

CHAPTER 17
APPEALS—CONTESTED CASES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

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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