The Wisconsin Department of Commerce adopts an order to amend Comm 40.44 (intro.); to repeal and recreate Comm 40.43; and to create Comm 5.003 (26x), Comm 5.01 (4) (h), Comm 5.02 Table 5.02 lines 50m. and 50n., Comm 5.06 Table 5.06 lines 50m. and 50n., Comm 5.31 (4) (c) Note, Comm 5.70 (4) Note, Comm 5.71 (4) Note, Comm 5.73, Comm 5.90 (6) (d), Comm 5.91 (6) (d) Note, Comm 40.52 Note, Comm 40.62 Note, Comm 40.72 Note, Comm 40.82 Note, and Comm 65.0300, relating to the liquefied gas suppliers, and affecting small businesses.

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7. Comparison with Rules in Adjacent States

An Internet-based search of liquefied petroleum gas suppliers in the states of Illinois, Iowa, Michigan and Minnesota found that none of the states have specific rules or programs regarding the licensing of liquefied gas suppliers.

8. Summary of Factual Data and Analytical Methodologies

The proposed rules were developed by reviewing the provisions under 2007 Wisconsin Act 203 in conjunction with the current licensing rules relating to businesses under ch. Comm 5.

9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report

The proposed rules implement the licensing mandates imposed by 2007 Wisconsin Act 203. The primary businesses affected by these licensing mandates are suppliers who fill propane gas cylinders. This would include bulk gas suppliers, cooperatives, hardware stores and camp grounds. The department does not believe that the proposed rules will increase the effect on small businesses over that imposed by the Act.

An economic impact report has not been required pursuant to s. 227.137, Stats.

10. Agency Contact.

James Quast, Program Manager, jim.quast@wisconsin.gov, (608) 266-9292

11. Public Hearing Comments.

The hearing record on this proposed rulemaking will remain open until November 14, 2008. Written comments on the proposed may be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

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SECTION 1. Comm 5.003 (26x) is created to read:

Comm 5.003 (26x) "Liquefied petroleum gas" has the meaning specified under s. 101.16 (1) (b), Stats.

Note: Section 101.16 (1) (b), Stats., reads: "Liquefied petroleum gas" means any material which is composed predominantly of, or any mixtures of, any of the following hydrocarbons including their isomers:

1. Propane.
2. Propylene.
3. Butane.
4. Butylene."

SECTION 2. Comm 5.01 (4) (h) is created to read:

Comm 5.01 (4) (h) Gas supplier.

SECTION 3. Comm 5.02 Table 5.02 lines 50m. and 50n. are created to read:

Table 5.02
(Partial Table)
FEES

	License, Certification or Registration Category	Type	Application Fee	Examination Fee	License, Certification or Registration Fee
	Subchapter VII				
50m.	Liquefied Gas Supplier	License	$15	NA	$60
50n.	Liquefied Gas Supplier – Restricted	License	$15	NA	$40

SECTION 4. Comm 5.06 Table 5.06 lines 50m. and 50n. are created to read:

Table 5.06
(Partial Table)
TERMS

	License, Certification or Registration Category	Term	Expiration Date	Continuing Education Cycle
	Subchapter VII			
50m.	Liquefied Gas Supplier	2 years	Date of Issuance	NA
50n.	Liquefied Gas Supplier – Restricted	2 years	Date of Issuance	NA

SECTION 5. Comm 5.31 (4) (c) Note is created to read:

Comm 5.31 (4) (c) **Note:** Section 101.16 (4) (a), Stats., provides that: The person performing the work of installing equipment utilizing liquefied petroleum gas for fuel purposes shall furnish the user of the equipment a statement, the form of which shall be prescribed by the department showing the design, construction, location, and installation of the equipment conforms with the rules promulgated by the department under this section.

SECTION 6. Comm 5.70 (4) Note is created to read:

Comm 5.70 (4) Note: Section 101.16 (4) (a), Stats., provides that: The person performing the work of installing equipment utilizing liquefied petroleum gas for fuel purposes shall furnish the user of the equipment a statement, the form of which shall be prescribed by the department showing the design, construction, location, and installation of the equipment conforms with the rules promulgated by the department under this section.

SECTION 7. Comm 5.71 (4) Note is created to read:

Comm 5.71 (4) Note: Section 101.16 (4) (a), Stats., provides that: The person performing the work of installing equipment utilizing liquefied petroleum gas for fuel purposes shall furnish the user of the equipment a statement, the form of which shall be prescribed by the department showing the design, construction, location, and installation of the equipment conforms with the rules promulgated by the department under this section.

SECTION 8. Comm 5.73 is created to read:

Comm 5.73 Liquefied gas suppliers. (1) GENERAL. (a) Pursuant to s. 101.16 (3g) (a), Stats., as of August 1, 2009, no person may engage in the business of filling containers with liquefied petroleum gas that is intended to be used directly from the containers as fuel, unless the person holds a license issued by the department as a licensed liquefied gas supplier or liquefied gas supplier - restricted, except as provided under either of the following conditions:

1. The business is engaged in only filling containers that have a water capacity of less than 4 pounds.

2. The filling of the containers with liquefied petroleum gas is for the person's or the entity's own use.

(b) A person who holds a license as a licensed liquefied gas supplier - restricted shall be limited to filling only department of transportation cylinders with liquefied petroleum gas.

Note: Under s. 101.16 (1) (c), Stats., a "department of transportation cylinder" means a container that holds liquefied petroleum gas and that meets the specifications established by the federal department of transportation.

(2) APPLICATION FOR LICENSE. A person applying for a liquefied gas supplier or a liquefied gas supplier - restricted license shall submit all of the following:

(a) An application in accordance with s. Comm 5.01.

(b) An application fee and a license fee in accordance with s. Comm 5.02, Table 5.02.

(3) QUALIFICATIONS FOR LICENSE. (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.

Note: Section 101.16 (3r) (c), Stats., requires any one of the following to prove financial responsibility:

1. A surety bond that is issued by a surety company that is listed as an acceptable surety for federal bonds on the date that the surety bond is obtained in the most recently published U.S. department of the treasury's circular 570.
2. An irrevocable letter of credit that is issued by a financial institution that is authorized to do business in this state or that is federally chartered. The letter of credit shall be for an initial period of at least one year.
3. 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.

(b) The person applying for either a liquefied gas supplier or a liquefied gas supplier - restricted license shall be the owner of the contracting business, a partner in the contracting business applying on behalf of a partnership, or the chairman of the board or chief executive officer applying on behalf of the contracting corporation.

(4) RESPONSIBILITIES. (a) A person who holds either a liquefied gas supplier or a liquefied gas supplier - restricted license shall maintain proof of financial responsibility 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) shall maintain proof of financial responsibility 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) 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 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 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 general liability insurance to a retail supplier for purposed of this subsection shall provide written notice to the retail supplier and to the department at least 60 days before canceling, revoking, suspending, or failing to renew the bond, letter or insurance.

(c) Pursuant to s. 101.16 (4) (c), Stats., a person who holds either a liquefied gas supplier or a liquefied gas supplier - restricted license and fills a container that is part of a propane gas system shall provide written information notices to customers in accordance with s. 101.16 (4) (c), Stats.

Note: Section 101.16 (4) (c), Stats., reads: Each retail supplier filling a container that is part of a propane gas system shall provide written notice to each custom subject to par. (b) of the customer's duty under par. (b) before the retail supplier'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.
2. The purpose of giving the notification to the retail supplier.
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).

Note: Section 101.16 (4) (a), Stats., The person performing the work of installing equipment utilizing liquefied petroleum gas for fuel purposes shall furnish the user of the equipment a statement, the form of which shall be prescribed by the department showing the design, construction, location, and installation of the equipment conforms with the rules promulgated by the department under this section.

(5) RENEWAL. (a) A person may renew his or her liquefied gas supplier or a liquefied gas supplier - restricted license.

(b) A liquefied gas supplier or a liquefied gas supplier - restricted license shall be renewed in accordance with s. Comm 5.07.

SECTION 9. Comm 5.90 (6) (d) Note is created to read:

Comm 5.90 (6) (d) **Note:** Section 101.16 (4) (a), Stats., provides that: The person performing the work of installing equipment utilizing liquefied petroleum gas for fuel purposes shall furnish the user of the equipment a statement, the form of which shall be prescribed by the department showing the design, construction, location, and installation of the equipment conforms with the rules promulgated by the department under this section.

SECTION 10. Comm 5.91 (6) (d) Note is created to read:

Comm 5.91 (6) (d) **Note:** Section 101.16 (4) (a), Stats., provides that: The person performing the work of installing equipment utilizing liquefied petroleum gas for fuel purposes shall furnish the user of the equipment a statement, the form of which shall be prescribed by the department showing the design, construction, location, and installation of the equipment conforms with the rules promulgated by the department under this section.

SECTION 11. Comm 40.43 is repealed and recreated to read:

Comm 40.43 Certification of installation. (1) Every person, firm, association or corporation installing equipment using liquefied petroleum gas shall complete a certificate of installation form, SBD-9656.

Note: A certificate of installation form (SBD 9656) may be downloaded from the Commerce webpage at: http://www.commerce.state.wi.us/SB/SB−DivForms or obtained through Document Sales P.O. Box 7840, Madison, Wisconsin 53707, (608-266-3358 information), (1-800-362-7253 or 608-264-9419 charge card orders) or http://www.doa.state.wi.us/section_detail.asp?linkcatid=266&linkid=49&locid=2&sname.

(2) The certificate of installation form, SBD-9656, shall be completed at the time of installation and shall be provided to the owner of the equipment.

(3) The certificate of installation form, SBD-9656, shall be submitted to the local fire department within 10 business days after completion of the installation, if the installation involved one of the following:

(a) A container with a water capacity of 2000 gallons or more.

(b) Containers with an aggregate water capacity of 4000 gallons or more.

Note: Section 101.16 (4), Stats., requires "(a) The person actually performing the work of installing equipment utilizing liquefied petroleum gas for fuel purposes shall furnish the user of the equipment a statement, the form of which shall be prescribed by the department, showing that the design, construction, location, and installation of the equipment conforms with the rules promulgated by the department under this section.

(b) 1. A person who owns, leases, or uses a propane gas system and who is a customer of a retail supplier shall notify the retail supplier of propane gas for the propane gas system of any interruption in the operation of the propane gas system due to the replacement, modification, repair, or servicing of the propane gas system by any person other than the retail supplier. The customer shall provide the notice at least 7 days in advance of the interruption in the operation of the propane gas system, except as provided in subd. 2. The retail supplier, or the person replacing, modifying, repairing, or servicing the propane gas system, shall perform a check for leaks or other defects in the propane gas system before placing the propane gas system back into operation in the manner required by rule.

2. If the interruption of a propane gas system subject to subd. 1. is due to emergency repair or servicing, the customer shall provide the notice to the retail supplier as soon as possible and no later than 24 hours after the repair or servicing is completed."

SECTION 12. Comm 40.44 (intro.) is amended to read:

Comm 40.44 Liquefied petroleum gas ~~facilities~~ systems shall be designed, constructed, installed, and maintained as specified in the following standards ~~as incorporated by reference in s. Comm 40.30~~:

SECTION 13. Comm 40.52 Note is created to read:

Comm 40.52 Note: A certificate of installation form (SBD 9656) may be downloaded from the Commerce webpage at: http://www.commerce.state.wi.us/SB/SB−DivForms or obtained through Document Sales P.O. Box 7840, Madison, Wisconsin 53707, (608-266-3358 information), (1-800-362-7253 or 608-264-9419 charge card orders) or http://www.doa.state.wi.us/section_detail.asp?linkcatid=266&linkid=49&locid=2&sname.

SECTION 14. Comm 40.62 Note is created to read:

Comm 40.62 Note: A certificate of installation form (SBD 9656) may be downloaded from the Commerce webpage at: http://www.commerce.state.wi.us/SB/SB−DivForms or obtained through Document Sales P.O. Box 7840, Madison, Wisconsin 53707, (608-266-3358 information), (1-800-362-7253 or 608-264-9419 charge card orders) or http://www.doa.state.wi.us/section_detail.asp?linkcatid=266&linkid=49&locid=2&sname.

SECTION 15. Comm 40.72 Note is created to read:

Comm 40.72 Note: A certificate of installation form (SBD 9656) may be downloaded from the Commerce webpage at: http://www.commerce.state.wi.us/SB/SB−DivForms or obtained through Document Sales P.O. Box 7840, Madison, Wisconsin 53707, (608-266-3358 information), (1-800-362-7253 or 608-264-9419 charge card orders) or http://www.doa.state.wi.us/section_detail.asp?linkcatid=266&linkid=49&locid=2&sname.

SECTION 16. Comm 40.82 Note is created to read:

Comm 40.82 Note: A certificate of installation form (SBD 9656) may be downloaded from the Commerce webpage at: http://www.commerce.state.wi.us/SB/SB−DivForms or obtained through Document Sales P.O. Box 7840, Madison, Wisconsin 53707, (608-266-3358 information), (1-800-362-7253 or 608-264-9419 charge card orders) or http://www.doa.state.wi.us/section_detail.asp?linkcatid=266&linkid=49&locid=2&sname.

SECTION 17. Comm 65.0300 is created to read:

Comm 65.0300 Statutory requirements. These are department informational notes to be used under IFGC chapter 3:

Note: Section 101.16 (4) (a), Stats., requires "The person actually performing the work of installing equipment utilizing liquefied petroleum gas for fuel purposes shall furnish the user of the equipment a statement, the form of which shall be prescribed by the department, showing that the design, construction, location, and installation of the equipment conforms with the rules promulgated by the department under this section."

Note: Section 101.16 (4) (b), Stats., requires "1. A person who owns, leases, or uses a propane gas system and who is a customer of a retail supplier shall notify the retail supplier of propane gas for the propane gas system of any interruption in the operation of the propane gas system due to the replacement, modification, repair, or servicing of the propane gas system by any person other than the retail supplier. The customer shall provide the notice at least 7 days in advance of the the interruption in the operation of the propane gas system, except as provided in subd. 2. The retail supplier, or the person replacing, modifying, repairing, or servicing the propane gas system, shall perform a check for leaks or other defects in the propane gas system before placing the propane gas system back into operation in the manner required by rule.

2. If the interruption of a propane gas system subject to subd. 1. is due to emergency repair or servicing, the customer shall provide the notice to the retail supplier as soon as possible and no later than 24 hours after the repair or servicing is completed.

END

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