

Clearinghouse Rule 11-002

**PROPOSED ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce proposes an order to repeal and recreate Comm 2.44 and Table 2.44 and Comm 40,

and to create Comm 14.01 (1) (g) Note [4], relating to fuel gas systems, and affecting small businesses.

Rule Summary

1. Statutes Interpreted

Sections 101.02 (1) and (15) (h) to (j), 101.11, 101.16, 101.17 and 101.19

2. Statutory Authority

Sections 101.02 (1) and (15) (h) to (j), 101.16 (2), 101.17, 101.19 (1) and 227.11 (2) (a).

3. Explanation of Agency Authority

Under sections 101.02 (1) and (15) (h) to (j) of the Statutes, the Department is required to establish rules and prescribe safeguards for protecting the life, health, safety and welfare of employees and frequenters of public buildings and places of employment. Under section 101.16 (2) of the Statutes, the Department is required to establish rules relating to design, construction, location, installation, operation, repair, and maintenance of equipment for storage, handling, use, and transportation by tank truck or tank trailer, of liquefied petroleum gases for fuel purposes, and for the odorization of those gases. Under section 101.17 of the Statutes, installation and use of machines and mechanical devices must comply with the rules of the Department. Section 101.19 of the Statutes authorizes the Department to assess fees for providing services. 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

Some of the fuel gas systems that are addressed by the proposed rule changes are connected to gas piping and appliances or equipment that is addressed by either the Wisconsin Commercial Building Code, which is contained in chapters Comm 61 to 66, or the Uniform Dwelling Code, which is contained in chapters Comm 20 to 25. Some of the gases that are addressed by the proposed changes are also used for other than fuel purposes – and those uses may include storage in pressure

vessels, which is then addressed in chapter Comm 41, and mechanical refrigeration, which is addressed in chapter Comm 45.

5. Plain Language Analysis

Chapter Comm 40 establishes minimum safety standards for design, construction, installation, operation, testing, inspection, repair and maintenance of liquefied petroleum gas systems, liquefied natural gas systems, compressed natural gas systems, gaseous hydrogen systems, and liquefied hydrogen systems – where these gas systems are used for fuel purposes, such as for heating appliances or engines.

The proposed changes would primarily update this chapter to have it include newer editions of several referenced national standards from the National Fire Protection Association (NFPA), and to make it consistent with current industry and regulatory practices. For example, the changes include more detailed requirements from a recent amendment to a national standard, for purging piping and equipment that use liquefied petroleum gas. The changes would also clarify and refine administrative elements, such as where and how the chapter applies, and where Department-level plan approval and inspection is required, including for vehicle-fuel dispensing systems.

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

An Internet-based search of the *Code of Federal Regulations* (CFR) found the following existing federal regulations relating to liquefied petroleum gas, liquefied natural gas, compressed natural gas, gaseous hydrogen and liquefied hydrogen as covered in this update of chapter Comm 40:

- 29 CFR 1910.101 – Compressed Gases (General Requirements). This regulation in the federal Department of Labor applies to the general inspection of compressed gas cylinders.
- 29 CFR 1910.103 – Hydrogen. This regulation in the federal Department of Labor applies to the design and installation of gaseous hydrogen systems and of liquefied hydrogen systems on consumer premises.
- 29 CFR 1910.110 – Storage and Handling of Liquefied Petroleum Gases. This regulation in the federal Department of Labor applies to the design, construction, location, installation and operation of liquefied petroleum gas systems.
- 33 CFR 127 Subpart B – Waterfront Facilities Handling Liquefied Natural Gas. This regulation in the federal Department of Homeland Security applies to the marine transfer area of waterfront facilities handling liquefied natural gas.

These federal regulations were revised July 1, 2010, and appear to be similar to the proposed rules. In addition to containing specific requirements for the various gas systems, the federal regulations incorporate by reference several national standards published by the NFPA, the American National Standards Institute, the Compressed Gas Association and the American Society of Mechanical Engineers.

An Internet-based search of the 2009 and 2010 issues of the *Federal Register* did not find any proposed regulations relating to gas systems as covered in this update of chapter Comm 40.

7. Comparison With Rules in Adjacent States

An Internet-based search of the four adjacent states' rules found the following requirements relating to gas systems used for fuel purposes:

- **Illinois** – Under the Illinois Administrative Code (41 Ill. Admin. Code 200), the Office of the Illinois State Fire Marshall adopts the 2008 edition of NFPA Standard 58 for liquefied petroleum gas. The rules also reference the 2006 edition of NFPA 54. Illinois does not have rules for liquefied natural gas, compressed natural gas or hydrogen.
- **Iowa** – The Division of the State Fire Marshal is responsible for regulating liquefied petroleum gas and liquefied natural gas, in chapter 101 of the Iowa Administrative Code. That chapter adopts NFPA 54, 58 and 59A by reference. Currently, Iowa does not have rules for compressed natural gas or hydrogen.
- **Michigan** – The Department of Environmental Quality administers rules relating to liquefied petroleum gas and liquefied natural gas. These rules adopt the 2004 editions of NFPA 52, 58 and 59A. The Department of Energy, Labor and Economic Growth administers rules for compressed and liquefied natural gas and hydrogen. These rules adopt NFPA 52 and federal Occupational Safety and Health Administrations regulations 29 CFR 1910.101 and 1910.103 for compressed gases and gaseous and liquefied hydrogen systems.
- **Minnesota** – The Minnesota State Fire Code incorporates by reference the 2006 edition of the International Fire Code (IFC). The IFC references NFPA 50A, 50B, 52, 58 and 59A. In addition, chapter 38 of the Minnesota State Fire Code incorporates by reference the 2004 edition of NFPA 58, and states that “the storage, handling, transportation and use of liquefied petroleum gas and the installation of all equipment pertinent to systems for such uses shall be designed, constructed, installed, operated and maintained in accordance with the provisions” in that standard.

8. Summary of Factual Data and Analytical Methodologies

In considering the latest editions of the referenced standards from NFPA, Department staff comprehensively compared these standards to the requirements currently in chapter Comm 40, and concluded that these standards are clearer and provide more detail than the current requirements and standards in Comm 40, and would not impose significant costs or other impacts on a substantial number of businesses. The Department's advisory council for fuel gas systems then reviewed these comparisons and agreed with these conclusions, and similarly assisted with developing the other changes for updating Comm 40. The members of that council represent the stakeholders involved in the fuel gas systems industry, and are members of the following organizations:

ANGI Energy Systems
City of Milwaukee
Cooperative Network

National Propane Gas Association
Wisconsin Agri-Service Association, Inc.
Wisconsin Crop Production Association
Wisconsin Propane Gas Association
Wisconsin State Fire Chiefs Association, Inc.
Wisconsin Utilities Association, Inc.

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 or required under section 227.137 of the Statutes. Consideration of the potential effects on small business was based on guidelines produced by the federal Small Business Administration's Office of Advocacy. The advisory council described above did not identify any significant impacts relative to compliance with the proposed changes for updating chapter Comm 40.

10. Effect on Small Business.

The proposed changes 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 40 consistent with current regional and national standards for fuel gas systems, and with current industry and regulatory 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 rule changes may be submitted by e-mail to sam.rockweiler@wi.gov, no later than February 14, 2011. 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: Comm40/rule analysis