

CHAPTER 1014**FIRE SAFETY AND ABOVEGROUND STORAGE TANKS***H.F. 2319*

AN ACT relating to activities of the department of public safety including regulating the storage of flammable and combustible liquids in aboveground storage tanks and retaining fees.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 100.1, subsection 5, Code 2009, is amended to read as follows:

5. To promulgate fire safety rules. The state fire marshal shall have exclusive right to promulgate fire safety rules as they apply to enforcement or inspection requirements by the state fire marshal, but the rules shall be promulgated only after public hearing pursuant to chapter 17A. Wherever by any statute the fire marshal or the department of public safety is authorized or required to promulgate, proclaim, or amend rules and minimum standards regarding fire hazards or fire safety or protection in any establishment, building or structure, the rules and standards shall promote and enforce fire safety, fire protection and the elimination of fire hazards as the rules may relate to the use, occupancy and construction of the buildings, establishments or structures. The word "*construction*" shall include, but is not limited to, electrical wiring, plumbing, heating, lighting, ventilation, construction materials, entrances and exits, and all other physical conditions of the building which may affect fire hazards, safety or protection. The rules and minimum standards shall be in substantial compliance except as otherwise specifically provided in this chapter, with the standards of the national fire protection association relating to fire safety as published in the national fire codes.

Sec. 2. Section 100C.9, subsection 2, Code 2009, is amended to read as follows:

2. Notwithstanding section 8.33, fees collected by the division of state fire marshal that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the in succeeding fiscal year years.

Sec. 3. Section 101.1, Code 2009, is amended to read as follows:

101.1 Rules by fire marshal.

1. The state fire marshal is hereby empowered and directed to formulate and adopt and from time to time amend or revise and to promulgate, in conformity with and subject to the conditions set forth in this chapter, reasonable rules for the safe transportation, storage, handling, and use of combustible liquids, flammable liquids, liquefied petroleum gases, and liquefied natural gases.

2. For purposes of this chapter:

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

a. b. "Flammable liquid" means a liquid having a with a closed-cup flash point below 200 100 degrees F. and a Reid vapor pressure not exceeding forty p.s.i. absolute, 2026.6 mm Hg, at 100 degrees F.

b. c. "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.

e. d. "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.

Sec. 4. Section 101.3, Code 2009, is amended to read as follows:

101.3 Separate rules for liquids and gas.

The rules covering combustible and flammable liquids and shall be formulated and promulgated separately from those covering liquefied petroleum gas shall be separately

~~formulated and separately promulgated.~~

Sec. 5. Section 101.5, Code 2009, is amended to read as follows:

101.5 Publication of rules Rules.

~~The rules shall be promulgated pursuant to chapter 17A, only after a public hearing at least twenty days' notice of the time and place of which is given by publication in the Iowa administrative bulletin and by mail to any person who has filed the person's name and address with the state fire marshal for the purpose of receiving the notice.~~

Sec. 6. Section 101.12, Code 2009, is amended by striking the section and inserting in lieu thereof the following:

101.12 Aboveground tanks authorized.

1. An aboveground flammable or combustible liquid storage tank may be installed at a retail motor vehicle fuel outlet, subject to rules adopted by the state fire marshal.

2. Rules adopted by the state fire marshal pursuant to this section shall be in substantial compliance with the applicable standards of the national fire protection association.

3. The installation of an aboveground flammable or combustible liquid storage tank at a retail motor vehicle fuel outlet shall also be subject to approval by the governing body of the local governmental subdivision which has jurisdiction over the fuel outlet.

Sec. 7. Section 101.21, Code 2009, is amended to read as follows:

101.21 Definitions.

As used in this ~~part~~ division unless the context otherwise requires:

1. ~~"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 ninety percent above the surface of the ground. ~~Aboveground petroleum flammable or combustible liquid storage tank~~ does not include any of the following:

a. Aboveground tanks of one thousand one hundred gallons or less capacity.

b. Tanks used for storing heating oil for consumptive use on the premises where stored.

c. Underground storage tanks as defined by section 455B.471.

d. 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.

2. ~~"Nonoperational aboveground petroleum tank"~~ means an aboveground storage tank in which ~~petroleum is not deposited or from which petroleum is not dispensed on or after July 1, 1989.~~

3. ~~2.~~ "Operator" means a person in control of, or having responsibility for, the daily operation of an aboveground ~~petroleum flammable or combustible liquid~~ storage tank.

4. ~~3.~~ "Owner" means:

a. In the case of an aboveground ~~petroleum flammable or combustible liquid~~ storage tank in use on or after July 1, 1989, a person who owns the aboveground ~~petroleum flammable or combustible liquid~~ storage tank used for the storage, use, or dispensing of ~~petroleum flammable or combustible liquid~~.

b. In the case of an aboveground ~~petroleum 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.

5. ~~4.~~ "Petroleum" means petroleum as defined in section 455B.471.

6. ~~5.~~ "Release" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an aboveground ~~petroleum flammable or combustible liquid~~ storage tank into groundwater, surface water, or subsurface soils.

7. ~~6.~~ "State fire marshal" means the state fire marshal or the state fire marshal's designee.

8. ~~7.~~ "Tank site" means a tank or grouping of tanks within close proximity of each other located on a facility for the purpose of storing ~~petroleum flammable or combustible liquid~~.

Sec. 8. Section 101.22, Code 2009, is amended to read as follows:

101.22 Report of existing and new tanks — registration fee — tag — penalty.

1. Except as provided in subsection 2, the owner or operator of an aboveground petroleum flammable or combustible liquid storage tank existing on ~~or before July 1, 1989~~ July 1, 2010, shall notify the state fire marshal in writing by ~~May 1, 1990~~ October 1, 2010, of the existence of each tank and specify the age, size, type, location, and uses of the tank.

2. The owner of an aboveground petroleum flammable or combustible liquid storage tank taken out of operation ~~between January 1, 1979, and July 1, 1989~~ on or before July 1, 2010, shall notify the state fire marshal in writing by ~~July 1, 1990~~ October 1, 2010, of the existence of the tank unless the owner knows the tank has been removed from the site. The notice shall specify, to the extent known to the owner, the date the tank was taken out of operation, the age of the tank on the date taken out of operation, the size, type, and location of the tank, and the type and quantity of substances left stored in the tank on the date that it was taken out of operation.

3. An owner or operator ~~which~~ who brings into use an aboveground petroleum flammable or combustible liquid storage tank after July 1, ~~1989~~ 2010, shall notify the state fire marshal in writing within thirty days of the existence of the tank and specify the age, size, type, location, and uses of the tank.

4. The registration notice of the owner or operator to the state fire marshal under subsections 1 through 3 shall be accompanied by an annual fee of ten dollars for each tank included in the notice. All moneys collected shall be retained by the department of public safety and are appropriated for the use of the state fire marshal. The annual renewal fee applies to all owners or operators who ~~filed~~ file a registration notice with the state fire marshal pursuant to subsections 1 through 3.

5. A person who deposits petroleum flammable or combustible liquid in an aboveground petroleum flammable or combustible liquid storage tank shall notify the owner or operator in writing of the notification requirements of this section.

6. A person who sells or constructs a tank intended to be used as an aboveground storage tank shall notify the purchaser of the tank in writing of the notification requirements of this section applicable to the purchaser.

7. It is unlawful to deposit petroleum flammable or combustible liquid in an aboveground petroleum flammable or combustible liquid storage tank which has not been registered pursuant to subsections 1 through 4.

8. The state fire marshal shall furnish the owner or operator of an aboveground petroleum flammable or combustible liquid storage tank with a registration tag for each aboveground petroleum flammable or combustible liquid storage tank registered with the state fire marshal.

a. The owner or operator shall affix the tag to the fill pipe of each registered aboveground petroleum flammable or combustible liquid storage tank.

b. A person who conveys or deposits petroleum flammable or combustible liquid shall inspect the aboveground petroleum flammable or combustible liquid storage tank to determine the existence or absence of the registration tag. If a registration tag is not affixed to the aboveground petroleum flammable or combustible liquid storage tank fill pipe, the person conveying or depositing the petroleum flammable or combustible liquid may deposit the petroleum flammable or combustible liquid in the unregistered tank. However, the deposit is allowed only in the single instance, that the person provides the owner or operator with another notice as required by subsection 5, and that the person provides the owner or operator with an aboveground petroleum flammable or combustible liquid storage tank registration form.

c. It is the owner or operator's duty to comply with registration requirements. A late registration penalty of twenty-five dollars is imposed in addition to the registration fee for a tank registered after the required date.

Sec. 9. Section 101.22A, Code 2009, is amended to read as follows:

101.22A Exemption.

An aboveground petroleum flammable or combustible liquid storage tank which is subject to regulation or registration under either the federal department of transportation or state department of transportation or both, is exempt from the registration requirements of section 101.22.

Sec. 10. Section 101.23, Code 2009, is amended to read as follows:

101.23 State fire marshal reporting rules.

The state fire marshal shall adopt rules pursuant to chapter 17A relating to reporting requirements necessary to enable the state fire marshal to maintain an accurate inventory of aboveground ~~petroleum~~ flammable or combustible liquid storage tanks.

Sec. 11. Section 101.24, subsections 1 and 2, Code 2009, are amended to read as follows:

1. Inspect and investigate the facilities and records of owners and operators of aboveground ~~petroleum~~ flammable or combustible liquid storage tanks with a capacity of fifteen thousand or more gallons, as necessary to determine compliance with this division and the rules adopted pursuant to this division. An inspection or investigation shall be conducted subject to subsection 4. For purposes of developing a rule, maintaining an accurate inventory, or enforcing this division, the department may:

a. Enter at reasonable times an establishment or other place where an aboveground storage tank is located.

b. Inspect and obtain samples from any person of ~~petroleum~~ flammable or combustible liquid or another regulated substance and conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, and groundwater. Each inspection shall be commenced and completed with reasonable promptness.

(1) If the state fire marshal obtains a sample, prior to leaving the premises, the fire marshal shall give the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each sample equal in volume or weight to the portion retained. If the sample is analyzed, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

(2) Documents or information obtained from a person under this subsection shall be available to the public except as provided in this subparagraph. Upon a showing satisfactory to the state fire marshal by a person that public disclosure of documents or information, or a particular part of the documents or information to which the state fire marshal has access under this subsection would divulge commercial or financial information entitled to protection as a trade secret, the state fire marshal shall consider the documents or information or the particular portion of the documents or information confidential. However, the documents or information may be disclosed to officers, employees, or authorized representatives of the United States charged with implementing the federal Solid Waste Disposal Act, to employees of the state of Iowa or of other states when the document or information is relevant to the discharge of their official duties, and when relevant in a proceeding under the federal Solid Waste Disposal Act or this division.

2. Maintain an accurate inventory of aboveground ~~petroleum~~ flammable or combustible liquid storage tanks.

Sec. 12. Section 101A.5, unnumbered paragraph 1, Code 2009, is amended to read as follows:

The state fire marshal shall ~~prepare, adopt, and distribute to permit-issuing authorities and other interested persons, without cost, rules in accordance with provisions of chapter 17A, adopt rules pursuant to chapter 17A~~ pertaining to the manufacture, transportation, storage, possession, and use of explosive materials. Rules adopted by the state fire marshal shall be compatible with, but not limited to the national fire protection association's pamphlet number 495 and federal rules pertaining to commerce, possession, storage, and use of explosive materials. Such rules shall:

Approved February 23, 2010