

Chapter Comm 48

PETROLEUM PRODUCTS

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Note: Chapter Ind 10 was renumbered to be chapter ILHR 48, Register, May, 1984, eff. June 1, 1984. Chapter ILHR 48 was renumbered to be chapter Comm 48 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, October, 1996, No. 490.

Subchapter I — Administration and Enforcement

Comm 48.01 Power and authority. (1) RULE-MAKING AUTHORITY. The department has been granted the power and authority for the promulgation of rules relating to petroleum product grade specifications and the administration and enforcement of the rules.

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

(3) AUTHORITY TO SAMPLE AND TEST. The department has been granted the authority to obtain samples of 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.

(4) 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 or receipt of products of petroleum for the purpose of determining the amount of petroleum products shipped or received.

(5) AUTHORITY TO PERFORM INVESTIGATIONS. Any accident or explosion involving products of petroleum which come to the knowledge of the department shall be investigated by the department to determine whether or not there has been a violation of these rules.

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

(7) AUTHORITY TO STOP SALE. Persons with enforcement authority under this chapter shall have the authority to shut down petroleum storage tank systems by the issuance of orders and the disabling with locks under the following conditions:

(a) *Immediate shutdown to protect life, safety or health.* Petroleum storage systems which 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 contaminated with gasoline, or contaminated aircraft fuels.

(b) *Immediate shutdown to blend or remove petroleum products or wastes.* Petroleum 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) *Shutdown after long term violation.* Petroleum storage systems containing petroleum products for which there is a continuing code violation under this chapter are subject to shutdown if the following conditions are met:

1. An order is issued with a specific compliance date and a period for compliance;
2. The first reinspection made after the specified compliance date shows that compliance has not been achieved;
3. A second compliance date is set with a period for compliance;
4. Reinspection after the second compliance date shows that compliance is still not achieved; and
5. The owner has not filed a written appeal with the department within 15 days of receiving the order.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; emerg. cr. (7), eff. 9-13-95; cr. (7), Register, May, 1996, No. 485, eff. 6-1-96.

Comm 48.02 Petition for variance, penalties and fees. (1) PENALTIES.

Pursuant to s. 168.15, Stats., every 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 for inspection shall be in accordance with ch. Comm 2, Fee Schedule, s. Comm 2.41.

Note: Section Comm 2.41 was repealed effective 11-1-05.

(3) REIMBURSEMENT OR CREDIT. If a petroleum product is shipped outside of the state after inspection, the persons making the shipment shall be given credit or be reimbursed by the department for such fees, providing the following conditions are met:

- (a) Notice of such shipment out of state is properly acknowledged and sworn to before a notary public.
- (b) The notice is given to the department not later than the 20th day of the following month.

(4) NO INSPECTION FEE. No inspection fee shall be charged on a petroleum product that is shipped by a person from storage at a refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture in this state to a person for storage at another refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture in this state.

(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.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; am. Register, October, 1984, No. 346, eff. 11-1-84; renum. (5) to be (5) (a) and cr. (5) (b), Register, April, 1985, No. 352, eff. 5-1-85; r. and recr. (1), Register, February, 1986, No. 362, eff. 3-1-86; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1995, No. 479; CR 03-011: r. and recr. (5) Register December 2003 No. 576, eff. 1-1-04.

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% or more by volume, or such other percentage, but not less than 70%, 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.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; cr. (6) and (7), Register, February, 1986, No. 362, eff. 3-1-86; CR 03-011: r. and recr. Register December 2003 No. 576, eff. 1-1-04.

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.

History: CR 03-011: cr. Register December 2003 No. 576, eff. 1-1-04.

Subchapter II — Petroleum Product Specifications

Comm 48.04 Gasoline specifications. (1) GASOLINE, AUTOMOTIVE GASOLINE, AND GASOLINE/ALCOHOL-ETHER BLENDS. Gasoline, automotive gasoline, and gasoline/alcohol-ether blends sold or offered for sale in this state shall be visually free of undissolved water, sediment and suspended matter and shall be clear and bright at the ambient temperature or 70° F (21° C), whichever is higher.

(a) *Gasoline.* Any petroleum product designated by name or reference as gasoline shall meet the requirements of Table 48.04-A.

**TABLE 48.04-A
MINIMUM REQUIREMENTS FOR GASOLINE**

Test	Requirement	ASTM Test Method ^{a/}
Distillation temp., deg F (deg C):		D86
Initial boiling point (max.)	131° F (55° C)	
Not less than 10% evaporation	167° F (75° C)	
Not less than 50% evaporation	284° F (140° C)	
Not less than 90% evaporation	392° F (200° C)	
End point (max.)	437° F (225° C)	
Natural residue (max.)	2%	

^{a/} Pursuant to s. 168.07, Stats., the latest revision of the ASTM Book of Standards of the American Society for Testing and Materials shall be used.

(b) *Automotive gasoline.* Any petroleum product designated by name or reference as automotive gasoline shall meet the requirements of ASTM D4814.

(c) *Gasoline/oxygenate blends.* 1. Anhydrous denatured alcohol may be added to gasoline if the original gasoline product meets the requirements of par. (b).

2. The alcohol content for ethyl alcohol may not exceed a concentration of 10 volume percent.

3. The alcohol content for methyl alcohol may not exceed a concentration of one volume percent.

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).

(d) *Documentation.* Any person who distributes gasoline products which contain one percent or more by volume of ethyl alcohol or methyl alcohol, or both, 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 alcohol rounded to a whole number or half number equal to or less than the determined percentage.

(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.

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

History: R. and recrate from Ind 10.03, Register, July, 1980, No. 295, eff. 8-1-80; Table 10.04-B1 reprinted to correct error, Register, September, 1980, No. 297; r. and recr. (1) (c) and Table 48.04-B1, cr. (1) (d), Register, February, 1986, No. 362, eff. 3-1-86; CR 03-011: am. (1) (b) and (2), r. Tables 48.04-B1, B2, and C, cr. (1) (e), Register December 2003 No. 576, eff. 1-1-04.

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

History: R. and recr. from Ind 10.03, Register, July, 1980, No. 295, eff. 8-1-80; am. table, Register, May, 1984, No. 341, eff. 6-1-84; r. and recr. table, Register, February, 1986, No. 362, eff. 3-1-86; CR 03-011: am., r. Table 48.05 Register December 2003 No. 576, eff. 1-1-04.

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

History: R. and recr. from Ind 10.01 and 10.02, Register, July, 1980, No. 295, eff. 8-1-80; am. table, Register, May, 1984, No. 341, eff. 6-1-84; r. and recr. table, Register, February, 1986, No. 362, eff. 3-1-86; CR 03-011: am., r. Table 48.06 Register December 2003 No. 576, eff. 1-1-04.

Comm 48.07 Diesel fuel oil specifications.

(1) Except as provided in sub. (2), any petroleum 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 D975.

(2) The flash point specification temperature for No. 2 diesel fuel oil shall be 100° 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.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; r. and recr. table, Register, February, 1986, No. 362, eff. 3-1-86; CR 03-011: am., r. Table 48.06, cr. (2) to (4) Register December 2003 No. 576, eff. 1-1-04.

Comm 48.08 Octane posting. **History:** Cr. Register, July, 1980, No. 295, eff. 8-1-80; r. and recr. Register, February, 1986, No. 362, eff. 3-1-86; CR 03-011: r. Register December 2003 No. 576, eff. 1-1-04.

Subchapter III — Inspection Procedures

Comm 48.09 Inspection procedures. (1) INSPECTION OF PETROLEUM PRODUCTS. All petroleum products imported into and received in this state shall be sampled by the department prior to being unloaded, sold, offered for sale or used.

(a) *Exceptions.* The inspection of petroleum products does not apply in the following situations:

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

2. Where the department permits unloading of ships or boats due to an emergency declared by the coast guard or where a permit has been granted by the department.

(2) NOTIFICATION FOR INSPECTION. (a) The recipient of all petroleum 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 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 product into a container with another grade of petroleum product, the entire

commingled product shall be deemed uninspected and the department shall be notified.

(c) If no sample is taken by an inspector within the time limit specified, the receiver or commingler shall take a true sample of not less than 8 ounces in accordance with the procedures per sub. (3) (b).

(d) After proper notification, the department shall take a sample of the petroleum product in accordance with the following schedule:

<u>Time of notification by recipient</u>	<u>Time of sampling by department</u>
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Before 11:45 a.m. 11:45 a.m. – 4:30 p.m. of same day

11:45 a.m. – 4:30 p.m. Before 11:45 a.m. of following day

Note: Saturdays, Sundays and legal holidays are not considered regular business days.

(3) SAMPLING PROCEDURES. A true sample of at least 8 ounces shall be taken from every shipment of petroleum products, including commingled products, imported into and received in this state.

(a) *Department procedures.* The department shall inspect each sample of petroleum product and perform the tests, deemed necessary, in accordance with the specifications as outlined in this code.

1. The department shall issue an inspection certificate if the petroleum product meets the specifications set forth in this code.

2. If the petroleum product does not meet the standards specified in this code, the department will notify the person for whom the inspection was made that the petroleum product shall not be sold, used or removed from storage until compliance with the standards are satisfied.

(b) *Sampling procedures by others.* Recipients of petroleum products who are required to take a sample as specified in sub. (2) (c) shall comply with the following sampling procedures.

1. The sample shall be taken in the presence of a disinterested person.

2. The petroleum sample shall be placed in a clean container which can be tightly closed.

3. The container holding the sample shall be identified with the following information:

- a. Means of conveyance (i.e., from a pipeline, tank car);
- b. Type of original container;
- c. Product name;
- d. Content quantity.

4. Upon request, the sample taken shall be held for delivery to the inspector.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; CR 03-011: r. (1) (a) 3., am. (3) (b) (intro.) Register December 2003 No. 576, eff. 1-1-04.

Comm 48.10 Labeling of dispensers and containers. (1) DISPENSING EQUIPMENT. (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 visible on both faces of the dispensing device indicating the 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) *Oxygenated gasoline dispensing device labels.* 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. 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 predominant oxygenate based upon volume percent.

Note: Reformulated gasoline is defined in s. 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) (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.

4. The label shall be contrasting in color to the dispenser and have lettering using not less than one-half inch high letters with a stroke of not less than one eighth inch in width.

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 department.

6. A label shall state that the product being dispensed "Contains" followed by the approved name for the oxygenate.

7. A label shall be conspicuous and legible to a customer when viewed from the driver's seat of a motor vehicle that is located within 6 feet of the dispensing device.

8. The label shall be capable of withstanding extremes of weather conditions for at least one year and shall be resistant to gasoline, oil, grease, solvents, detergents, and water. When damaged so that they are not legible, labels shall be replaced.

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 days of receiving the order, the department shall stop the sale of the product in accordance with s. Comm 48.01 (7).

(2) STORAGE CONTAINERS. All containers for storing gasoline shall be metal or materials meeting the standards approved by the department and all containers shall be labeled and colored red. These requirements do not apply to the following:

(a) *Exception No. 1.* Fuel supply tanks connected to internal combustion engines, appliances or any device consuming the fuel.

(b) *Exception No. 2.* Any container holding one gallon or less of a petroleum product, which was filled originally by a manufacturer or a packager, and which complies with the federal standards for packaging and labeling.

(c) *Exception No. 3.* Kerosene, diesel fuel, burner fuel oils and similar products of petroleum with a flash point of 100° F (38° C) or greater shall not be stored in any container colored red.

(d) *Exception No. 4.* Containers having a capacity of 275 gallons or more.

(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."

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

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; renun. (1) (a) to be (4), cr. (1) (a), Register, May, 1984, No. 341, eff. 6-1-84; reprinted to correct error in (1) (a), Register, October, 1984, No. 346; r. and recr. (1), Register, February, 1986, No. 362, eff. 3-1-86; emerg. r. and recr. (1) (b), r. (1) (c), eff. 9-13-95; r. and recr. (1) (b), r. (1) (c), Register, May, 1996, No. 485, eff. 6-1-96; correction in (1) (b) 2. made under s. 13.93 (2m) (b) 7., Stats.; **CR 03-011: am. (1) (a), (b) 1., 2., 3. and 5., r. and recr. (3) Register December 2003 No. 576, eff. 1-1-04.**

Comm 48.11 Records. (1) **DEPARTMENT RECORDS.** The department shall keep records of each inspection made showing:

- (a) Time and place of each inspection;
- (e) Product name of petroleum product inspected;
- (f) Name and address of person for whom inspection is made.

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

(3) **RECEIPT RECORDS.** Every person receiving petroleum products shall maintain records, together with bills of lading, waybills and other pertinent documents, for at least 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.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; **CR 03-011: r. (1) (b) to (d), am. (3) Register December 2003 No. 576, eff. 1-1-04.**