

Clearinghouse Rule 10-006

**PROPOSED ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce proposes an order to repeal Comm 48.200 (3) and (4);

to renumber Comm 48.200 (title) and (5); 48.300 (title), (1) (a) to (d), (2) to (6) and (10) to (12); 48.400 (1) (i) and (2); 48.500 (title), (1) (title), (a), (b) (title), (c) (title) and 2. and (d) to (g) and Table 48.500; 48.530 (title) and (2) to (5); 48.580 (title), (1) (title), (b) (title) and 1. to 8. and (c), (2) (title) and (a) (title), (intro.), 1. and 3. and (3) (b); 48.590 (title) and (3); 48.600 (title), (1) (b) (title) and 2., (2) (title), (c) and (d) and (3) (title), (c) (title) and 2.; and 48.650 (title), (1), (2) (title), (intro.), (a) and (b), (3) and (4);

to renumber and amend Comm 48.100 (1) to (7) (d); 48.200 (1) and (2); 48.300 (1) (intro.) and (7) to (9); 48.400 (title) and (1) (a) to (h) and (j); 48.500 (1) (b), (c) 1., (d) 1. and 4. and (2); 48.510; 48.520; 48.530 (1); 48.580 (1) (a) and Note and (b) 9., (2) (a) 2. and (b), (3) (title) and (a) and (4); 48.590 (1), (2) and (4) to (6); 48.600 (1) (title), (a), (b) (intro.), 1. and 3., (2) (a) and (b) and (3) (a), (b) and (c) 1. and 3.; 48.650 (2) (c) and (5); and 48.700;

to amend Comm 48 (title) and 48 subchapter II (title);

and to create Comm 48.100 (1) and (8) (d); 48.200 (1) (k) and (L); 48.240 (4); 48.300 (1) (a) Note [2] and (c) Note, (3) (a) Note and (4) Note; 48.310 (2) (e); 48.320; 48.400 (5) and Note and 48 subchapter IV (title), relating to petroleum and other liquid fuel products, and affecting small businesses.

Rule Summary

1. Statutes Interpreted

Sections 168.04 (1) and 168.16 (4).

2. Statutory Authority

Sections 101.02 (1), 168.04 (1), 168.16 (4), and 227.11 (2) (a).

3. Explanation of Agency Authority

Under section 101.02 (1) of the Statutes, the Department is required to adopt reasonable rules relative to the exercise of the Department's powers and authorities, and to the mode and manner of its inspections. Under chapter 168 of the Statutes, the Department is responsible for inspection of petroleum and other liquid fuel products that come into Wisconsin. Chapter 168 requires that these

products meet minimum product-grade specifications as prescribed by rule by the Department; and that the Department's inspections be conducted, so far as applicable, in accordance with the latest standards produced by ASTM International. Section 168.16 (4) of the Statutes specifically authorizes the Department to promulgate reasonable rules relating to the administration and enforcement of chapter 168. The Department also has authority under section 227.11 (2) (a) of the Statutes to promulgate rules interpreting any statute that is enforced or administered by the Department, if the rule is considered necessary to effectuate the purpose of the statute.

4. Related Statute or Rule

The proposed rule changes for chapter Comm 48 are related to rules in chapter Comm 10 that address inventory controls for motor vehicle fuels, and to rules in chapters Comm 10 and 14 that address storage of flammable and combustible liquids.

5. Plain Language Analysis

The proposed rule changes primarily consist of updating chapter Comm 48 to include the latest revisions of several recently updated ASTM International standards for petroleum and other liquid fuel products. Consent to adopting the ASTM standards will be obtained from the Attorney General prior to incorporating the standards into the rules.

The proposed changes also include several clarifications and refinements relating to administration and enforcement by the Department's inspectors. These changes would (1) further clarify that this chapter addresses not only petroleum-based fuels but also liquid fuels and fuel components which are not petroleum-based, such as ethanol and biodiesel; (2) authorize shutdown of a storage tank system if corresponding inventory, delivery or manifest records either have been falsified or are not available for inspection within 24 hours after being requested; (3) codify use of biodiesel-blended motor fuels of 6 to 20 percent biodiesel; (4) clarify that fuel products which are imported into the state are subject to sampling by the Department, instead of always sampled by the Department; (5) clarify that the Department tests samples at locations and frequencies which are designed to prevent sale of noncompliant fuel products, instead of testing all samples of all products; and (6) codify the maximum amount of water permitted in a fuel-storage tank.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations

The Federal Trade Commission establishes requirements for accurate automotive fuel ratings, under Title 16 of the Code of Federal Regulations, Part 306 – which includes criteria for octane ratings, certification, and posting. Also included in Part 306 are detailed requirements for labeling retail diesel fuel dispensing devices that dispense fuel blends consisting of more than 5 percent by volume biodiesel fuel or biomass-based diesel fuel. Those detailed requirements include prescribed dispenser labels for blended fuels of 6 to 20 percent biodiesel fuel or biomass-based diesel fuel, and dispenser labels for blended fuels of more than 20 percent biodiesel fuel or biomass-based diesel fuel. The proposed rule changes for chapter Comm 48 include an informational Note referencing those labeling requirements.

Federal Environmental Protection Agency fuel standards mandate transitioning fully to ultra-low-sulfur diesel fuel, which has a sulfur content of no greater than 15 parts per million, and which is needed to enable heavy-duty engine components to consistently reduce particulate matter and

nitrogen oxide emissions by 90 and 95 percent, respectively, below previous standard levels. The current deadlines for completing this transition are December 1, 2010, for highway vehicles – and 2014 for non-road, locomotive, and marine vehicles. The EPA is likewise implementing corresponding, similar reductions in sulfur levels in automotive gasoline. The proposed rule revisions for chapter Comm 48 do not directly address air-quality-based issues such as these, and therefore retain the current Wisconsin requirements that permit higher maximum sulfur levels in diesel fuel and automotive gasoline. These Wisconsin requirements are expected to be retained until the federally mandated transition is completed.

7. Comparison With Rules in Adjacent States

Minnesota, Iowa, Illinois, and Michigan all have requirements addressing the quality of motor vehicle fuels. An Internet-based search showed that Iowa, Illinois, and Michigan similarly apply the most recent, corresponding standards produced by ASTM International. Minnesota and Illinois were found to similarly collect samples of motor fuels, which are then tested appropriately.

8. Summary of Factual Data and Analytical Methodologies

In considering the latest revisions of the ASTM International standards, Department staff reviewed the corresponding topics addressed by ASTM International in updating each standard. In developing the clarifications and refinements relating to administration and enforcement, input from inspection staff was relied upon, particularly in relation to mandated product-inventory records that have been found to be either unavailable or unreliable.

The rules were also developed with assistance from the Department's advisory committee for petroleum and other liquid fuel products. The organizations represented on that advisory committee are as follows:

- Wisconsin Biodiesel Association
- Wisconsin Small Engine Consortium
- Wisconsin Petroleum Council
- Petroleum Marketers Association and Convenience Store Association of Wisconsin Cooperative Network
- Wisconsin Bio Industry Alliance
- Renewable Fuels Association
- National Petrochemical and Refiners Association

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report

An economic impact report was not prepared. Consideration of the potential effects on small business was based on federal guidelines produced by the federal Small Business Administration's Office of Advocacy.

10. Effect on Small Business.

The proposed rules are not expected to impose significant costs or other impacts on a substantial number of businesses because the primary effect of the changes is to make chapter

Comm 48 consistent with current regional and national standards for fuel quality, and with current administrative practices.

11. Agency Contact Information

Sam Rockweiler, Wisconsin Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI, 53708-0427; telephone (608) 266-0797; e-mail sam.rockweiler@wi.gov.

12. Place Where Comments Are to Be Submitted, and Deadline for Submission.

Comments on the proposed rules may be submitted by e-mail to sam.rockweiler@wisconsin.gov, no later than March 3, 2010. If e-mail submittal is not possible, written comments may be mailed, by the same date, to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

File reference: Comm48 -09/rule analysis