

CHAPTER 168

OIL INSPECTION

168.01	Definition	168.10	Access to records
168.02	Inspector defined.	168.11	Identifications.
168.03	Petroleum products defined.	168.12	Fees for oil inspection
168.04	Standards.	168.13	Required records
168.05	Inspection of petroleum products	168.14	Misbranding.
168.06	Powers.	168.15	Penalty.
168.07	Inspections; requirements.	168.16	Duties of department.
168.08	Records.	168.17	Attorney general and district attorney to prosecute.
168.09	Authority to enter.	168.18	Title.

168.01 Definition. In this chapter "department" means the department of industry, labor and human relations.

History: 1971 c. 215.

168.02 Inspector defined. "Inspector" means a duly authorized petroleum products inspector of the department.

168.03 Petroleum products defined. "Petroleum products" means gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil and diesel fuel oil.

History: 1977 c. 29; 1979 c. 140.

168.04 Standards. The department by rule shall prescribe minimum product grade specifications for gasoline and kerosene and may prescribe product grade specifications for automotive gasoline, gasoline-alcohol fuel blends, aviation gasoline, fuel oils and diesel fuels. Automotive gasoline specifications shall include lead content. The rules shall be in conformity with nationally recognized standards, specifications and classifications, such as those published by the American society for testing and materials, the society of automotive engineers and the U.S. environmental protection agency. The department may not promulgate or enforce a rule prohibiting additional information from placement on the dispensing device.

History: 1971 c. 206; 1977 c. 29; 1979 c. 140; 1989 a. 295.

Legislative Council Note, 1979: Clarifies that the department of industry, labor and human relations has authority to promulgate standards for gasoline-alcohol fuel blends. The existing requirement that rules be in conformity with nationally recognized standards, including those published by the U.S. environmental protection agency, should ensure that any rules establishing standards for gasoline-alcohol fuel blends are consistent with federal rulings on those additives permitted to be mixed with unleaded gasoline. [Bill 456-A]

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 chapter. 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. This subsection does not apply if the user receiving the petroleum product is exempted from departmental inspection under s. 168.07 (3).

(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. 895.20, 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. 895.20, 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).

History: 1977 c. 21; 1977 c. 187 s. 135; 1977 c. 273, 418; 1983 a. 192 s. 304

168.06 Powers. (1) For the purposes of administering this chapter, inspectors may take samples of gasoline, gasoline-alcohol fuel blends, kerosene, other refined oils, fuel oils and petroleum distillates for tests and make inspections at any points within or without this state, and may open any original container containing gasoline, gasoline-alcohol fuel blends, kerosene, other refined oils, fuel oils and petroleum distillates and take a true sample of not less than 8 ounces of the contents thereof, even though the original containers may still be in the possession of a common or contract carrier, provided the opening and sampling does not unduly inconvenience

168.06 OIL INSPECTION

nience or hamper the transportation of the products. After the original containers are opened and sampled the same shall be resealed with seals furnished by the department for such purposes. The authority conferred by this section shall be in addition to, and not in limitation of, any of the provisions of s. 168.05.

(2) If any petroleum product is emptied or transferred into any container in which is contained any other grade of petroleum product, then the entire commingling shall be deemed uninspected and a sample of such commingled petroleum product shall be taken before such commingled petroleum product is removed from such container, sold, offered for sale or used.

(3) Notice of such commingling of any petroleum products shall be given in the same manner and subject to the same conditions as notice of the receipts of petroleum products as provided in s. 168.05. The sample of such commingled petroleum products shall be taken by the inspector within a reasonable length of time, as defined and set forth in s. 168.05, after notice. If such inspector does not take such sample within such time, the commingler shall take a true sample of not less than 8 ounces of the commingled petroleum products. The taking, sealing and holding of such sample by the commingler shall, so far as applicable, be governed by the provisions of s. 168.05 relating to the same by a person receiving a petroleum product.

History: 1971 c. 206; 1979 c. 140.

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.

(2) Inspections made by the inspectors shall be conducted, so far as applicable, in accordance with the methods outlined in the latest revision of the ASTM Book of Standards of the American Society for Testing and Materials.

(3) The department shall establish procedures for exempting from departmental inspection any petroleum product user which has inspection procedures certified by the department and which does not receive its petroleum product from a pipeline terminal, marine terminal, pipeline tank farm or bulk plant in this state or a pipeline terminal, marine terminal, pipeline tank farm or bulk plant in Michigan, Minnesota, Iowa or Illinois that is inspected by the department.

History: 1971 c. 206; 1977 c. 29, 418.

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

- (1) Time and place of each.
- (2) Number of containers inspected.
- (3) Number of gallons contained therein.
- (4) Amount of fees thereon.
- (5) Product name of petroleum product inspected.
- (6) 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 chapter.

History: 1971 c. 206; 1979 c. 140.

168.10 Access to records. Every agent or employe 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 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, employes, or common carriers, or other persons shall render the department and the inspectors all information in their possession when so requested in tracing, finding, sampling and inspecting such shipments.

History: 1971 c. 206; 1979 c. 140.

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) 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. The label 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 unless the container is constructed of sound metal or of equally sound nonflammable material meeting the requirements of the department's flammable and combustible liquids code; is substantially a bright red color; and has the common name of the product clearly labeled or painted on it. These requirements do not apply to:

(a) The fuel supply tank permanently connected to an internal combustion engine;

(b) The fuel supply tank which is structurally a part of any appliance or device consuming the fuel;

(c) The first use of any container of one gallon or less originally filled by a manufacturer or packager when the container complies with the packaging and labeling requirements of the federal government and its agencies; or

(d) Containers of 275 gallons capacity or more. This provision does not exempt such containers from the identification requirements under chapter Ind. 8, Wis. adm. code.

(3) Except for containers referred to in sub. (2) (a), (b) and (c) no person may deliver, place, receive or store any kerosene, diesel fuel or burner oil, or a like product of petroleum which has a flash point of 100° F. or more when tested in the Tagliabue closed cup tester, in any visible container which is in any manner colored red.

(4) No person may use interchangeably any pipeline, hose, pump or metering device to dispense gasoline (or a like product of petroleum which 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 100° F. or more when tested in the Tagliabue closed cup tester) unless such pipeline, hose, pump or metering device has been sufficiently flushed and cleaned before such interchanged use to eliminate any contamination of products due to such interchanged use.

History: 1971 c. 164, 206; 1977 c. 29; 1979 c. 92; 1987 a. 403; 1989 a. 295.

168.12 Fees for oil inspection. (1) The department shall demand and receive within 2 weeks after demand, from the owner or other person for whom it inspects any petroleum product, an inspection fee at a rate prescribed by the department by rule for each 50 gallons from which the sample was taken. In addition to the inspection fee, the department shall charge a fee for each 50 gallons from which a sample was taken in an amount to be prescribed by the department by rule that would annually generate \$1,566,000 for fiscal years 1987-88 and 1988-89, and \$566,000 in the fiscal years thereafter. Such fees shall be a lien on the products so inspected.

(1m) The department shall charge an additional oil inspection fee in an amount prescribed by the department that would generate the amount specified under s. 101.143 (2) (a), to be deposited in the petroleum storage environmental cleanup fund. The department shall consult the petroleum storage environmental cleanup council regarding the amount of the fee under this subsection before changing the amount of the fee. An increase in the fee under this subsection may not take effect earlier than 60 days after the department, in writing, notifies the persons that are required to pay the fee under this subsection of the increase in the fee.

(1s) In addition to any other fees, the department shall collect a well compensation fee from the owner or any other person for whom it inspects any petroleum product. The well compensation fee under this subsection shall be 0.125 cents for each 50 gallons from which a sample is taken. The well compensation fee collected under this subsection shall be credited to the environmental fund for environmental repair.

(2) If a petroleum product is shipped outside of the state after inspection, the persons so making such shipment shall be given credit or be reimbursed by the department for such fees, provided notice of such shipment out of the state, properly acknowledged and sworn to before a notary public, is given the department not later than the twentieth day of the following month.

(3) No fee may 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.

(4) If a petroleum product is imported into and received in this state by a person at a refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture within

this state after inspection the person so importing and receiving such shipment shall be given credit or be reimbursed by the department for such fees upon notice thereof, properly acknowledged and sworn to before a notary public, filed with the department not later than the twentieth day of the following month.

(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) The department may establish and collect a fee from a petroleum product user for certifying its petroleum product inspection procedures under s. 168.07 (3).

History: 1971 c. 206; 1977 c. 29, 418; 1985 a. 313; 1987 a. 27, 399; 1989 a. 31.

168.13 Required records. Every person receiving petroleum products in this state shall keep books and records of all petroleum products so received, together with bills of lading, waybills and other pertinent documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be subject to inspection by the department and its inspectors. Such books, records and other papers and documents shall be preserved for not less than 3 years, unless the department, in writing, authorizes their destruction or disposal at an earlier date.

168.14 Misbranding. (1) It is unlawful for any person to represent, advertise, promote for sale, offer for sale or sell any lubricating oil which is in part or wholly derived from previously used lubricating oil unless such representation, advertisement, sales promotion and the container or item of equipment through which such previously used lubricating oil is shipped, stored, offered for sale or sold, clearly and conspicuously identifies to the public that such lubricating oil has been previously used. The identification shall contain appropriate and descriptive words such as "Reclaimed used lubricating oil," "Rerefined used lubricating oil," "Recleaned 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.

(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.

History: 1971 c. 206; 1977 c. 29; 1979 c. 140; 1989 a. 295.

168.15 Penalty. 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.

History: 1983 a. 122.

168.16 Duties of department. (1) The department shall enforce this chapter. 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 chapter.

168.16 OIL INSPECTION

(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 chapter.

History: 1971 c. 206

168.17 Attorney general and district attorney to prosecute. Upon request of the department, the attorney general or proper district attorney shall prosecute any action to enforce this chapter.

168.18 Title. This chapter may be cited as the "Oil Inspection Act".