

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 101.1, the State Fire Marshal hereby amends Chapter 221, “Flammable and Combustible Liquids,” Iowa Administrative Code.

Iowa Code chapter 101 establishes the authority of the State Fire Marshal to establish requirements for the safe transportation, storage, handling and use of flammable and combustible liquids, which include motor vehicle fuels such as gasoline, “traditional” ethanol (90% gasoline, 10% ethanol) and higher blends of ethanol, including E-85. 661—subrule 221.4(2) governs the dispensing of ethanol blended fuels. Generally, dispensers used for motor vehicle fuels are required to be “listed” by an independent testing laboratory for use with the fuel dispensed. However, there has not, until recently, been a dispenser available which was listed for use with E-85, and provisions for the use of other dispensers, with additional monitoring requirements, were included in subrule 221.4(2).

Iowa Code section 455G.31 requires the State Fire Marshal to monitor the potential availability of one or more dispensers listed for use with E-85 and to issue an order regarding the use of listed dispensers once they have become commercially available. Recently, the State Fire Marshal was notified of the commercial availability of two dispensers listed for use with E-85 and issued an order regarding the use of such dispensers, as required by Iowa Code section 455G.31. The order carries out specific requirements specified in Iowa Code section 455G.31: 60 days after the issuance of the order, any new dispensers installed for use with E-85 must be listed for this use, and four years after the issuance of the order, E-85 may be dispensed only from dispensers listed for use with E-85.

The amendment adopted herein codifies the terms of the order issued by the State Fire Marshal. Additionally, the amendment modifies the definition of “E-10” to include blends of gasoline and ethanol up to 16 percent ethanol, rather than 15 percent; coordinates the definition of “E-blend” with the definition of “E-10”; and provides a definition of “listed” to clarify that a piece of equipment which is of a model that has been listed for a specific use shall be considered to be listed regardless of whether it was manufactured prior to or after the date on which the listing takes effect.

This amendment is also published herein under Notice of Intended Action as **ARC 9289B** to allow for public comment. A public hearing will be held on January 4, 2011.

Pursuant to Iowa Code section 17A.4(3), the State Fire Marshal finds that notice and public participation are unnecessary because this rule making brings the rules into conformity with the order issued by the State Fire Marshal and published on August 25, 2010, which, because of its statutory basis, takes precedence over the current language of the rules.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the State Fire Marshal further finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective December 1, 2010. Significant possibility of confusion as to the requirements in effect for dispensing E-85 exists as long as those requirements are not accurately captured in current rule language; the public will benefit from the clarity resulting from the adoption of this amendment.

This amendment is intended to implement Iowa Code section 455G.31.

This amendment became effective December 1, 2010.

The following amendment is adopted.

Amend subrule 221.4(2) as follows:

221.4(2) Add the following new sections:

2206.7.1.1 Dispensing of blended biofuels.

2206.7.1.1.1 Definitions.

“*B-blend*” means biodiesel blended fuel as defined in Iowa Code section 214A.1 with the blend including no more than 20 percent biodiesel, as defined in Iowa Code section 214A.1.

“*E-10*” means a blend of petroleum and ethanol including no more than ~~15~~ 16 percent ethanol intended for use as a motor vehicle fuel.

“E-blend” means a blend of petroleum and ethanol including more than ~~15~~ 16 percent ethanol intended for use as a motor vehicle fuel.

“Existing E-blend dispenser” means a dispenser installed on or before October 24, 2010, for use in dispensing E-blend.

“Listed” means listed or approved by an independent testing laboratory for a specific use. A product shall be considered to be listed if it is of a model which has been listed for the use to which it is being put, whether it was manufactured prior to or after the date on which the listing became effective.

2206.7.1.1.2 E-blend may ~~only~~ be dispensed only if ~~(a)~~ (1) or ~~(b)~~ (2) applies:

(1) The dispenser is listed by an independent testing laboratory for use with E-blend or E-85.

(2) The dispenser is an existing E-blend dispenser and either (a) or (b) applies:

(a) ~~Only a~~ The dispenser is listed by an independent testing laboratory as compatible with E-10 gasoline ~~shall be used to dispense E-blend~~, and the retail dealer ~~shall~~ visually ~~inspect~~ inspects the dispenser and the dispenser sump daily for leaks and equipment failure. The dealer shall maintain a record of such inspection for at least one year after the inspection. The record shall be located on the premises of the retail dealer and shall be made available to the department of natural resources or the state fire marshal upon request. If a leak is detected, the department of natural resources shall be notified pursuant to Iowa Code section 455B.386.

(b) The dispenser’s manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with E-85 gasoline. ~~In addition, and~~ the retail dealer ~~shall install~~ has installed an under-dispenser containment system with electronic monitoring.

NOTE: Option (2) will not be available after August 25, 2014. On or after August 26, 2014, E-blend will be allowed to be dispensed only from dispensers listed by independent testing laboratories for use with E-blend or E-85.

2206.7.1.1.3 B-blend may ~~only~~ be dispensed only if ~~(a)~~ (1) and either ~~(b), (c), or (d)~~ (2), (3), or (4) apply:

~~(a)~~ (1) Only a dispenser listed by an independent testing laboratory as compatible with diesel fuel shall be used to dispense B-blend.

~~(b)~~ (2) The retail dealer shall visually inspect the dispenser and the dispenser sump daily for leaks and equipment failure and maintain a record of such inspection for at least one year after the inspection. The record shall be located on the premises of the retail dealer and shall be made available to the department of natural resources or the state fire marshal upon request. If a leak is detected, the department of natural resources shall be notified pursuant to Iowa Code section 455B.386.

~~(c)~~ (3) The dispenser’s manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with B-blend, and the retail dealer has installed an under-dispenser containment system with electronic monitoring.

~~(d)~~ (4) Information published or provided by the manufacturer of the dispenser is available stating that the dispenser is compatible with B-blend.

NOTE: If option ~~(b)~~ (2) or ~~(d)~~ (4) is used, under-dispenser containment shall be provided if otherwise required by the rules in this chapter, rules of the department of natural resources, or any other applicable provision of law.

[Filed Emergency 11/24/10, effective 12/1/10]

[Published 12/15/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/10.