CHAPTER 168

PETROLEUM PRODUCTS AND DANGEROUS SUBSTANCES

SUBCHAPTER I

PETROLEUM PRODUCT INSPECTIONS

168.01 Definitions. In this subchapter:
(1) “Department” means the department of agriculture, trade and consumer protection.
(2) “Inspector” means a duly authorized petroleum products inspector of the department.
(2s) “Person” includes any individual, sole proprietorship, partnership, limited liability company, corporation, or association. A single−owner entity that is disregarded as a separate entity under ch. 71 is disregarded as a separate entity for purposes of this subchapter.
(3) “Petroleum products” means gasoline, gasoline−alcohol fuel blends, kerosene, fuel oil, burner oil and diesel fuel.
(4) “Supplier” includes a person who imports, or acquires immediately upon import, petroleum products by pipeline or marine vessel from a state, territory or possession of the United States or from a foreign country into a terminal and who is registered under 26 USC 4101 for tax−free transactions in gasoline.
“Supplier” also includes a person who produces in this state; or who merely handles in a terminal petroleum products consigned to the terminal operator.
(5) “Person” includes any individual, sole proprietorship, partnership, limited liability company, corporation, or association. A single−owner entity that is disregarded as a separate entity under ch. 71 is disregarded as a separate entity for purposes of this subchapter.
(6) “Person” includes any individual, sole proprietorship, partnership, limited liability company, corporation, or association. A single−owner entity that is disregarded as a separate entity under ch. 71 is disregarded as a separate entity for purposes of this subchapter.
(7) “Petroleum products” means gasoline, gasoline−alcohol fuel blends, kerosene, fuel oil, burner oil and diesel fuel.
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“Supplier” also includes a person who produces in this state; or who merely handles in a terminal petroleum products consigned to the terminal operator.
(9) “Person” includes any individual, sole proprietorship, partnership, limited liability company, corporation, or association. A single−owner entity that is disregarded as a separate entity under ch. 71 is disregarded as a separate entity for purposes of this subchapter.
(10) “Petroleum products” means gasoline, gasoline−alcohol fuel blends, kerosene, fuel oil, burner oil and diesel fuel.
(11) “Supplier” includes a person who imports, or acquires immediately upon import, petroleum products by pipeline or marine vessel from a state, territory or possession of the United States or from a foreign country into a terminal and who is registered under 26 USC 4101 for tax−free transactions in gasoline.
“Supplier” also includes a person who produces in this state; or who merely handles in a terminal petroleum products consigned to the terminal operator.

168.04 Standards. (1) The department by rule shall prescribe minimum product grade specifications for gasoline, automotive gasoline, gasoline−alcohol fuel blends, reformulated gasoline, as defined in s. 285.37 (1), and kerosene and may prescribe product grade specifications for aviation gasoline, fuel oils, and diesel fuels.
(2) Except as provided in par. (b), the rules required under sub. (1) shall prohibit gasoline, automotive gasoline, gasoline−alcohol fuel blends, and reformulated gasoline, as defined in s. 285.37 (1), beginning on August 1, 2004, from containing more than 0.5 percent, by volume, of methyl tertiary−butyl ether.
(b) The rules required under sub. (1) shall not prohibit racing fuel used at racing events or in preparation for racing events from containing any amount of methyl tertiary−butyl ether.

168.05 Inspection of petroleum products. (1) No petroleum product imported into and received in this state or received from a manufacturer or refiner or from a marine or pipeline terminal within this state may be unloaded from its original container except as provided under sub. (5), sold, offered for sale or used until a true sample of not less than 8 ounces is taken as provided in this subchapter. This subsection does not apply if the department has previously inspected the petroleum product at the refinery, marine or pipeline terminal. Each person importing or receiving a petroleum product which has not been previously inspected shall notify the inspector in the person’s district of the receipt thereof, and the inspector shall take a sample of the petroleum product.

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(2) If such petroleum product is received on a regular business day between the hours of 7:45 a.m. and 4:30 p.m., such notice shall be given forthwith upon receipt of such petroleum product. If received at any other time, such notice shall be given between the next succeeding hours of 7:45 a.m. and 10 a.m. of a regular business day. Provided, that if any petroleum product is received on Saturday, Sunday, or any legal holiday, designated in s. 995.20, such notice shall be given on the next following regular business day between the hours of 7:45 a.m. and 10 a.m.

(3) If the inspector does not, upon proper notice, after a reasonable length of time, take such sample, the recipient of such petroleum product may, in the presence of a disinterested witness, open such original container and take a true sample of not less than 8 ounces of the contents thereof. Such sample shall be immediately placed in a clean container which is in compliance with s. 168.11 (2) and (3) and tightly closed. The recipient shall record upon a label attached to such container the means of conveyance, the type of original container, the product name and quantity of the contents thereof, and such other information as the department reasonably requires for the proper identification of such shipment. Such sample thus taken shall be held for delivery, upon demand, to the inspector. After such sample is taken such petroleum product may be unloaded, sold, offered for sale or used the same as if sampled by the inspector.

(4) For the purpose of this section, the following shall constitute a reasonable length of time in which an inspector shall take the sample herein required: If notice is properly given to an inspector before the hour of 11:45 a.m., the inspector shall take such sample before the hour of 4:30 p.m. of the day; if notice is properly given between the hours of 11:45 a.m. and 4:30 p.m., such sample shall be taken before the hour of 11:45 a.m. of the next following regular business day. Saturdays, Sundays, and legal holidays, designated in s. 995.20, shall not be considered regular business days.

(5) The department may permit a recipient to unload such petroleum product prior to inspection if the recipient submits an application setting forth good and sufficient reasons, and may unload ships or boats without inspection if an emergency is declared by the coast guard. A recipient must notify the department as required by sub. (2) and the department shall revoke permission granted under this subsection if the recipient violates sub. (2).

(6) This section does not apply to a petroleum product that is a renewable fuel exempt under s. 78.01 (2)(a) from the tax under s. 78.01 (1) unless inspection is required by federal law.

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168.07 Inspections; requirements. (1) The inspector shall inspect each sample of petroleum product and if the inspector finds that it meets the minimum specifications prescribed by the department, the inspector shall issue an inspection certificate, except that inspections for particular grade specifications shall be at the discretion of the department. If an inspector believes that a product has been misidentified, an inspection shall be performed. If the inspector finds that the petroleum product does not meet the minimum specifications prescribed by the department, the inspector shall notify the person for whom the inspection was made. After such notice, no person may sell or use the product in this state or remove it from storage as long as it fails to meet the minimum specifications prescribed by the department or until satisfactory disposition is approved by the inspector. Any transporter, wholesaler or distributor of petroleum products who delivers or causes to be delivered a petroleum product that fails to meet the minimum specifications prescribed by the department shall, at the direction of the department, remove the petroleum product and dispose of it in a manner approved by the department. The department may contract for the performance of testing conducted under this subsection.

(2) Inspections under sub. (1) shall be conducted, so far as applicable, in accordance with the methods outlined in the latest revision of the ASTM Book of Standards of ASTM International.

168.08 Records. The department shall keep a record of each inspection made, showing:

(1) Time and place of each inspection.

(2) Name and address of person for whom inspection is made.

168.09 Authority to enter. Any inspector may enter in or upon the premises of any manufacturer, vendor, dealer or user of gasoline, gasoline–alcohol fuel blends, kerosene, other refined oils, fuel oils and petroleum distillates, during regular business hours to determine whether any petroleum product intended for sale or use has not been sampled and inspected in accordance with this subsection.

168.10 Access to records. Every agent or employee of any railroad company or other transportation company and every person transporting gasoline, gasoline–alcohol fuel blends, kerosene, other refined oils, fuel oils and petroleum distillates, having the custody of books or records showing the shipment or receipt of gasoline, gasoline–alcohol fuel blends, kerosene, or other refined oils, fuel oils and petroleum distillates shall give and permit the department and the inspectors; and, in regard to the fee under s. 168.12 (1), shall give and permit the department of revenue; free access to such books and records for the purpose of determining the amount of petroleum products shipped and received. All clerks, bookkeepers, express agents, railroad agents or officials, employees, or common carriers, or other persons shall provide the department and the inspectors; and, in regard to the fee under s. 168.12 (1), shall provide the department of revenue; all informa-
168.105 Dispensing gasoline–ethanol fuel blends. A dispensing device at a retail station may be used to dispense through the same fueling nozzle and hose gasoline–ethanol fuel blends containing greater than 10 percent and not more than 15 percent ethanol by volume, gasoline containing no ethanol, and gasoline–ethanol fuel blends containing not more than 10 percent ethanol by volume if any of the following applies:

(1) All of the following apply:

(a) The retail station provides a device having at least one fueling nozzle and hose that dispenses only gasoline–ethanol fuel blends containing no more than 10 percent ethanol by volume.

(b) A label satisfying the requirements under s. 168.11 (1) (b) 3., is prominently affixed to the dispensing device stating “Passenger Vehicles Only. Use in Other Vehicles, Engines and Equipment May Violate Federal Law.”

(c) The retail station displays signs informing customers of the availability and location of the device required under par. (a).

(2) A label satisfying the requirements under s. 168.11 (1) (b) 3., is prominently affixed to the dispensing device that states that a minimum purchase of 4 gallons is required.

168.11 Identifications. (1) (a) Except as provided in par. (b), all devices used to draw petroleum products from storage containers at filling stations, garages or other places where petroleum products are sold or offered for sale shall be marked or labeled in a conspicuous place and in a conspicuous manner with the name and the grades of the petroleum product being dispensed.

(b) 1. A device that dispenses a gasoline–ethanol fuel blend for sale at retail shall be marked or labeled with the percentage of ethanol at all times when the product is offered for sale.

2. A device that dispenses, for sale at retail, a reformulated gasoline, as defined in s. 285.37 (1), that contains an oxygenate other than ethanol shall be marked or labeled with the identity of the oxygenate at all times when the product is offered for sale. The label shall identify the oxygenate or oxygenates in the manner specified by the department by rule.

3. A label under this paragraph shall be on the front or side of the upper half of the dispensing device and 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. The device may also be marked or labeled with any product grade specifications prescribed under s. 168.04.

(2) No person may deliver, place, receive or store in any visible container any gasoline; any product of petroleum, regardless of name, meeting the gasoline specifications prescribed by the department under s. 168.04; or any product of petroleum commonly or commercially used as a fuel in a spark–ignition internal combustion engine or as a fuel for any appliance or device if such product of petroleum has a flash point of less than 100° F when tested in the Tagliabue closed cup tester, and to dispense kerosene, diesel fuel or burner fuel oils, or a like product of petroleum which has a flash point of less than 100° F when tested in the Tagliabue closed cup tester, unless the pipeline, hose, pump or metering device has been sufficiently flushed and cleaned before the interchanged use to eliminate any contamination of products due to the interchanged use.

168.12 Fees for oil inspection. (1) Except as provided in subs. (1g) and (1r), there is imposed a petroleum inspection fee at the rate of 2 cents per gallon on all petroleum products that are received by a supplier for sale in this state or for sale for export to this state. The department of revenue shall determine when a petroleum product is received under this subsection in the same manner that it determines under s. 78.07 when motor vehicle fuel is received. The fee shall be paid under s. 168.125 and shall be based on the number of gallons reported under s. 168.125.

(1g) The fee under sub. (1) is not imposed on petroleum products that are shipped from storage at a refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture to a person for storage at another refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture.

(1r) The fee under sub. (1) is not imposed on petroleum products exported from this state by a person who is licensed under sub. (7) or s. 78.09.

(2) The fee under sub. (1) is not imposed on a petroleum product that is a renewable fuel exempt under s. 78.01 (2n) from the tax under s. 78.01 (1).

(5) No fee may be charged on a commingled or blended petroleum product when such commingling or blending is approved by the inspector as a satisfactory means of disposing of contaminated or substandard products.

(6) (a) Any person who purchases in this state general aviation fuel, as defined in s. 78.55 (3), from a supplier is eligible for an allowance of 2 cents for each gallon of general aviation fuel purchased in excess of 1,000,000 gallons per month. A person who purchases general aviation fuel for resale is not eligible for the allowance.

(b) To receive an allowance, an eligible purchaser under par. (a) shall complete a claim upon a form that the department of revenue prescribes and furnishes and file the claim with the department of revenue not later than 12 months after the date of purchase of the general aviation fuel.

(c) The department of revenue shall investigate the correctness and veracity of the representations in the claim and may require a claimant to submit records to substantiate the claim. The department of revenue shall either allow or deny a claim under this subsection not later than 60 days after the filing of the claim. If the department of revenue allows the claim, it shall pay the claimant the amount allowed from the moneys appropriated under s. 20.855 (4) (r). If the department of revenue does not pay the allowance by the 90th day after the date on which the purchaser files the claim, the department of revenue shall also pay interest on the unpaid claim beginning on that day, at the rate of 3 percent per year, from the moneys appropriated under s. 20.855 (4) (r).
(d) If a purchaser negligently files a claim under this subsection that is inaccurate in whole or in part, the department of revenue shall:

1. If the department of revenue has not paid the claim but has allowed a portion of the claim, reduce the allowance by 25 percent.

2. If the department of revenue has paid the claim, require the purchaser to refund to the department of revenue that portion of the amount paid under par. (c) to which the purchaser is not entitled and impose a penalty on the purchaser equal to 25 percent of the allowance, plus interest on the sum of the unpaid penalty and the amount required to be refunded, accruing from the date that the penalty is imposed, at the rate of 12 percent per year.

(e) If a purchaser files a fraudulent claim under this subsection, the department of revenue shall:

1. If the claim has not been paid and the department of revenue allows a portion of the claim, impose a penalty on the purchaser, plus interest on the sum of the unpaid penalty and the amount required to be refunded, accruing from the date that the penalty is imposed, at the rate of 12 percent per year.

2. If the claim has not been paid and the department of revenue allows a portion of the claim, reduce the allowance by 50 percent.

3. If the claim has been paid, require the purchaser to refund to the department of revenue that portion of the amount paid under par. (c) that the department of revenue determines was fraudulently obtained and impose a penalty on the purchaser equal to 50 percent of the amount claimed by the purchaser, plus interest on the sum of the unpaid penalty and the amount required to be refunded, accruing from the date that the penalty is imposed, at the rate of 12 percent per year.

(f) Any person who knowingly signs or verifies a fraudulent claim under par. (e) may be fined not more than $500 or imprisoned for not more than 30 days or both.

(g) Any person who knowingly aids, abets or assists another in making a fraudulent claim under par. (e) or in signing or verifying a fraudulent claim under par. (f) may be fined not more than $500 or imprisoned for not more than 30 days or both.

(h) With respect to imposing a penalty and requiring a refund under par. (d), the department of revenue shall give notice to the purchaser within 4 years after the date that the claim was filed. The department of revenue may impose a penalty and require a refund under par. (e) when the department of revenue discovers the fraud committed.

(7) No person may ship petroleum products into this state unless that person has a valid certificate under s. 73.03 (50) and either has a license under s. 78.09 or obtains a petroleum products shipper license from the department of revenue by filing with that department an application prescribed and furnished by that department and verified by the owner of the business if the owner is an individual, by a member if the owner is an unincorporated association, by a partner if the owner is a partnership or by the president and secretary if the owner is a corporation.

(8) (a) To protect the revenues of this state, the department of revenue may require any person who is liable to that department for the fee under sub. (1) to place with it security in the amount that that department determines. The department of revenue may increase or decrease the amount of the security, but that amount may not exceed 3 times the person’s average monthly liability for the fee under sub. (1) as estimated by that department. If any person fails to provide that security, the department of revenue may refuse to issue a license under sub. (7) or s. 78.09 or may revoke the person’s license under sub. (7) or s. 78.09. If any taxpayer is delinquent in the payment of the fee under sub. (1), the department of revenue may, upon 10 days’ notice, recover the fee, interest, penalties, costs and disbursements from the person’s security. The department of revenue may not pay interest on any security deposit.

(b) The security required under par. (a) may be a surety bond furnished to the department of revenue and payable to this state. The department of revenue shall prescribe the form and contents of the bond.

(c) The surety of a bond under par. (b) may conditionally cancel the bond by filing written notice with the person who is liable for the fee under sub. (1) and with the department of revenue. A surety who files that notice is not discharged from any liability that has accrued or from any liability that accrues within 60 days after the filing. If the person who is liable for the fee under sub. (1) does not, within 60 days after receiving the notice, file with the department of revenue a new bond that is satisfactory to that department, that department shall revoke the person’s license under sub. (7) or s. 78.09. If the person furnishes a new bond, the department of revenue shall cancel and surrender the old bond when it is satisfied that all liability under the old bond has been discharged.

(d) If the liability on the bond is discharged or reduced or if the department of revenue determines that the bond is insufficient, that department shall require additional surety or new bonds. If any person who is liable for the fee under sub. (1) fails to file that additional bond within 5 days after the department of revenue provides written notice, that person’s license under sub. (7) or s. 78.09 is revoked.

(e) Suspension, revocation or cancellation of a license under sub. (7) or s. 78.09, partial recovery on the bond or execution of a new bond does not affect the validity of a bond under this subsection.

(9) Sections 78.65 to 78.74 and 78.79 to 78.81 as they apply to the taxes under ch. 78 apply to the fee under sub. (1).
cating oil,” “Reclaned used lubricating oil” or “Reconditioned used lubricating oil”.

(2) No person may receive, unload, use, sell or offer for sale in this state, any gasoline, gasoline-alcohol fuel blends, kerosene, fuel oils, diesel fuels or other petroleum distillates which the person knows, or reasonably should know, is misidentified as to name or grade. Gasoline-ethanol blends that are identified in compliance with s. 168.11 when sold at retail are correctly identified as to name. Biodiesel blends that are identified in compliance with sub. (2m) (c) 4., when sold at retail are correctly identified as to name.

(2m) (a) “Biodiesel fuel” means a fuel that is comprised of monoalkyl esters of long chain fatty acids derived from vegetable oils or animal fats.

(b) No person may represent, advertise, label, or otherwise promote for sale a fuel as being biodiesel fuel unless the fuel meets all of the following requirements:

1. The fuel is registered as biodiesel fuel by a manufacturer under 40 CFR Part 79.
2. The fuel is pure biodiesel fuel, is identified as such with the alphanumeric B100, and does not contain any petroleum product, any additive, or other foreign material.
3. The fuel meets all of the applicable requirements of ASTM International.

(c) No person may represent, advertise, label, or otherwise promote for sale a fuel as being a blend of biodiesel and petroleum-based fuel unless the fuel meets all of the following requirements:

1. The volume percentage of the biodiesel fuel to the petroleum-based fuel is at least 2 percent.
2. The fuel is blended with petroleum-based diesel fuel.
3. The fuel meets all of the applicable requirements of ASTM International.

4. The volume percentage under subd. 1. is disclosed to the purchaser and is identified by use of the alphanumeric Bxx, with a number replacing the xx in the alphanumeric and with that number representing the volume percentage of biodiesel fuel in the biodiesel fuel blend.

(3) A person who sells a gasoline-ethanol fuel blend to a person selling or offering to sell it at wholesale or retail shall provide information before the sale on the ethanol content of the fuel blend to the person selling or offering to sell it and shall provide written verification of the ethanol content at delivery of the fuel blend.


168.15 Penalty. Every person who violates any provision of this subchapter that is not related to the fee under s. 168.12 (1) 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 subchapter is a separate violation.


168.16 Duties of department. (1) The department shall enforce this subchapter. Inspection districts shall be defined and numbered by the department.

(2) Any accident or explosion involving products of petroleum which comes to the knowledge of the department shall be investigated to determine whether or not there has been a violation of this subchapter.

(3) The department may, upon request of state agencies or local authorities, assist in the investigation of hazardous situations involving suspected or known products of petroleum.

(4) The department may promulgate reasonable rules relating to the administration and enforcement of this subchapter.

History: 1971 c. 206; 2013 a. 20.

Cross-reference: See also chs. ATCP 93 and 94, Wis. adm. code.
ing heating oil to any noncommercial storage tank for consumptive use on the premises to submit to the department, within 30 days after the department requests, the location, contents and size of any such tank.

(2) The department may transfer any information which the department receives under sub. (1) to any other agency or governmental unit. The department and any such agency shall treat the name of the owner and the location of any noncommercial storage tank which stores heating oil for consumptive use on the premises, required to be submitted to the department under sub. (1), as confidential and shall not permit inspection or copying under s. 19.35 of any record containing the information.

(3) The rule promulgated under sub. (1) may require the certification or registration of persons who install, remove, clean, line, perform tightness testing on and inspect tanks and persons who perform site assessments. Any rule requiring certification or registration shall also authorize the revocation or suspension of the certification or registration. The department may not require an individual who is eligible for the veterans fee waiver program under s. 45.44 to pay any fee that may be charged pursuant to such a rule.

(4) The department shall promulgate a rule specifying fees for plan review and inspection of tanks for the storage, handling, or use of flammable or combustible liquids and for any certification or registration required under sub. (3).

(5) (a) Subject to par. (b), in addition to any fee charged by the department by rule for plan review and approval for the construction of a new or additional installation or change in operation of a previously approved installation for the storage, handling or use of a liquid that is flammable or combustible or a federally regulated hazardous substance, as defined in s. 168.21 (3), the department shall collect a groundwater fee of $100 for each plan review submittal. The moneys collected under this subsection shall be credited to the environmental fund for environmental management.

(b) Notwithstanding par. (a), an installation for the storage, handling or use of a liquid that is flammable or combustible or a federally regulated hazardous substance, as defined in s. 168.21 (3), that has a capacity of less than 1,000 gallons is not subject to the groundwater fee under par. (a).

(6) The department may not promulgate or enforce a rule that requires the owner or operator of a motor vehicle fueling facility to have a telephone or other means for contacting emergency services available to the public.

History: 2013 a. 20 ss. 1615 to 1619, 1629, 1630; Stats. 2013 s. 168.23; 2015 a. 247.

168.24 Secondary containment requirements. (1) In this section, “hazardous substance” means a combustible liquid, a flammable liquid, or a federally regulated hazardous substance.

(2) The department may not impose any requirement that specifies that pipe connections at the top of a storage tank and beneath all freestanding pumps and dispensers that routinely contain a hazardous substance be placed within secondary containment sumps, if the pipe connections were installed or in place on or before February 1, 2009. This section does not apply after December 31, 2020.

History: 2013 a. 20 ss. 1620 to 1622; Stats. 2013 s. 168.24.

168.25 Enforcement. (1) The department shall enforce this subchapter.

(2) The department shall issue orders directing and requiring compliance with the rules and standards of the department adopted under this subchapter whenever, in the judgment of the department, the rules or standards are threatened with violation, are being violated or have been violated.

(3) The circuit court for any county where violation of such an order occurs has jurisdiction to enforce the order by injunctive and other appropriate relief.

History: 2013 a. 20 ss. 1623 to 1626; Stats. 2013 s. 168.25.

168.26 Penalties. Any person who violates this subchapter or any rule or order adopted under this subchapter shall forfeit not less than $10 nor more than $5,000 for each violation. Each violation of this subchapter or any rule or order under this subchapter constitutes a separate offense and each day of continued violation is a separate offense.

History: 2013 a. 20 s. 1627; Stats. 2013 s. 168.26.

168.28 Inventory of petroleum product storage tanks. (1) Definitions. In this section:

(a) Notwithstanding s. 168.01 (3), “petroleum product” means materials derived from petroleum, natural gas, or asphalt deposits and includes gasoline, diesel and heating fuels, liquefied petroleum gases, lubricants, waxes, greases, and petrochemicals.

(b) “Storage tank” means an enclosed container with a capacity in excess of 60 gallons which is used to hold a petroleum product, regardless of the duration of storage and which is intended for use as a fixed, rather than as a portable, installation.

(2) Inventory of storage tanks. The department shall undertake a program to inventory and determine the location of aboveground storage tanks and underground storage tanks. The department may require its deputies and any person engaged in the business of distributing petroleum products to provide information on the location of aboveground storage tanks and underground storage tanks. The department shall develop uniform procedures for reporting the location of aboveground storage tanks and underground storage tanks.


Cross-reference: See also s. NR 747.11, Wis. adm. code.