

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

Proposing rule making related to the renewable fuel infrastructure program and providing an opportunity for public comment

The Agriculture and Land Stewardship Department hereby proposes to amend Chapter 13, “Renewable Fuel Infrastructure Board—Organization,” Chapter 14, “Renewable Fuel Infrastructure Program for Retail Motor Fuel Sites,” and Chapter 16, “Renewable Fuel Infrastructure Program Administration,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in 2022 Iowa Acts, House File 2128.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 159A and 2022 Iowa Acts, House File 2128.

Purpose and Summary

The proposed amendments make several changes to the Renewable Fuel Infrastructure Program to implement 2022 Iowa Acts, House File 2128. Specifically, the proposed rule making:

- Adds definitions for “special status,” “tier I site,” “tier II site,” and “tier III site.”
- Updates allowable purchases to E-85 and B-20 compatible infrastructure.
- Removes the option of a three-year cost-share agreement.
- Provides for prioritization of special status applicants and tier I through tier III sites, including updated cost-share rates.
- Makes other conforming changes to reflect requirements of House File 2128.

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 31, 2022. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
502 East 9th Street
Des Moines, Iowa 50319
Phone: 515.518.7609
Email: colin.tadlock@iowaagriculture.gov

Public Hearing

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

August 24, 2022
11 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 actions are proposed:

ITEM 1. Amend rule 21—13.1(159A) as follows:

21—13.1(159A) Definitions. As used in these rules, unless the context otherwise requires, the definitions in Iowa Code section 159A.11 shall apply to this chapter and to 21—Chapters 14, 15, and 16. The following definitions shall also apply:

“*Agreement*” means the cost-share agreement executed by the department after approval of the grant by the board.

“*Applicant*” means a person, as defined in this rule, who owns or operates a site.

“*Biodiesel*,” for the purpose of this rule, must be at least B99.

“*Biodiesel blended fuel*,” as defined in Iowa Code section 214A.1, means a blend of biodiesel with petroleum-based diesel fuel which meets the standards, including separately the standard for its biodiesel component. For the purpose of these rules, biodiesel blended fuel must contain at least 2 percent biodiesel at a terminal site and at least \pm 5 percent at a retail site.

“*Biofuel*” means ethanol or biodiesel as defined in Iowa Code section 214A.1.

“*Blender pump*,” for the purpose of these rules, means blending biofuel. When blending ethanol, the pump must have the capacity to dispense E-15 and E-85 gasoline at all times. When blending biodiesel, the pump must have the capacity to dispense biodiesel blended fuel classified as B-5 or higher at all times.

“*Board*” means the renewable fuel infrastructure board established by Iowa Code section 159A.13.

“*Checklist*” or “*IDNR checklist*” means the most recent version of the Underground Storage Tank System Checklist for Equipment Compatibility with E-Blend Fuels (greater than 10 percent by volume) issued by the Iowa department of natural resources.

“*Grant*” or “*cost-share grant*” means moneys awarded by the board on a cost-share basis from the renewable fuel infrastructure fund created by Iowa Code chapter 15G to help pay for a project.

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

“*Project*” means the installation of equipment for motor fuel storage, dispensing and distribution of E-15 or ~~E-85~~ higher gasoline, biodiesel or biodiesel ~~blend~~ blended fuel classified as B-5 or higher.

“*Rack*” means a metered motor fuel, special fuel or renewable fuel loading facility with the capacity to pump fuel at a rate of at least 100 gallons per minute (100 gpm); whether from an overhead, lateral, or underneath position, into a transportation vessel for further delivery.

“*Renewable fuel,*” as defined in Iowa Code section 214A.1, means a combustible liquid derived from grain starch, oilseed, animal fat, or other biomass; or produced from a biogas source, including any nonfossilized decaying organic matter which is capable of powering machinery, including but not limited to an engine or power plant. Renewable fuel includes but is not limited to biofuel, ethanol blended gasoline, or biodiesel blended fuel meeting the standards provided in Iowa Code section 214A.2.

“*Retail*” means offered for sale to the public for final consumption.

“*Retail motor fuel site*” means a site at which motor fuel is offered for sale to the public for final consumption. ~~A retail motor fuel site may include a tank vehicle or transport.~~

“*Special status*” means a retail motor fuel site that does not comply with the E-15 access standard under Iowa Code section 214A.32 as enacted by 2022 Iowa Acts, House File 2128, section 2, and is ineligible to be issued an E-15 incompatible infrastructure class 2 waiver order.

“*Tank vehicle*” means a motor vehicle designed to transport liquid or gaseous materials within a tank having a rated capacity of 1,001 or more gallons either permanently or temporarily attached to the vehicle or chassis.

“*Tier I site*” means a retail motor fuel site as described in Iowa Code section 159A.14(4B) “*b*” as enacted by 2022 Iowa Acts, House File 2128, section 93.

“*Tier II site*” means a retail motor fuel site as described in Iowa Code section 159A.14(4B) “*c*” as enacted by 2022 Iowa Acts, House File 2128, section 93.

“*Tier III site*” means a retail motor fuel site as described in Iowa Code section 159A.14(4B) “*d*” as enacted by 2022 Iowa Acts, House File 2128, section 93.

ITEM 2. Amend subrule 13.2(4) as follows:

13.2(4) Meetings. Board meetings will generally be held ~~by telephone or~~ at the department’s offices, electronically, or by telephone. All meetings shall comply with Iowa Code chapter 21.

ITEM 3. Amend rule 21—14.2(159A) as follows:

21—14.2(159A) Eligible applicants. To be eligible to receive a retail motor fuel site infrastructure grant, an applicant shall:

14.2(1) and 14.2(2) No change.

14.2(3) Meet the following eligibility requirements established by the board:

a. The fuel storage and dispensing infrastructure may include either an aboveground or belowground storage tank and ancillary equipment.

~~*b.* Rescind IAB 6/8/16, effective 7/13/16.~~

~~*e. b.*~~ The storage tank must, however, be used exclusively for retail delivery to the final consumer.

~~*c.*~~ If a tank has multiple compartments, at least one of the compartments must be used exclusively for the storage and dispensing of ethanol blended gasoline ~~at or between~~ classified as E-15 and E-85 or higher, biodiesel or biodiesel blended fuel classified as B-5 or higher at retail. The compartment used exclusively for the storage of ethanol blended gasoline ~~at or between~~ E-15 and E-85 or higher, biodiesel or biodiesel blended fuel is considered the tank for purposes of this program.

~~*e. d.*~~ The tank and ancillary equipment must be approved for ethanol blended gasoline ~~at or between E-15 and~~ classified as E-85 or higher, biodiesel or biodiesel blended fuel classified as B-20 or higher use by either the Iowa department of natural resources or the state fire marshal, as evidenced by the most recent IDNR checklist.

~~f. e.~~ The dispenser and dispenser components must be listed by an independent testing laboratory, approved by the manufacturer or approved by the state fire marshal as compatible with ethanol blended gasoline ~~at or between E-15 and~~ classified as E-85 or higher. An Iowa-licensed installer has been identified to perform the installation.

~~g. f.~~ Conversion kits. If a UL-listed E-85 dispenser conversion kit is used, it must be approved by the state fire marshal ~~to be eligible for the E-85 grant~~.

ITEM 4. Rescind rule **21—16.1(159A)**.

ITEM 5. Renumber rules **21—16.2(159A)** to **21—16.5(159A)** as **21—16.1(159A)** to **21—16.4(159A)**.

ITEM 6. Amend renumbered rules 21—16.1(159A) to 21—16.4(159A) as follows:

21—16.1(159A) Form of award available; award amount.

16.1(1) Form of award. Eligible applicants may apply for financial incentives on a cost-share basis. Funding shall be available in the form of a grant.

16.1(2) Timing of application. A grant may be awarded for an eligible project not yet commenced. However, a grant for an initial application may not be ~~awarded~~ submitted more than one year after the project is put in service.

16.1(3) Amount of award.

a. Retail award site.

~~(1) Three-year cost-share agreement for a retail site. The maximum award amount is 50 percent of the actual cost of making the improvements or \$30,000, whichever is less.~~

~~(2) (1) Five-year cost-share agreement for a retail site. The~~

1. For a tier I site, the maximum award amount is 90 percent of the actual cost of making the improvement or \$63,900, whichever is less.

2. For a tier II site, the maximum award amount is 75 percent of the actual cost of making the improvement or \$53,250, whichever is less.

3. For a tier III site, the maximum award amount is 70 percent of the actual cost of making the improvements or \$50,000, whichever is less.

~~(3) Supplemental financial incentives. A person may be granted supplemental financial incentives as an amendment to the cost-share agreement.~~

~~1. Supplemental award for Underwriters Laboratories upgrade. The purpose of an award for Underwriters Laboratories (UL) is to upgrade to UL-certified dispensers, blender pumps and dispensing infrastructure, UL-approved conversion kits and approved and insurable installation projects. The maximum amount available as a supplemental financial incentive is 75 percent of the actual cost of making the improvements or \$30,000, whichever is less. The dispenser can be listed by an independent certified testing laboratory or Underwriters Laboratories (UL) as compatible with ethanol blended gasoline classified as E-9 or higher.~~

~~2. Supplemental award for additional tank and associated infrastructure. A person may request a supplemental financial incentive for tank and associated infrastructure, as an amendment to the subsequent cost-share agreement(s). The purpose of an award for an additional tank(s) and associated infrastructure is to accelerate the installation of an additional tank(s) and associated infrastructure at an additional retail motor fuel site after an initial grant award is provided. The maximum award amount available as a supplemental financial incentive is \$6,000 per supplemental site. The person is limited to four supplemental financial incentive awards within the 12-month period following the completion of the initial retail motor fuel site project.~~

(2) Supplemental award for additional tank and associated infrastructure. A person may request a supplemental financial incentive for a tank and associated infrastructure, as an amendment to the subsequent cost-share agreement(s). The purpose of an award for an additional tank(s) and associated infrastructure is to accelerate the installation of an additional tank(s) and associated infrastructure at an additional retail motor fuel site after an initial grant award is provided. The maximum award amount available as a supplemental financial incentive is \$6,000 per supplemental site. The person is limited to

four supplemental financial incentive awards within the 12-month period following the completion of the initial retail motor fuel site project.

b. No change.

~~*c.* Tank vehicle. Rescinded IAB 6/8/16, effective 7/13/16.~~

16.1(4) and **16.1(5)** No change.

16.1(6) *Multiple awards for multiple fuel types.*

a. No change.

b. *At multiple fuel sites.* A person may receive multiple grants as described in paragraph ~~16.2(6)“a”~~ **16.1(6)“a”** for more than one motor fuel site. When considering multiple grants for multiple fuel sites, the board will make awards fairly and properly among applicants and geographic areas.

16.1(7) *Exhaustion of funds.* In the event funding is exhausted ~~at the end of the fiscal year,~~ the board ~~shall~~ may approve remaining applications based on criteria implemented by the board.

21—16.2(159A) Application process.

16.2(1) No change.

16.2(2) *Contents of application.*

a. Statutory requirements. An application shall include the information required in Iowa Code ~~section 15G.203~~ chapter 159A.

b. Other information required by the board:

(1) Assurance that the project will be for the purpose of installing, replacing, or converting equipment for the storage or dispensing of the renewable fuel under consideration.

(2) Assurance that all equipment funded by the grant is designed E-85 or B-20 compatible and will be used exclusively to store or dispense E-15 ~~or E-85~~ or higher gasoline, biodiesel or biodiesel blended fuel classified as B-5 or higher, respectively, for the period specified in the agreement.

(3) An IDNR checklist indicating the current status of the site.

(4) Assurance of compliance with any and all federal requirements for financial responsibility.

(5) Assurance of compliance with any and all state and federal laws and regulations.

(6) A cost proposal from an Iowa-licensed underground storage tank installer (for underground storage projects) and a qualified aboveground storage tank installer (for aboveground storage projects).

~~(7) Documentation of initiation of the process of applying to an independent laboratory and the manufacturer’s written statement that the dispenser is “not incompatible.”~~

21—16.3(159A) Review process.

16.3(1) ~~The underground storage tank fund board has chosen not to review the applications.~~ The renewable fuel infrastructure board will review an application for final approval or disapproval. The renewable fuel infrastructure board shall determine the amount of financial incentives to be awarded to an applicant.

16.3(2) Completed applications, including supporting documentation of meeting eligibility requirements, will be reviewed on a first-come, first-served basis. The board shall rank applications with priority given to projects in the following order:

a. A retail motor fuel site that is assigned special status.

b. A retail motor fuel site that is a tier I site.

c. A retail motor fuel site that is a tier II site.

d. A retail motor fuel site that is a tier III site.

16.3(3) If the amount of funding requests exceeds available funds, the board shall evaluate applications based upon criteria that include, but are not limited to, the following:

a. Submittal of a completed application, including supporting documentation.

b. Priority status.

~~*c.*~~ *c.* Location factors such as demographics, proximity to major transportation corridors, and proximity to existing renewable fuel retail and storage facilities.

~~*e.*~~ *d.* Projected annual sales volume.

~~*d.*~~ *e.* Other sources of funding.

e. f. Previous grants awarded.

21—16.4(159A) Contract administration.

16.4(1) No change.

16.4(2) *Contract required.* The board shall direct the department to prepare a cost-share agreement which shall include terms and conditions of the grant established by the board. The agreement shall:

a. to *d.* No change.

e. Recite the penalty for the storage or dispensing of motor fuel other than the type of renewable fuel for which the grant was awarded.

(1) Awards for projects under construction or not yet started. The ~~three~~ or five-year obligation to continue dispensing renewable fuel begins on the date the project is completed.

(2) Awards for projects already completed. The ~~three~~ or five-year obligation to continue dispensing renewable fuel begins on the date the department issues the first disbursement of grant funds, not on the date of project completion.

f. Be amended to include a supplemental financial incentive, if a supplemental financial incentive is awarded by the board.

16.4(3) *Disbursement of funds.* Beginning January 1, 2023, the department shall only reimburse an applicant for qualifying expenditures that comply with Iowa Code sections 455G.32 and 455G.33 as enacted by 2022 Iowa Acts, House File 2128, sections 29 and 30, unless a grant was awarded to the applicant with moneys appropriated in the 2022 fiscal year budget or prior.

~~16.4(3)~~ **16.4(4) *Repayment penalty for nonexclusive renewable fuel use.*** In the absence of a waiver from the board, the department may impose a 25 percent penalty due to a grant recipient's use of infrastructure equipment for which a grant was awarded, for the storage or dispensing, within the time frame stated in the agreement, of motor fuel other than the type of renewable fuel for which the grant was awarded.

~~16.4(4)~~ **16.4(5) *Repayment or board waiver.*** A grant recipient may not use the infrastructure to store and dispense motor fuel other than the type approved by the board, unless one of the following applies: (1) the grantee is granted a waiver by the board, or (2) the grantee pays back the moneys awarded including a 25 percent penalty.

~~16.4(5)~~ **16.4(6) *Waiver criteria.*** The board may waive repayment of grant funds plus the 25 percent penalty. A grant recipient seeking a waiver during the time period in which a cost-share agreement is in effect shall submit a written waiver request to the board. The board will consider waiver requests under the following circumstances:

a. Permanent waiver.

(1) No change.

(2) Waiver due to demonstration of financial hardship (repayment on a sliding scale and no 25 percent penalty). A grant recipient may seek a permanent waiver of exclusive use of the approved renewable fuel during the time period in which a cost-share agreement is in effect due to financial hardship. The grant recipient must demonstrate that continuing to dispense the renewable fuel at a project site will cause a financial hardship. A request for waiver due to financial hardship shall include documentation to show a "good faith" effort to market the fuel, specifically the most recent six-month history of gallons of approved renewable fuel sold by month, marketing/advertising efforts, retail price comparison of E-15 or E-85 to E-10 (or regular gasoline) or of biodiesel to regular diesel. If a waiver is granted, the 25 percent penalty will not be assessed, but the grant funds shall be repaid as follows: at 100 percent for months one through ten of a cost-share agreement or 2 percent of the grant amount for each month remaining on the cost-share agreement after month ten.

1. ~~Three-year cost-share agreement: Months 1 through 11 of the cost-share agreement, 100 percent of grant amount. Months 12 through 36 of cost-share agreement, 4 percent of grant amount for each month remaining on the cost-share agreement.~~

2. ~~Five-year cost-share agreement: Months 1 through 10 of the cost-share agreement, 100 percent of grant amount. Months 11 through 60 of the cost-share agreement, 2 percent of grant amount for each month remaining on the cost-share agreement.~~

b. Temporary waiver (temporary suspension of repayment and 25 percent penalty). A grant recipient may request a temporary suspension of the obligation to use only the approved renewable fuel and a temporary waiver of the repayment plus penalty requirement. A request for a temporary waiver, or an extension of a temporary waiver, will only be considered by the board if the recipient can document to the board's satisfaction that market forces are not allowing for advantageous sales of the approved renewable fuel. A grant recipient shall submit documentation of the previous six-month sales history and marketing attempts to substantiate the grant recipient's request for a temporary waiver. The following conditions apply to requests for a temporary waiver:

- (1) A temporary waiver will not be granted during the first six months of a cost-share agreement.
- (2) A temporary waiver will not shorten the grant recipient's obligation to use the infrastructure to store and dispense the approved renewable fuel for a minimum of ~~three years~~ or five years. If the board approves a temporary waiver, the duration of the cost-share agreement will be extended by the length of the approved waiver period.
- (3) A grant recipient may request a temporary waiver of up to six months. The board may approve one or more six-month waivers, provided the total cumulative time period allowed for temporary waivers shall not exceed two years.
- (4) If a state executive order suspending the Iowa Renewable Fuel Standard (RFS) schedule is issued, the board may decide to grant a temporary waiver to all grant recipients. The board will establish the duration of the waiver and provide written notice to all grant recipients of the board's action. When the board determines that a temporary waiver is necessary due to suspension of the Iowa RFS schedule, the ~~three-year~~ or five-year duration of the cost-share agreement will not be extended by the length of the temporary waiver.