

RULE REPORT

Department of Commerce

Clearinghouse Rule No.: 06-127

Rule No.: Chapter Comm 5

Relating to: Credentials for Storage of Flammable, Combustible, and Hazardous Liquids and for Cleanup of Properties Contaminated by Petroleum-Product Discharges

Contact person for substantive questions:

Contact person for internal processing:

Name Sam Rockweiler

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Title Code Development Consultant

Title Code Development Consultant

Telephone Number 608-266-0797

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1. Basis and purpose of the proposed rule.

The purpose of the rule revisions is to update the credential categories related to storage of flammable, combustible and hazardous liquids – and to update the requirements corresponding to those categories and to the categories for cleanup of properties contaminated by petroleum-product discharges.

2. How the proposed rule advances relevant statutory goals or purposes.

The rule revisions would further protect the waters of the State from improper storage, handling and use of flammable or combustible liquids, or federally regulated hazardous substances.

3. Changes to the rule analysis or fiscal estimate that was prepared for public hearing.

The rule analysis was updated to include references to the substantive changes that were made to the Hearing draft. Those changes included (1) newly requiring submittal of proof of (currently required) liability coverage when applying for or renewing a PECFA consulting firm or consultant credential; and (2) requiring tank system removers and cleaners to have and exhibit the same contractor liability coverage as currently proposed for tank specialty firms; and (3) expanding the reasons for denial, suspension or revocation of a credential to include routinely submitting inadequate reports to the Department, or failing to pay a financial penalty assessed under chapter Comm 47.

No changes were made to the fiscal analysis.

COM-10550 (R.02/04)

FINAL REGULATORY FLEXIBILITY ANALYSIS

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Final regulatory flexibility analysis not required. (Statement of determination required.)

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.

The Statutes authorize the Department to administer the issuance of numerous credentials as part of the Department's responsibility for protecting the safety and health of frequenters and occupants in public buildings and places of employment, and for protecting the waters of the state from improper storage, handling and use of flammable or combustible liquids, or federally regulated hazardous substances. The proposed revisions in the credential rules are minimum requirements to meet the directives of the Statutes, and any less stringent requirements would be contrary to the Statutory objectives that are the basis of the rules.

2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

The only submitter of comments suggested increasing the included credential terms from 2 years to 4 years, and changing the renewal of those terms to coincide with a State fiscal year. Changing the current practice of issuing renewals throughout each year to instead issuing renewals at the beginning or end of a State fiscal year would undesirably compress the Department's corresponding workload into a much shorter time period. Changing the credential term from 2 years to 4 years would undesirably increase the time periods during which credential holders could allow their renewal qualifications to lapse, such as the qualifications relating to liability-insurance coverage and continuing education.

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3. Nature and estimated cost of preparation of any reports by small businesses.

Providers of approved educational programs for continuing education credits relating to storage tanks for flammable, combustible or hazardous liquids would be newly required to notify the Department of (1) any material changes to an approved program or (2) discontinuance of an approved program prior to the end of an approval period. The proposed rules do not mandate a fee for this notice.

4. Nature and estimated cost of other measures and investments required of small businesses.

The application fee for becoming certified or recertified to perform cathodic protection activities would be \$50 every two years.

The proposed rules are not expected to impose any other significant costs on small businesses because the associated requirements for becoming certified to perform cathodic protection activities would not be significantly more restrictive than current, corresponding federal requirements. Although the proposed deletion of continuing-education requirements for three certification categories would reduce costs for individuals in those categories, that reduction may be offset by codifying a common practice of tank specialty firms to have contractor liability insurance coverage. Outreach efforts to firms currently performing these activities indicate that this insurance is readily available, commonly held, beneficial, and reasonably priced.

5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small businesses.

None of the methods listed in 1. for reducing small-business impacts are included in the draft rules.

6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.

None of the methods listed in 1. for reducing small-business impacts are included in the draft rules.

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

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Title: Code Development Consultant

Telephone No. 608-266-0797

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority [s. 227.15(2)(a)]

a. Accepted

b. Accepted in part

c. Rejected

d. Comments attached

2. Review of rules for form, style and placement in administrative code [s. 227.15(2)(c)]

a. Accepted

b. Accepted in part

c. Rejected

d. Comments attached

(Continued on reverse side)

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3. Review rules for conflict with or duplication of existing rules [s. 227.15(2)(d)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
4. Review rules for adequate references to related statutes, rules and forms [s. 227.15(2)(e)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
5. Review language of rules for clarity, grammar, punctuation and plainness [s. 227.15(2)(f)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
6. Review rules for potential conflicts with, and comparability to, related federal regulations [s. 227.15(2)(g)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
7. Review rules for permit action deadline [s. 227.15(2)(h)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected

d. Comments attached