



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

DATE: January 10, 2023

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Randy Romanski, Secretary
Michelle Reinen, Acting Administrator, Division of Trade and Consumer Protection

SUBJECT: Petroleum and Other Liquid Fuel Products;
Wisconsin Admin. Code Chapter ATCP 94 (Final Hearing Draft)

PRESENTED BY: David A. Woldseth

REQUESTED ACTION:

At the January 26, 2023 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to authorize the final hearing draft rule to be sent to the Governor (copy attached) related to petroleum and other liquid fuel products. This rule implements the provisions of Wis. Stat ch. 168 that prescribe minimum product grade specifications for petroleum and other liquid fuel products.

SUMMARY:

With the enactment of 2013 Wisconsin Act 20 (the biennial budget bill), the state of Wisconsin transferred the Petroleum and Other Liquid Fuel Products program, also known as the Petroleum Inspection Program, from DSPS to DATCP. Act 20 authorized the transfer of existing administrative rules with the approval of the Secretary of the Department of Administration. [See Section 9138 (2) (fm) and (4) (f).] The Legislature expected DATCP to update the rules as part of the transfer. This rule fulfills that commitment.

To develop this rule, DATCP reviewed federal and state laws related to fuel quality specifications, current fuel quality inspection practices, national and international fuel quality standards and test methods, and stakeholder input. The Department considered comments offered to its scope statement and hearing draft rule offered during various industry meetings, phone calls with staff, informal commenting periods, and a formal comment period.

The Board approved the scope statement at its July 22, 2021 meeting after holding a hearing on the new scope statement. DATCP again sent the rule and a redline to its stakeholders on August 9, 2021, and received no informal comments. At the request of the Wisconsin Biofuels Association, DATCP staff met with them on September 14, 2021, to discuss the proposed hearing draft rule. At the November 18, 2021 Board meeting, the Board approved hearings on the rule that were held on February 8 (Madison), February 15 (Appleton), and February 22 (Cyber, headquartered in Madison), 2022. Public comments were due March 15, 2022. Staff considered those comments and guidance from the Legislative Clearinghouse.

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Next Steps

If the Board approves, DATCP will transmit the rule to the Governor for his written approval. After the Governor approves the final draft rule, DATCP will send the final draft rule to the Legislature for review by the appropriate legislative committees. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

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Rule Number: <i>ATCP 94</i>		<i>Hearing Dates: February 8, 15, and 22, 2022</i>	
Comments: <i>Oral, Written, or Letter</i>	Presenter and Group Represented	Comments or Recommendations	Agency Response
Written	Josh Hermus US Venture	<p>We recommend the following revisions to Section 20 ATCP 94.210(3) by substituting the following text for the one in the Draft Rule.</p> <p>REVISE by Substituting the Underlined Red Text below: SECTION 20. ATCP 94.210 (3) is created to read:</p> <p>(3) REID VAPOR PRESSURE FOR GASOLINE-ETHANOL BLENDS. <u>When gasoline is blended with ethanol, the ethanol shall meet the latest version of ASTM D4806, “Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel,” and the blend shall meet the latest version of ASTM D4814, “Standard Specification for Automotive Spark-Ignition Engine Fuel,” with the following permissible exceptions:</u> <u>(a) The maximum vapor pressure shall not exceed the ASTM D4814 limits by more than:</u> <u>(1) 1.0 psi for blends containing 9 to 10 percent by volume ethanol from June 1 through September 15.</u> <u>(2) 1.0 psi for blends containing one or more percent by volume ethanol for volatility classes A, B, C, D, and E from September 16 through May 31.</u></p> <p>Delete text in blue strikethrough in current Hearing Draft:</p> <p>SECTION 20. ATCP 94.210 (3) is created to read:</p> <p>(3) REID VAPOR PRESSURE FOR GASOLINE-ETHANOL BLENDS. When gasoline is blended with ethanol, the ethanol shall meet ASTM D4806, “Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark Ignition Engine Fuel,” and the blend shall meet ASTM D4814, “Standard Specification for Automotive Spark Ignition Engine Fuel,” with the following permissible exception that the maximum vapor pressure shall not exceed the ASTM D4814 limits by more than 1.0 psi for blends containing one or more percent by volume ethanol for volatility classes A, B, C, D, and E from September 16 through May 31.</p>	<p>The federal government plans to review E15 and engage in their rulemaking to offer guidance. The Department cannot commit to certain changes until it receives that more assured guidance. The Department may pursue additional rulemaking in ATCP 94 on these issues at a later date.</p> <p>In the meantime, the Department plans to adopt the summer waiver through NIST Handbook under ATCP 94.200.</p>

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Written	Melissa Edge CITGO	<p>Rule changes proposed at ATCP 94.200 (2) and ATCP 94.210(1)(c)1:</p> <p>The proposed rule change noted by new language in ATCP 94.200(2) purports adoption of Standard Fuel Specifications listed in NIST Handbook 130 version 2020. Within this version of Handbook 130, the requirements listed in 2.1.1. Gasoline and Gasoline-Oxygenate Blends state these fuels must meet the latest version of ASTM D4814. This rule change proposes to modify past practices related to fuel quality from allowing gasoline and gasoline-oxygenate blends to satisfy fuel specification requirements on either the base fuel <u>or</u> the ethanol-blended fuel properties and move towards a requirement for the base fuel <u>and</u> the ethanol-blended fuel to meet ASTM D4814. As applied to gasoline suppliers to the Wisconsin market, this specific incorporation would result in unintended adverse impacts without benefits, including incurring unnecessary costs and limiting flexibility for gasoline fuels supplies. Consequently, CITGO does not support adoption of the rule as written and is providing recommended language that could easily address this issue for DATCP's consideration in this proposed rule.</p> <p>Section 2.1.2. Gasoline-Ethanol Blends of NIST Handbook 130 (v2020) provides conditions where a 1.0 psi volatility allowance would be provided for gasoline-ethanol blends from June 1 through September 15. Section 20 of the proposed rule (ATCP 94.210(3)) provides supplemental language to provide a volatility allowance for gasoline-ethanol blends from September 16 through May 31. CITGO supports the state's inclusion of this language to establish a year-round volatility allowance for gasoline-ethanol blends. To reinforce clarity in the proposed rulemaking, CITGO recommends these allowances be located proximate to one another in the regulatory text and is providing recommended language to incorporate these changes.</p> <p>The proposed adoption of NIST Handbook 130 version 2020 also incorporates new requirements for premium diesel fuel. Existing state regulations do not impose limitations of distillates marketed as premium diesel fuel. Most premium diesel sales are driven by customers requesting certain enhanced properties of the diesel fuel which may not be inclusive of the properties defined in the Handbook 130 premium diesel requirements. Some customers may desire enhanced cetane properties for their fuel purchases</p>	<p>The federal government plans to review E15 and engage in their rulemaking to offer guidance. The Department cannot commit to certain changes until it receives that more assured guidance. The Department may pursue additional rulemaking in ATCP 94 on these issues at a later date.</p> <p>In the meantime, the Department plans to adopt the summer waiver through NIST Handbook under ATCP 94.200.</p>
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while others only request improved cold flow protection. By adopting the standard language of Handbook 130, the state will restrict suppliers' ability to provide these custom options to customers. CITGO does not support adoption of this portion of the proposed rule as written and is providing alternative language for consideration.

CITGO respectfully recommends the proposed rules be revised as follows:

SECTION 10. ATCP 94.200 (2) is repealed and recreated to read:

The following portions of NIST Handbook 130 are adopted by reference into this chapter:

(a) Section 2. "Standard Fuel Specifications", excluding specifications pertaining to premium diesel produced from diesel fuel meeting the specifications, lubricants and compressed gases; including natural gas, liquid natural gas, liquid propane and hydrogen; and with the following exceptions noted below for gasoline-ethanol blends:

i. Gasoline-ethanol blends shall meet the requirements specified in Section 2.1.2. Gasoline-Ethanol Blends of NIST Handbook 130 version 2020 except conformance with ASTM D4814 may be demonstrated on either the base fuel or the blended fuel.

SECTION 20. ATCP 94.210 (3) is created to read:

(3) REID VAPOR PRESSURE FOR GASOLINE-ETHANOL BLENDS.
When gasoline is blended with ethanol, the ethanol shall meet the latest version of ASTM D4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel," and the blend shall meet the latest version of ASTM D4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel," with the following permissible exceptions:

(a) The maximum vapor pressure shall not exceed the ASTM D4814 limits by more than:

1. 1.0 psi for blends containing 9 to 10 volume percent ethanol from June 1 through September 15.
- 2) 1.0 psi for blends containing one or more volume percent ethanol for volatility classes A, B, C, D, and E from September 16 through May 31.

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		<p>These recommended language changes provide a mechanism for the state to adopt the most recent version of ASTM D4814 for gasoline and gasoline-ethanol blends as well as ASTM D975 for diesel fuel and allow refiners and suppliers to provide fuels into the Wisconsin market without costly changes impacting producing refineries. This proposed change also aligns gasoline fuel specifications to Minnesota's base or blend requirements allowing continued fungibility of products between these markets and aligns the winter season volatility allowance with Illinois and Iowa.</p>	
Written	Melissa Edge CITGO	<p>CITGO's Lemont, Illinois refinery provides gasoline and distillate fuels for distribution throughout the Midwest and New England states. Adoption of a base and blend requirement for gasoline fuel specifications would result in a significant negative economic impact to the Lemont refinery approximately \$10 million per year.</p> <p>The current rule utilizing a base or blend requirement has been in place for over 10 years with no issues related to gasoline quality. If the rule becomes more restrictive, the gasoline production capability of the Midwest refineries will be reduced and lead to a higher cost product for consumers. In turn, this could lead to more gasoline imports into the Midwest region and reduced stability of product supply.</p> <p>CITGO requests that the state reject adoption of a base and blend specification for gasoline and retain their existing requirement of meeting ASTM D4814 on the base fuel or blended fuel. CITGO requests adoption of language to provide for a volatility allowance during winter months to remain consistent with current requirements as well as requirements in those states adjacent to Wisconsin. CITGO also requests the state to reject adoption of premium diesel specifications as defined in Handbook 130 and retain the requirement for diesel fuel to meet the most recent version of D975.</p> <p>CITGO appreciates Wisconsin DATCP's consideration of these comments and welcomes further discussion of the information submitted.</p>	<p>In recognizing the fuel industry's continued efforts to advance new fuels and technologies and better serve their customers, the Department believes the shift to regulation of finished fuels will allow greater flexibility in the methods used to develop finished fuel products. Department regulatory efforts are better utilized and more closely align with the Department mission and statutory obligations by ensuring that finished fuel products meet the required specifications in order to ensure environmental and consumer protections.</p>

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<p>Written</p>	<p>Marilyn Herman Herman and Associates</p>	<p>I. Amend “Section 20.ATCP 94.210, (3) REID VAPOR PRESSURE FOR GASOLINE-ETHANOL BLENDS” To Include the Summer RVP Waiver for Gasoline-Ethanol Blends As currently drafted, “Section 20.ATCP 94.210, (3) REID VAPOR PRESSURE FOR GASOLINE-ETHANOL BLENDS” does not include the summer EPA RVP waiver for gasoline-ethanol blends containing 9-10% volume ethanol.</p> <p>Because “Section 20.ATCP 94.210, (3) REID VAPOR PRESSURE FOR GASOLINE-ETHANOL BLENDS” addresses “Reid Vapor Pressure” we feel it would be clearer to include both the summer and winter RVP waiver in this section. Nearly 40 states have adopted regulations specifically providing a year-round ethanol RVP waiver, including the EPA summer RVP waiver.</p> <p>We recommend that the Department amend the Draft Rule to specifically identify the EPA RVP waiver from June 1- September 15 for blends of 9-10% ethanol. Adding the proposed sentence to this section would provide much needed clarity in the regulations and would be consistent with many other state regulations and the U.S. Environmental Protection Agency.</p> <p>SECTION 20. ATCP 94.210 (3) should be revised by adding a reference to the 1.0 psi RVP waiver for 9 to 10 volume percent ethanol from June 1-September 15 as follows: <i>[Note: The blue text is same as current draft proposal with certain formatting and editorial changes. The red text is additional wording.]</i> “SECTION 20. ATCP 94.210 (3) is created to read: (3) REID VAPOR PRESSURE FOR GASOLINE-ETHANOL BLENDS. When gasoline is blended with ethanol, the ethanol shall meet the latest version of ASTM D4806, “Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel,” and the blend shall meet the latest version of ASTM D4814, “Standard Specification for Automotive Spark-Ignition Engine Fuel,” with the following permissible exceptions: (a) The maximum vapor pressure shall not exceed the ASTM D4814 limits by more than: <u>(1) 1.0 psi for blends containing 9 to 10 volume percent ethanol from June 1 through September 15.</u> (2) 1.0 psi for blends containing one or more volume percent ethanol for volatility classes A, B, C, D, and E from September 16 through May 31.”</p>	<p>The federal government plans to review E15 and engage in their rulemaking to offer guidance. The Department cannot commit to certain changes until it receives that more assured guidance. The Department may pursue additional rulemaking in ATCP 94 on these issues at a later date.</p> <p>In the meantime, the Department plans to adopt the summer waiver through NIST Handbook under ATCP 94.200.</p>
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Written	Bob Welch Wisconsin Biofuels Association	1 – In Section 8, (1)(b) states Biofuels over B5. The Definition of biofuels includes Ethanol and this reference to B5 is confusing. The language should be changed to Biodiesel over B5.	Change made.
Written	Bob Welch Wisconsin Biofuels Association	2 – Section 8, (1)(a), (c), (26), (28) and (31) refer to coal-derived fuels, methanol and MTBE. WBFA does not believe that these substances should be allowed in Wisconsin’s liquid fuel supply as their use has negative environmental consequences. Additionally, WBFA believes that MTBE is actually banned from use.	Per Wis. Stat. § 168 (2) (a), fuel with MTBE content greater than 0.5 percent by volume is banned in Wisconsin except for racing fuel; however, leaded fuel exists (for example, in aviation), and, as such, needs to be defined in rule and regulated in Wisconsin.
Written	Bob Welch Wisconsin Biofuels Association	3 – Section 8, (2)(d) WBFA strongly requests that this labeling requirement be changed to align with the Federal standard by reference. If the Federal label requirement changes, Wisconsin would automatically follow suit –avoiding having 2 conflicting label requirements for retailers.	Change made. The rule now directly references Title 16 CFR Part 306 for all of sub. (2).
Written	Bob Welch Wisconsin Biofuels Association	4 – There seems to be no definition for Midgrade Ethanol blends over 15% but below 50% ethanol. These fuels do exist as flex fuels. Nationally, there has been discussion to move to an E25 or E30 blend for high compression vehicle engines.	The Department does not define gasoline marketing terms such as regular, midgrade, or premium. Therefore it does not see a need to define “midgrade ethanol”. These fuels, however, are permissible in Wisconsin, and defined in the new ATCP 94.120 (1) (a).
Written	Bob Welch Wisconsin Biofuels Association	5 – Section 18 – ATCP 94.210 (1)(d) 2. states that ethyl alcohol may not exceed 10% by volume. This is not in line with the rest of the rule, current law or current practice and must be deleted.	Changed ATCP 94.210 (1) (d) (title) in Section 14 and Section 18 to read <i>Gasoline/oxygenate “Gasoline containing up to 10 percent oxygenate by volume”</i> .
Written	Bob Welch Wisconsin Biofuels Association	6 – Section 18 – Item 3 Why is methanol allowed? Again, WBFA does not believe that these substances should be allowed in Wisconsin’s liquid fuel supply as their use has negative environmental consequences.	This is outside the scope of this rule.
Written	Bob Welch Wisconsin Biofuels Association	7 – Section 31 – Racing Gasoline allows the use of lead in gasoline. In 2022, there is no good excuse for allowing such a hazardous carcinogen in our fuel supply. Ethanol is a high octane replacement for lead that is inexpensive, healthy, and readily available.	This is statutory and outside the scope of the rule.
Written	Bob Welch Wisconsin Biofuels Association	8- Section 34 – ATCP 94.300 (1)(b) E10 should no longer be labeled unless a retailer chooses to do so. Twenty states do not require this label and consumers are not asking for it. Perhaps the label should be reversed because fuels with no ethanol contain a much higher percentage of carcinogenic hydrocarbons like Benzene and Toluene. The oil industry has only asked for this label in an attempt to discourage ethanol blending.	Labeling is statutory and outside the scope of the rulemaking.

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Written	Bob Welch Wisconsin Biofuels Association	9 – Section 42 (and 59) – Requires notice, testing and approval for switching to a dissimilar fuel. We believe that switching from E10 to E15 and back should not require this process because there is little difference between the two fuels.	From a consumer protection standpoint, DATCP believes the current rule should not place E10 and E15 in the same category due to restrictions on the use of E15 in certain older cars and in small engines as well as the ongoing issue with E15 use during the summer months.
Written	Bob Welch Wisconsin Biofuels Association	10 – Section 62 bans the blending of fuel in underground storage tanks. This must be removed because this would ban a relatively common practice of splash blending ethanol into gasoline in the tank.	Adopting this provision will be consistent with API RP 1626, Storing and Handling Ethanol and Gasoline-ethanol Blends at Distribution Terminals and Filling Stations. In addition, the Department is requiring this since the mixture would not otherwise be homogeneous and would lack proper agitation.
Written	Elizabeth Van Holt API	We appreciate DATCP staff’s initiative to update the fuels regulations and offer the following comments that are intended to ensure that the Wisconsin consumer continues to receive a high-performing, safe and efficiently delivered fuel and that there is clarity in how the regulations apply to industry. In summary: 1) We re-iterate our request to allow fuels to comply with ASTM D4814 as a “base or blend.” This has been the prevailing rule for a long time and allows the most flexibility in providing compliant quality fuel to the consumer. Without this allowance consumers could see an upwards pressure on the cost of gasoline. 2) If DATCP decides not to allow compliance at the base or blended fuel, then we recommend adopting the 1-psi vapor pressure waiver during both the summer and non-summer months; and 3) We identify several areas where we support the agency’s direction, but we believe additional clarification would be helpful.	Thank you for the comments. In recognizing the fuel industry’s continued efforts to advance new fuels and technologies and better serve their customers, the Department believes the shift to regulation of finished fuels will allow greater flexibility in the methods used to develop finished fuel products. Department regulatory efforts are better utilized and more closely align with the Department mission and statutory obligations by ensuring that finished fuel products meet the required specifications in order to ensure environmental and consumer protections.

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<p>Written</p>	<p>Elizabeth Van Holt API</p>	<p>API supports adoption of ASTM specifications allowing compliance at either the base or the blended fuel.</p> <p>API encourages DATCP to continue to allow a base-or-blend approach to delivering gasoline. When a fuel is blended it must meet three related, but separate volatility specifications: (1) the distillation temperature where 50 % of the fuel evaporates (T50), (2) the vapor pressure, and (3) the vapor to liquid ratio (TV/L). The more flexibility there is in meeting these specifications without a negative impact to the environment or the driver’s experience, the better opportunity there is for allowing efficient manufacturing, distribution, and supply that ultimately benefits the consumer. This flexibility is best provided with a base or blend approach.</p> <p>For decades, the state has allowed industry to comply with the ASTM D4814 gasoline specifications using the base or the blend approach fuel in meeting the ASTM requirements. In this context, a “base” gasoline is typically a blendstock for oxygenate blending or BOB, and the “blend” is the BOB blended with an oxygenate, typically ethanol. Allowing the “base or blend” approach to be used provides the greatest flexibility for refiners and suppliers when providing gasoline to consumers in Wisconsin without creating any negative consequences to the environment or to the State’s drivers.</p> <p>When the base gasoline meets ASTM D4814 specification, it is assumed to meet the RVP specification after the addition of ethanol. This has been proven over many years of ethanol blending and testing.</p> <p>Providing fuel that meets specification as either a base or blend: (1) aligns Wisconsin’s specifications with those of surrounding states, therefore creating opportunity for a free exchange of fit-for-purpose gasoline with other states; and (2) allows an unconstrained supply to Wisconsin consumers and 3) continues a practice that has been in place for years without issue. For the reasons stated above, we recommend that the regulation include the qualification that states either the base gasoline or the gasoline-oxygenate blend shall comply with D4814 gasoline.</p>	<p>In 2017, the Legislature changed Chapter 168 in 2017 Wisconsin Act 59. Statute supersedes the rule. This should not represent a change to industry.</p> <p>The majority of Wisconsin’s fuel supply comes from Illinois, which is a base and blend state.</p>
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Written	Elizabeth Van Holt API	<p>If the state chooses not to adopt a base-or-blend compliance option, we encourage DATCP to adopt a 1-psi vapor pressure waiver for non-summer blends as well as summer blends.</p> <p>We appreciate the proposal to adopt a 1-psi vapor pressure waiver during the non-summer season and the adoption of ASTM D4814. This will ensure that the state does not become a fuel island if the base or blend compliance option is not continued. To eliminate possible confusion in the future, we recommend that the state not only adopt the proposed 1-psi volatility waiver for gasoline during the non-summer months, but that it also adopts language that it also applies during the summer months.</p>	This is subject to EPA jurisdiction. The EPA grants summertime RVP waivers, and the Governor has requested action in this area. The result of the request is not yet known.
Written	Elizabeth Van Holt API	Standards Incorporated by Reference We support the reference to the most current version of ASTM D4814 which is accomplished by referencing the 2020 edition of NIST Handbook 130.	Thank you for the comment.
Written	Elizabeth Van Holt API	ATCP 94.100(8)(b) “Immediate shutdown to blend or remove liquid fuel products or wastes.” We suggest adding details on how a person with enforcement authority will verify the product meets the required standards. What tests will be required to demonstrate compliance? How long will it take to conduct such an analysis? How long must a site wait before it can remediate the issue? Without additional explanation, we suggest deleting this requirement.	The questions reference current code language, and DATCP did not change this in the draft rule. The information in this paragraph is clarified in fact sheets available on the DATCP website here: https://datcp.wi.gov/Documents/ContaminatedFuel-PumpOuts.pdf
Written	Elizabeth Van Holt API	ATCP 94.100(8)(e) “Immediate shutdown for labeling discrepancies.” Further clarification and guidance would be helpful to understand how different the labels of the shipment and the product would need to be that would trigger an immediate shutdown of the equipment?	Wis. Stat. § 168.14 (2) defines misbranding, and the rule follows that requirement. DATCP sees misfueling as a consumer protection issue because if there is a discrepancy it could result in consumers receiving a different fuel than what is labeled at the pump.
Written	Elizabeth Van Holt API	ATCP 94.120(1)(a) (1) “‘Alternative liquid automotive fuel’ includes all of the following: (a) Mixtures containing more than 15 percent by volume of methanol, denatured ethanol, and/or other alcohols with gasoline or other fuels;” Methanol is limited by the EPA’s Substantially Similar rule to 0.3 vol% methanol. To that end, the state does not have authority to allow 15 percent by volume methanol nor do we believe this is the state’s intention. We recommend removing the word “methanol” from the cited definition.	Methanol appears in the current provisions of the EPA.

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Written	Elizabeth Van Holt API	<p>We support the definition of an “Alternative liquid automotive fuel” at ATCP 94.120(1)(a) to include fuels greater than 15% denatured ethanol. This definition minimizes confusion with the Federal Trade Commission’s definition of ethanol flex fuel (EFF). Relatedly, there is a discrepancy at Section ATCP 94.200(2), which references NIST HB 130, 3.8 “Ethanol Flex Fuel” that cites the FTC labeling requirements at 16 CFR 306. The FTC language states that ethanol flex fuel is a mixture of gasoline and ethanol containing more than 10 percent but not greater than 83 percent ethanol by volume. It would be helpful to add language clarifying that if there is a discrepancy between the Wisconsin rule and NIST HB 130, the Wisconsin rule will take precedence and applies. Additionally, as written, the definition would not allow butanol up to 16% to be classified as gasoline. However, a 16% blend of butanol is currently allowed by the EPA. This discrepancy should be addressed to ensure a clear reading of the state rule.</p>	<p>The updated rule does not adopt NIST Handbook 130 3.8 in ATCP 94.200 (2). There may have been some confusion since this subsection was repealed and recreated.</p> <p>DATCP does create a new section on E15 in the rule draft that defines it as more than 10 and less than 15. Therefore, the resolution to the discrepancy should be implied. DATCP acknowledges that its rule would take priority over a standard where they conflict.</p> <p>The comment is correct in regard to ATCP 94.120 (1) (a).</p>
Written	Elizabeth Van Holt API	<p>ATCP 94.120, “Definitions,” and ATCP 94.200(2). These two sections provide definitions that might conflict. We suggest referencing the definitions in NIST Handbook 130 (HB 130) and not copying them into the Wisconsin rule. Replicating HB 130 in the state rule could result in an inadvertent conflict either through typographical error or by a future disconnect between a change in the State’s rules and that in the Handbook.</p>	<p>Wisconsin will not adopt the Handbook 130 definitions in proposed ATCP 94.120.</p>
Written	Elizabeth Van Holt API	<p>ATCP 94.200(2)(c)6, “Biodiesel Blends” appears to have a typographical error. It references 3.15.2.4. This section does not exist in the latest NIST HB 130. Should it be 3.15.2.3?</p>	<p>Thank you for pointing this out. Change made.</p>
Written	Elizabeth Van Holt API	<p>ATCP 94.200(3), “All finished fuels must meet the adopted standard specifications at the time they are offered for sale.” It is unclear what facilities this applies to. Does it apply when the product is offered to sale to the consumer or is does it apply to the terminal or to both? Additionally, we encourage the state to remove this requirement as it would not allow fuels to meet the fuel requirements at a base or blend.</p>	<p>DATCP will now define “finished fuels” in the Definitions section. The concern is that the fuel meets the specification at the time of sale.</p>

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Written	Elizabeth Van Holt API	ATCP 210(1)(d)2. “The alcohol content for ethyl alcohol may not exceed a concentration of 10 percent by volume.” This appears to limit the alcohol content for gasoline-oxygenate blends to 10 percent by volume negating the opportunity to sell 15 percent by volume. In order to be consistent with ASTM D4814, this should be modified from “10 percent” to “15 percent.”	In the draft rule, E15 now has its own section due to compatibility and labeling requirements. Therefore, it does not negate the opportunity.
Written	Elizabeth Van Holt API	ATCP 210(1)(d)4. “Other oxygenated fuels shall be acceptable if the oxygenates are blended in a manner approved by the department in amounts allowed by the EPA and the final product conforms to the standard specifications for gasoline under par. (c).” The intent of this provision is not well understood and may not be necessary. Additionally, what would be the expected approval process?	This language exists in the current rule and does not represent a change. The variance process is laid out in ATCP 94.110. The intent is to allow for new fuels to be sold.
Written	Elizabeth Van Holt API	ATCP 94.215, “E15 Specifications.” This section references both ASTM D4814 and NIST HB 130, which also references the latest version of D4814. This could be confusing. Does E15 have to meet ASTM D4814 or HB 130? We suggest adopting the latest version of ASTM D4814.	NIST Handbook 130 adopts the most recent version of ASTM D4814. Therefore, they do match.
Written	Elizabeth Van Holt API	ATCP 94.210(3) and 94.215(2), Reid Vapor Pressure for Gasoline-Ethanol Blends. The requirements for these two sections are virtually identical and could be combined as E10 and E15 are both defined as gasoline by the EPA and should receive the 1-psi vapor pressure waiver for non-summer months that is provided in the two separate paragraphs. Additionally, the term “gasoline-ethanol blends” is not defined but could be replaced with “gasoline-oxygenate blend.”	The federal government plans to review E15 and engage in their rulemaking to offer guidance. The Department cannot commit to certain changes until it receives that more assured guidance. The Department may pursue additional rulemaking in ATCP 94 on these issues at a later date. In the meantime, the Department plans to adopt the summer waiver through NIST Handbook under ATCP 94.200.

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Written	Elizabeth Van Holt API	<p>Ethanol content of E85 should be included in the bill of sale from the terminal.</p> <p>Like the requirement at ATCP 94.215, “E15 specifications,” any person who distributes E85 should be required to identify the percentage of ethanol in the product being delivered to the customer. Specifically, E85 is often used to manufacture E15 at retail using a blender pump that is connected to a tank of E10 or E0.</p> <p>E85 can have a significant range of ethanol content depending on season and geography. The ethanol content can range between 51%-85% denatured ethanol. Magellan Midstream Partners, LLP, collected data from 370 blends from 23 terminals covering 10 states that showed a range of denatured fuel ethanol from 60% to 85% in the ethanol flex fuel. It may be helpful for retail gasoline stations to know the volume of ethanol in the E85 to accurately blend it with E0/E10 to blend E15 at the pump. To address this issue, we recommend ATCP 94.215 be updated to require the bill of sale, bill of lading, etc. include language that states that: “EXX contains XX% ethanol.” The term XX refers to the volume percent ethanol present.</p>	This recommendation has been added in ATCP 94.270.
Written	Elizabeth Van Holt API	ATCP 94.240 (5), “...diesel...state on the bill of lading...the type and maximum percent by volume of each component.” It is unclear which “each component” is required to be reported. This seems to indicate that there is a desire to list both the maximum percent of the petroleum portion as well as the non-petroleum sourced fuel. Is it intended to list both?	<p>This is an existing requirement, and the draft rule does not change this.</p> <p>‘Component’ references non-petroleum-source diesel and petroleum-source diesel.</p>
Written	Elizabeth Van Holt API	ATCP 94.300(1)(b)9.a. “Labeling,” We support the adoption of the U.S. EPA E15 labeling requirements at the pump.	Thank you for your comment.
Written	Elizabeth Van Holt API	ATCP 94.300(1)(c) 1. <i>Dual dispenser for alcohol.</i> “Dispensing gasoline-ethanol fuel blends. 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 15 percent ethanol by volume shall bear a label clearly warning any purchaser that the first gallon may have more than 15 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., 1 4., 6. and 7.” The term, “gasoline-ethanol fuel blend” is not defined within the regulations.	DATCP does not believe it needs to define gasoline-ethanol fuel blend. This language comes from Chapter 168 of Wisconsin statute.

**DIVISION OF TRADE AND CONSUMER PROTECTION
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

Written	Elizabeth Van Holt API	ATCP 94.300(4)(b) , “A person who changes the fuel product dispensed from a tank...” To clarify the intent of this section, we suggest the need for a definition of "dissimilar product." One would not assume that switching from one grade of gasoline to another (e.g., 87 AKI to 91 AKI) would be a dissimilar product. However, the intent is unclear as written.	ATCP 94.120 (13) defines “Dissimilar fuel product” as “fuel products with different oxygenates, different oxygenate content by volume, different octane rating, different ASTM specifications, different biomass content by volume, or different definitions under this chapter.”
Written	Elizabeth Van Holt API	ATCP 94.310 (2) NOTIFICATION FOR INSPECTION. (a)(2) “Where requested by the department, the inspector shall be notified of any liquid fuels products received after 4:30 p.m...” The required hours of receipt and notification to the inspector are confusing. What is the purpose of these times? (b) “If a person transfers one grade of a liquid fuel product into a container...” This requirement seems vague. What size of a container is the rule intending to address?	These are the normal work hours for employees, and this language already exists in the current rule and in the statute. The authority to regulate is not based on the type of container. Therefore, the type of container is not relevant to the rule.
Written	Elizabeth Van Holt API	ATCP 94.400(11) , “No person may blend a fuel product in an underground storage tank.” This clause prevents the possibility of corrective remediation of a fuel in an underground storage tank. We suggest exempting corrective action for bringing an off-spec product back into compliance. For example, o Regular Unleaded with diminished octane could have premium unleaded added to rectify the octane o Too little or too much ethanol could be mitigated by the addition of E0 or E15 o Excessive RVP could be remedied with the addition of low-RVP material These types of remediation activities include confirmation through testing that the correction worked.	Adopting this provision would be consistent with API RP 1626, Storing and Handling Ethanol and Gasoline-ethanol Blends at Distribution Terminals and Filling Stations. In addition, the Department is requiring this since the mixture would not otherwise be homogeneous and would lack proper agitation.
Written	Elizabeth Van Holt API	Conclusion: We continue to appreciate the thoughtful approach to developing these rules and for accepting many of our past comments and we strongly encourage you to adopt the exception that allows suppliers to provide fuel on a base-or-blend basis.	Thank you for your comment.
Written	Chris Bliley Growth Energy	In Section 8 (2)(d), we strongly recommend deleting this section as the Federal Trade Commission (FTC) already requires labeling for flex-fuels. Leaving the state requirement in place is unnecessarily duplicative.	The draft rule now directly references Title 16 CFR Part 306 for all of sub. (2).

**DIVISION OF TRADE AND CONSUMER PROTECTION
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

Written	Chris Bliley Growth Energy	<p>Additionally, we strongly recommend that you strike the reference to 10% ethanol in Section 18(1)(d) as this wording is in conflict with Section 21, ATP 94.215 and undermines the original “Rule Content” intent to add clarification for fuels that contain higher blends of ethanol (E15 and E85.)</p>	<p>The Department changed ATP 94.210 (1) (d) (title) in Section 14 and Section 18 to read <i>Gasoline/oxygenate</i> “<u>Gasoline containing up to 10 percent oxygenate by volume</u>”.</p>
		<p>We also suggest that you exclude varying ethanol blends from the “dissimilar products” requirements in Section 42, ATP 94.300 as there are no technical or fuel quality concerns and no consumer risk when switching from E10 to E15 and back. The ethanol content will be declared on the bills of lading or other product transfer documents.</p> <p>The growth in ethanol use since the 1980s was due in part to the phase out of tetra-ethyl lead (lead) due to severe neurotoxicity which created a need for a new octane source. Especially in “racing gasoline” applications, the use of ethanol has increased exponentially; ethanol has replaced unhealthy and environmentally harmful octane additives. The same sentiment applies to MTBE which is banned from use in Wisconsin.</p> <p>Today, 98 percent of all gasoline sold in the U.S. contains 10 percent ethanol, and E15 is now available at nearly 2,600 retail locations in 31 states and at 267 terminals. Consumers have now driven more than 25 billion miles on E15 and retailers have conducted millions of transactions with this fuel. There have been no adverse reports of fuel quality experienced with E15 since first being approved 11 years ago. There are retailers making significant investments in Wisconsin to offer a cheaper, cleaner fuel; the Department can take steps to support these local investments by including legally approved fuels.</p>	<p>ATCP 93 requires plan review in order to switch between ethanol blends higher than E10. ATCP 94 needs to be consistent.</p> <p>In addition, E15 cannot be used in all engines. DATCP must monitor and test for ethanol content when conversions occur.</p> <p>Finally, E15 has different labeling requirements, and DATCP inspectors check to make sure those requirements are met.</p>
Written	Chris Bliley Growth Energy	<p>Growth Energy appreciates the opportunity to comment on the modifications to the fuel regulation for the state of Wisconsin. Additionally, we support the comments submitted by the Wisconsin Biofuels Association. We are available to discuss these comments on the modifications at your convenience and would welcome an opportunity to update you on our efforts to advance ethanol blends.</p>	<p>Thank you for your comment.</p>

THE DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION'S
PROPOSED ORDER TO ADOPT PERMANENT RULES

PROPOSED ORDER

The Wisconsin department of agriculture, trade and consumer protection proposes the following rule *to repeal* ATCP 94.110 (3) (Note1), 94.210 (1) (b), Table 94.210, 94.210 (1) (c) 2., and (Note), 94.210 (2), 94.240 (2), (3) (Note), (6), and (6) (Note), 94.300 (1) (a) (Note1), (1) (b) 8., (2) (a) 3. (Note), 94.310 (2) (c), 94.310 (3) (c), 94.400 (5) (Note), (6), and (7), and 94.410 (2); *to renumber* 94.110 (3) to 94.110 (3) (a), 94.300 (4) (Intro.) to 94.300 (4) (a), and 94.410 (3) to 94.410 (6); *to renumber and amend* ATCP 94.110 (3), 94.240 (4), 94.300 (1) (c), 94.300 (4) (Note), 94.410 (1) and (3); *to amend* ATCP 94.100 (8) (b), (c), (d) (Title) and (Note1), 94.110 (Title), (2), and (3) (Title), 94.200 (1), 94.200 (2) (Note1), 94.210 (1) (Title), (1) (a), (1) (c) 1., (1) (d) (Title), 2., 3., and 4., (1) (e) 1. and 2., and (1) (f), 94.220, 94.230, 94.240 (Title), (1), (3), and (5), 94.300 (1) (a), 94.300 (1) (b) 1. and 2., 94.300 (2) (a) and 2., 94.310 (1) (b) 1., 94.310 (2) (a) 1., 2., 3., and (b), and (e) 1. and 2. (Note1) and (Note2), 94.310 (3) (a), 94.400 (2) and (5), and 94.410 (5); *to repeal and recreate* ATCP 94.100 (8) (e), 94.120, 94.320, and 94.330; *to create* ATCP 94.100 (8) (b) (Note), (f), and (g), 94.110 (3) (a) 1., 2., 3., 4., 5., 6., 7., 8. and (b), 94.200 (1m), 94.210 (3), 94.215, 94.240 (4) (b), 94.250, 94.260, 94.270, 94.300 (1) (b) 9., (1) (c) 2., and (4) (b), 94.340, 94.400 (2m), (8), (9), (10), (11), and (12), and 94.410 (1) and (2); *relating to* petroleum product inspections, and affecting small businesses.

Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection

This rule implements Wis. Stat. ch. 168, subch. I, which directs the department of agriculture, trade and consumer protection (department) to promulgate rules related to minimum product grade specifications of petroleum and other liquid fuels.

Statutes Interpreted

Statutes Interpreted: Wis. Stat. ss. 168.04 and 168.16 (4).

Statutory Authority

Statutory Authority: Wis. Stat. ss. 168.04 and 168.16 (4).

Explanation of Statutory Authority

The department has authority, under Wis. Stat. s. 168.04, to promulgate rules that prescribe minimum product grade specifications for petroleum and other liquid fuel products. The department has authority, under Wis. Stat. s. 168.16, to promulgate reasonable rules relating to the administration and enforcement of Wis. Stat. ch. 168, subch. I.

Related Statutes and Rules

Wis. Stat. s. 93.06 (1p) allows the department to charge a fee to cover its cost to provide inspection, diagnostic, analytical or testing services if the service is requested and is related to an authorized department program and serves program objectives.

Wis. Stat. s. 93.06 (1pm) allows the department to establish a schedule of fees for the performance or contract for performance of testing of petroleum products other than testing provided under ch. 168.

Wis. Stat. ch. 168, subch. I, titled *Petroleum Product Inspections*, grants the department authority to promulgate rules related to product grade specifications and to administration and enforcement of the subchapter.

Wis. Admin. Code ch. ATCP 93 implements Wis. Stat. ch. 168, subch. II, titled *Storage of Dangerous Substances*. Chapter ATCP 93 establishes the appeals process for a system shutdown, which applies to both storage systems and the fuels contained within them.

Plain Language Analysis

Background

During the 1980s and early 1990s, Wisconsin's tanks and petroleum inspection programs were housed within the Department of Industry, Labor, and Human Relations. These programs were transferred to the Department of Commerce (Commerce) in 1996. They were transferred from Commerce to the Department of Safety and Professional Services (DSPS) as part of the 2011-13 biennial budget (2011 Wisconsin Act 32). Chapter SPS 348 was previously titled chs. ILHR 48 and COMM 48 before becoming the current ch. ATCP 94.

With the enactment of 2013 Wisconsin Act 20 (the biennial budget bill), the state of Wisconsin transferred the Petroleum and Other Liquid Fuel Products program, also known as the Petroleum Inspection Program, from DSPS to the department. 2013 Wisconsin Act 20 authorized the transfer of existing administrative rules with the approval of the Secretary of the Department of Administration. *See* Section 9138 (2) (fm) and (4) (f). The Legislature expected the department to update the rules as part of the transfer.

DSPS approved a scope statement in January 2011, but the program transferred before action was taken. The department Board approved a joint scope statement for chs. ATCP 93 and ATCP 94 in September 2013, and the department initially considered changes to ch. ATCP 94. The department never formally presented any changes to its Board and never held a public hearing on any proposed changes. Work was

completed on ch. ATCP 93, the storage tanks inspection program, with the rule's promulgation in November 2019.

Per Wis. Stat. s. 168.04 (4) (c), no gasoline-ethanol fuel blend rule could take effect sooner than July 1, 2019.

Per 2019 Wisconsin Act 64, Wis. Stat. s. 168.105 permits nozzles to dispense differing blends.

The department Board approved a new scope statement for this rule at its November 7, 2019 meeting. The department had advocated a new scope statement be created for two main reasons: first, the nature of the industry had changed since September 2013; second, the then current scope statement expired in February 2020, per Wis. Stat. s. 227.135 (5), and a reset of the calendar with a new scope statement best served a thorough review and discussion of the rule.

During the ensuing rulemaking discussions, proposed amendments, and informal sharing of those revisions with industry stakeholders, the department staff discovered that so much in the industry had changed since 2019 that the 2019 scope statement might arguably be insufficient to encompass all the revisions that might be needed to address the respective needs and interests of those in the petroleum products industry, the consumers of those products, and the broader public.

Therefore, at the request of the department, its Board approved a new scope statement at its July 22, 2021 meeting.

Rule Content

General

This rule does all of the following:

- Updates standards incorporated by reference.
- Creates definitions clarifying the meaning of important terms.
- Updates petition for variance procedures and fee authority per transfer from DSPS.
- Updates allowance for water in tanks to match national standards.
- Creates new sections on E15 and E85.
- Creates new sections on aviation fuel and racing fuel.
- Clarifies record keeping and documentation.
- Codifies the Reid Vapor Pressure waiver.
- Makes other minor updates and changes including corrections to outdated provisions.

Standards Incorporated by Reference

This rule updates the ASTM standards incorporated by reference in Wis. Admin. Code s. ATCP 94.200 to reference the most current standards. This rule directly adopts individual ASTM standards at the time of approval by the DATCP Board. In some cases, the new rule adopts phrasing and definitions directly from these and other national standards.

Creation of Definitions

This rule creates and expands definitions of important terms used throughout the chapter. The current ch. ATCP 94 defines 12 terms; the new rule, if adopted, will define 36 terms. This rule adopts many definitions from NIST Handbook 130 and others used throughout industry. Wisconsin definitions will therefore more closely match those adopted and used nationally. Adoption of these definitions clarifies the rule and thereby makes it easier to understand.

Petition for Variance and Fee Authority per Transfer from DSPS

This rule repeals now-outdated procedures and creates specific requirements for requesting a variance. This rule clarifies the fee requirement and authority to request a variance. This rule repeals outdated references to Wis. Admin. Code chs. SPS 302 and SPS 305, which set fees for a variety of DSPS services and established variance procedures for a variety of DSPS programs. The fees do not increase, but the fee authority now appears entirely in a department rule rather than in the department rule with a cross reference to a DSPS rule. The rule therefore is easier to understand and helps complete the transfer of the program to the department authority as required by 2013 Wisconsin Act 20.

Water in Tanks

This rule updates limits for water in tanks of several fuel types to match the limits specified in Wis. Admin. Code s. ATCP 93.605 (1) (g), which the department promulgated in November 2019. Thus, the rule eliminates potential contradictions between the two administrative rules and requires no additional costs since the two standards match.

E15 and E85

This rule defines E15 and E85 (Wis. Admin. Code s. ATCP 94.120 (14) and (15)), creates sections that address E15 specifications (Wis. Admin. Code s. ATCP 94.215) and E85 specifications (Wis. Admin. Code s. ATCP 94.270), and sets labeling and dispensing requirements (Wis. Admin. Code s. ATCP 94.300) that government and industry have long wanted.

Aviation Fuel and Racing Fuel

In the current rule, the standards for aviation fuels are in Wis. Admin. Code s. ATCP 94.210 (2). In the new proposed rule, aviation fuel specifications are expanded and moved to a newly created section (Wis. Admin. Code s. ATCP 94.250). Also, due to numerous questions about racing fuels, a new section, Wis. Admin. Code s. ATCP 94.260, has been created in an effort to make the rule match the changing needs of industry.

Record Keeping and Documentation

Records and documentation requirements have been clarified in two ways: one, by repealing and recreating Wis. Admin. Code s. ATCP 94.330, so the rule will concern only the department inspection records; two, by creating Wis. Admin. Code s. ATCP 94.340, which will concern records that must be kept by industry.

Reid Vapor Pressure

The 1.0 PSI additional RVP allowance in finished fuels during the wintertime months (September 16 – May 31) will permit refineries to produce a consistent base fuel for higher ethanol finished fuel blends.

Other Changes

The proposed rule makes other minor clarifying and corrective changes, as well as typical stylistic changes that occur during rulemaking.

Since the department Board approved a joint scope statement for chs. ATCP 93 and ATCP 94 in September 2013, there has been an expectation that the two rules will be in harmony. The department promulgated the current ch. ATCP 93 in November 2019. The new ch. ATCP 94 harmonizes with changes previously adopted in ch. ATCP 93 so that the two will not conflict.

The rule also makes changes based on new state or federal laws and guidelines. For instance, 2019 Wisconsin Act 64 created Wis. Stat. s. 168.105 to permit nozzles to dispense differing blends, and that statute required the creation of Wis. Admin. Code s. ATCP 94.300 (1) (c) 2.

The rule change also attempts to anticipate emerging technologies.

*Summary of and Comparison with Existing or Proposed
Federal Statutes and Regulations*

The federal Clean Air Act (CAA) authorizes the Environmental Protection Agency (EPA) to establish emissions standards for motor vehicles to address air pollution that may reasonably be anticipated to endanger public health or welfare. EPA also has authority to establish fuel controls to address such air pollution. 40 CFR Parts 79, 80, 85, and 86 establish fuel quality and emissions standards by rule, which are enforced by EPA. These rules incorporate by indirect reference ASTM International standards and test methods.

To reduce the risk of ozone-related health problems, EPA regulates the vapor pressure of gasoline sold at retail stations during the summer ozone season to reduce evaporative emissions from gasoline that contribute to ground-level ozone, which might contribute to ozone-related health problems.

42 U.S.C. s. 7545 regulates fuels and allows for a temporary waiver of a control or prohibition respecting the use of a fuel or fuel additive. By this authority, EPA may grant partial waivers allowing for gasoline-ethanol blends greater than 10 percent up to 15 percent (E15) for use in model year 2001 and newer light-duty vehicles. 40 CFR Part 80 establishes E15 labeling and survey requirements, and transfer document requirements for gasoline-oxygenate blends.

*Summary of Comments Received during Preliminary
Comment Period and at Public Hearing on Statement of Scope*

During the June 10, 2021 hearing on the statement of scope, only Preston Searles from the American Petroleum Institute testified. His stated concerns pertained to the rule itself rather than the scope statement. Therefore, his comments were considered in the drafting of the hearing rule but did not result in any changes to the scope statement.

The department held three public hearings on the draft rule in February 2022: in Madison on February 8, in Appleton on February 15, and a cyber hearing on February 22 from Madison. After the final hearing, the department held the written comment period open for three weeks until March 15, 2022.

Comparison with Rules in Adjacent States

Illinois

Illinois adopts by reference the most recent revisions of ASTM standards regarding motor fuel. Illinois adopts by reference sections of the most current revision of NIST Handbook 130, including the standards and test methods regarding gasoline-ethanol blends, which include E15 as gasoline. Illinois allows the sale of E15 as gasoline. Illinois requires fuel to meet specifications at base and blend.

Iowa

Iowa adopts ASTM standards and test methods regarding motor fuel. Iowa allows the sale of E15 as gasoline. Iowa requires fuel to meet specifications at base and blend.

Michigan

Michigan adopts standards and test methods regarding gasoline, motor fuel additives, and grading. Michigan allows the sale of E15 as gasoline. Michigan requires fuel to meet specifications at base and blend.

Minnesota

Minnesota requires petroleum products to meet ASTM standards, and allows for gasoline-ethanol blends to be blended up to any percentage specifically authorized by an EPA waiver under the Clean Air Act. Minnesota allows the sale of E15 as gasoline. Minnesota requires fuel to meet specifications at base or blend.

Summary of Factual Data and Analytical Methodologies

To develop this rule, the department reviewed federal and state laws related to fuel quality specifications, current fuel quality inspection practices, national and international fuel quality standards and test methods, and stakeholder input. The department also considered comments offered to its scope statement and offered during various industry meetings and phone calls with staff. In June 2020, a draft and redline were sent to industry stakeholders to seek informal comments before presentation to the department Board for permission to hold public hearings on the draft hearing rule. On December 18, 2020, the department sent responses to those comments, a new hearing draft rule, and a redline of changes. From January 5 to 19, 2021, the fiscal estimate and regulatory flexibility analysis were posted on the department website. The department received no comments to either.

However, in its own internal review, the department staff discovered the Wis. Admin. Code ch. ATCP 94 scope statement might arguably be insufficient to encompass all the revisions that might be needed to make these proposed changes. Therefore, at the request of the department, the department Board approved a new scope statement at its July 22, 2021 meeting, doing so after the department held a June 10, 2021 public hearing on the new scope statement. The department again sent the rule and a redline version of the rule to its stakeholders on August 9, 2021, and received no informal comments. At the request of the Wisconsin Biofuels Association, the department staff met with them on September 14, 2021, to discuss the proposed hearing draft rule.

Summary of Comments Received during Public Hearings and Comment Period

Due to the complexity of this rule, the department shared drafts of the proposed Wis. Admin. Code ch. ATCP 94 with numerous industry stakeholders prior to the November 18, 2021 Board approval to hold formal public hearings on the rule.

The department stressed that the drafts were preliminary and subject to change both from internal and external input. The department pointed out that the ability to comment on these drafts would not circumvent any step or aspect of the formal rulemaking process specified in statute. The department emphasized that an opportunity to comment would continue up to and including this proposed order to adopt this rule. Consequently, the department received comments throughout its process, considered the suggested changes or requests for clarifications, made changes to the draft language based on stakeholder comments, and responded to the stakeholders before release of the public hearing draft rule. A redlined version was also sent to stakeholders with the draft rule.

The department received a number of comments from the Wisconsin Legislative Council Rules Clearinghouse and considered them.

The department held three hearings on the draft rule in February 2022:

- Prairie Oaks State Office Building in Madison on February 8, 2022;
- Outagamie County Courthouse in Appleton on February 15, 2022; and
- Zoom Virtual Hearing headquartered out of Madison on February 22, 2022.

After the final hearing, the department accepted formal written comments for an additional three weeks and closed the comment period on March 15, 2022. An internal committee considered all internal and external recommended changes.

Analysis and Supporting Documents used to Determine Effect on Small Business in Preparation of an Economic Impact Analysis

The effect on small business was determined by reviewing stakeholder input and internal discussion as to how the proposed changes would affect regulated industries. From August 31 to September 14, 2021, the fiscal estimate and regulatory flexibility analysis was posted on the department website. The department received no comments.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on Small Business

This rule may impact businesses that sell or distribute petroleum and other liquid fuel products, either at wholesale or retail. These businesses are already regulated under the existing rule, but they may need to make minor changes to comply with updated requirements.

Many of the businesses affected by this rule are “small businesses.” However, given the subject matter, there are very few accommodations or special exceptions that can be made for small businesses by the department. Therefore, the department does not propose any.

The department briefed the Small Business Regulatory Review Board on the rule at its March 20, 2022 meeting.

A complete *regulatory flexibility analysis* is attached.

The department’s Regulatory Review Coordinator may be contacted by:
Email at Bradford.Steine1@wisconsin.gov
Telephone at (608) 224-5024

Standards Incorporated by Reference

This rule updates the ASTM standards incorporated by reference in Wis. Admin. Code s. ATCP 94.200 to reference the most current standards. This rule directly adopts individual ASTM standards at the time of approval by the DATCP Board. In some cases, the new rule adopts phrasing and definitions directly from these and other national standards. As required by Wis. Stat. ch. 227, consent has been received from the Attorney General to incorporate these standards by reference after the public hearings and prior to seeking the Governor’s assent to the final draft rule. A copy of these documents will be kept on file with the department and the Legislative Reference Bureau.

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Where Comments May Be Submitted

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After the final hearing, the department accepted formal written comments for an additional three weeks and closed the public comment period on March 15, 2022.

RULE TEXT

SECTION 1. ATCP 94.100 (8) (b) is amended to read:

ATCP 94.100 (8) (b) *Immediate shutdown to blend or remove liquid fuel products or wastes.* Liquid fuel storage systems that contain wastes or products which fail to meet the operational and technical standards of this chapter shall be immediately 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.

SECTION 2. ATCP 94.100 (8) (b) (Note) is created to read:

ATCP 94.100 (8) (b) **Note:** To obtain supervision of a person with enforcement authority under this chapter, contact the department. See the department website at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx for the contact information for the inspectors.

SECTION 3. ATCP 94.100 (8) (c), (d), and (Note 1) are amended to read:

ATCP 94.100 (8) (c) *Immediate shutdown after a prohibited act.* Liquid fuel storage systems are subject to immediate shutdown after any corresponding violation of s. ATCP 94.400 (1) ~~or (2)~~ occurs.

(d) ~~*Shutdown*~~ *Immediate shutdown after failure to maintain records.* Liquid fuel storage tank systems are subject to immediate shutdown if corresponding inventory, delivery, or manifest records ~~either~~ are inaccurate, incomplete, 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 ATCP 93.500 (9) and ATCP 94.330 (3) 94.340 (4), 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 ATCP 94.100 (5) and 94.330 (3) 94.340 (4), these records must be made available for inspection by the department. Section ATCP 93.500 (9) also requires maintaining several other types of records for retail storage tank systems.

SECTION 4. ATCP 94.100 (8) (e) is repealed and recreated to read:

ATCP 94.100 (8) (e) *Immediate shutdown for labeling discrepancies.* Liquid fuel storage tank systems are subject to immediate shutdown if the product identification at the tank fill is labeled differently than the product identification at the device dispensing fuel from the tank.

SECTION 5. ATCP 94.100 (8) (f) and (g) are created to read:

ATCP 94.100 (8) (f) *Shutdown after continued violation.*

1. Tank systems or components are subject to shutdown for a continuing code violation under this chapter, provided all of the following conditions are met:

a. An order, allowing a period for compliance of at least 15 days, is issued with a specific compliance date.

b. The reinspection made after the specified compliance date shows that compliance has not been achieved.

2. If compliance is not achieved by the 15-day compliance date as in subd. 1. a., any additional inspections may result in a reinspection fee per the special inspection fees listed in s. ATCP 93.1605 (5).

(g) *Appeals.* Any appeal to a shutdown order must be filed pursuant to s. ATCP 93.190.

SECTION 6. ATCP 94.110 (Title), (2), and (3) (Title) are amended to read:

ATCP 94.110 ~~Petition Penalties, fees, and petitions for variance, penalties and fees.~~

(2) FEES. Fees for requested inspections, including complaint-driven inspections, shall be assessed in accordance with ~~ch. SPS 302~~ s. ATCP 94.410.

(3) ~~PETITION~~ PETITIONS FOR VARIANCE.

SECTION 7. ATCP 94.110 (3) is renumbered ATCP 94.110 (3) (a) and amended to read:

ATCP 94.110 (3) (a) The department ~~shall consider and~~ may grant a variance to a provision of this chapter, ~~in accordance with ch. SPS 303. The petition for variance shall include, where applicable, a position statement from the fire department having jurisdiction. A separate petition for variance must~~ be submitted to the department for each fuel type and shall include all of the following:

SECTION 8. ATCP 94.110 (3) (a) 1., 2., 3., 4., 5., 6., 7., 8., and (b) are created to read:

ATCP 94.110 (3) (a) 1. Requester's name and address.

2. Type of business.

3. Product description, intended use and specification sheet.

4. Evidence that an equivalency is established in the petition for variance that meets the intent of the rule being petitioned.

5. Reason for the request.

6. Signature and title of the requester.

7. Date of the request.

8. The fee of \$300.

(b) The department will respond within 30 days of receipt of complete petitions.

SECTION 9. ATCP 94.110 (3) (Note1) is repealed.

SECTION 10. ATCP 94.120 is repealed and recreated to read:

ATCP 94.120 **Definitions.** In this chapter:

(1) "Alternative liquid automotive fuel" includes all of the following:

(a) Mixtures containing more than 16.1 percent by volume of butanol or 15 percent by volume of methanol, denatured ethanol, other alcohols, or any combination thereof with gasoline or other fuels.

(b) Biodiesel over B5.

(c) Coal-derived liquid fuels.

(d) Other liquid automotive fuels not defined by this chapter.

(2) “Automotive fuel rating” means:

(a) For gasoline, the octane rating.

(b) For an alternative liquid automotive fuel other than biodiesel, biomass-based diesel, biodiesel blends, biomass-based diesel blends, and ethanol flex fuels, the commonly used name of the fuel with a disclosure of the amount, expressed as the minimum percentage by volume, of the principal component of the fuel. A disclosure of other components, expressed as the minimum percentage by volume, may be included, if desired.

(c) For biomass-based diesel, biodiesel, biomass-based diesel blends with more than 5 percent biomass-based diesel, and biodiesel blends with more than 5 percent biodiesel, a disclosure of the biomass-based diesel or biodiesel component, expressed as the percentage by volume.

(d) For ethanol flex fuels, a disclosure of the ethanol component, expressed as the percentage by volume and the text “Use Only in Flex-Fuel Vehicles/May Harm Other Engines.”

(3) “Automotive gasoline” means a type of gasoline suitable for use in spark ignition automobile engines and also commonly used in marine and non-automotive applications.

(4) “Aviation gasoline” means a type of gasoline suitable for use as a fuel in an aviation spark-ignition internal combustion engine.

(5) “Aviation turbine fuel” means a refined middle distillate suitable for use as a fuel in an aviation gas turbine internal combustion engine.

(6) “Biodiesel blend” means a fuel comprised of biodiesel fuel with petroleum-based diesel fuel, designated BXX. In the abbreviation BXX, the XX represents the percent by volume of biodiesel fuel in the blend.

(7) "Biodiesel fuel" means a fuel comprised of at least 99 percent by volume mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100 or B99.

(8) "Biofuels" means any fuel that is derived from biomass.

(9) "Biomass" means biological material including any material other than fossil fuels which is or was a living organism or component or product of a living organism.

(10) "Butanol" means butyl alcohol, the chemical compound C_4H_9OH , a colorless substance existing in four isomeric forms.

(11) "Department" means the Wisconsin department of agriculture, trade and consumer protection.

(12) "Diesel fuel" means a refined hydrocarbon suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine that may contain a combination of biodiesel, renewable diesel, and fuel additives.

(13) "Dissimilar fuel products" means fuel products with different oxygenates, different oxygenate content by volume, different octane rating, different ASTM specifications, different biomass content by volume, or different definitions under this chapter.

(14) "E15" means gasoline containing more than ten percent ethanol by volume but not more than fifteen percent ethanol by volume.

(15) "E85" means high-level ethanol-gasoline blends containing 51 percent to 83 percent ethanol by volume, depending on geography and season.

(16) "EPA" means the United States environmental protection agency.

(17) "Ethanol" and "denatured fuel ethanol" means ethyl alcohol.

(18) "Ethanol flex fuel" means blends of ethanol and hydrocarbons restricted for use as fuel in ground vehicles equipped with flexible-fuel spark-ignition engines.

(19) "Finished fuels" means fuels that are ready to be used without requiring additional chemical or physical processing to meet adopted specifications.

(20) "Fuel oil" means refined oil middle distillates, heavy distillates, or residues of refining, or blends of these, suitable for use as a fuel for heating or power generation.

(21) “Gasoline” means a volatile mixture of liquid hydrocarbons generally containing small amounts of additives suitable for use as a fuel in a spark-ignition internal combustion engine.

(22) “Gasoline-oxygenate blend” means a fuel consisting primarily of gasoline along with more than one percent by volume oxygenate, or more than 0.3 percent by volume methanol not to exceed the total oxygen content permitted by applicable laws and regulations.

(23) “Inspection” means collection of product samples, qualitative determination by visual assessment and laboratory testing, and verification of associated product–shipping and storage records.

(24) “Inspector” means a duly authorized fuel products inspector of the department.

(25) “Kerosene” and “kerosine” means a refined middle distillate suitable for use as a fuel for heating or illuminating.

(26) “Lead substitute” means an EPA-registered gasoline additive suitable, when added in small amounts to fuel, to reduce or prevent exhaust valve recession or seat wear in automotive spark-ignition internal combustion engines designed to operate on leaded fuel.

(27) “Methanol” means methyl alcohol.

(28) “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. ATCP 94.300.

(29) “MTBE” means methyl tertiary-butyl ether.

(30) “Oxygenate” means an oxygen-containing, ashless, organic compound, such as an alcohol or ether, which can be used as a fuel or fuel supplement.

(31) “Petroleum and other liquid fuel products,” “liquid fuels,” and “fuel products” means gasoline, gasoline/alcohol-ether gasoline-oxygenate blends, aviation gasoline, aviation turbine fuel, automotive gasoline, kerosene, fuel oil, burner fuel, diesel fuel, biofuels, other liquid motor fuels, and blends of petroleum-based fuels and biofuels.

(32) “Racing gasoline” means a specialty fuel typically used in non-road racing vehicles that is generally of lower volatility, has a narrower boiling range and a higher octane rating than gasolines made for use in conventional passenger vehicles.

(33) “Reclaimed used lubricating oil,” “re-cleaned used lubricating oil,” or “reconditioned used lubricating oil” means used oil which has been cleaned by cleaning methods used for the primary purpose of removing insoluble contaminants to make the oil suitable for further use. In this subsection, “cleaning method” includes settling, heating, dehydration, filtration, or centrifuging.

(34) “Red-tag” means a red tag secured to a component of a storage or dispensing system, which gives notice that the system or the product stored is under enforcement action for failure to comply with the requirements of either this chapter or ch. ATCP 93, and which prohibits operation of the system until the red tag is removed by or under the direction of an inspector.

(35) “Rerefined used lubricating oil” means used oil on which refining processes have been used to produce high-quality base stock for lubricants. In this subsection, “refining process” includes distillation, hydrotreating, or treatments employing acid, caustic, solvent, clay, or other chemicals, or a combination of those processes.

SECTION 11. ATCP 94.200 (1) is amended to read:

ATCP 94.200 Adoption of standard specifications by reference.

(1) The following standards of the ~~2018~~ 2023 *Annual Book of ASTM Standards* of ASTM International are incorporated by reference into this chapter:

- (a) ASTM D396-~~18~~ 21, standard specification for fuel oils.
- (b) ASTM D910-~~18~~ 21, standard specification for aviation gasolines.
- (c) ASTM D975-~~18~~ 22, standard specification for diesel fuel oils.
- (d) ASTM D1655-~~18a~~ 22, standard specification for aviation turbine fuels.
- (e) ASTM D3699-~~13b1~~ 19, standard specification for kerosene.
- (f) ASTM D4806-~~17~~ 21a, standard specification for denatured fuel ethanol for blending with gasolines for use as automotive spark-ignition engine fuel.

(g) ASTM D4814-~~18b~~ 21c, standard specification for automotive spark-ignition engine fuel.

(h) ASTM D5798-~~17~~ 21, standard specification for ethanol fuel blends for flexible-fuel for automotive spark-ignition engines.

(i) ASTM D6227-~~17~~ 18, standard specification for unleaded aviation gasoline containing a non-hydrocarbon component.

(j) ASTM D6751-~~15eel~~ 20a, standard specification for biodiesel fuel blend stock (B100) for middle distillate fuels.

(k) ASTM D7467-~~17~~ 20a, standard specification for diesel fuel oil, biodiesel blend (B6 to B20).

(L) ASTM D7547-~~17a~~ 21, standard specification for hydrocarbon unleaded aviation gasoline.

SECTION 12. ATCP 94.200 (1m) is created to read:

ATCP 94.200 (1m) All finished fuels must meet the adopted standard specifications at the time they are offered for sale.

(a) Fuels sold from terminals, bulk plants, or other wholesale operations shall meet the required specification for the fuel type indicated on the delivery records required in s. ATCP 94.340.

(b) Fuels sold at retail shall meet the required specification for the fuel type indicated by the dispenser labeling required in s. ATCP 94.300 (1).

SECTION 13. ATCP 94.200 (2) (Note1) is amended to read:

ATCP 94.200 (2) **Note:** Copies of the adopted standards are on file in the offices of the department and the legislative reference bureau. Copies of the ASTM standards may be purchased from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959, telephone 877-909-2786, e-mail service@astm.org, or ~~Web-site~~ website www.astm.org.

SECTION 14. ATCP 94.210 (1) (Title) and (a) are amended to read:

ATCP 94.210 (1) (Title) GASOLINE, AUTOMOTIVE GASOLINE, ALCOHOL, AND GASOLINE/ALCOHOL-ETHER BLENDS, AND GASOLINE CONTAINING UP TO 10 PERCENT OXYGENATE BY VOLUME.

(a) *General.* Gasoline, automotive gasoline, and ~~gasoline/alcohol-ether-gasoline-oxygenate~~ blends sold or offered for sale in this state shall be visually free of undissolved water, sediment and suspended matter and shall be clear and bright at the ~~ambient temperature or 70 degrees F (21 degrees C), whichever is higher~~ fuel temperature at the point of custody transfer or a lower temperature agreed upon by the purchaser and seller.

SECTION 15. ATCP 94.210 (1) (b) and Table 94.210 are repealed.

SECTION 16. ATCP 94.210 (1) (c) 1. is amended to read:

ATCP 94.210 (1) (c) 1. ~~Except as provided in subd. 2., any~~ Any fuel product designated by name or reference as automotive gasoline shall meet the requirements of ~~ASTM D4814~~ specified in ASTM D4814.

SECTION 17. ATCP 94.210 (1) (c) 2. and (1) (c) 2. (Note) are repealed.

SECTION 18. ATCP 94.210 (1) (d) (Title), (1) (d) 2., 3., 4., (1) (e) 1. and 2., and (f) are amended to read:

ATCP 94.210 (1) (d) (title) ~~Gasoline/oxygenate blends~~ Gasoline containing up to 10 percent oxygenate by volume.

1. Anhydrous denatured alcohol may be added to gasoline if the original gasoline product meets the requirements of par. ~~(b) or (c).~~

2. The alcohol content for ethyl alcohol may not exceed a concentration of 10 ~~volume~~-percent by volume.

3. The alcohol content for ~~methyl alcohol gasoline-methanol blends~~ may not exceed a concentration of one ~~volume~~-percent by volume.

4. Other oxygenated fuels shall be acceptable if the oxygenates are blended ~~at the refinery in a manner approved by the department~~ in amounts allowed by the EPA and the final product conforms to the standard specification for gasoline under par. ~~(b) or (c).~~

(e) *Ethanol.* 1. Any product designated by name or reference as denatured fuel ethanol for blending with gasoline for use as automotive spark-ignition engine fuel shall meet the requirements given for denatured fuel ethanol in of ASTM D4806.

2. Any product designated by name or reference as ethanol flex fuel ethanol for automotive spark-ignition engines shall meet the requirements of ASTM D5798.

(f) *Documentation.* Any person who distributes gasoline products which contain one percent or more by volume of ethyl alcohol or methyl alcohol, or both, shall accurately state on any invoice, bill of lading, shipping paper, or other documentation accompanying the shipment used in normal and customary business practices, the type and ~~percentage of alcohol rounded to a whole number or half number equal to or less than the determined percentage~~ maximum percent by volume of alcohol.

SECTION 19. ATCP 94.210 (2) is repealed.

SECTION 20. ATCP 94.210 (3) is created to read:

ATCP 94.210 (3) REID VAPOR PRESSURE FOR GASOLINE-ETHANOL BLENDS NOT TO EXCEED TEN PERCENT ETHANOL BY VOLUME. When gasoline is blended with ethanol and the resulting fuel product contains no more than ten percent ethanol by volume, the ethanol shall meet ASTM D4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel," and the blend shall meet ASTM D4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel," except that the maximum vapor pressure shall not exceed the ASTM D4814 limits by more than 1.0 psi for blends containing one or more percent by volume ethanol for volatility classes A, B, C, D, and E from September 16 through May 31.

SECTION 21. ATCP 94.215 is created to read:

ATCP 94.215 **E15 specifications.** (1) **REQUIREMENTS.** Except as provided in sub. (2), any fuel product designated by name or reference or defined as "E15" shall meet the requirements specified in ASTM D4814. Any person who distributes E15 shall accurately state on any invoice, bill of lading, shipping paper, or other documentation accompanying the shipment used in normal and customary business practices, the maximum percent by volume of ethanol.

(2) **REID VAPOR PRESSURE FOR E15.** When gasoline is blended with ethanol and the resulting fuel product is designated by name or reference or defined as E15, the ethanol shall meet ASTM D4806,

“Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel,” and the blend shall meet ASTM D4814, “Standard Specification for Automotive Spark-Ignition Engine Fuel,” except that the maximum vapor pressure shall not exceed the ASTM D4814 limits by more than 1.0 psi for blends containing one or more percent by volume ethanol for volatility classes A, B, C, D, and E from September 16 through May 31.

SECTION 22. 94.240 (Title) and (1) are amended to read:

ATCP 94.240 Diesel fuel oil specifications.

(1) ~~Except as provided in subs. (2) and (6), any~~ Any 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 D975.

SECTION 23. 94.240 (2) is repealed.

SECTION 24. ATCP 94.240 (3) (Note) is repealed.

SECTION 25. ATCP 94.240 (4) is renumbered ATCP 94.240 (4) (a) and amended to read:

ATCP 94.240 (4) (a) ~~Biodiesel-blended motor fuels~~ Biodiesel blends of 6 greater than 5 to but not more than 20 percent biodiesel by volume shall meet the requirements of ASTM D7467.

SECTION 26. ATCP 94.240 (4) (b) is created to read:

ATCP 94.240 (4) (b) The retailer shall be provided, at the time of delivery of the fuel, a declaration of the percent by volume biodiesel on an invoice, bill of lading, shipping paper, or other document. This documentation is for dispenser labeling purposes only; it is the responsibility of any potential blender to determine the amount of biodiesel in the diesel fuel prior to blending.

SECTION 27. ATCP 94.240 (5) is amended to read:

ATCP 94.240 (5) Any person who distributes petroleum-source diesel fuel mixed with non-petroleum-source diesel fuel shall accurately state on any invoice, bill of lading, shipping paper, or other documentation accompanying the shipment used in normal and customary business practices, the type and percentage maximum volume percent of each component ~~rounded to a whole number or half number equal to or less than the determined percentage.~~

SECTION 28. ATCP 94.240 (6) and (Note) are repealed.

SECTION 29. ATCP 94.250, ATCP 94.260, and ATCP 94.270 are created to read:

ATCP 94.250 **Aviation fuels.** (1) AVIATION GASOLINE. Any fuel product designated by name or reference as aviation gasoline shall meet the requirements of ASTM D910, D6227, or D7547.

(2) AVIATION TURBINE FUEL. Any fuel product designated by name or reference as aviation turbine fuel shall meet the requirements of ASTM D1655.

ATCP 94.260 **Racing gasoline.** This section only applies to racing gasoline.

(1) OCTANE RATING. The octane rating of racing gasoline shall not be less than any of the following:

(a) The octane rating posted on the product dispenser.

(b) The certification on the invoice, bill of lading, shipping paper, or other documentation.

(2) SPECIFICATIONS. The product specification limits shall be those as declared by the manufacturer's product specifications. Upon the request by the department, each supplier of racing gasoline shall provide a copy of the manufacturer's product specifications.

(3) LEAD AND LEAD SUBSTITUTE. (a) *Minimum Lead Content to Be Termed Leaded.* Gasoline and gasoline oxygenate blends sold as leaded shall contain a minimum of 0.013 grams of lead per liter or 0.05 grams per U.S. gallon.

(b) *Labeling.* Each dispensing device from which gasoline or gasoline-oxygenate blends containing lead shall display the following legend, "Contains lead." The lettering of this legend shall not be less than 12.7 millimeters or ½ inch in height and the color of the lettering shall be in definite contrast to the background color to which it is applied.

(c) *Use of Lead Substitute Must be Disclosed.* Each dispensing device from which gasoline or gasoline-oxygenate blends containing a lead substitute is dispensed shall display the following legend: "Contains Lead Substitute." The lettering of this legend shall not be less than 12.7 millimeters or ½ inch in height and the color of the lettering shall be in definite contrast to the background color to which it is applied.

(d) *Nozzle Requirements for Leaded Fuel.* Each dispensing device from which gasoline or gasoline oxygenate blends that contain lead in amounts sufficient to be considered leaded gasoline, or lead substitute

engine fuel, is sold shall be equipped with a nozzle spout having a terminal end with an outside diameter of not less than 23.63 millimeters or 0.93 inches.

ATCP 94.270 E85 specifications. Any fuel product designated by name or reference or defined as “E85” shall meet the requirements specified in ASTM D5798. Any person who distributes E85 shall state on any invoice, bill of lading, shipping paper, or other documentation accompanying the shipment used in normal and customary business practices, the actual volume percent of ethanol.

SECTION 30. ATCP 94.300 (1) (a) is amended to read:

ATCP 94.300 Labeling of dispensers and containers. (1) DISPENSING EQUIPMENT. (a) *General.* All devices dispensing liquid fuel products at motor fuel dispensing facilities, garages, or other places where liquid fuel products are sold or offered for sale shall be marked with a conspicuous label visible on both faces of the dispensing device accurately indicating the actual automotive fuel rating of the fuel product. No label may be placed so that the text is sideways or upside down.

SECTION 31. ATCP 94.300 (1) (a) (Note1) is repealed.

SECTION 32. ATCP 94.300 (1) (b) 1. and 2. are amended to read:

ATCP 94.300 (1) (b) *Oxygenated gasoline dispensing device labels.* 1. A device that dispenses a gasoline-ethanol fuel blend of more than ~~2%~~ one percent by volume of ethanol shall be labeled with the maximum ~~volume~~ percent by volume of ethanol at all times the product is offered for retail sale.

2. A device that dispenses a reformulated gasoline, as defined in s. 285.37 (1), Stats., that contains an oxygenate other than ethanol shall be labeled with the identity of the oxygenate at all times the product is offered for retail sale. If the ~~reformulated~~ gasoline contains multiple oxygenates, the label shall identify the ~~predominate~~ predominant oxygenate based upon percent by volume ~~percent~~.

SECTION 33. ATCP 94.300 (1) (b) 8. is repealed.

SECTION 34. ATCP 94.300 (1) (b) 9. is created to read:

ATCP 94.300 (1) (b) 9. a. Labeling. Any retailer or wholesaler who sells, dispenses, or offers for sale or dispensing E15 shall comply with labeling requirements in 40 CFR s. 1090.1510.

b. Placement. The label shall be placed on the upper two-thirds of each fuel dispenser where the consumer will see the label when selecting a fuel to purchase. For dispensers with one nozzle, the label shall be placed above the button or other control used for selecting E15, or in any other manner which clearly indicates which control is used to select E15. For dispensers with multiple nozzles, the label shall be placed in the location that is most likely to be seen by the consumer at the time of selection of E15.

SECTION 35. ATCP 94.300 (1) (c) is renumbered ATCP 94.300 (1) (c) 1. and amended to read:

ATCP 94.300 (1) (c) 1. ~~Dual dispenser for alcohol.~~ Dispensing gasoline-ethanol fuel blends. 1. 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~~ 15 percent ethanol by volume shall bear a label clearly warning any purchaser that the first gallon may have more than ~~10~~ 15 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., 6. and 7. ~~Enforcement of this paragraph shall be in accordance with par. (b) 8.~~

SECTION 36. ATCP 94.300 (1) (c) 2. is created to read:

ATCP 94.300 (1) (c) 2. *Same Nozzle Permitted.* 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 either of the following applies:

a. A label satisfying the requirements under s. 168.11 (1) (b) 3., Stats., is prominently affixed to the dispensing device stating “Passenger Vehicles Only. Use in Other Vehicles, Engines and Equipment May Violate Federal Law.”; 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 ten percent ethanol by volume; and the retail station displays signs informing customers of the availability and location of the device required under this subdivision paragraph.

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

SECTION 37. ATCP 94.300 (2) (a) and 2. are amended to read:

ATCP 94.300 (2) (a) *Gasoline and similar products.* All containers for storing gasoline or any other product that has a flash point of less than 100°F when tested using either an ASTM D56, ~~or ASTM D93~~, ASTM D6450, ~~or ASTM D7094~~ closed tester shall be metal or equally sound nonflammable material meeting the requirements of ch. ATCP 93 or SPS 314, shall have the common name of the contents clearly labeled or painted on the exterior, and shall be substantially a bright red color. These requirements do not apply to any of the following:

2. Containers holding ~~one gallon or less~~ of a liquid fuel product which were filled originally by a manufacturer or a packager and which comply with the federal standards for packaging and labeling.

SECTION 38. ATCP 94.300 (2) (a) 3. (Note) is repealed.

SECTION 39. ATCP 94.300 (4) (Intro.) is renumbered ATCP 94.300 (4) (a).

SECTION 40. ATCP 94.300 (4) (b) is created to read:

ATCP 94.300 (4) (b) A person who changes the fuel product dispensed from a tank system to a dissimilar fuel product shall notify the inspector, and the new product shall be tested and approved before being dispensed.

SECTION 41. ATCP 94.300 (4) (Note) is renumbered ATCP 94.300 (4) (b) (Note) and amended to read:

ATCP 94.300 (4) (b) (Note): Chapter ATCP 93 has detailed requirements that apply when converting a fuel tank to storage of fuel containing more than 10 percent ethanol by volume and more than five percent biodiesel by volume. Those requirements address cleaning the tank, tightness testing, and equipment compatibility.

SECTION 42. ATCP 94.310 (1) (b) 1. is amended to read:

ATCP 94.310 (1) (b) 1. Liquid fuel products previously inspected by the department at the refinery or at a marine or pipeline terminal within or ~~without~~ outside the state.

SECTION 43. ATCP 94.310 (2) (a) 1., 2., 3., (b), (e) 1., and 2. (Notes) are amended to read:

ATCP 94.310 (2) NOTIFICATION FOR INSPECTION. (a) 1. Where requested by the department, the recipient of all liquid fuel products shall notify the ~~department's corresponding district inspection office~~ inspector 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. Where requested by the department, the ~~department's corresponding district inspection office~~ inspector shall be notified of any 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~~ inspector.

(b) If a person transfers one grade of a liquid fuel product into a container with another grade of liquid fuel product, the entire commingled product shall be deemed uninspected and the ~~department's corresponding district inspection office~~ inspector shall be notified.

(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~~, inspector, and the new product shall be tested and approved before being dispensed.

2. **Note:** Under chapter ATCP 93, the ~~department's corresponding district inspection office~~ inspector 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~~ website at http://datcp.wi.gov/Consumer/Weights_and_Measures/index.aspx. for the contact information for the ~~Department's district inspection offices~~ inspectors.

SECTION 44. ATCP 94.310 (2) (c) is repealed.

SECTION 45. ATCP 94.310 (3) (a) is amended to read:

ATCP 94.310 (3) (a) SAMPLING PROCEDURES. (a) *General*. A representative sample of ~~at least 8 ounces~~ shall may be taken from ~~every~~ any shipment of liquid fuel products, including commingled products that ~~is~~ are imported into and received in this state.

SECTION 46. ATCP 94.310 (3) (c) is repealed.

SECTION 47. ATCP 94.320 is repealed and recreated to read:

ATCP 94.320 **Water in tanks.** Water may not exceed the depths specified in s. ATCP 93.605 in any tank utilized for storing fuels for retail sale, except as otherwise approved by the department.

SECTION 48. ATCP 94.330 is repealed and recreated to read:

ATCP 94.330 **Department records.** The department shall keep records of each inspection made, showing all of the following:

- (1) The date and place of each inspection.
- (2) The product name of the liquid inspected.
- (3) The name and address of the person for whom the inspection is made.

Note: Wis. Stat. ch. 98 has detailed requirements that apply to delivery of certain liquid fuels.

SECTION 49. ATCP 94.340 is created to read:

ATCP 94.340 **Documentation and records.**

(1) **GENERAL.** Any person receiving, unloading, using, offering for sale, or selling any liquid fuel product shall accurately 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 s. 306.12.

(2) **OXYGENATE DISCLOSURE.** Any person who distributes fuel products which contain one percent or more by volume of an oxygenate, shall accurately state on any invoice, bill of lading, shipping paper, or other documentation accompanying the shipment used in normal and customary business practices, the type of oxygenate and maximum percent by volume contained in the fuel.

(3) **TRANSPORTATION RECORDS.** Every person transporting liquid fuel products shall maintain accurate and complete records showing the shipment or receipt of the fuel products. The department shall

have free access to the records for the purpose of determining the amount of liquid fuel products shipped or received.

(4) RECEIPT RECORDS. Every person receiving fuel products shall maintain an accurate and complete record of the delivery of the product, together with bills of lading, waybills, and any other documents pertinent to verifying the inventory of the product, for at least 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 fuel products shipped or received.

Note: See Wis. Stat. s. 98.225 for additional detailed requirements for deliveries of certain liquid fuels.

SECTION 50. ATCP 94.400 (1) is amended to read:

ATCP 94.400 **Prohibited acts.** (1) No person other than an operator of a refinery or terminal may ~~deliberately~~ deliver, unload, direct, or transfer ~~a lower grade of~~ a fuel product into a storage tank system labeled as containing ~~a higher grade of~~ dissimilar fuel product unless specifically approved in writing by an inspector.

SECTION 51. ATCP 94.400 (2) is amended to read:

ATCP 94.400 (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~~ fuel products into a storage tank unless specifically approved in writing by an inspector.

SECTION 52. ATCP 94.400 (2m) is created to read:

ATCP 94.200 (2m) Except as authorized under sub. (1), no person may deliver, unload, direct, or transfer a fuel product into a storage tank that contains a dissimilar fuel product unless specifically approved in writing by an inspector.

SECTION 53. ATCP 94.400 (5) is amended to read:

ATCP 94.400 (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 contaminated with a dissimilar product or altered after being testing-tested under this

chapter, unless either approved otherwise by the department or further testing shows the altered product complies with this chapter.

SECTION 54. ATCP 94.400 (5) (Note), (6), and (7) are repealed.

SECTION 55. ATCP 94.400 (8), (9), (10), (11), and (12) are created to read:

ATCP 94.400 (8) No person may fail to maintain accurate and complete records and reports required under this chapter.

(9) No person may remove or tamper with any red-tag without written authorization from the department.

(10) No person may fail to comply with an administrative order issued by the department.

(11) No person may blend a fuel product in an underground storage tank.

(12) No person may remove contaminated product from a storage tank system without first notifying the department.

SECTION 56. ATCP 94.410 (1) is renumbered ATCP 94.410 (3) and is amended to read:

ATCP 94.410 (3) OUTSIDE TESTING. An owner or seller of products which are subjected to a ~~qualitative~~ an analysis that cannot be performed by department equipment and which are therefore sent to an outside testing source shall reimburse the department for the actual cost of the analysis ~~and, the cost of shipping, the fee specified in sub. (2),~~ and pay any fee assessed under ~~ch. SPS 302~~ this chapter.

SECTION 57. ATCP 94.410 (2) is repealed.

SECTION 58. ATCP 94.410 (1) and (2) are created to read:

ATCP 94.410 (1) INVESTIGATIONS AND TESTING. An owner or seller of a product shall reimburse the department for all of the following, as specified in sub. (2):

(a) Investigation and testing of fuel specification failures, misdeliveries, and contaminated fuel.

(b) Investigation and testing of mislabeled products.

(c) Investigation and testing related to accidents or explosions under s. ATCP 94.100 (6).

(d) Investigation and testing requested by the owner or seller of the product.

(2) COSTS. An owner or seller of a product shall reimburse the department the cost of shipping plus:

(a) \$80 per hour for investigations and testing by the department conducted between 7:45 a.m. and 4:30 p.m. on weekdays Monday through Friday.

(b) \$120 per hour for investigations and testing performed by the department on Saturdays, Sundays, holidays and at times other than scheduled from 7:45 a.m. and 4:30 p.m. on weekdays Monday through Friday.

SECTION 59. ATCP 94.410 (3) is renumbered ATCP 94.410 (6).

SECTION 60. ATCP 94.410 (5) is amended to read:


ATCP 94.410 (5) CONTINUATION OF SHUTDOWN. Failure to pay any reimbursements or fees required under this section, for a liquid fuel storage tank system that has been shut down under s. ATCP 94.100 (8), shall result in a continuation of that shutdown.

SECTION 61. EFFECTIVE DATE: This rule takes effect on the first day of the month following publication.

(END OF RULE TEXT)

Dated this 10 day of January, 2023.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: 
Randy Romanski
Secretary

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date August 24, 2022
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) ATCP 94	
4. Subject Petroleum and Other Liquid Fuel Products	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule With the enactment of 2013 Wisconsin Act 20 (the biennial budget bill), the state of Wisconsin transferred the Petroleum and Other Liquid Fuel Products program, also known as the Petroleum Inspection Program, from the Department of Safety and Professional Services (DSPS) to the Department of Agriculture, Trade and Consumer Protection (department). Wisconsin Act 20 also authorized the transfer of existing administrative rules relating to this program with the approval of the Secretary of the Department of Administration. The Legislative Reference Bureau used its authority to renumber the affected rule from Chapter SPS 348 to Chapter ATCP 94. Other aspects of the transfer must be addressed through administrative rulemaking. The department rule revisions make technical and organizational changes to portions of ch. ATCP 94. These changes integrate the petroleum inspection program into the department's other regulatory programs and provide clarity to regulated industries. The amendments to ch. ATCP 94 also clarify Wisconsin law on E15 and address ongoing producer concerns about base versus blend.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. None at this time. The fiscal estimate and flexibility analyses were posted with the draft rule, as well as being posted on the department's website independent of the rule. The concerns of the regulated community were identified and addressed more thoroughly in the rulemaking. No comments were made directly to the fiscal estimate by stakeholders during the rulemaking process.	

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

None involved. Because the program is a state responsibility, the department does not expect local governments to have any additional expenses.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

This rule will impact businesses that sell or distribute petroleum and other liquid fuel products, either at wholesale or retail. Although these businesses are already regulated under the existing rule, they might need to make minor changes to comply with updated requirements, such as a reduction in the water levels permitted in tanks containing certain fuels.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Benefits

Eliminating outdated standards that conflict with national and federal standards benefits producers, wholesalers, and retailers of petroleum and other liquid fuel products by reducing confusion and the overall burden of compliance. Those businesses also benefit from updates in the rule that clarify definitions and processes, including fee authority and the process by which to request a variance. In addition, updates allow for the sale of E15 as gasoline.

This rule benefits manufacturers and sellers of vehicles and small engines that should never use E15 by adopting and enforcing EPA requirements that aim to prevent mis-fueling with E15.

This rule benefits consumers of petroleum and other liquid fuel products by ensuring that the Wisconsin Administrative Code is consistent with national standards. Consumers also benefit from the option to choose E15 for use in appropriate vehicles and from regulations protecting vehicles and small engines that should never use E15.

Alternatives

Do nothing. If the department does not implement the numerous technical updates, the rule will be unnecessarily difficult to understand, and it will remain inconsistent with the latest national standards. In addition, if the department does not implement the rule, businesses that wish to sell or dispense E15 as gasoline (rather than as alternative fuel) will be unable to do so easily. Finally, numerous changes have been made in state statute concerning fuel quality. Without adoption of this rule, ch. ATCP 94 will continue to be outdated and inconsistent with statute.

16. Long Range Implications of Implementing the Rule

There are no expected long-term implications to implementing this rule.

17. Compare With Approaches Being Used by Federal Government

The federal Clean Air Act (CAA) authorizes the Environmental Protection Agency (EPA) to establish emissions standards for motor vehicles to address air pollution that may reasonably be anticipated to endanger public health or welfare. EPA also has authority to establish fuel controls to address such air pollution. 40 CFR Parts 79, 80, 85, and 86 establish fuel quality and emissions standards by rule, which are enforced by EPA. These rules incorporate by reference the ASTM International standards and test methods.

EPA regulates the vapor pressure of gasoline sold at retail stations during the summer ozone season. The EPA does so to reduce evaporative emissions from gasoline that contribute to ground-level ozone and to diminish the effects of ozone-related health problems.

ADMINISTRATIVE RULES
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42 U.S.C. § 7545 regulates fuels and allows for a temporary waiver of a control or prohibition respecting the use of a fuel or fuel additive. By this authority, EPA may grant partial waivers allowing for gasoline-ethanol blends greater than 10 percent and up to 15 percent (E15) for use in model year 2001 and newer light-duty vehicles. 40 CFR Part 80 establishes E15 labeling and survey requirements, as well as transfer document requirements for gasoline-oxygenate blends.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois

Illinois adopts by reference the most recent revisions of ASTM standards regarding motor fuel. Illinois adopts by reference sections of the most current revision of NIST Handbook 130, including the standards and test methods regarding gasoline-ethanol blends, which include E15 as gasoline. Illinois allows the sale of E15 as gasoline. Illinois requires fuel to meet specifications at base and blend.

Iowa

Iowa adopts ASTM standards and test methods regarding motor fuel. Iowa allows the sale of E15 as gasoline. Iowa requires fuel to meet specifications at base and blend.

Michigan

Michigan adopts standards and test methods regarding gasoline, motor fuel additives, and grading. Michigan allows the sale of E15 as gasoline. Michigan requires fuel to meet specifications at base and blend.

Minnesota

Minnesota requires petroleum products to meet ASTM standards, and allows for gasoline-ethanol blends to be blended up to any percentage specifically authorized by an EPA waiver under the Clean Air Act. Minnesota allows the sale of E15 as gasoline. Minnesota allows fuel to meet specifications at base or blend.

19. Contact Name

David A. Woldseth

20. Contact Phone Number

608-224-5164

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

None.

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: Petroleum and Other Liquid Fuel Products
Adm. Code Reference: ATCP 94
Rules Clearinghouse #: 21-096
DATCP Docket #: 21-R-06

Rule Summary

This rule does all of the following:

- Updates standards incorporated by reference.
- Creates definitions clarifying the meaning of important terms.
- Updates petition for variance procedures and fee authority per transfer from the Department of Safety and Professional Services (DSPS).
- Updates allowance for water in tanks to match national standards.
- Creates new sections on E15 and E85.
- Creates new sections on aviation fuel and racing fuel.
- Clarifies record keeping and documentation.
- Codifies the Reid Vapor Pressure waiver.
- Makes other minor updates and changes including corrections to outdated provisions.

Small Business Affected

This rule will apply to businesses that sell or distribute petroleum and other liquid fuel products, either at wholesale or at retail. Although these businesses are already regulated under the existing rule, they might need to make minor changes to comply with updated requirements, such as a reduction in the water levels permitted in tanks containing certain fuels.

Recalibration of water sensors in tanks will pose the greatest impact on businesses selling petroleum and other liquid fuel products. Sellers are already required to complete annual checks of fueling systems, at which time a recalibration of water sensors to meet the new standard can be done, thereby avoiding the cost of additional visits from service providers.

The new rule also eliminates the need to cross reference DSPS rules in the assessment of fees and completes the legislative requirement that the rule comply with the Department of Agriculture, Trade and Consumer Protection policies. This should help small businesses in reviewing relevant rules.

Record Keeping requirements

Although the records management portion of the rule applicable to industry was repealed and recreated for the sake of clarity, there are no substantive changes to record keeping requirements. The new Wis. Admin. Code s. ATCP 94.340 will not impose any new record keeping requirements on businesses since the substantive requirements of subs. (3) and (4) were previously set forth in the current rule under Wis. Admin. Code s. ATCP 94.330.

Accommodation for Small Business

Many of the businesses affected by this rule are “small businesses.” However, given the subject matter, there are very few accommodations or special exceptions that can be made for small businesses.

Conclusion

This rule will have minimal impact on affected businesses, including “small businesses.” Negative effects, if any, will be few and limited. Because this rule will not have a significant adverse effect on “small business,” it is not subject to the delayed “small business” effective date provided in Wis. Stat. s. 227.22 (2) (e).

Dated this 23 day of August, 2022.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: Lara Sutherlin

Lara Sutherlin, Administrator
Division of Trade and Consumer Protection