



Scott Walker, Governor
Laura Gutiérrez, Secretary

Clearinghouse Rule 18-003

January 10, 2018

Senator Stephen Nass, Senate Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 10 South, State Capitol
Madison, WI 53702

Representative Joan Ballweg, Assembly Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 210 North, State Capitol
Madison, WI 53702

RE: Petition for Authorization to Repeal Administrative Rules

Dear Senator Nass and Representative Ballweg:

I am petitioning for authorization to repeal portions of the administrative code relating to the storage, use, and handling of flammable or combustible liquids and products as referenced in ch SPS 305. A copy of the proposed rule is attached.

2013 Wisconsin Act 20, section 9138 (3) (fm) and (f), transferred authority relating to the storage, use, and handling of flammable or combustible liquids, and the storage and inspection of petroleum products under ss. 101.09 and 101.142, 2011 stats., and chapter 168, 2011 stats., to the Department of Agriculture, Trade and Consumer Protection. The Department of Agriculture, Trade and Consumer Protection has submitted Rules Clearinghouse No. 17-092, *Proposed Order of the Wisconsin Department of Agriculture, Trade and Consumer Protection* to repeal and recreate ch ATCP 93, relating to flammable, combustible, and hazardous liquids in Wisconsin. The administrative rules in SPS 305 relating to the storage, use, and handling of flammable or combustible liquids and products are no longer relevant in light of the proposed ch. ATCP 93 in Rules Clearinghouse No. 17-092.

Therefore, the Department is requesting authorization to repeal the rule by utilizing the expedited process under s. 227.26 (4), Stats.

Thank you.

Sincerely,

Laura Gutiérrez
Secretary

Department of Safety and Professional Services

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY AND
DEPARTMENT OF SAFETY AND : PROFESSIONAL SERVICES
PROFESSIONAL SERVICES : ADOPTING RULES
: (CLEARINGHOUSE RULE)

The department is petitioning the Joint Committee for Review of Administrative Rules to repeal rules the department has determined to be unauthorized rules using the process under s. 227.26 (4), Stats.

PROPOSED ORDER

An order of the department to repeal SPS 305.01 Note (3); SPS Table 305.02 lines 53, 54, 55, 56, 57, 58, 59, 60, and 61; SPS Table 305.06 lines 42, 48, 49, 50, 51, 52, 53, 54, 54g, and 54r; SPS 305.68; SPS 305.68 Note; SPS 305.82; SPS 305.82 Note; SPS 305.83; SPS 305.83 Note; SPS 305.84; SPS 305.84 Note; SPS 305.85; SPS 305.85 Note; SPS 305.86; SPS 305.86 Note; SPS 305.87; SPS 305.87 Note; SPS 305.88; SPS 305.88 Note; SPS 305.89; and SPS 305.89 Note.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

2013 Wisconsin Act 20, sections 9138 (3) (fm) and (4) (f)

Statutory authority:

s. 227.11 (2) (a); chapter 168, 2011 stats.; ss. 101.09 and 101.142, 2011 stats.

Explanation of agency authority:

2013 Wisconsin Act 20, section 9138 (3) (fm), states that, “all rules promulgated ... by the department of safety and professional services, that ... relate to the storage, use, and handling of flammable or combustible liquids or federally regulated hazardous substances under section 101.09, 2011 stats., and that are in effect on the effective date of this paragraph shall remain in effect until their specified expiration date or until amended or repealed by the department of agriculture, trade and consumer protection.”

2013 Wisconsin Act 20, section 9138 (4) (f), states that, “all rules promulgated ... by the department of safety and professional services, that ... relate to the storage and inspection of petroleum products under section 101.142, 2011 stats., and chapter 168, 2011 stats., and that are in effect on the effective date of this paragraph shall remain in effect until their specified

expiration date or until amended or repealed by the department of agriculture, trade and consumer protection.”

Section 168.16 (4), Stats., states that “the department may promulgate reasonable rules relating to the administration and enforcement of this chapter.”

Section 227.11 (2) (a), Stats., sets forth the parameters of an agency’s rule-making authority, stating an agency, “may promulgate rules interpreting provisions of any statute enforced or administered by the agency. . .but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Related statute or rule:

Rules Clearinghouse No. 17-092, *Proposed Order of the Wisconsin Department of Agriculture, Trade and Consumer Protection* to repeal and recreate ch ATCP 93, relating to flammable, combustible, and hazardous liquids in Wisconsin.

ATCP chapters 93 (renumbered from SPS 310 and SPS 302.43) and 94 (renumbered from SPS 348), *Administrative Register*, October 2013 No. 694

Plain language analysis:

Section 1 repeals a note directing users to DATCP for applications and forms related to petroleum hazardous storage tanks.

Section 2 repeals the fee schedule related to credentialing authority that is no longer vested with DSPS and now is with DATCP.

Section 3 repeals the term schedule related to credentialing authority that is no longer vested with DSPS and now is with DATCP.

Section 4 repeals the sections of chapter 305, subchs. VI and VIII, and corresponding Notes which define the credentialing requirements for Storage Tank credential holders that are no longer vested with DSPS and now is with DATCP.

Agency contact person:

Helen Leong, Administrative Rules Coordinators, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0797; email at DSPSAdminRules@wisconsin.gov.

TEXT OF RULE

SECTION 1. SPS 305.01 (1) Note (3) is repealed.

SECTION 2. SPS Table 305.02 lines 53, 54, 55, 56, 57, 58, 59, 60, and 61 are repealed.

SECTION 3. SPS Table 305.06 lines 42, 48, 49, 50, 51, 52, 53, 54, 54g, and 54r are repealed.

SECTION 4. SPS 305.68, SPS 305.68 Note, SPS 305.82, SPS 305.82 Note, SPS 305.83, SPS 305.83 Note, SPS 305.84, SPS 305.84 Note, SPS 305.85, SPS 305.85 Note, SPS 305.86, SPS 305.86 Note, SPS 305.87, SPS 305.87 Note, SPS 305.88, SPS 305.88 Note, and SPS 305.89, SPS 305.89 Note are repealed.

SECTION 5. EFFECTIVE DATE. The rules repealed in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
