

Clearinghouse Rule 16-092

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT
DEPARTMENT OF SAFETY AND : ADOPTING RULES
PROFESSIONAL SERVICES : (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the department to repeal SPS 305.73 (3) (a) (Note) and amend SPS 305.73 (3) (a) and (4) (a) and (Note), (b) and (Note), and (c) (Note 1), relating to liquefied gas suppliers.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 101.16 (3r) and (4), Stats.

Statutory authority:

Sections 101.02 (1) and 101.16 (3g) (a), Stats.

Explanation of agency authority:

Section 101.02 (1), Stats., provides “[t]he department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings.

Section 101.16 (3g) (a), Stats., as amended effective October 1, 2016, by 2015 Wisconsin Act 327 provides “[n]o retailer may distribute liquefied petroleum gas without holding a license issued by the department. The department, subject to s. 101.02 (20) and (21), shall issue a license to be a retailer upon receiving the fee established under s. 101.19 (1g) (L) or (1m) and upon the retailer's obtaining commercial general liability insurance as required under sub. (3r) (c). The term of the license shall be set by the department, not to exceed 2 years.”

Related statutes or rules:

None.

Plain language analysis:

The proposed rules reflect the provisions of 2015 Wisconsin Act 327, which changes the financial responsibility requirements for retailers of liquefied petroleum gas.

Current rules authorize a person applying for or holding a liquefied gas supplier or liquefied gas supplier – restricted license to have either 1) a surety bond, 2) an irrevocable letter of credit, or 3) commercial general liability insurance as the proof of financial responsibility required under s. 101.16, Stats. The proposed rule amends s. SPS 305.73 to reflect the provisions of 2015 Wisconsin Act 327, which, effective October 1, 2016, eliminates the first 2 options listed above. Under the Act, a person applying for or holding a liquefied gas supplier or liquefied gas supplier – restricted license is required to have commercial general liability insurance.

Summary of, and comparison with, existing or proposed federal statutes and regulations:

None.

Comparison with rules in adjacent states:

An Internet-based search found the states of Illinois, Iowa, Michigan, and Minnesota do not have rules relating to the licensing of retail liquefied gas suppliers.

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing the provisions of 2015 Wisconsin Act 327 in conjunction with the current rules relating to liquefied gas suppliers under s. SPS 305.73.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Jeffrey.Weigand@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8935, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held at 8:00 a.m. on January 31, 2017, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 305.73 (3) (a) is amended to read:

SPS 305.73 (3) (a) A person applying for either a liquefied gas supplier or a liquefied gas supplier — restricted license shall ~~provide proof of financial responsibility~~ as required under s. 101.16 (3r) (c), Stats., obtain commercial general liability insurance as an endorsement to an existing policy or as a separate policy from an insurer, or a risk retention group, that is licensed to transact the business of insurance in this state or that is eligible to provide insurance as a surplus lines insurer in one or more states.

SECTION 2. SPS 305.73 (3) (a) (Note) is repealed.

SECTION 3. SPS 305.73 (4) (a) and (Note), (b) and (Note), and (c) (Note 1) are amended to read:

SPS 305.73 (4) (a) A person who holds either a liquefied gas supplier or a liquefied gas supplier — restricted license shall maintain ~~proof of financial responsibility~~ commercial general liability insurance in accordance with s. 101.16 (3r) (a) or (b), Stats.

(Note) Section 101.16 (3r) (a) and (b), Stats., reads as follows:

(a) Except as provided in par. (b), a ~~retail supplier (a licensed liquefied gas supplier or a liquefied gas supplier — restricted)~~ retailer shall maintain ~~proof of financial responsibility~~ commercial general liability insurance in the amount of \$1,000,000 per occurrence with an annual aggregate of \$2,000,000 for compensating 3rd parties for bodily injury and property damages for incidents associated with the release of liquefied petroleum gas.

(b) A ~~retail supplier (a licensed liquefied gas supplier or a liquefied gas supplier — restricted)~~ retailer who only fills department of transportation cylinders or who only fills containers for engine and recreational vehicle fueling systems shall maintain ~~proof of financial responsibility~~ commercial general liability insurance in the amount of \$500,000 per occurrence with an annual aggregate of \$1,000,000 for compensating 3rd parties for bodily injury and property damages for incidents associated with the release of liquefied petroleum gas.

(b) Pursuant to s. 101.16 (3r) (g), Stats., a person who holds either a liquefied gas supplier or a liquefied gas supplier — restricted license shall notify the department at

least 60 days before cancelling or failing to renew a ~~surety bond, letter of credit or commercial~~ general liability insurance ~~as proof of financial responsibility~~.

(Note) Section 101.16 (3r) (f), Stats., requires a 3rd party that issues a ~~surety bond, letter of credit, or commercial~~ general liability insurance to a ~~retail supplier~~ retailer for ~~purposed~~ purposes of this subsection shall provide written notice to the ~~retail supplier~~ retailer and to the department at least 60 days before canceling, revoking, suspending, or failing to renew the ~~bond, letter or~~ insurance.

(c) (Note 1) Section 101.16 (4) (c), Stats., reads: Each ~~retail supplier~~ retailer filling a container that is part of a propane gas system shall provide written notice to each ~~customer~~ customer subject to par. (b) of the customer's duty under par. (b) before the ~~retail supplier's~~ retailer's first delivery of propane gas to that customer and shall provide subsequent notices on an annual basis. The notice shall include all of the following information concerning the duty to notify under par. (b):

1. The name, address, and telephone number of the ~~retail supplier~~ retailer.
2. The purpose of giving the notification to the ~~retail supplier~~ retailer.
3. A description of the type of propane gas system that is subject to the notification requirement.
4. A description of the types of activities that constitute a replacement, modification, repair, or servicing of a propane system.
5. A copy of the provisions under s. 101.16 (4) (b).

SECTION 4. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
