

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

**Proposing rule making related to aboveground flammable or combustible liquid storage tanks
and providing an opportunity for public comment**

The State Fire Marshal hereby proposes to amend Chapter 224, “Aboveground Petroleum Storage Tanks,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 101.23.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 101.

Purpose and Summary

The purposes of the proposed amendments to Chapter 224 are to update the process for registration of tanks and to provide contact information for the program.

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

Pursuant to the provisions of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. 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 the provisions of rule 661—10.222(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 22, 2020. Comments should be directed to:

Sarah Jennings
Department of Public Safety
Oran Pape State Office Building
215 East 7th Street
Des Moines, Iowa 50319
Phone: 515.725.6185
Email: jennings@dps.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

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 actions are proposed:

ITEM 1. Amend **661—Chapter 224**, title, as follows:
ABOVEGROUND PETROLEUM FLAMMABLE OR COMBUSTIBLE LIQUID STORAGE TANKS

ITEM 2. Amend rules 661—224.1(101) and 661—224.2(101) as follows:

661—224.1(101) Scope. These rules apply to aboveground ~~petroleum~~ flammable or combustible liquid storage tanks, as defined in Iowa Code section 101.21.

224.1(1) The aboveground flammable or combustible liquid storage tanks program is located at the following address:

State Fire Marshal Division
Iowa Department of Public Safety
Attn: Aboveground Storage Tank Administration
215 East 7th Street
Des Moines, Iowa 50319

224.1(2) The program may be contacted by electronic mail at sfmast@dps.state.ia.us or by the United States Postal Service.

224.1(3) The website for the aboveground flammable or combustible liquid storage tanks program is: dps.iowa.gov/divisions/state-fire-marshal/licensing/above-ground-storage-tanks.

661—224.2(101) Definition Definitions. The following ~~definition applies~~ definitions apply to the rules in this chapter:

“Aboveground ~~petroleum~~ flammable or combustible liquid storage tank” means one or a combination of tanks, including connecting pipes connected to the tanks which are used to contain an accumulation of ~~petroleum~~ flammable or combustible liquid and the volume of which, including the volume of the underground pipes, is more than 90 percent above the surface of the ground. Aboveground ~~petroleum~~ storage tank “Aboveground flammable or combustible liquid storage tank” does not include any of the following:

1. Aboveground tanks of 1100 gallons or less capacity.
2. Tanks used for storing heating oil for consumptive use on the premises where stored.
3. Underground storage tanks as defined by Iowa Code section 455B.471.
4. A flow-through process tank, or a tank containing a regulated substance, other than motor fuel used for transportation purposes, for use as part of a manufacturing process, system, or facility.
5. An aboveground tank that stores flammable liquids on a farm located outside the limits of a city if the aboveground tank has 2000 gallons or less capacity.
6. An aboveground tank that stores combustible liquids on a farm located outside the limits of a city if the aboveground tank has 5000 gallons or less.

“Combustible liquid” means any liquid that has a closed-cup flash point greater than or equal to 100 degrees Fahrenheit.

“Commodities” means crops as defined in Iowa Code section 202.1 or animals as defined in Iowa Code section 459.102.

“Farm” means land and associated improvements used to produce agricultural commodities, if at least \$1000 is annually generated from the sale of the agricultural commodities.

“Flammable liquid” means a liquid with a closed-cup flash point below 100 degrees Fahrenheit and a Reid vapor pressure not exceeding 40 psi absolute, 2026.6 mm Hg, at 100 degrees Fahrenheit.

“Liquefied natural gas” means a fuel in the liquid state composed predominantly of methane and which may contain minor quantities of ethane, propane, nitrogen, or other components normally found in natural gas.

“Liquefied petroleum gas” means material composed predominantly of any of the following hydrocarbons, or mixtures of the same: propane, propylene, butanes (normal butane or isobutane), and butylenes.

“Operator” means a person in control of, or having responsibility for, the daily operation of an aboveground flammable or combustible liquid storage tank.

“Owner” means: in the case of an aboveground flammable or combustible liquid storage tank in use on or after July 1, 1989, a person who owns the aboveground flammable or combustible liquid storage tank used for the storage, use, or dispensing of flammable or combustible liquid, or in the case of an aboveground flammable or combustible liquid storage tank in use before July 1, 1989, but no longer in use on or after that date, a person who owned the tank immediately before the discontinuation of its use.

“Petroleum” means petroleum as defined in Iowa Code section 455B.471.

ITEM 3. Amend rules 661—224.4(101) to 661—224.8(101) as follows:

661—224.4(101) Registration of existing and new tanks—fees. All existing, new, replacement and out-of-service aboveground tanks of 1101-gallon capacity or greater shall be registered with the state fire marshal. This requirement applies to aboveground tanks used to store ~~petroleum~~ flammable or combustible liquids, as defined in Iowa Code section 455B.471, which ~~includes~~ include, but are not limited to, crude oil, heating oil offered for resale, motor fuels and oils such as gasoline, diesel fuels and motor oil. Tanks which are used, or planned for use, to store blended fuels which include either gasoline or diesel are subject to this requirement.

224.4(1) Registration form. Registration forms for aboveground storage tanks may be obtained from the state fire marshal division. A completed registration form shall be submitted to the state fire marshal division, online or by mail as established in rule 661—224.1(101), by the date on which it is due and shall be accompanied by the applicable fee, including any applicable late charges.

224.4(2) Fees. The annual registration fee for each tank shall be ~~\$10~~ \$20. The fee shall cover registration for each tank for one year, which ends on October 1. If a tank is registered on or after October 1 of any year, payment of the fee shall cover registration until the following October 1.

224.4(3) Registration deadline. Each tank shall be registered annually by October 1 of each year.

EXCEPTION: A tank may be registered for the first time on any date without penalty, provided that it has not previously been in use to store ~~petroleum products~~ flammable or combustible liquids. A tank that is registered for the first time shall not be used to store ~~petroleum products~~ flammable or combustible liquid until the registration has been completed and the registration tag has been attached to the tank.

224.4(4) No change.

224.4(5) Payment. The registration fee, and any late fee if applicable, shall be submitted electronically or by draft, check, or money order in the applicable amount payable to the Iowa State Fire Marshal Division. Draft, check, or money order shall be addressed to the state fire marshal as established in subrule 224.1(1). Payment shall not be made in cash.

661—224.5(101) Approval of plans. A registration tag for a new aboveground storage tank shall not be issued prior to approval by the state fire marshal of plans for the installation of the tank and payment of the required plan review and registration fee. The state fire marshal may require inspection of the tank and payment of an inspection fee prior to use of the tank.

661—224.6(101) Inspections and orders.

224.6(1) and 224.6(2) No change.

224.6(3) Suspension of use. If any corrective action ordered pursuant to subrule 224.6(2) is not completed in the time specified in the order issued pursuant to subrule 224.6(2), the state fire marshal may order that the tank be placed out of service until the corrective action or actions have been completed. If a tank is ordered to be placed out of service pursuant to this subrule, the tank shall have a sticker prominently affixed to it which states that the tank is out of service by order of the state fire marshal and that it is a violation of law to transfer any ~~petroleum product~~ flammable or combustible liquid into the tank.

224.6(4) Emergency order. If the state fire marshal finds that a violation identified during an inspection conducted pursuant to subrule 224.6(1) creates an imminent threat to public safety or public health, or if the state fire marshal finds, after consultation with the department of natural resources, that such a violation creates an imminent threat of environmental damage, the state fire marshal shall order that the tank be placed out of service immediately and may order that the tank be evacuated of liquid and purged of vapors. If a tank is ordered to be placed out of service pursuant to this subrule, the tank shall have a sticker prominently affixed to it which states that the tank is out of service by order of the state fire marshal and that it is a violation of law to transfer any ~~petroleum product~~ flammable or combustible liquid into the tank.

224.6(5) Notice. Notice of any order issued pursuant to this rule shall be given to the owner or operator of a tank subject to the order. Notice of an emergency order issued pursuant to subrule 224.6(4) shall be given by personal service. Notice of any other order issued pursuant to this rule may be given by regular mail, electronic mail, or personal service.

EXCEPTION: If the owner of a tank subject to an order issued pursuant to this rule is unknown or cannot be located, notice shall be considered to have been given if the notice is served personally to any person at the location of the tank or, if no person is present, by affixing the notice to the tank. Alternatively, notice may be given by mailing the notice to the address at which the tank is located, with a return receipt requested. Notification from the United States Postal Service that delivery was attempted unsuccessfully or that delivery was refused shall serve as proof that notice was given.

661—224.7(101) Leaks, spills, or damage. Any leak from, spill from, or damage to a storage tank shall be reported to the local fire department and, if required by law, to the department of natural resources. If a tank is leaking or has been damaged, it shall be placed out of service until the leak has been repaired. A sign shall be placed prominently on the tank stating that the tank is out of service and that no ~~petroleum product~~ flammable or combustible liquid shall be placed into the tank until required repairs have been completed.

661—224.8(101) Civil penalty. The state fire marshal may impose a civil penalty upon the owner of a storage tank for any of the following:

1. Failure to register a storage tank currently being used to store a ~~petroleum product~~ flammable or combustible liquid if the registration is more than 30 days late.
2. Allowing any ~~petroleum product~~ flammable or combustible liquid to be placed into a tank which has been ordered to be placed out of service and for which the order has not been rescinded or allowing any ~~petroleum product~~ flammable or combustible liquid to be placed into any tank which has been damaged or is leaking, if the damage or leak has not been repaired.

A civil penalty issued pursuant to this rule and to Iowa Code section 101.26 shall not exceed \$100 for each day during which the violation occurs or \$1000 in total.