

591—13.5(455G) Recovery of free product discovered during the completion of a site cleanup report in a community remediation or packaged community remediation project.

13.5(1) The board shall require the consultant or contractor handling the project to perform free product recovery if free product is discovered during the course of the project. Expenses for field time, report submittal, product disposal, free product recovery systems and any other related cost shall be paid by the fund as an emergency response cost after budget approval by the administrator.

13.5(2) Free product recovery during completion of a site cleanup report shall be considered temporary abatement of the free product, not a permanent solution. Cost recovery against all responsible parties shall be sought by the board.

13.5(3) The board may require that the use of equipment to remove free product during completion of the site cleanup reports be publicly bid in an effort to achieve the lowest overall cost. Any such bids shall include services for tracking, storage, maintenance and movement of systems as deemed appropriate by the administrator and the DNR. If public bidding occurs, all costs will be paid by the board. Equipment purchased would be rented to each owner or operator for the length of time that the system was needed to meet necessary DNR corrective action standards.

13.5(4) If more than one site contributed to a free product contamination plume, costs for each contributor shall be allocated on a pro rata basis with each participant sharing the overall cost for free product removal equally. The administrator, at the written request of one or more of the owners or operators included in the community remediation or packaged community remediation project, may consider other methods of allocating costs for the work completed. The owner or operator making such request shall outline the method of allocation as an alternative. The board or its designee may allow the proposed alternative or may allocate costs as previously outlined in this rule.

13.5(5) Each owner or operator shall be responsible for free product recovery and required reports to the DNR. The selected contractor or consultant shall routinely maintain the system and submit all necessary reports to the DNR.

13.5(6) If free product recovery is required after the completion of the site cleanup report phase of activity, the owner/operator shall be responsible for obtaining budget approval of additional activity from the administrator.

13.5(7) Free product recovery costs are subject to deductible and copayments obligations.

13.5(8) Costs for work associated with a specific site, even those involving free product which has merged, shall be paid by the owner and operator of the site and shall not be prorated.

591—13.6(455G) Completion of corrective action design reports.

13.6(1) The selection of a consultant to prepare the corrective action design shall be by public bidding. The board shall establish guidelines which measure the technical and cost aspects of the proposal. Owners or operators that are affected may also provide input into the process based on the overall effects to business operations.

13.6(2) Selection shall be based on the best combination of the proposed technology and the capital and long-term costs.

13.6(3) The board shall have the right to renegotiate the cost of services after the completion of the corrective action design report and prior to the actual installation of corrective action measures designed to remediate the site.

13.6(4) The board's selection of technology does not relieve an owner/operator from the obligation to cooperate with the board. Failure to cooperate may result in the loss of benefits. The board reserves the right to rebid during the review of submitted proposals. The technology selected by the board shall be provided to the owner/operator for review. The owner may propose alternative technology, provided that it does not slow down the process and has DNR approval and the cost of presenting such alternatives is borne by the owner or operator. The board is not obligated to follow alternative suggestions.

591—13.7(455G) Payment for corrective action and the completion of the corrective action design report when commingled plumes exist.

13.7(1) All work in this phase of activity is subject to the copayment and deductibles in Iowa Code section 455G.9.

13.7(2) The board shall pay fund benefits directly to the consultant. The owner/operator shall pay the balance to the consultant with proof of payment provided to the administrator.

13.7(3) Costs shall be borne equally by all sites contributing to the plume, unless specific action is required attributable to a specific site, such as overexcavation. Costs of specific action attributable to a specific site shall be borne by the owner/operator at the site in accordance with the level of copayment and deductible that remains the owner/operator's responsibility.

13.7(4) Nothing herein will diminish or extinguish the rights of individual owners or operators to seek recovery of funds paid by other affected parties.

591—13.8(455G) Selection of a consultant when the plume of contamination is attributable to eligible and noneligible sites.

13.8(1) The board shall include all sites sharing a common plume if each party agrees in writing to pay for their costs as determined by these rules. The board shall attempt to negotiate inclusion prior to corrective action design or actual cleanup.

13.8(2) The board shall determine on a case-by-case basis whether to include and pay for the cost on the corrective action design and cleanup of a noneligible, insolvent or site with limited benefits. If agreement cannot be reached before starting corrective action, based on its impact to the project as a whole, the board shall seek cost recovery on any funds expended on a site with limited benefits that was insolvent or noneligible.

13.8(3) All costs shall be prorated among the sites included in the project.

591—13.9(455G) Process for handling an owner/operator who does not want to participate in the corrective action phase of the corrective action community remediation or packaged community remediation project.

13.9(1) The board shall require the participation of all sites in addressing the overall commingled plume and seek a negotiated settlement with the owner/operator who, for whatever reason, fails to participate.

13.9(2) If settlement is not possible, the board may approve the completion of all work required to meet DNR's guidelines. The board may seek cost recovery against owner/operator not settling with the board.

These rules are intended to implement Iowa Code sections 455G.2(4), 455G.2(5), and 455G.9.

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CHAPTER 14
ABOVEGROUND PETROLEUM STORAGE TANK FUND

591—14.1(455G) Eligible claims. All claims eligible for benefits under 2004 Iowa Acts, House File 2401, section 4, will be subject to available funding. In order to be eligible for reimbursement, the claimant must prove the aboveground petroleum storage tank site for which benefits are sought was registered with the state fire marshal pursuant to Iowa Code section 101.22 on or before January 1, 2004. Failure to prove that registration occurred on or before January 1, 2004, to the satisfaction of the board, will render that site ineligible for benefits. These provisions do not confer a right upon any party.

591—14.2(455G) Eligible claimants. Only the owner of the aboveground petroleum storage tank site is eligible to receive benefits. The owner is the legal title holder to the real property upon which the aboveground petroleum storage tank is located or to the tank site as defined in Iowa Code section 101.21.

591—14.3(455G) Eligible tanks. Eligible tanks are aboveground petroleum storage tanks containing petroleum as defined in Iowa Code section 455B.471. If the aboveground petroleum storage tank is empty, the last-known substance it contained must meet the definition of petroleum in Iowa Code section 455B.471.

591—14.4(455G) Claim submission deadline. Only owners that submit an application for reimbursement to the board on or before February 18, 2005, are eligible for benefits.

591—14.5(455G) Form of claim. The application for reimbursement must be in writing and made on a form provided by the board. Claims made orally, by telephone, or on a form other than that deemed acceptable by the board will be ineligible for benefits.

591—14.6(455G) Eligible costs. Only costs approved by the board or its designee will be eligible for reimbursement. No costs shall be reimbursed unless deemed by the board to be reasonable and necessary for the upgrade or permanent closure of an aboveground petroleum storage tank site.

591—14.7(455G) Reimbursement limits. Upon receiving appropriate documentation of eligible costs, and after board approval of the costs incurred, the board may reimburse the owner of the aboveground petroleum storage tank site up to $25,000 per site. In no event, however, shall an owner be eligible for more than $100,000 total for all aboveground petroleum storage tank sites eligible for benefits.

591—14.8(455G) Upgrade expenses. Only upgrade expenses incurred after January 1, 2004, and not later than December 31, 2005, are eligible for reimbursement. Only expenses reasonable and necessary to the installation or improvement of aboveground petroleum storage tank equipment or systems required to comply with 40 CFR Section 112 are eligible for reimbursement. Reasonable and necessary expenses include, but are not limited to, installation or upgrade of the following:

1. Secondary containment.
2. Corrosion protection.
3. Loss prevention.
4. Security.
5. Drainage.
6. Removal of noncompliant tanks.

591—14.9(455G) Permanent closure expenses. Only expenses incurred for permanent closure activities occurring after January 1, 2004, and not later than December 31, 2005, are eligible for reimbursement. Only expenses for activities reasonable and necessary to permanently close the aboveground petroleum storage tank site are eligible for reimbursement. Postclosure costs associated with activities to improve the aboveground petroleum storage tank site are not eligible for

reimbursement. Reasonable and necessary activities eligible for reimbursement include, but are not limited to, the following:

1. Removal of the tank and tank piping system.
2. Removal of tank support and confinement systems.
3. Removal of security systems.
4. Disposal of waste petroleum and other waste material, including concrete.

591—14.10(455G) Board approval of costs. All expenses submitted to the board for reimbursement are subject to approval by the board prior to reimbursement. The board may deny reimbursement for any reason deemed by the board to be inconsistent with these rules.

591—14.11(455G) Activities performed by the owner. If an owner seeks reimbursement for expenses associated with activities performed by the owner, the owner's employer, an employee of the owner, or a relative of the owner, the owner is required to obtain prior approval from the board of the activities to be performed and the expenses to be incurred. Expenses for activities performed without prior approval by the board may be denied in their entirety at the sole discretion of the board.

591—14.12(455G) Activities performed under contract. If the owner of an aboveground petroleum storage tank site contracts with another individual or business entity to perform the upgrade or permanent closure activities, the expenses may be submitted to the board for approval upon completion of the work and payment to the contracting party. The board may deny any reimbursement request that does not have accompanying proof of payment in full to the contracting party. If an owner desires approval of costs from the board prior to incurring expenses, the owner may seek and obtain prior approval from the board of the activities to be performed and the expenses to be incurred.

591—14.13(455G) Board contracts for permanent closure of sites. The board may enter into contracts with qualified businesses to perform permanent closure activities for eligible claims. The board may limit reimbursement to only those activities approved under the terms of the contracts, and reimbursement will be no more than $25,000 per site and not more than $100,000 per owner. The permanent closure activities under contract may occur and be reimbursed after February 18, 2005, provided the owner (1) timely applied for reimbursement, (2) emptied all tanks prior to February 18, 2005, or had all tanks in compliance with 40 CFR Section 112 by that date, (3) agreed in writing to allow the board to contract to complete the permanent closure at a time determined to be convenient to the board and (4) provides sufficient evidence, which may at a minimum consist of declinations from a contractor, that the activities were pursued by the owner during the eligible reimbursement period. Expenses for any activities completed after December 31, 2006, however, will not be eligible for reimbursement.

These rules are intended to implement 2004 Iowa Acts, House File 2401, section 4.

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CHAPTER 15
INSTALLERS AND INSPECTORS

Rescinded IAB 8/15/07, effective 8/15/07

CHAPTER 16
WAIVERS AND VARIANCES

591—16.1(17A) Definition. The term "waiver" as used in this chapter means a described waiver or variance from a specific rule or set of rules of this board applicable only to an identified person on the basis of the particular circumstances of that person.

591—16.2(17A) Scope of chapter. This chapter creates standards and a process for granting individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law purports to govern the issuance of a waiver from a particular rule, the more specific waiver provision shall supersede this chapter with respect to any waiver from that rule.

591—16.3(17A) Applicability. This chapter applies only to waivers of those board rules that are within the exclusive rule-making authority of the board.

591—16.4(17A) Compliance with law. The board may not issue a waiver under this chapter unless the waiver is consistent with statute and other provisions of law. No waiver may be granted under this chapter from any mandatory requirement imposed by statute.

591—16.5(17A) Criteria for a waiver. The board may issue an order, in response to a completed petition, or on its own motion, granting a waiver from a rule adopted by the board, in whole or in part, as applied to the circumstances of a specified person, if the board finds that the granting of such a waiver would not exceed the authority for granting waivers contained in Iowa Code section 17A.9A, that the waiver would not prejudice the substantial legal rights of any person, and either that:

1. The application of the rule to the person at issue does not advance, to any extent, any of the purposes for the rule or set of rules; or
2. All of the following criteria have been met:

- The application of the rule or set of rules to the person at issue would result in an undue hardship or injustice to that person; and
- The waiver on the basis of the particular circumstances relative to the specified person would be consistent with the overall public interest; and
- The waiver, if related to administrative deadlines, would not jeopardize the overall goals of the deadline as established.

In determining whether a waiver would be consistent with the public interest, the board shall consider whether, if a waiver is granted, the public health, safety, and welfare will be adequately protected by other means that will ensure a result that is substantially equivalent to full compliance with the rule.

591—16.6(17A) Board discretion. The final decision to grant or deny a waiver shall be vested in the board. This decision shall be made at the discretion of the board upon consideration of relevant facts.

591—16.7(17A) Burden of persuasion. The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant the petitioner a waiver based upon the criteria contained in this chapter.

591—16.8(17A) Contents of petition. A petition for a waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is being requested. To the extent applicable, the petition should also include the site registration number(s) and LUST number(s) and the case number of any related contested case.
2. A description and citation of the specific rule or set of rules 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 history of any prior contacts between the petitioner and the board relating to the activity affected by the proposed waiver or variance, including 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 requester relating to 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 or variance.

8. The name, address, and telephone number of any entity or person who 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 of the waiver request to furnish the board with information relevant to the waiver.

11. If there is a contested case concerning the person, site or matter for which the petition for waiver is being made, such petition must include a signed statement consenting to ex parte communications between the board and its counsel concerning the facts and issues of the petition. If there is a contested case filed subsequent to this petition for waiver, such a statement must be provided at that time.

591—16.9(17A) 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 representative from the board to discuss the petition and surrounding circumstances.

591—16.10(17A) Notice. The board shall acknowledge the petition upon receipt. The petitioner 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. The petitioner shall provide to the board a written statement attesting to the fact that proper notice has been provided and to whom that notice has been provided. In addition, the board may give notice to other persons.

591—16.11(17A) 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 of a rule or set of rules filed within a contested case, and shall otherwise apply to board proceedings for a waiver only when the board so provides by rule or order, or is required to do so by statute or other binding law.

591—16.12(17A) 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 operative time period of a waiver if one is issued.

591—16.13(17A) Conditions. The board may condition the granting of the waiver on such conditions that the board deems to be reasonable and appropriate in order to achieve the objectives of the particular rule in question through alternative means.

591—16.14(17A) 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, then the board may grant or deny the petition at the time the final decision in that contested case is issued.

591—16.15(17A) 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 as required by this rule.

591—16.16(17A) Service of orders. Within 30 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. The petitioner shall ensure that notice of the order 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 order. The petitioner shall provide a written statement attesting to the fact that proper notice has been provided and to whom that notice has been provided. In addition, the board may give notice to other persons.

591—16.17(17A) Record keeping. Subject to the provisions of Iowa Code section 17A.3(1)*"e,"* the board shall maintain a record of all orders granting and denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and copies distributed to members of the administrative rules review committee upon request. All final rulings shall also be available for inspection by the public at the address identified in 591—1.4(455G) during regular business hours.

591—16.18(17A) Term and renewals of waivers. Waivers issued pursuant to this chapter will not be on a permanent basis, unless specified as permanent. If a waiver is issued without either a specified time frame or a statement clearly identifying the specified waiver as permanent, the waiver will be deemed to be for a duration of 120 days. A waiver will automatically expire if no action is taken by the board to renew the waiver. Any action to renew the waiver must be in writing and specify terms and conditions of the renewal.

591—16.19(17A) 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 from the board or knowingly misrepresented to the board 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 has been demonstrated to be insufficient and no other means exists to protect the substantial legal rights of any person; or
3. The subject of the waiver order has failed to comply with all of the conditions contained in the order.

591—16.20(17A) Violations. A 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.

591—16.21(17A) Defense. After the board issues an order granting a waiver, 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.

591—16.22(17A) Appeals. Appeals within the board from a decision granting or denying a waiver shall be in accordance with Iowa Code chapter 17A and board rules. These appeals shall be taken within ten days of the issuance of the ruling granting or denying the waiver request unless a different time is provided by rule or statute.

These rules are intended to implement Iowa Code section 17A.9A.

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CHAPTER 17
APPEALS—CONTESTED CASES

591—17.1(17A) Scope and applicability. This chapter shall govern procedure in contested cases as defined under Iowa Code subsection 17A.2(2). Contested cases generally include, but are not limited to, appeals of rulings made by the administrator on remedial claims under Iowa Code section 455G.9, on loans under Iowa Code section 455G.10, on insurance under Iowa Code section 455G.11, on prioritization under Iowa Code section 455G.12, and on cost containment under Iowa Code section 455G.12A.

591—17.2(17A) Definitions. Except where otherwise specifically defined by law:

"Administrator" means the Iowa comprehensive petroleum underground storage tank fund program administrator as provided for in Iowa Code section 455G.5.

"Agency" means the Iowa comprehensive petroleum underground storage tank fund board or the administrator, as appropriate, having statutory jurisdiction over a particular contested case.

"Benefit" means any of the benefits provided for under Iowa Code chapter 455G and subject to UST board authority.

"Contested case" means a proceeding defined by Iowa Code subsection 17A.2(2).

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

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

"Presiding officer" means the administrative law judge assigned to the contested case.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the UST board did not preside.

"UST board" means the Iowa comprehensive petroleum underground storage tank fund board.

591—17.3(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may, by written agreement of all parties to the contested case proceeding, waive any provision of this chapter and may, by written agreement of all parties to the contested proceeding, agree to any other rules of procedure for the conduct of the proceeding. However, the UST board or the presiding officer in its discretion may refuse to give effect to such a waiver or agreement when it deems the waiver or agreement to be inconsistent with the public interest.

591—17.4(17A) Informal procedure prior to hearing. Any party may pursue an informal settlement of any contested case by meeting with the administrator or the administrator's designee for that purpose. The request shall be made in writing and shall be delivered to the administrator with a copy to the UST board and presiding officer, if any. Upon receipt of the request, all formal contested case procedures and proceedings are stayed. If informal settlement procedures are unsuccessful, formal contested procedures may be initiated as provided herein or the stay may be lifted if formal proceedings have already begun.

591—17.5(17A) Time requirements.

17.5(1) Time shall be computed as provided in Iowa Code subsection 4.1(22).

17.5(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rules of the board. 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.

591—17.6(17A) Presiding officer. Upon receipt of a notice of appeal, the administrator shall notify the department of insurance for assignment of an administrative law judge, or, if not available, the department of inspections and appeals for an assignment of an administrative law judge. The administrative law judge assigned shall be the presiding officer for purposes of hearing the appeal. Expenses generated shall be shared equally by the parties.

591—17.7(17A) Notice of appeal. Any person appealing a decision of the administrator and claiming an entitlement to a contested case proceeding shall file a written notice of appeal within 30 days of receipt of the decision of the administrator.

The notice of appeal should be directed to the administrator and should state the name and address of the appellant, identify the specific portion or portions of the action of the administrator that are being appealed, and include a short and plain statement of the reasons the specific action is being appealed.

591—17.8(17A) Commencement of cases. Within 15 days of when the administrator receives a notice of appeal, the administrator will file the notice of appeal with the presiding officer and notify all affected parties of the filing of the notice of appeal with the presiding officer. When the presiding officer receives a notice of appeal from the administrator, the presiding officer will prepare a notice of hearing and deliver it to all parties to the contested case proceeding. A contested case commences when a notice of hearing is delivered to the parties.

591—17.9(17A) Notice of hearing.

17.9(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; or

d. Any other method agreed to in writing by the parties.

17.9(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing. The hearing shall be held within 180 days of the filing of the petition, unless good cause is shown for a delay;

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 presiding officer 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, the presiding officer may require the parties to furnish a more definite and detailed statement through required pleadings or otherwise;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the UST board, the administrator, or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding; and

g. Reference to procedural rules governing informal settlement.

591—17.10(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 upon order of the presiding officer. 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.

591—17.11(17A) Consolidation—severance.

17.11(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.

17.11(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

591—17.12(17A) Pleadings.

17.12(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

17.12(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 relief demanded and the facts and law relied upon for such relief;

(2) The particular provisions of statutes and rules involved;

(3) The persons or entities on whose behalf the petition is filed; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

17.12(3) Answer. An answer to a petition shall be filed 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.

17.12(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.

591—17.13(17A) Service and filing of pleadings and other papers.

17.13(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 board, 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.

17.13(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. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

17.13(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.

17.13(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, or mailed by first-class mail or state interoffice mail to the presiding officer so long as there is proof of mailing.

17.13(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 & 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]

591—17.14(17A) Discovery.

17.14(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 as provided in the Iowa Rules of Civil Procedure.

17.14(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 17.14(1). The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

591—17.15(17A) Subpoenas.

17.15(1) *Issuance.*

a. A UST board 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. Parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

17.15(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.

591—17.16(17A) Motions.

17.16(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. Any motion for summary judgment shall comply with the Iowa Rules of Civil Procedure.

17.16(2) Any party may file a written response to a motion within 14 days after the motion is served, unless the time period is extended or shortened by rules of the UST board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

17.16(3) The presiding officer may schedule oral argument on any motion.

17.16(4) Motions pertaining to the hearing 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 agency or an order of the presiding officer.

591—17.17(17A) Prehearing conference.

17.17(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 ten days prior to the hearing date. A prehearing conference shall be scheduled not less than three 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.

17.17(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.

17.17(3) In addition to the requirements of subrule 17.15(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.

17.17(4) Prehearing conferences may be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a prehearing conference.

591—17.18(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

17.18(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The UST board may waive notice of such requests for a particular case or an entire class of cases.

17.18(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.

591—17.19(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only upon the approval of the board or the presiding officer. Unless otherwise provided, a withdrawal shall be with prejudice.

591—17.20(17A) Intervention.

17.20(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.

17.20(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.

17.20(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.

17.20(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.

591—17.21(17A) Hearing procedures.

17.21(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.

17.21(2) All objections shall be timely made and stated on the record.

17.21(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.

17.21(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.

17.21(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

17.21(6) Witnesses may be sequestered during the hearing.

17.21(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 proceeding;

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.

591—17.22(17A) Evidence.

17.22(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.

17.22(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

17.22(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 fairness and the public interest determine otherwise. The presiding officer may admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice. Upon timely request that party shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

17.22(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.

17.22(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.

17.22(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.

591—17.23(17A) Default.

17.23(1) If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, proceed with the hearing and render a decision in the absence of the party.

17.23(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.

591—17.24(17A) Ex parte communication.

17.24(1) Prohibited communications. Following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between any party or representative of any party in connection with any issue of fact or law in a case and any person assigned to render a proposed or final decision or to make findings of fact or conclusions of law 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 persons assigned to render a proposed or final decision in a contested case or to make findings of fact or conclusions of law in such a case from seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as that advice or help does not violate Iowa Code section 17A.12(8).

17.24(2) Disclosure of prohibited communications. Any person who receives a communication prohibited by subrule 17.24(1) shall disclose that communication to all parties. A copy of any prohibited written communication or a summary of any prohibited oral communication shall be submitted for inclusion in the record.

17.24(3) The presiding officer or the agency may impose appropriate sanctions for violations of this rule. Possible sanctions include a decision against the offending party; censure, suspension, or revocation of the privilege to practice before the agency; and censure, suspension, dismissal, or other disciplinary action against agency personnel.

591—17.25(17A) Recording costs. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

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

591—17.26(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the UST board may review an interlocutory order of the presiding officer. In determining whether to do so,

the UST board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the UST board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order but no later than the time for compliance with the order or the date of hearing, whichever is first.

591—17.27(17A) Proposed decision—administrative law judge. The ruling of an administrative law judge in a contested case proceeding is a proposed decision which will become the final decision of the UST board unless there is an appeal. Any appeal of a presiding officer's proposed decision shall be made to the UST board. A proposed decision shall be issued by the administrative law judge within 120 days following the close of the hearing.

591—17.28(17A) Appeals and review of proposed decision of an administrative law judge.

17.28(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision of a presiding officer to the UST board within 30 days after issuance of the proposed decision.

17.28(2) *Review.* The UST board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

17.28(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the UST board. 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.

17.28(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 30 days of service of the notice of appeal. The UST board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

17.28(5) *Scheduling.* The UST board shall issue a schedule for consideration of the appeal.

17.28(6) *Briefs and arguments.* Unless otherwise ordered, within 30 days of the notice of appeal, 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 UST board may resolve the appeal on the briefs or provide an opportunity for oral argument. The UST board may shorten or extend the briefing period as appropriate.

591—17.29(17A) Applications for rehearing.

17.29(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

17.29(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 UST board decision on the existing record and whether, subject to 17.28(4), the applicant requests an opportunity to submit additional evidence.

17.29(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

17.29(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 UST board shall serve copies on all parties.

17.29(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the UST board grants the application within 20 days after its filing.

591—17.30(17A) Stays of UST board actions.

17.30(1) *When available.*

a. Any party to a contested case proceeding may petition the UST board for a stay of an order issued in that proceeding, pending review by the agency. The petition for a stay shall be filed with the notice of appeal and shall state the reasons justifying a stay. The UST board may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the UST board for a stay, pending judicial review, of all or part of that proceeding. The petition for a stay shall state the reasons justifying a stay.

17.30(2) *When granted.* In determining whether to grant a stay, the presiding officer or UST board, as appropriate, shall consider whether substantial questions exist as to the propriety of the order for which a stay is requested, whether the party will suffer substantial and irreparable injury without the stay, and whether, and the extent to which, the interests of the public and other persons will be adversely affected by such a stay.

17.30(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the UST board or any other party.

591—17.31(17A) Final UST board action—appeal. UST board decisions in contested case proceedings are final agency action for purposes of appeal. Final UST board decisions will be in writing and outline the basis of the decision in the contested case proceeding. The administrator will write the final decision as instructed by the UST board. The UST board decision shall be final unless appealed pursuant to Iowa Code section 17A.19.

591—17.32(17A) License suspension or revocation or other disciplinary proceedings of installers and inspectors of underground storage tanks.

17.32(1) *Notice.* Except as provided in 17.32(6), prior to the suspension or revocation of a license, the administrator shall give Notice of Intended Action and an opportunity to be heard at an evidentiary hearing conducted according to the provisions of this chapter.

17.32(2) *Content of notice.* The notice shall inform the licensee of the administrator's intent to suspend or revoke the license or otherwise discipline the licensee and shall include facts or conduct which warrant the intended action, a statement of the legal authority and jurisdiction under which the hearing is to be held, and a statement that the licensee may show at a hearing that the licensee meets all lawful requirements to retain the license or otherwise not be subject to disciplinary action.

17.32(3) *Delivery of notice.* Delivery of notice in license proceedings may be by personal service or by restricted certified mail.

17.32(4) *Requested hearings.* In the case of revocation or suspension of licenses, the administrator shall give notice as required in 17.32(1) and 17.32(2), which shall include a statement that the person notified has the right to a hearing in accordance with this chapter and that the person entitled to a hearing may invoke the right within ten days of receipt of the notice. Upon receipt of the request for hearing, the presiding officer shall prepare a notice of hearing. Within ten days of receiving a notice of hearing, the administrator shall file a petition and the procedure shall follow that of this chapter.

Notwithstanding Iowa Code section 17A.18, the obligor does not have the right to a hearing before the board to contest the board's actions under Iowa Code chapter 252J but may request a court hearing pursuant to Iowa Code section 252J.9 within 30 days of the provision of notice under this section.

17.32(5) *Emergency suspension.* A license may be suspended without providing the licensee notice and opportunity to be heard if the UST board or its designee finds that the public health, safety, or welfare requires emergency action, and incorporates a finding to that effect in its order. The order shall be served

in the same manner provided in 17.32(3). If a license is summarily suspended in accordance with this paragraph, the administrator shall promptly thereafter give notice and an opportunity to be heard and determine the matter.

17.32(6) *Effective date of suspension or revocation.*

a. With respect to a license suspension or revocation pursuant to this rule, except an emergency suspension pursuant to 17.32(5), the suspension or revocation shall be effective upon failure of the permittee to request a hearing within the time required in 17.32(5) or upon the issuance of an order suspending or revoking the license after hearing.

b. With respect to a license suspension pursuant to 17.32(5), the suspension is effective upon service of the order and shall remain effective until rescinded by the UST board or its designee or until the suspension is terminated by order after hearing.

591—17.33(17A,455G) Use of legal assistants or paralegals. The UST board and the administrator may be represented by legal assistants or paralegals at contested case hearings.

Legal assistants or paralegals representing the UST board and the administrator shall be under the supervision of the UST board's counsel from the office of the attorney general.

These rules are intended to implement Iowa Code section 17A.12 and chapter 455G.

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