

**ADMINISTRATIVE RULES
FISCAL ESTIMATE
AND ECONOMIC IMPACT ANALYSIS**

Type of Estimate and Analysis

Original Updated Corrected

Administrative Rule Chapter, Title and Number

Ch. ATCP 93 - Flammable, Combustible and Hazardous Liquids

Subject

Flammable, Combustible and Hazardous Liquids

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Chapter 20 , Stats. Appropriations Affected

20.115 (1) (t)

Fiscal Effect of Implementing the Rule

No Fiscal Effect

Indeterminate

Increase Existing Revenues

Decrease Existing Revenues

Increase Costs

Could Absorb Within Agency's Budget

Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy

Local Government Units

Specific Businesses/Sectors

Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

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 Storage Tank Inspection programs* ("tanks program") from the Department of Safety and Professional Services (DSPS) to the Department of Agriculture, Trade and Consumer Protection (DATCP). In doing so, DATCP inherited ATCP 93 (formerly SPS 310) that had been last comprehensively evaluated in 2008 when the Department of Commerce housed the program.

In the past decade, multiple events have shaped aspects of the rule to the point that ATCP 93 has become outdated:

- In 2011, the program transferred from the Department of Commerce to DSPS.
- In 2013, the program transferred from DSPS to DATCP. While SPS 310 was renumbered ATCP 93, the rule continues to refer to SPS Administrative Code for fees, administrative procedures, and licensing among other program functions.
- In 2015, the EPA enacted rule changes that are expected to be in place in 2018.
- ATCP 93 incorporates 64 standards by reference; of these, 54 have been updated to more recent standards, and new standards availed themselves.
- ATCP 93 has time provisions that have now elapsed.
- Some explanatory notes are no longer necessary.
- Over time, industry and staff noted unclear or confusing wording.

In order to rectify these problems, DATCP plans to repeal and recreate ATCP 93. To do so, DATCP proposes changes in seven broad categories:

- To accept recommendations made by DSPS prior to the program's relocation to DATCP.
- To harmonize ATCP 93 with current federal standards, especially those set by the EPA.

- To address reorganizational changes of the program that occurred during the transfer to DATCP from DSPS.
- To respond to questions raised by stakeholders and businesses regulated by ATCP 93.
- To update standards incorporated by reference.
- To address agency concerns about the responsibilities of Class A, B, and C operators.
- To clarify or improve an aspect of this rule.

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)

The new ATCP 93 incorporates approximately 75 standards by reference in the tables located in Section 200. Dependent on the nature of the entity, a business may need to purchase or access some of these standards but not all. Because the EPA requires many of the same standards, some businesses would likely bear this cost regardless of whether ATCP 93 requires them or not. The cost of the updated standards cannot be determined because it would depend on individual buying decisions and circumstances of the regulated businesses and industries. For regulatory purposes, the State will need to purchase all standards at a cost measuring in the thousands of dollars.

The new ATCP 93 updates, reorganizes, and moves portions of SPS chapters that affect the program into the ATCP chapters of the Wisconsin Administrative Code. For instance, ATCP 93.240 incorporates numerous certifications and enforcement provisions from SPS 305. Similarly, a table from SPS 302 currently used by the tanks program will be incorporated as ATCP Table 93.130. Small businesses should benefit from this streamlining; it should have no fiscal impact on state government or program costs. Since the majority of the proposed rule updates and reorganizes provisions, adoption of the rule would have minimal, if any, economic impact to state and/or local economies.

Adopting certain provisions may have an economic impact on certain businesses dependent on the age and technology of their tank systems. DATCP does not believe these changes will incur significant costs for the agency or for regulated businesses:

- 93.505 (2) (a) 3. b. – DATCP proposes to include a site assessment for suspected or obvious releases with a tear, crack, or hole from spill basins. The site assessment could add costs.
- 93.515 (6) – there could be a hardware upgrade cost if a business uses stick to determine tank inventory; since most now use electronic, the costs should be minimal.
- 93.515 (11) – ullage testing and conversion could create additional costs if there is repeated non-compliance. Compliant businesses should see no financial effect.
- 93.545 (1) (j) – puts Wisconsin in line with other states for putting older, single-walled tanks back into service or permanently closing them.
- 93.630 (2) (d) – a new section on irrigation operations could affect the subset of businesses that have irrigation operations.

For the most part, fees have not been changed in ATCP 93. However, some re-inspection fees and plan approvals under 93.115 and in Table 93.1605 could have an impact on business costs and government program revenues.

Some changes in ATCP 93 relate to manufacturer or industry requirements. Regardless of whether DATCP includes them in a rule, these changes in practice may simply occur due to equipment and technology updates.

Comments Received in Response to Web Posting and DATCP Response

On September 30, 2017, DATCP posted the draft rule and initial regulatory flexibility analysis on the

department webpage for 30 days of comment. DATCP received no specific fiscal comments.

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

Benefits

ATCP 93, as amended, is designed to clarify and modernize existing rules and regulations. Since the standards being adopted will more closely mirror federal guidelines, industry compliance will be much easier. The proposed changes provide administrative efficiencies in this way.

Some aspects of the current tanks program tie into rules administered by DSPS. The proposed rule eliminates that problem by taking applicable provisions from the SPS rules and putting them directly into the newly created ATCP 93. This is especially important for licenses, certifications, and registrations since DATCP currently borrows the provisions from Chapter SPS 305. Instead of needing to look at multiple rules across two agencies, industry will now be able to rely largely upon the new ATCP 93.

Alternatives

Do Nothing

This rule is designed to clarify and modernize existing rules and ensure regulatory consistency. If the proposed changes are not enacted, outdated rule language will remain and existing regulations will fail to comply with the 2015 EPA rule changes expected to be in place in 2018.

If the department does not implement the numerous technical updates, the rule will continue to be difficult to understand and remain inconsistent with the latest industry standards. If the department does not alter the structure of the existing rules, its authority to administer Wisconsin's storage tanks and petroleum inspection programs will continue to rely on a non-statutory provision (Section 9138) of 2013 Wisconsin Act 20. This would become increasingly impractical and confusing as time goes on.

As mentioned, some rules affecting the program will remain in another agency's administrative code and would continue an inefficiency. Since DSPS no longer uses the portions of the rules that affect the tanks inspection program, it could eliminate these provisions (and has advocated to do so) which would effectively leave no rules in place beyond those which already transferred from SPS 310 as the current ATCP 93.

Long Range Implications of Implementing the Rule

Implementing this rule benefits business and the general public. The new rule simplifies the number of rules businesses must follow and develops a more uniform standard. In addition, the rule modifications create consistency between this rule and other existing DATCP rules. ATCP 93 also incorporates known EPA-mandated changes that will become necessary over the coming years.

Compare With Approaches Being Used by Federal Government

As mentioned above, DATCP incorporated new EPA requirements and regulations from 2015.

The Federal government also relies on many of the industry standards that DATCP proposes to incorporate by reference into ATCP Tables 93.200-1 to 11.

The new rule maintains the requirement that a substance release must be reported if it qualifies under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

All federal financial requirements in the previous subchapter VII (Financial Responsibility) will be maintained in the current rule.

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

All surrounding states have similar programs. Minnesota plans to finalize a new rule on underground storage tanks in October 2018.