

CR 10-006

ORDER OF THE DEPARTMENT OF COMMERCE

CREATING RULES

The Wisconsin Department of Commerce adopts an order to repeal Comm 48.200 (3) and (4) and 48.580 (1) (b) 6.;

to renumber Comm 48.100 (7) (d) 2. to 4.; 48.200 (title) and (5); 48.300 (title), (1) (a) to (d), (2) to (6) and (10) to (12); 48.400 (1) (g) and (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 3., 5., 7. and 8. and (c), (2) (title) and (a) (title), (intro.), 1. and 3. and (3) (b); 48.590 (title) and (3); 48.600 (title), (1) (a) (title), (b) (title) and 2., (2) (title), (c) and (d) and (3) (title) and (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) (intro.); 48.100 (1) (d) 5.; 48.200 (1) and (2); 48.300 (1) (intro.) and (7) to (9); 48.400 (title) and (1) (a) to (f), (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) 4. and 9. and (c), (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); 48.210 (1) (d) 4. Note; 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 rule changes in this order 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, combustible and hazardous liquids.

5. Plain Language Analysis

The rule changes in this order 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 incorporating the ASTM standards has been obtained from the Attorney General.

These rule changes also include several clarifications and refinements relating to administration and enforcement by the Department's inspectors. These changes (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 rule changes in this order 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 rule changes in this order 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 rule changes 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 guidelines produced by the federal Small Business Administration's Office of Advocacy.

10. Effect on Small Business.

The rule changes in this order 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

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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~~ 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) **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~~ pose an immediate danger to life, safety, or health include ~~but are not limited to~~ all of the following:

1. ~~heating~~ Heating oil that is contaminated with gasoline.
2. ~~or kerosene~~ Kerosene that is contaminated with gasoline,;
3. ~~or contaminated aircraft fuels~~ Aircraft fuel that is contaminated with any substance.

(b) *Immediate shutdown to blend or remove* ~~petroleum liquid fuel~~ products or wastes. ~~Petroleum~~ Liquid fuel storage systems ~~which that~~ contain wastes or products ~~that~~ which 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 Comm 48.100 (8) (e) (intro.) and 5, as renumbered, are 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:

5. The owner has not filed a written appeal with the department within 15 calendar days of ~~receiving~~ the date of the order.

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) in subchapter I, 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 in subchapter I, and Comm 48.130 (1) (intro.) and (7) to (9), as renumbered, are amended to read:

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

(7) “Inspector” means a duly authorized ~~petroleum products~~ 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 48.300 (1) (a) Note [2] and (c) Note, (3) (a) Note and (4) Note are created in subchapter III 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.

(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.

(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.

(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 11. Comm 48.310 (2) (e) is created in subchapter III to read:

Comm 48.310 (2) (e) 1. A person who changes the fuel product dispensed from a tank system from a Class II or III liquid to a Class I liquid shall notify the department’s corresponding district inspection office, 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 corresponding district 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 at www.commerce.state.wi.us/ER/pdf/bst/Forms_FM/ER-BST-FM-8592-BRPSmap.pdf for the contact information for the Department’s district inspection offices.

SECTION 12. Comm 48.320 is created in subchapter III 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 13. Comm 48.400 is renumbered Comm 48.200 in subchapter II, and Comm 48.200 (title) and (1) (a) to (f), (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~~ D396-09a, Standard Specification for Fuel Oils.
- (b) ASTM ~~D 910-04a~~ D910-07a, Standard Specification for Aviation Gasolines.
- (c) ASTM ~~D 975-05~~ D975-09b, Standard Specification for Diesel Fuel Oils.
- (d) ASTM ~~D 1655-05~~ D1655-09, Standard Specification for Aviation Turbine Fuels.
- (e) ASTM ~~D 3699-05~~ D3699-08, Standard Specification for Kerosine.
- (f) ASTM ~~D 4806-04a~~ D4806-09, Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel.
- (h) ASTM ~~D 5798-99(2004)~~ D5798-09b, Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines.
- (j) ASTM ~~D 6751-03a~~ D6751-09a, Standard Specification for Biodiesel Fuel (~~B100~~) Blend Stock (B100) for Middle Distillate Fuels.

SECTION 14. Comm 48.200 (1) (k) and (L) are created to read:

Comm 48.200 (1) (k) ASTM D7467-09a, Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20).

(L) ASTM D7547-09, Standard Specification for Unleaded Aviation Gasoline.

SECTION 15. Comm 48.400 (5) and Note are created in subchapter IV 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 16. Comm 48 subchapter II (title) is amended to read:

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

SECTION 17. Comm 48 subchapter IV (title) is created to read:

CHAPTER Comm 48 SUBCHAPTER IV (title), VIOLATIONS

[Note to LEGISLATIVE REFERENCE BUREAU: This subchapter title precedes s. Comm 48.400.]

SECTION 18. Comm 48.500 and Table 48.500 are renumbered Comm 48.210 and Table 48.210 in subchapter II, 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~~ 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~~ product designated by name or reference as automotive gasoline shall meet the requirements of ASTM ~~D4814~~ D4814.

(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~~ product designated by name or reference as aviation gasoline shall meet the requirements of ASTM ~~D-910~~ D910, D6227 or ~~D-6227~~ D7547.

(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~~ D1655.

SECTION 19. Comm 48.210 (1) (d) 4. Note is created to read:

Comm 48.210 (1) (d) 4. Note: See paragraph (g) for restrictions relating to methyl tertiary-butyl ether.

SECTION 20. Comm 48.510 and 48.520 are renumbered Comm 48.220 and Comm 48.230 in subchapter II and amended to read:

Comm 48.220 Kerosene specifications. Any ~~petroleum fuel~~ product designated by name or reference as “kerosene” or “kerosine” shall meet the requirements specified in ASTM ~~D-3699~~ D3699.

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~~ D396.

SECTION 21. Comm 48.530 (title) and (1) to (3) are renumbered Comm 48.240 (title) and (1) to (3) in subchapter II, 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~~ D975.

SECTION 22. Comm 48.530 (4) and (5) are renumbered Comm 48.240 (5) and (6).

SECTION 23. 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~~ D7467.

SECTION 24. 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~~ motor fuel dispensing facilities, 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 25. Comm 48.580 (1) (b) 6. is repealed.

SECTION 26. Comm 48.580 (1) (b) (title), 1. to 5. and 7. to 9. and (c) are renumbered Comm 48.300 (1) (b) (title) and 1. to 8. and (c), and Comm 48.300 (1) (b) 4., 8. and (c), as renumbered, are amended to read:

Comm 48.300 (1) (b) 4. The label shall be contrasting in color to the dispenser, and ~~have~~ shall include lettering ~~using not less than one-half inch high letters that complies with a stroke of not less than one-eighth inch~~ any applicable requirements in width ch. 168, Stats.

Note: Section 168.11 (1) (b) 1. of the Statutes reads as follows: “A device that dispenses a gasoline-ethanol fuel blend for sale at retail shall be marked or labeled with the percentage of ethanol, using one-half inch high letters with a stroke of not less than one-eighth inch in width, at all times when the product is offered for sale.”

8. 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).

(c) *Dual dispenser for ethanol.* A dispensing device which has existed since before February 1, 2009, and which does not use a separate fueling nozzle and hose for dispensing ethanol-blended motor fuels of more than 10 percent ethanol by volume shall bear a label clearly warning any purchaser that the first gallon may have more than 10 percent ethanol by volume. This label shall be adjacent to the ethanol label that is required in par. (b), and shall comply with the requirements in par. (b) 3., 4., ~~7.~~ 6. and ~~8.~~ 7. Enforcement of this paragraph shall be in accordance with par. (b) ~~9.~~ 8.

SECTION 27. 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~~ Containers holding one gallon or less of a ~~petroleum liquid fuel~~ product, which ~~was~~ were filled originally by a manufacturer or a packager, and which ~~complies~~ comply 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 28. 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 29. 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 30. Comm 48.590 (5) and (6) are renumbered Comm 48.400 (6) and (7) 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~~ D56 or ASTM ~~D-6450~~ D6450 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~~ D56 or ASTM ~~D-6450~~ D6450 closed tester, in any portable container which is in any manner colored red.

SECTION 31. 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) ~~1. The~~ Where requested by the department, the recipient of all ~~petroleum~~ liquid fuel products ~~received on Monday through Friday~~ shall notify the ~~department~~ department's corresponding district inspection office of the receipt, between the hours of 7:45 a.m. and 4:30 p.m. on the day of the receipt, except as provided in subd. 2. or 3.

~~2. The~~ Where requested by the department, the department's corresponding district inspection office 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.

~~3. Where requested by the department, current delivery schedules for liquid fuel products delivered through a pipeline shall be made available to the department's corresponding district inspection office.~~

(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~~ department's corresponding district inspection office shall be notified.

SECTION 32. 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 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 48.330 in subchapter III and amended to read:

Comm 48.330 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.

(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.
