

SECTION 1. Chapter Comm 48 (title) is amended to read:

CHAPTER Comm 48 (title) PETROLEUM AND OTHER LIQUID FUEL PRODUCTS

SECTION 2. Comm 48.100 (1) to (7) (c) are renumbered Comm 48.100 (2) to (8) (c) and amended to read:

Comm 48.100 (2) RULE-MAKING AUTHORITY. ~~The~~ Under ch. 168, Stats., the department has ~~been granted the power and authority for the promulgation of~~ to promulgate rules relating to ~~petroleum product~~ grade specifications for petroleum and other liquid fuel products, and ~~the administration to administer and enforcement of~~ enforce the rules.

(3) **AUTHORITY TO ENTER.** The department has ~~been granted the~~ authority to enter any premises of any manufacturer, vendor, dealer or user of petroleum or other liquid fuel products ~~of petroleum~~ during the regular business hours to determine whether the petroleum fuel product has been inspected in accordance with ~~the rules of this code~~ chapter.

(4) **AUTHORITY TO SAMPLE AND TEST.** The department has ~~been granted the~~ authority to obtain samples of petroleum and other liquid fuel products ~~of petroleum~~, at any point within or without this state, for the purpose of testing these products in accordance with ~~the rules of~~ this code chapter.

(5) **AUTHORITY FOR ACCESS TO RECORDS.** The department has ~~the~~ authority to inspect the records of every person having custody of books or records showing the shipment, receipt, and inventory of petroleum or other liquid fuel products ~~of petroleum~~ for the purpose of determining the amount of ~~petroleum~~ products shipped or received.

(6) **AUTHORITY TO PERFORM INVESTIGATIONS.** Any accident or explosion involving petroleum or other liquid fuel products ~~of petroleum~~ which ~~come~~ comes to the knowledge of the department may be investigated by the department to determine whether ~~or not~~ there has been a violation of this chapter.

(7) **AUTHORITY TO PROVIDE ASSISTANCE TO LOCAL AUTHORITIES.** The department has ~~been granted the~~ authority, upon request of other state agencies or local authorities, to assist in the investigation of hazardous situations involving suspected or known liquid fuel products ~~of petroleum~~.

(8) (intro.) **AUTHORITY TO STOP SALE.** Persons with enforcement authority under this chapter ~~shall~~ have ~~the~~ authority to shut down petroleum liquid fuel storage tank systems by the issuance of orders, the disabling with locks, or applying a red-tag, under the following conditions:

(a) *Immediate shutdown to protect life, safety or health.* ~~Petroleum~~ Liquid fuel storage systems ~~which that~~ contain products which pose an immediate danger to life, safety or health shall be subject to immediate shutdown. Products that cause immediate danger to life, safety, or health include ~~but are not limited to:~~ heating oil or kerosene, if contaminated with gasoline, ~~or~~ and contaminated aircraft fuels.

(b) *Immediate shutdown to blend or remove ~~petroleum~~ liquid fuel products or wastes.* ~~Petroleum~~ Liquid fuel storage systems which contain wastes or products that fail to meet the operational and technical standards of this chapter shall be shut down until a pump out or blend is completed under the supervision of a person with enforcement authority under this chapter. The system may be reopened as soon as the product contained in the tank is verified by a person with enforcement authority under this chapter as meeting this chapter's operational and technical standards.

(c) *Immediate shutdown after a prohibited act.* ~~Petroleum~~ Liquid fuel storage systems are subject to immediate shutdown after any corresponding violation of s. Comm ~~48.590~~ 48.400 (1) or (2) occurs.

SECTION 3. Comm 48.100 (1) is created to read:

Comm 48.100 (1) SCOPE. This chapter primarily establishes quality standards for petroleum and other liquid fuel products that are used as liquid fuels for engines and heating equipment. It also establishes labeling requirements for used lubricating oils.

SECTION 4. Comm 48.100 (7) (d) is renumbered Comm 48.100 (8) (e) and amended to read:

Comm 48.100 (8) (e) *Shutdown after long term violation.* ~~Petroleum~~ Liquid fuel storage systems containing ~~petroleum~~ fuel products for which there is a continuing code violation under this chapter are subject to shutdown if all of the following conditions are met:

SECTION 5. Comm 48.100 (8) (d) is created to read:

Comm 48.100 (8) (d) *Shutdown after failure to maintain records.* Liquid fuel storage tank systems are subject to immediate shutdown if corresponding inventory, delivery or manifest records either have been falsified or are not available for inspection within 24 hours after being requested by a person with enforcement authority under this chapter.

Note: Under sections Comm 10.500 (9) and 48.330 (3), all product inventory records, including delivery receipts, must be kept at the site of a retail storage tank system for a duration of at least 10 years. Under sections Comm 48.100 (5) and 48.330 (3), these records must be made available for inspection by the Department. Section Comm 10.500 (9) also requires maintaining several other types of records for retail storage tank systems.

Note: For further requirements about the inventory verification that is required for any tank system from which fuel products are offered for sale to the public, see section Comm 10.503. For further information about inventory control or statistical inventory reconciliation, which are prescribed methods of leak detection, see section Comm 10.515 (2) or (6), respectively.

SECTION 6. Comm 48.200 (title), (1) and (2) are renumbered Comm 48.120 (title), (1) and (2), and Comm 48.120 (1) and (2), as renumbered, are amended to read:

Comm 48.120 (1) PENALTIES. Pursuant to s. 168.15, Stats., ~~every~~ any person who violates any provision of this chapter shall forfeit not less than \$10 nor more than \$100 for each violation. Each day a person fails to comply with any provision of this chapter is a separate violation.

~~(2) FEES. The department is authorized to collect fees for the inspection of any petroleum product. The fees~~ Fees for inspection inspections shall be assessed in accordance with ch. Comm 2, Fee Schedule.

SECTION 7. Comm 48.200 (3) and (4) are repealed.

SECTION 8. Comm 48.200 (5) is renumbered Comm 48.120 (3).

SECTION 9. Comm 48.300 is renumbered Comm 48.130, and Comm 48.130 (1) (intro.) and (7) to (9), as renumbered, are amended to read:

Comm 48.130 (1) (intro.) “Alternative liquid automotive fuel” includes, ~~but is not limited to~~ all of the following:

(7) “Inspector” means a duly authorized ~~petroleum fuel-products~~ inspector of the department.

(8) “Motor fuel” means a flammable or combustible liquid which is used in the operation of an internal combustion or turbine engine and which is regulated by either the product specifications in subch. II or the labeling requirements in s. Comm ~~48.580~~ 48.300.

(9) “Petroleum and other liquid fuel products,” ~~“products of petroleum”~~ “liquid fuels” and “fuel products” means gasoline, gasoline/alcohol-ether blends, aviation gasoline, automotive gasoline, kerosene, fuel oil, burner fuel, ~~and diesel fuel,~~ biofuels, and blends of petroleum-based fuels and biofuels.

SECTION 10. Comm 48.400 is renumbered Comm 48.200 in subchapter II, and Comm 48.200 (title) and (1) (a) to (h) and (j), as renumbered, are amended to read:

Comm 48.200 (title) ~~Adoption of standards~~ standard specifications by reference.

(1) (a) ASTM D 396–~~05~~ 09, Standard Specification for Fuel Oils.

(b) ASTM D 910–~~04a~~ 07a, Standard Specification for Aviation Gasolines.

(c) ASTM D 975–~~05~~ 09b, Standard Specification for Diesel Fuel Oils.

(d) ASTM D 1655–~~05~~ 09, Standard Specification for Aviation Turbine Fuels.

(e) ASTM D 3699–~~05~~ 08, Standard Specification for Kerosine.

(f) ASTM D 4806–~~04a~~ 09, Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel.

(g) ASTM D 4814–~~04b[±]~~ 09b, Standard Specification for Automotive Spark-Ignition Engine Fuel.

(h) ASTM D 5798–~~99(2004)~~ 09B, Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines.

(j) ASTM D 6751–~~03a~~ 09, Standard Specification for Biodiesel Fuel (~~B100~~) Blend Stock (B100) for Middle Distillate Fuels.

SECTION 11. Comm.48.200 (1) (k) and (L) are created to read:

Comm 48.200 (1) (k) ASTM D 7467–09a, Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20).

(L) ASTM D 7547–09, Standard Specification for Unleaded Aviation Gasoline.

SECTION 12. Comm 48 subchapter II (title) is amended to read:

CHAPTER Comm 48 SUBCHAPTER II (title), PETROLEUM AND OTHER LIQUID FUEL
PRODUCT SPECIFICATIONS

SECTION 13. Comm 48.500 and Table 48.500 are renumbered Comm 48.210 and Table 48.210, and Comm 48.210 (1) (b), (c) 1., (d) 1. and 4. and (2), as renumbered, are amended to read:

Comm 48.210 (1) (b) *Gasoline*. Any ~~petroleum fuel~~ fuel product designated by name or reference as gasoline shall meet the requirements of Table ~~48.500~~ 48.210.

(c) *Automotive gasoline*. 1. Except as provided in subd. 2., any ~~petroleum fuel~~ fuel product designated by name or reference as automotive gasoline shall meet the requirements of ASTM D 4814.

(d) 1. Anhydrous denatured alcohol may be added to gasoline if the original gasoline product meets the requirements of par. (b) or (c).

4. Other oxygenated fuels shall be acceptable if the oxygenates are blended at the refinery in amounts allowed by the EPA and the final product conforms to the standard specification for gasoline under par. (b) or (c).

(2) AVIATION FUELS. (a) *Aviation gasoline*. Any ~~petroleum fuel~~ fuel product designated by name or reference as aviation gasoline shall meet the requirements of ASTM D 910, ~~or D 6227~~ or D 7547.

(b) *Aviation turbine fuel.* Any ~~petroleum~~ fuel product designated by name or reference as aviation turbine fuel shall meet the requirements of ASTM D 1655.

SECTION 14. Comm 48.510 and 48.520 are renumbered Comm 48.220 and Comm 48.230 and amended to read:

Comm 48.220 Kerosene specifications. Any ~~petroleum~~ fuel product designated by name or reference as “kerosene” shall meet the requirements specified in ASTM D 3699.

Comm 48.230 Fuel oil specifications. Any ~~petroleum~~ fuel product designated by name or reference as No. 1 fuel oil to No. 6 fuel oil shall meet the requirements specified in ASTM D 396.

SECTION 15. Comm 48.530 (title) and (1) to (3) are renumbered Comm 48.240 (title) and (1) to (3), and Comm 48.240 (1), as renumbered, is amended to read:

Comm 48.240 (1) Except as provided in subs. (2) and (5), any ~~petroleum~~ fuel product designated by name or reference as No. 1 diesel fuel oil to No. 4 diesel fuel oil shall meet the requirements specified in ASTM D 975.

SECTION 16. Comm 48.530 (4) and (5) are renumbered Comm 48.240 (5) and (6).

SECTION 17. Comm 48.240 (4) is created to read:

Comm 48.240 (4) Biodiesel-blended motor fuels of 6 to 20 percent biodiesel by volume shall meet the requirements of ASTM D 7467.

SECTION 18. Comm 48.580 (title) and (1) (title), (a) and Note are renumbered Comm 48.300 (title) and (1) (title), (a) and Note, and Comm 48.300 (1) (a) and Note, as renumbered, are amended to read:

Comm 48.300 (1) (a) General. All devices dispensing ~~petroleum~~ liquid fuel products at filling stations, garages or other places where ~~petroleum~~ liquid fuel products are sold or offered for sale shall be marked with a conspicuous label visible on both faces of the dispensing device indicating the automotive fuel rating of the ~~petroleum~~ fuel product. No label may be placed so that the text is sideways or upside down.

Note: The Federal Trade Commission (FTC) establishes the requirements for accurate automotive fuel ratings, which include octane ratings, certification and posting under Title 16 CFR Part 306. 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 FTC requirements are available on the Internet at www.ftc.gov, or at the U.S. Government Bookstore, 310 West Wisconsin Avenue, Suite 150W, Milwaukee, WI 53203-2228, telephone 414/297-1304.

SECTION 19. Comm 48.300 (1) (a) Note [2] is created to read:

Comm 48.300 (1) (a) Note [2]: A single label may be used to refer to multiple grades of fuel, provided all of the requirements of this section are met.

SECTION 20. Comm 48.580 (1) (b) and (c) are renumbered Comm 48.300 (1) (b) and (c), and Comm 48.300 (1) (b) 9., as renumbered, is amended to read:

Comm 48.300 (1) (b) 9. If a dispenser remains unlabeled after the expiration of orders issued by the department for labeling, and the owner does not file a written appeal within 15 calendar days of receiving the order, the department shall stop the sale of the product in accordance with s. Comm 48.100 (~~7~~) (8).

SECTION 21. Comm 48.300 (1) (c) Note is created to read:

Comm 48.300 (1) (c) Note: Under Chapter Comm 10, fuel dispensers that are installed after February 1, 2009, must use a separate fueling nozzle and hose for dispensing any ethanol-blended motor fuels of more than 10 percent ethanol by volume, such as E-85, E-30, E-20 and E-15.

SECTION 22. Comm 48.580 (2) and (3) are renumbered Comm 48.300 (2) and (3), and Comm 48.300 (2) (a) 2. and (b) and (3) (title) and (a), as renumbered, are amended to read:

Comm 48.300 (2) (a) 2. Any container holding one gallon or less of a ~~petroleum~~ liquid fuel product, which was filled originally by a manufacturer or a packager, and which complies with the federal standards for packaging and labeling.

(b) *Flash points of 100 °F or greater.* ~~Kerosene, diesel fuel, burner fuel oils and similar products of petroleum with~~ Any fuel product that has a flash point of 100°F or greater when tested as stated in par. (a) may not be stored in any container which is in any manner colored red.

(3) (title) ~~MISLABELING~~ IDENTIFICATION. (a) *General.* Any person receiving, unloading, using, offering for sale or selling any ~~petroleum~~ liquid fuel product shall identify the product as to name or grade. Delivery of automotive fuel to a retail outlet shall include a certification of the automotive fuel rating, either by letter or on the delivery ticket or other paper, as required by 16 CFR 306.10 (g).

SECTION 23. Comm 48.300 (3) (a) Note is created to read:

Comm 48.300 (3) (a) Note: Under section 168.14 (2m) (c) of the Statutes, any fuel that is represented, advertised, labeled or otherwise promoted for sale as being a blend of biodiesel and petroleum-based diesel fuel must be at least 2 percent biodiesel fuel by volume.

SECTION 24. Comm 48.580 (4) is renumbered Comm 48.300 (4) and amended to read:

Comm 48.300 (4) CLEANING OF DISPENSING EQUIPMENT. Any pipeline, hose, pump or metering device used for dispensing ~~petroleum liquid fuel~~ products shall be properly flushed and cleaned before dispensing a dissimilar ~~petroleum liquid fuel~~ product.

SECTION 25. Comm 48.300 (4) Note is created to read:

Comm 48.300 (4) Note: Chapter Comm 10 has detailed requirements that apply when converting a fuel tank to storage of fuel containing more than 10 percent ethanol by volume. Those requirements address cleaning the tank, tightness testing and equipment compatibility.

SECTION 26. Comm 48.590 (title) and (1) to (4) are renumbered Comm 48.400 (title) and (1) to (4) in subchapter IV, and Comm 48.400 (1), (2) and (4), as renumbered, are amended to read:

Comm 48.400 (1) No person other than an operator of a refinery or terminal may deliberately deliver, unload, direct or transfer a lower grade of a ~~petroleum fuel~~ product into a storage tank system labeled as containing a higher grade of ~~petroleum fuel~~ product unless specifically approved in writing by an inspector.

(2) Except as authorized under sub. (1), no person may deliberately deliver, unload, direct or transfer dissimilar fuels, dissimilar octane or a dissimilar grade of ~~petroleum fuel~~ products into a storage tank unless specifically approved in writing by an inspector.

(4) No person may represent a motor fuel or ~~petroleum fuel~~ product in any manner that is contrary to the provisions and the adopted standards of this chapter, and the provisions of ch. 168, Stats.

SECTION 27. Comm 48.590 (5) and (6) are renumbered Comm 48.400 (6) and (7) in subchapter IV and amended to read:

Comm 48.400 (6) No person may deliver, place, receive or store in any portable container any product that has a flash point of less than 100°F when tested using either an ASTM D 56 or ASTM D 6450 closed tester, unless the container complies with s. Comm ~~48.580~~ 48.300 (2) (a).

(7) No person may deliver, place, receive or store any ~~kerosene, diesel fuel or burner oil, or a like product of petroleum~~ that has a flash point of 100°F or more when tested using either an ASTM D 56 or ASTM D 6450 closed tester, in any portable container which is in any manner colored red.

SECTION 28. Comm 48.600 (title), (1) and (2) are renumbered Comm 48.310 (title), (1) and (2), and Comm 48.310 (1) (title) and (a), (b) (intro.), 1. and 3. and (2) (a) and (b), as renumbered, are amended to read:

Comm 48.310 (1) (title) INSPECTION OF PETROLEUM AND OTHER LIQUID FUEL PRODUCTS

(a) *General.* All petroleum and other liquid fuel products imported into and received in this state shall be ~~sampled~~ subject to sampling by the department prior to being unloaded, sold, offered for sale or used.

(b) *Exceptions.* The inspection of ~~petroleum~~ liquid fuel products does not apply in the following situations:

1. ~~Petroleum~~ Liquid fuel products previously inspected by the department at the refinery or at a marine or pipeline terminal within or without the state.

3. Specialty motor fuels and ~~petroleum~~ liquid fuel products that will not be introduced into the wholesale or retail market stream.

(2) (a) The recipient of all ~~petroleum~~ liquid fuel products received on Monday through Friday shall notify the department between the hours of 7:45 a.m. and 4:30 p.m. The department shall be notified of any ~~petroleum~~ liquid fuel products received after 4:30 p.m. or received on a Saturday, Sunday or any legal holiday, between the hours of 7:45 a.m. and 10:00 a.m. of the next regular working day.

(b) If a person transfers one grade of a ~~petroleum~~ liquid fuel product into a container with another grade of ~~petroleum~~ liquid fuel product, the entire commingled product shall be deemed uninspected and the department shall be notified.

SECTION 29. Comm 48.310 (2) (e) is created to read:

Comm 48.310 (2) (e) 1. When the fuel product dispensed from a tank system is changed from a Class II or III liquid to a Class I liquid, the department's district fuel products inspection office shall be notified, and the new product shall be tested and approved before being dispensed.

2. In this paragraph, "Class I liquid" means a liquid that will give off sufficient vapor, below 100°F, to form an ignitable mixture with air near the surface of the liquid or within a test vessel; and "Class II or III liquid" means a liquid that will give off such vapor at or above 100°F.

Note: Under chapter Comm 10, the department's district fuel products inspection office must likewise be notified, and the new product must likewise be tested and approved before being dispensed, when the product dispensed from a tank system is changed from a Class I liquid to a Class II or III liquid.

Note: See the Department Web site www.commerce.state.wi.us/ER/ER-RPS-Index.html for the contact information for fuel products inspectors.

SECTION 30. Comm 48.600 (3) is renumbered Comm 48.310 (3), and Comm 48.310 (3) (a), (b) and (c) 1. and 3., as renumbered, are amended to read:

Comm 48.310 (3) (a) General. A representative sample of at least 8 ounces shall be taken from every shipment of ~~petroleum~~ liquid fuel products, including commingled products, that is imported into and received in this state.

(b) 1. The department shall inspect ~~each sample and test samples collected under this section, at locations and frequencies that are designed to prevent sale of petroleum product and perform the tests, deemed necessary, in accordance with the specifications as outlined and other liquid fuel products in this chapter state which do not comply with this chapter.~~

2. If the petroleum fuel product does not meet the standards specified in this ~~code~~ chapter, the department will notify the person for whom the inspection was made that the petroleum product ~~shall~~ may not be sold, used, ~~or~~ removed from storage or transferred to any place for retail sale until compliance with the standards are satisfied is established.

(c) 1. If the inspector does not, upon proper notice, after a reasonable length of time, take the sample as specified in sub. (2) (d), the recipient of the petroleum fuel product may open the original container and take a representative sample of not less than 8 ounces of the contents. The sample shall be immediately placed in a clean container which is in compliance with s. Comm ~~48.590 (5) 48.400 (6) and (6) (7)~~ and which is then tightly closed.

3. The sample taken under this paragraph shall be held for delivery, upon demand, to the inspector. After the sample is taken, the petroleum fuel product may be unloaded, sold, offered for sale or used the same as if sampled by the inspector. The sample shall be retained for 7 business days and then may be discarded.

SECTION 31. Comm 48.320 is created to read:

Comm 48.320 Water in tanks. Water may not exceed the following depths, as measured with water-indicating paste, in any tank utilized in storing the following fuels for retail sale, except as otherwise approved by the department:

- (1) Gasoline-alcohol blends – 1/4 inch.
- (2) Aviation gas and aviation turbine fuel – 1 inch.
- (3) Gasoline, diesel, gasoline-ether and other fuels – 2 inches.

SECTION 32. Comm 48.400 (5) and Note are created to read:

Comm 48.400 (5) No person may transfer a fuel product to any place for retail sale or offer to sell that fuel product if it has been altered after being testing under this chapter, unless either approved otherwise by the department or further testing shows the altered product complies with this chapter.

Note: Blending two batches of fuel which each meet the same ASTM standard is not considered to be altering the fuel.

SECTION 33. Comm 48.650 is renumbered Comm 48.420 in subchapter IV, and Comm 48.420 (2) (c) and (5), as renumbered, are amended to read:

Comm 48.420 (2) (c) Investigation of accidents or explosions, under s. Comm 48.100 ~~(5)~~ (6).

(5) CONTINUATION OF SHUTDOWN. Failure to pay any reimbursements or fees under this section, for a ~~petroleum~~ liquid fuel storage tank system that has been shut down under s. Comm 48.100 ~~(7)~~ (8), shall result in a continuation of that shutdown.

SECTION 34. Comm 48.700 is renumbered Comm 48.320 and amended to read:

Comm 48.320 Records. (1) DEPARTMENT RECORDS. The department shall keep records of each inspection made, showing all of the following:

- (a) ~~Time~~ The time and place of each inspection;
- ~~(e)~~ (b) ~~Product~~ The product name of ~~petroleum~~ the liquid fuel product inspected;
- ~~(f)~~ (c) ~~Name~~ The name and address of the person for whom the inspection is made.

(2) TRANSPORTATION RECORDS. Every person transporting ~~petroleum~~ liquid fuel products shall maintain records showing the shipment or receipt of ~~petroleum~~ the fuel products. The department shall have free access to the records for the purpose of determining the amount of ~~petroleum~~ liquid fuel products shipped or received.

(3) RECEIPT RECORDS. Every person receiving ~~petroleum~~ fuel products shall maintain ~~records~~ a record of the delivery of the product, together with bills of lading, waybills and any other pertinent documents pertinent to verifying the inventory of the product, for at least 4 10 years, unless approval to the contrary is obtained from the department in writing. The department shall have free access to the records for the purpose of determining the amount of ~~petroleum~~ fuel products shipped or received.

SECTION 35. Comm 48 subchapter IV (title) is created to read:

CHAPTER Comm 48 SUBCHAPTER IV (title), VIOLATIONS

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after the date of publication in the Wisconsin administrative register.

File reference: Comm 48-09/rules 2009 PH2