

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

**Proposing rule making related to adoption by reference of NIST Handbooks 44, 130 and 133
and providing an opportunity for public comment**

The Agriculture and Land Stewardship Department hereby proposes to amend Chapter 85, “Weights and Measures,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 189.2 and 215.24.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 189 and 215.

Purpose and Summary

This rule making proposes to adopt by reference National Institute of Standards and Technology (NIST) Handbooks 44, 130 and 133, amended or revised as of January 1, 2020. The anticipated effect on stakeholders of the adoption of the most recent versions of these handbooks is minimal, although there may be some impact on commercial dispensers of hydrogen fuel and ethanol-gasoline blends. The Department routinely adopts the latest versions of these handbooks every five years.

In 2019, the 88th General Assembly enacted House File 767, which added hydrogen fuel to those fuels subject to taxation under Iowa Code chapter 452A. This legislation also required the licensing and inspection of commercial dispensers of hydrogen fuel. Even though there are no commercial dispensers of hydrogen fuel in Iowa at this time, the Department anticipates that some will be in operation soon. The most recent versions of NIST Handbooks 44, 130 and 133 cover inspection and testing procedures for dispensers of hydrogen fuel. The adoption by reference of the most recent versions of these handbooks will ensure equity and safety for Iowa consumers of hydrogen fuel in the future.

The Department’s adoption by reference of the updated version of NIST Handbook 130 also relates to seasonal summer sales of E-15 gasoline. In 2019, the Environmental Protection Agency (EPA) withdrew its prohibition of the sale of E-15 gasoline from June 1 to September 15, creating a “vapor pressure” allowance for the summer months. NIST requirements regarding E-15 gasoline were still in the process of revision at the time of the EPA’s regulatory change, and the Department was still following NIST standards that enforced the summer sales prohibition. To address this inconsistency, the Department in 2019 issued a waiver of its own rules on the prohibition of summer sales of E-15 gasoline that covered the period from June 1 to September 15, 2019. In February 2020, the Department adopted ARC 4947C, which adopted by reference only that part of NIST Handbook 130 that addressed gasoline-ethanol blends, namely, Part IV, Section G, 2.1.2. Since the adoption of ARC 4947C, the Department has determined that the entirety of Handbook 130 may be adopted by reference because NIST has completed updating all its requirements, including those that affect seasonal summer sales of E-15 gasoline.

Other updated sections of NIST Handbooks 44, 130 and 133 focus on matters such as tractor hydraulic fluid labeling and plywood density for which the Department does not have active inspection programs; however, the Department may choose to investigate complaints about these things on an individual basis. The most recent versions of NIST Handbooks 44, 130 and 133 provide definitive standards for the Department’s investigation of complaints and enforcement of NIST standards.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 18, 2020. Comments should be directed to:

Maison Bleam
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: maison.bleam@iowaagriculture.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

August 19, 2020
9 to 10 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend rule 21—85.39(189,215) as follows:

21—85.39(189,215) Weights and measures.

85.39(1) The specifications, tolerances and regulations for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Institute of Standards and Technology and published in National Institute of Standards and Technology Handbook 44 amended or revised as of ~~July 1, 2013~~ January 1, 2020, shall be the specifications, tolerances and regulations for commercial weighing and measuring devices in the state of Iowa, except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship and not rescinded.

85.39(2) The National Institute of Standards and Technology (NIST) ~~Handbooks~~ Handbook 130 and, Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality, Handbook 133: Weights and Measures Law, Packaging and Labeling, Method of Sale, Type Evaluation, Checking the Net Contents of Packaged Goods, and Uniform Engine Fuels and Automotive Lubricants Regulation, and all supplements ~~to these handbooks~~, as published by the National Institute of Standards and Technology amended or revised as of ~~July 1, 2013~~ January 1, 2020, are adopted in their entirety by reference except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship.

a. ~~The National Institute of Standards and Technology (NIST) Handbook 130, Part IV, Section G, Section 2. Standard Specifications, 2.1.2. Gasoline Ethanol Blends, as of November 1, 2020, is adopted in its entirety by reference except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship.~~

b. ~~Reserved.~~

This rule is intended to implement Iowa Code sections 189.9, 189.13, 189.17, 215.14, 215.18 and 215.23.