AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 21—Chapters 13, 14, 15 and 16 "Renewable Fuel Infrastructure Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 159.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 159A

Public Hearing

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

October 10, 2024 10:30 a.m.	Conference Room 2N Wallace State Office Building Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Agriculture and Land Stewardship no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Phone: 515.281.7808
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

This proposed rulemaking updates the Renewable Fuel Infrastructure Program to comply with revisions made to the program in the 2024 Legislative Session.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

None.

- Classes of persons that will benefit from the proposed rulemaking:

Fuel retailers who are accessing cost-share funding to upgrade fuel infrastructure to offer higher blends of biofuels will benefit. Consumers will also benefit from greater access to higher-blend biofuels.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

None.

- Qualitative description of impact:

None.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

None.

- Anticipated effect on state revenues:

None.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

None. This is a grant program.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

None. This is a grant program.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

None.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Not applicable.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Pursuant to the Iowa Code, smaller retailers are given priority to access cost-share funds.

Text of Proposed Rulemaking

ITEM 1. Rescind 21—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13
RENEWABLE FUEL INFRASTRUCTURE PROGRAM

DIVISION I
DEFINITIONS

21—13.1(159A) Definitions. As used in these rules, unless the context otherwise requires, the definitions in Iowa Code section 159A.11 apply to this chapter. The following definitions 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," means the same as defined in Iowa Code section 214A.1. For the purpose of these rules, biodiesel blended fuel must contain at least 2 percent biodiesel at a terminal site and at least 5 percent at a retail site.

"Biofuel" means ethanol or biodiesel as defined in Iowa Code section 214A.1.

"Blender pump" means the same as defined in Iowa Code section 214.1.

"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 159A 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 higher gasoline, biodiesel or biodiesel 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" means the same as defined in Iowa Code section 214A.1.

"Retail" means offered for sale to the public for final consumption.

"Retail motor fuel site" means a geographic location in this state where a retail dealer sells and dispenses motor fuel on a retail basis.

"Special status" means a retail motor fuel site that does not comply with the E-15 access standard under Iowa Code section 214A.32 and is ineligible to be issued an E-15 incompatible infrastructure Class 2 waiver order.

"Tier I site" means a retail motor fuel site as described in Iowa Code section 159A.14(6)*"b."*

"Tier II site" means a retail motor fuel site as described in Iowa Code section 159A.14(6)*"c."*

"Tier III site" means a retail motor fuel site as described in Iowa Code section 159A.14(6)*"d."*

This rule is intended to implement Iowa Code chapter 159A.

DIVISION II
RENEWABLE FUEL INFRASTRUCTURE BOARD

21—13.2(159A) Renewable fuel infrastructure board.

13.2(1) *Duties.* The board exists to make awards for renewable fuel infrastructure programs and perform other functions as necessary.

13.2(2) *Staff.* Staff assistance is provided through the department. The department will market the renewable fuel infrastructure program throughout the state.

13.2(3) *Meetings.* Board meetings will generally be held at the department's offices, electronically, or by telephone. All meetings are to comply with Iowa Code chapter 21.

This rule is intended to implement Iowa Code section 159A.13.

21—13.3 to **13.9** Reserved.

DIVISION III
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR RETAIL MOTOR FUEL SITES

21—13.10(159A) Purpose. The purpose of the renewable fuel infrastructure program is to install, replace and convert infrastructure to store, blend, and dispense renewable fuels at a retail motor fuel site.

21—13.11(159A) Eligible applicants. To be eligible to receive a retail motor fuel site infrastructure grant, an applicant shall:

13.11(1) Be an owner or operator of a retail motor fuel site.

13.11(2) Submit an application to the department in form and content acceptable to the department and the board.

13.11(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. 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 classified as E-15 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 E-15 or higher, biodiesel or biodiesel blended fuel is considered the tank for purposes of this program.

d. The tank and ancillary equipment must be in compliance with Iowa Code sections 455G.32 and 455G.33, as evidenced by the most recent IDNR checklist.

e. The dispenser and dispenser components must be listed by an independent testing laboratory, approved by the manufacturer or approved by the department of inspections, appeals, and licensing as compatible with ethanol blended gasoline in accordance with Iowa Code section 455G.32. An Iowa-licensed installer has been identified to perform the installation.

f. Conversion kits. If a UL-listed E-85 dispenser conversion kit is used, it must be approved by the department of inspections, appeals, and licensing.

These rules are intended to implement Iowa Code section 159A.14.

21—13.12 to **13.14** Reserved.

DIVISION IV
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR BIODIESEL TERMINALS

21—13.15(159A) Purpose. The purpose of the renewable fuel infrastructure program for biodiesel terminal grants is to provide grants to a terminal facility which stores, blends, or distributes biodiesel fuel, including B2 through B98 and B99/B100, to dealers and retailers.

21—13.16(159A) Eligible applicants. To be eligible to receive a biodiesel terminal grant, an applicant shall:

13.16(1) Be an owner or operator of a biodiesel terminal.

13.16(2) Submit an application to the department in form and content acceptable to the department and the board.

13.16(3) Meet the following eligibility requirements established by the board:

a. The terminal must not be a retail motor fuel site.

b. The terminal must not be a facility at which fuel or blend stocks are used in the manufacture of products other than motor fuel and from which no fuel is removed.

c. The terminal must have at least one storage tank of at least a 10,000-gallon capacity, used exclusively for or dedicated exclusively to the storage of biodiesel fuel. The terminal may also have storage for one or more biodiesel blends. The terminal must have facilities for the dispensing of either biodiesel, biodiesel blends, or both.

d. The dispensing of motor fuel at the terminal must be done at a rack in excess of 100 gpm pumping capacity.

These rules are intended to implement Iowa Code section 159A.15.

21—13.17 to **13.19** Reserved.

DIVISION V
RENEWABLE FUEL INFRASTRUCTURE PROGRAM ADMINISTRATION

21—13.20(159A) Form of award available; award amount.

13.20(1) *Form of award.* Eligible applicants may apply for financial incentives on a cost-share basis. Funding is available in the form of a grant.

13.20(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 submitted more than one year after the project is put in service.

13.20(3) *Amount of award.*

a. Retail site award.

(1) Cost-share agreements are subject to the terms specified in Iowa Code section 159A.14, including the duration of the financing agreement and the award amount.

(2) Supplemental award for additional infrastructure. A person may request a supplemental financial incentive for motor fuel storage and dispensing 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 motor fuel storage and dispensing infrastructure at an additional retail motor fuel site after an initial grant award is provided. Supplemental award amounts are subject to the limitations set forth in Iowa Code section 159A.14(8) *"b."*

b. Terminal facility award for biodiesel B2 through B98 and B99/B100 for year-round distribution.

(1) Biodiesel fuel B2 through B98. Cost-share agreements are subject to the terms specified in Iowa Code section 159A.15, including the duration of the financing agreement and the award amount.

(2) Biodiesel fuel B99/B100 for year-round distribution. Cost-share agreements are subject to the terms and limitations specified in Iowa Code section 159A.15, including the duration of the financing agreement and the award amount.

13.20(4) *Time of payment.* The grant will be paid only upon timely completion of the project and upon the board's receipt of records satisfying the board of the applicant's qualifying expenditures.

a. The applicant must deliver to the board prior to payment a certificate of completion on the board's form.

b. The certificate of completion must include the IDNR checklist completed and signed by an Iowa-certified installer showing review and approval of the completed project.

c. The certificate of completion must be accompanied by proof of financial responsibility as necessary to meet federal requirements for underground storage tank installation.

13.20(5) *Deadline for completion.* The project must be completed within eight months of the board's approval of the award. An extension may be granted by the board upon application showing demonstrable progress toward completion.

13.20(6) *Multiple awards for multiple fuel types.*

a. At a single fuel site. A person must file a separate application form for an ethanol infrastructure improvement grant and a biodiesel infrastructure improvement grant, respectively, at a

single fuel site. The board may approve multiple improvements to the same retail motor fuel site for the full amount available for ethanol infrastructure and biodiesel infrastructure. Applications for ethanol and biodiesel infrastructure improvements must be written in separate cost-share agreements.

b. At multiple fuel sites. A person may receive multiple grants as described in paragraph 13.20(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.

13.20(7) *Exhaustion of funds.* In the event funding is exhausted, the board may approve remaining applications based on criteria implemented by the board.

21—13.21(159A) Application process.

13.21(1) *Application procedures.*

a. Applications may be submitted at any time, but will be reviewed on a first-come, first-served basis as established by the date stamp on the filed application.

b. Applications are to be submitted to: Renewable Fuel Infrastructure Board, Iowa Department of Agriculture and Land Stewardship, 502 East Ninth Street, Des Moines, Iowa 50309. Application forms and instructions are available at this address.

13.21(2) *Contents of application.*

a. Statutory requirements. An application must include the information required in Iowa Code 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 will be used to store or dispense E-15 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).

21—13.22(159A) Review process.

13.22(1) The renewable fuel infrastructure board will review an application for final approval or disapproval. The renewable fuel infrastructure board will determine the amount of financial incentives to be awarded to an applicant.

13.22(2) Completed applications, including supporting documentation of meeting eligibility requirements, will be reviewed on a first-come, first-served basis. The board will rank applications in accordance with Iowa Code section 159A.14(6)*"e."*

13.22(3) If the amount of funding requests exceeds available funds, the board will evaluate applications based upon criteria that include but are not limited to, in no particular order, the following:

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

b. Priority status.

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

d. Projected annual sales volume.

e. Other sources of funding.

f. Previous grants awarded.

21—13.23(159A) Contract administration.

13.23(1) *Notice of award.* The department will notify approved applicants in writing of the board's award of grants, including any conditions and terms of the approval.

13.23(2) *Contract required.* The board will direct the department to prepare a cost-share agreement that includes the terms and conditions of the grant established by the board. The agreement shall:

a. Describe the project in sufficient detail to demonstrate the eligibility of the project.

b. State the total cost of the project expressed in a project budget that contains sufficient detail to meet the requirements of the infrastructure board.

c. State the project completion deadline.

d. State the project completion requirements which are preconditions for payment of the grant by the board.

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 five-year obligation to continue dispensing renewable fuel begins on the date the project is completed.

(2) Awards for projects already completed. The 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.

13.23(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 unless a grant was awarded to the applicant with moneys appropriated in the 2022 fiscal year budget or prior.

13.23(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.

13.23(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.

13.23(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) Waiver due to demonstration of good cause (no repayment and no 25 percent penalty). A grant recipient may request a permanent waiver during the time period in which a cost-share grant agreement is in effect if the grant recipient can demonstrate good cause for failure to continue using the approved renewable fuel. "Good cause" includes, but is not limited to, events such as the following:

1. Permanent business closure due to bankruptcy.
2. Permanent closure of underground or aboveground storage tanks.

(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 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.

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 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 five-year duration of the cost-share agreement will not be extended by the length of the temporary waiver.

These rules are intended to implement Iowa Code sections 159A.11 to 159A.16.

ITEM 2. Rescind and reserve **21—Chapter 14**.

ITEM 3. Rescind and reserve **21—Chapter 15**.

ITEM 4. Rescind and reserve **21—Chapter 16**.