



State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Chapter Comm 48

Relating to: Petroleum Products

Clearinghouse Rule No.: 03-011

The Department of Commerce proposes an order to repeal ss. Comm 48.04 Tables 48.04-B1, 48.04-B2, and 48.04-C, Comm 48.05 Table 48.05, Comm 48.06 Table 48.06, Comm 48.07 Table 48.07, Comm 48.08, Comm 48.09 (1) (a) 3., Comm 48.11 (1) (b) to (d), ch. Comm 48 Appendices A, B and C; to amend ss. Comm 48.04 (1) (b), Comm 48.04 (2), Comm 48.05, Comm 48.06, Comm 48.07, Comm 48.09 (3) (b) (intro.), Comm 48.10 (1) (a), (b) 1., 2., Note, 3. and 5., and Comm 48.11 (3); to repeal and recreate ss. Comm 48.02 (5), Comm 48.03, and Comm 48.10 (3); and to create ss. Comm 48.035, Comm 48.04 (1) (e), and Comm 48.07 (2) to (4), relating to petroleum products.

Analysis of Proposed Rules

Statutory Authority: Sections 168.04, 168.07 (2) and 168.16 (4), Stats.
Statutes Interpreted: Sections 168.04, 168.07 (2) and 168.16 (4), Stats.

The Environmental and Regulatory Services Division within the Department of Commerce is responsible for the inspection of petroleum products that come into the state of Wisconsin. The petroleum products must meet minimum product grade specifications as prescribed by rule by the Department. The product grade specifications are contained in chapter Comm 48.

The proposed rules consist of a complete update of chapter Comm 48. The current chapter Comm 48 contains tables listing product grade specifications that petroleum products must meet. The proposed rules remove the tables from chapter Comm 48 and replace them with the incorporation by reference of specification standards published by the American Society for Testing and Materials (ASTM). ASTM specification standards are adopted for fuel oils, gasoline, diesel fuel oil, kerosene and biodiesel fuel. The standards are adopted as written, except for one modification to the specifications for diesel fuel oil. The flash point temperature for No. 2 diesel fuel oil is changed to 100 degrees Fahrenheit instead of the 125 degrees in the ASTM standard. The proposed rules contain several other miscellaneous changes relating to the amount of MTBE allowed in gasoline and the labeling of dispensing devices.

The proposed rules have been developed with the assistance of the Petroleum Products Code Advisory Committee. The members of that citizen advisory committee are as follows:

<u>Name</u>	<u>Representing</u>
Don DeMaster	Wisconsin Small Engine Consortium
Robert S. Elvert	Wisconsin Petroleum Council
Curt Heller	Wisconsin Federation of Cooperatives
Greg Klimek	Wisconsin Motor Carriers Association
Tony Wanta	National Petrochemical & Refiners Association
Gary Welch	Renewable Fuels Association
Ed Wolf	Petroleum Marketers Association of Wisconsin

SECTION 1. Comm 48.02 (5) is repealed and re-created to read:

Comm 48.02 (5) PETITION FOR VARIANCE. The department shall consider and may grant a variance to a provision of this chapter in accordance with ch. Comm 3. The petition for variance shall include, where applicable, a position statement from the fire department having jurisdiction.

Note: Chapter Comm 3 requires the submittal of a petition for variance form (ERS-9890A) and a fee, and that an equivalency is established in the petition for variance that meets the intent of the rule being petitioned. Chapter Comm 3 also requires the department to process regular petitions within 30 business days and priority petitions within 10 business days. A position statement from the fire department is applicable when the rule being petitioned relates to fire safety issues.

Note: Form ERS-9890A is available at no charge from the department at the Environmental and Regulatory Services Division, P.O. Box 7839, Madison WI 53707-7839, telephone 608/266-7874, or on the Internet at www.commerce.state.wi.us/ER/ER-BST-FM-Comm10Forms.html.

SECTION 2. Comm 48.03 is repealed and re-created to read:

Comm 48.03 Definitions. In this chapter:

(1) "Alternative liquid automotive fuel" includes, but is not limited to:

(a) Methanol, denatured ethanol, and other alcohols;

(b) Mixtures containing 85 percent or more by volume, or such other percentage, but not less than 70 percent, as determined by the secretary of the United States department of energy by rule, of methanol, denatured ethanol, and/or other alcohols with gasoline or other fuels;

(c) Liquefied natural gas;

(d) Liquefied petroleum gas; and

(e) Coal-derived liquid fuels.

(2) "Automotive fuel rating" means:

(a) For gasoline, the octane rating; or

(b) For an alternative liquid automotive fuel, the commonly used name of the fuel with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel.

(3) "Department" means the department of commerce.

(4) "Inspector" means a duly authorized petroleum products inspector of the department.

(5) "Petroleum products" means gasoline, gasoline/alcohol-ether blends, aviation gasoline, automotive gasoline, kerosene, fuel oil, burner fuel oil and diesel fuel oil.

(6) "Reclaimed used lubricating oil", "re-cleaned used lubricating oil" or "reconditioned used lubricating oil" means used oil which has been cleaned by cleaning methods used for the primary purpose of removing insoluble contaminants to make the oil suitable for further use. In this subsection, "cleaning method" includes settling, heating, dehydration, filtration or centrifuging.

(7) "Rerefined used lubricating oil" means used oil on which refining processes have been used to produce high-quality base stock for lubricants. In this subsection, "refining process" includes distillation, hydrotreating, or treatments employing acid, caustic, solvent, clay or other chemicals or a combination of those processes.

SECTION 3. Comm 48.035 is created to read:

Comm 48.035 Incorporation of standards by reference. The following standards of the American Society for Testing and Materials (ASTM) are hereby incorporated by reference into this chapter.

- (1) ASTM D396-02a, Standard Specification for Fuel Oils.
- (2) ASTM D910-02, Standard Specification for Aviation Gasolines.
- (3) ASTM D975-02, Standard Specification for Diesel Fuel Oils.
- (4) ASTM D3699-02, Standard Specification for Kerosine.
- (5) ASTM D4814-01a, Standard Specification for Automotive Spark-Ignition Engine Fuel.
- (6) ASTM D6227-00, Standard Specification for Grade 82 Unleaded Aviation Gasoline.
- (7) ASTM D6751-02, Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

Note: Copies of the adopted standards are on file in the offices of the department, the secretary of state and the revisor of statutes. Copies of the standards may be purchased from the American Society for Testing and Materials, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959, telephone (610) 832-9585, e-mail service@astm.org, or website www.astm.org.

Note: Pursuant to s. 168.07 (2), Stats., inspections to determine compliance with the specifications must be conducted in accordance with the latest ASTM methods.

SECTION 4. Comm 48.04 (1) (b) is amended to read:

Comm 48.04 (1) (b) *Automotive gasoline.* Any petroleum product designated by name or reference as automotive gasoline shall meet the requirements of ~~Tables 48.04-B1 and 48.04-B2~~ ASTM D4814.

SECTION 5. Comm 48.04 Tables 48.04-B1 and 48.04-B2 are repealed.

SECTION 5M. Comm 48.04 (1) (e) is created to read:

Comm 48.04 (1) (e) MTBE content. 1. Except as provided in subd. 2., gasoline, automotive gasoline, gasoline-alcohol fuel blends, and reformulated gasoline, as defined in s. 285.37 (1), Stats., beginning on August 1, 2004, may not contain more than 0.5%, by volume, of methyl tertiary-butyl ether.

2. Racing fuel used at racing events or in preparation for racing events may contain any amount of methyl tertiary-butyl ether.

SECTION 6. Comm 48.04 (2) is amended to read:

Comm 48.04 (2) AVIATION GASOLINE. Any petroleum product designated by name or reference as aviation gasoline shall meet the requirements of ~~Table 48.04 C~~ ASTM D910 or D6227.

SECTION 7. Comm 48.04 Table 48.04-C is repealed.

SECTION 8. Comm 48.05 is amended to read:

Comm 48.05 ~~Minimum kerosene~~ Kerosene specifications. Any petroleum product designated by name or reference as "kerosene" shall meet the ~~minimum~~ requirements specified in ~~Table 48.05~~ ASTM D3699.

SECTION 9. Comm 48.05 Table 48.05 is repealed.

SECTION 10. Comm 48.06 is amended to read:

Comm 48.06 Fuel oil specifications. Any petroleum product designated by name or reference as No. 1 fuel oil ~~or No. 2 to No. 6~~ fuel oil shall meet the requirements specified in ~~Table 48.06~~ ASTM D396.

SECTION 11. Comm 48.06 Table 48.06 is repealed.

SECTION 12. Comm 48.07 is amended to read:

Comm 48.07 Diesel fuel ~~oils~~ oil specifications. ~~(1) Any~~ Except as provided in sub. (2), any petroleum product designated by name or reference as No. 1 diesel fuel oil ~~or No. 2 to No. 4~~ diesel fuel oil shall meet the requirements specified in ~~Table 48.07~~ ASTM D975.

SECTION 13. Comm 48.07 Table 48.07 is repealed.

SECTION 14. Comm 48.07 (2) to (4) are created to read:

Comm 48.07 (2) The flash point specification temperature for No. 2 diesel fuel oil shall be 100 degrees Fahrenheit.

(3) Non-petroleum sources of diesel fuel meeting the requirements specified in ASTM D6751 may be added to diesel fuel meeting the requirements specified in ASTM D975.

(4) Any person who distributes petroleum-source diesel fuel mixed with non-petroleum-source diesel fuel shall state on any invoice, bill of lading, shipping paper or other documentation accompanying the shipment used in normal and customary business practices, the type and percentage of each component rounded to a whole number or half number equal to or less than the determined percentage.

SECTION 14M. Comm 48.08 is repealed.

SECTION 15. Comm 48.09 (1) (a) 3. is repealed.

SECTION 16. Comm 48.09 (3) (b) (intro.) is amended to read:

Comm 48.09 (3) (b) (intro.) *Sampling procedures by others.* Recipients of petroleum products and users of petroleum products ~~which have been certified by the department~~ who are required to take a sample as specified in sub. (2) (c) shall comply with the following sampling procedures.

SECTION 17. Comm 48.10 (1) (a), (b) 1., 2., Note, 3. and 5. are amended to read:

Comm 48.10 (1) (a) General. All devices dispensing petroleum products at filling stations, garages or other places where petroleum products are sold or offered for sale shall be marked with a conspicuous label on both faces of the dispensing device indicating the ~~name and grade~~ automotive fuel rating of the petroleum 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. 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.

(b) 1. A device that dispenses a gasoline-ethanol fuel blend of more than 2% by volume of ethanol shall be labeled with the maximum volume percent of ethanol at all times the product is offered for retail sale.

2. A device that dispenses a reformulated gasoline, as defined in s. ~~444.3716(1)~~ 285.37 (1), Stats., that contains an oxygenate other than ethanol shall be labeled with the identity of the

oxygenate at all times the product is offered for retail sale. If the reformulated gasoline contains multiple oxygenates, the label shall identify the predominate oxygenate based upon volume percent.

Note: Reformulated gasoline is identified in s. ~~444.3716 (4)~~ 285.37 (1), Stats., as gasoline formulated to reduce emissions of volatile organic compounds and toxic air pollutants as provided in ~~42 USC 7545 (k) (5)~~ 42 USC 7545 (k) (1) to (3). The addition of an oxygenate to a fuel alone does not create a reformulated gasoline, other criteria specified in the law must also be met.

3. The label shall be placed on the face of the dispenser next to the name and grade of the product being dispensed. No label may be placed so that the text is sideways or upside down.

5. The label shall identify the oxygenate as either "Ethanol", "Methyl Tertiary Butyl Ether (MTBE)", "Ethyl Tertiary Butyl Ether (ETBE)", "Tertiary Amyl Methyl Ether (TAME)", "Tertiary Butyl Alcohol (TBA)", or as an other oxygenate name approved by the ~~bureau of petroleum~~ department.

SECTION 18. Comm 48.10 (3) is repealed and re-created to read:

Comm 48.10 (3) MISLABELING. (a) *General.* Any person receiving, unloading, using, offering for sale or selling any petroleum product shall identify the product as to name or grade. A person may not deliberately deliver, unload or drop any dissimilar fuels, dissimilar octane or dissimilar grade of petroleum products into tank storage that would allow fraudulent fuel sales.

(b) *Used oils.* Any person representing, advertising, promoting for sale, offering for sale or selling any lubricating oil which has previously been used shall identify the product as such. The label shall contain the appropriate and descriptive words of "reclaimed used lubricating oil", "rerefined used lubricating oil", "re-cleaned used lubricating oil" or "reconditioned used lubricating oil."

SECTION 19. Comm 48.11 (1) (b) to (d) are repealed.

SECTION 20. Comm 48.11 (3) is amended to read:

Comm 48.11 (3) RECEIPT RECORDS. Every person receiving petroleum products shall maintain records, together with bills of lading, waybills and other pertinent documents, for at least ~~3~~ 4 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 products shipped or received.

SECTION 21. Appendices A, B and C are repealed.

END

EFFECTIVE DATE

Pursuant to s. 227.22 (2)(intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.
