

CHAPTER 101

COMBUSTIBLE AND FLAMMABLE LIQUIDS AND LIQUEFIED GASES

Referred to in §455B.474, 455G.31

[P]
See also chapter 455G

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DIVISION I

GENERAL PROVISIONS

101.1 Rules by fire marshal — definitions.

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 Fahrenheit.

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

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.

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.

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

[C35, §1655-g1, -g2, -g4; C39, §1655.1, 1655.2, 1655.4; C46, 50, 54, §101.1, 101.2; C58, 62, 66, 71, 73, 75, 77, 79, 81, §101.1]

2010 Acts, ch 1014, §3; 2011 Acts, ch 34, §28

101.2 Scope of rules.

Except as otherwise provided in this chapter, the rules shall be in substantial compliance with the standards of the national fire protection association relating to flammable and combustible liquids, liquefied petroleum gases, and liquefied natural gases.

[C35, §1655-g2; C39, §1655.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §101.2]
98 Acts, ch 1008, §2; 2011 Acts, ch 34, §29

101.3 Separate rules for liquids and gas.

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

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §101.3]
2010 Acts, ch 1014, §4; 2011 Acts, ch 34, §30

101.4 Nonconforming use.

The rules shall make reasonable provision under which facilities in service prior to the effective date of the regulations and not in strict conformity therewith may be continued in service unless the nonconformity is such as to constitute a distinct hazard to life or adjoining property; and for guidance in enforcement may delineate these types of nonconformity that should be considered distinctly hazardous, those that should not be considered distinctly hazardous and those the need for elimination of which should be evaluated in the light of local factors. As to any rule the need for compliance with which is conditioned on local factors, the rules shall provide, as a condition precedent to evaluation or issuance of a compliance order, for reasonable notice to the proprietor of the facility affected of intention to evaluate the need and of the time and place at which the proprietor may appear and offer evidence thereon.

[C35, §1655-g3; C39, §1655.3; C46, 50, 54, §101.3; C58, 62, 66, 71, 73, 75, 77, 79, 81, §101.4]

101.5 Rules.

The rules shall be promulgated pursuant to chapter 17A.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §101.5]
2004 Acts, ch 1125, §12; 2010 Acts, ch 1014, §5

101.5A Shared public petroleum storage facilities.

The state fire marshal shall permit by rule the shared ownership, operation, or cooperative use of a publicly owned petroleum storage or dispensing facility by more than one public agency or political subdivision in order to maximize the opportunity for cooperation, to avoid unnecessary duplication of facilities posing both an environmental and fire hazard, and to minimize the cost of providing public services. Shared or cooperative use is not a violation of chapter 23A, even if one public agency or political subdivision compensates another public agency or political subdivision for the use or for petroleum dispensed. A publicly owned petroleum storage facility subject to this section may use aboveground or underground storage tanks, or a combination of both.

90 Acts, ch 1113, §1

101.6 Ordinances by municipalities.

Rules promulgated pursuant to this chapter shall have uniform force and effect throughout the state and no municipality or political subdivision shall enact or enforce any ordinance or regulation inconsistent or not in keeping with the statewide rules. Provided that nothing in this chapter shall in any way impair the power of any municipality when authorized by other law to regulate the use of land by comprehensive zoning or to control the construction of buildings and structures under building codes or restricted fire district regulations. Provided, further, that the size, weight and cargo carried by vehicles used in the transportation or delivery of flammable liquids or liquefied petroleum gas shall be governed by the uniform provisions of the motor vehicle and highway traffic laws of this state and local ordinances therein authorized.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §101.6]

101.7 Penalty.

Any person, firm or corporation violating any of the rules promulgated under this chapter shall be deemed guilty of a simple misdemeanor. Each day of the continuing violation of such rules after conviction shall be considered a separate offense. Appeals may be taken from such convictions as in other criminal cases.

[C35, §1655-g3, -g4; C39, §1655.3, 1655.4; C46, 50, 54, §101.2, 101.4; C58, 62, 66, 71, 73, 75, 77, 79, 81, §101.7]

101.8 Assistance by local officials.

The chief fire prevention officer of every city or village having an established fire prevention department, the chief of the fire department of every other city or village in which a fire department is established, the mayor of every city in which no fire department exists, the township clerk of every township outside the limits of any city or village and all other local officials upon whom fire prevention duties are imposed by law shall assist the state fire marshal in the enforcement of the rules.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §101.8]

101.9 Repairs ordered by fire marshal.

If the state fire marshal has reasonable grounds for believing after conducting tests that a leak exists in a flammable or combustible liquid storage tank or in the distribution system of a flammable or combustible liquid storage tank the state fire marshal shall issue a written order to the owner or lessee of the storage tank or distribution system requiring the storage tank and distribution system be emptied and removed or repaired immediately upon receipt of the written order.

[C79, 81, §101.9]

101.10 Assistance of department of natural resources.

If the state fire marshal has reasonable grounds for believing that a leak constitutes a hazardous condition which threatens the public health and safety, the fire marshal may request the assistance of the department of natural resources, and upon such request the department of natural resources is empowered to eliminate the hazardous condition as provided in chapter 455B, division IV, part 4, the provisions of section 455B.390, subsection 3, to the contrary notwithstanding.

[C79, 81, §101.10; 82 Acts, ch 1199, §92, 96]

101.11 Use in vehicle — marking — dispensing prohibition — penalty.

1. A vehicle which carries liquefied petroleum gas fuel or natural gas, as a fuel source for the vehicle, in a concealed area, including but not limited to trunks or compartments located in or under the vehicle, shall display on the left rear and right front bumpers of the vehicle a standard abbreviation or symbol, approved by the department of public safety, which indicates liquefied petroleum gas fuel or natural gas is a fuel source for the vehicle.

2. The owner of the vehicle which is fueled by natural gas or liquefied petroleum gas shall be responsible for the placement of the approved abbreviation or symbol on the vehicle.

3. A person shall not dispense liquefied petroleum gas fuel or natural gas into a tank in a concealed area of a vehicle unless the vehicle complies with subsection 1.

4. A person who violates this section is guilty of a simple misdemeanor.

84 Acts, ch 1095, §9

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.

89 Acts, ch 131, §3; 90 Acts, ch 1235, §1; 98 Acts, ch 1008, §3; 2010 Acts, ch 1014, §6

101.13 Liquefied petroleum gas containers.

1. If a liquefied petroleum gas container designed to hold more than twenty pounds of liquefied petroleum gas has the name, mark, initials, or other identifying device of the owner in plainly legible characters on the surface of the container, a person other than the owner or a person authorized by the owner shall not do any of the following:

a. Fill or refill the container with liquefied petroleum gas or any other gas or compound except when the owner is unable to supply liquefied petroleum gas to a person to whom the owner is leasing or furnishing the container and to whom the owner ordinarily supplies the liquefied petroleum gas in which case, the owner shall authorize the refilling of the container by another person designated by the owner.

b. Buy, sell, offer for sale, give, take, loan, deliver or permit to be delivered, or otherwise use the container.

c. Deface, remove, conceal, or change the name, mark, initials, or other identifying device of the owner.

d. Place the name, mark, initials, or other identifying device indicating ownership by any person other than the owner on the container.

2. A person who violates this section is guilty of a simple misdemeanor. Each violation of this section shall constitute a separate offense.

93 Acts, ch 138, §1

101.14 Action for damages — evidence — user conduct.

1. In any action or claim seeking damages for personal injuries or damage to property arising out of injuries or loss due to defects in a liquefied petroleum gas system, or arising out of the condition of any portion of that system, the negligence or other fault of the customer, owner, or other person in possession of or making use of that system relating to the installation, modification, maintenance, or repair of the system or damage incurred to the system shall be admissible in evidence and considered by the finder of fact if such conduct was a cause in fact of the accident or condition leading to the injuries or damages.

2. For purposes of this section, “*liquefied petroleum gas system*” means any container designed to hold liquefied petroleum gas and attached valves, regulators, piping, appliances, controls on appliances, and venting of appliances.

2004 Acts, ch 1126, §1

101.15 through 101.20 Reserved.

DIVISION II

ABOVEGROUND STORAGE TANKS

101.21 Definitions.

As used in this division unless the context otherwise requires:

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

3. “Owner” means:

a. 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.

b. 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.

4. “Release” means spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an aboveground flammable or combustible liquid storage tank into groundwater, surface water, or subsurface soils.

5. “State fire marshal” means the state fire marshal or the state fire marshal’s designee.

6. “Tank site” means a tank or grouping of tanks within close proximity of each other located on a facility for the purpose of storing flammable or combustible liquid.

89 Acts, ch 131, §4; 90 Acts, ch 1235, §2; 2006 Acts, ch 1142, §83; 2010 Acts, ch 1014, §7; 2011 Acts, ch 34, §31

Referred to in §424.2

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 flammable or combustible liquid storage tank existing on July 1, 2010, shall notify the state fire marshal in writing by 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 flammable or combustible liquid storage tank taken out of operation on or before July 1, 2010, shall notify the state fire marshal in writing by 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 who brings into use an aboveground flammable or combustible liquid storage tank after July 1, 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 file a registration notice with the state fire marshal pursuant to subsections 1 through 3.

5. A person who deposits flammable or combustible liquid in an aboveground 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 flammable or combustible liquid in an aboveground 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 flammable or combustible liquid storage tank with a registration tag for each aboveground 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 flammable or combustible liquid storage tank.

b. A person who conveys or deposits flammable or combustible liquid shall inspect the aboveground 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 flammable or combustible liquid storage tank fill pipe, the person conveying or depositing the flammable or combustible liquid may deposit the flammable or combustible liquid in the unregistered tank. However, only one deposit is allowed into the unregistered tank, the person making the deposit shall provide the owner or operator of the tank with another notice as required by subsection 5, and the person shall provide the owner or operator with an aboveground 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.

89 Acts, ch 131, §5; 90 Acts, ch 1235, §3; 2000 Acts, ch 1224, §23; 2002 Acts, ch 1119, §127; 2008 Acts, ch 1032, §191; 2010 Acts, ch 1014, §8; 2011 Acts, ch 34, §32

Referred to in §101.22A

101.22A Exemption.

An aboveground 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.

90 Acts, ch 1235, §4; 2010 Acts, ch 1014, §9

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 flammable or combustible liquid storage tanks.

89 Acts, ch 131, §6; 90 Acts, ch 1235, §5; 2010 Acts, ch 1014, §10

101.24 Duties and powers of the state fire marshal.

The state fire marshal shall:

1. Inspect and investigate the facilities and records of owners and operators of aboveground 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 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 flammable or combustible liquid storage tanks.

3. Take any action allowed by law which, in the state fire marshal's judgment, is necessary to enforce or secure compliance with this division or any rule adopted pursuant to this division.

4. Conduct investigations of complaints received directly, referred by other agencies, or other investigations deemed necessary. While conducting an investigation, the state fire marshal may enter at any reasonable time in and upon any private or public property to investigate any actual or possible violation of this division or the rules or standards adopted under this division. However, the owner or person in charge shall be notified.

a. If the owner or operator of any property refuses admittance, or if prior to such refusal the state fire marshal demonstrates the necessity for a warrant, the state fire marshal may make application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.

b. In the application the state fire marshal shall state that an inspection of the premises is mandated by the laws of this state or that a search of certain premises, areas, or things designated in the application may result in evidence tending to reveal the existence of violations of public health, safety, or welfare requirements imposed by statutes, rules, or ordinances established by the state or a political subdivision of the state. The application shall describe the area, premises, or thing to be searched, give the date of the last inspection if known, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of the desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute, rule, or ordinance pursuant to which inspection is to be made. If an item of property is sought by the state fire marshal it shall be identified in the application.

c. If the court is satisfied from the examination of the applicant, and of other witnesses, if any, and of the allegations of the application of the existence of the grounds of the application, or that there is probable cause to believe in their existence, the court may issue a search warrant.

d. In making inspections and searches pursuant to the authority of this division, the state fire marshal must execute the warrant as follows:

(1) Within ten days after its date.

(2) In a reasonable manner, and any property seized shall be treated in accordance with the provisions of chapters 808 and 809.

(3) Subject to any restrictions imposed by the statute, rule or ordinance pursuant to which inspection is made.

89 Acts, ch 131, §7; 90 Acts, ch 1235, §6; 2000 Acts, ch 1224, §24; 2010 Acts, ch 1014, §11

101.25 Violations — orders.

1. If substantial evidence exists that a person has violated or is violating a provision of this division or a rule adopted under this division the state fire marshal may issue an order directing the person to desist in the practice which constitutes the violation, and to take corrective action as necessary to ensure that the violation will cease, and may impose appropriate administrative penalties pursuant to section 101.26. The person to whom the order is issued may appeal the order as provided in chapter 17A. On appeal, the administrative law judge may affirm, modify, or vacate the order of the state fire marshal.

2. However, if it is determined by the state fire marshal that an emergency exists respecting any matter affecting or likely to affect the public health, the fire marshal may issue any order necessary to terminate the emergency without notice and without hearing. The order is binding and effective immediately and until the order is modified or vacated at an administrative hearing or by a district court.

3. The state fire marshal may request the attorney general to institute legal proceedings pursuant to section 101.26.

89 Acts, ch 131, §8

Referred to in §101.26

101.26 Penalties — burden of proof.

1. A person who violates this division or a rule or order adoption issued pursuant to this division is subject to a civil penalty not to exceed one hundred dollars for each day during which the violation continues, up to a maximum of one thousand dollars; however, if the tank is registered within thirty days after the state fire marshal issues a cease and desist order pursuant to section 101.25, subsection 1, the civil penalty under this section shall not accrue. The civil penalty is an alternative to a criminal penalty provided under this division.

2. A person who knowingly fails to notify or makes a false statement, representation, or certification in a record, report, or other document filed or required to be maintained under this division, or violates an order issued under this division, is guilty of an aggravated misdemeanor.

3. The attorney general, at the request of the state fire marshal, shall institute any legal proceedings, including an action for an injunction, necessary to enforce the penalty provisions of this division or to obtain compliance with the provisions of this division or rules adopted or order pursuant to this division. In any action, previous findings of fact of the state fire marshal after notice and hearing are conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

4. In all proceedings with respect to an alleged violation of this division or a rule adopted or order issued by the state fire marshal pursuant to this division, the burden of proof is upon the state fire marshal.

5. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 101.27 shall be raised in the legal proceedings instituted in accordance with this section.

89 Acts, ch 131, §9

Referred to in §101.25, 101.27

101.27 Judicial review.

Except as provided in section 101.26, subsection 5, judicial review of an order or other action of the state fire marshal may be sought in accordance with chapter 17A. Notwithstanding chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed or the final order was entered.

89 Acts, ch 131, §10

Referred to in §101.26

101.28 Fees for certification inspections of underground storage tanks. Repealed by 2005 Acts, ch 19, § 125.