



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

Report From Agency

DATE: May 23, 2023

TO: The Honorable Chris Kapenga
President, Wisconsin State Senate
Room 220 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable Robin Vos
Speaker, Wisconsin State Assembly
Room 217 West, State Capitol
PO Box 8953
Madison, WI 53708-8953

FROM: Randy Romanski, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Clearinghouse Rule # 21-096
Final Draft Rule regarding ATCP 94 relating to Petroleum and Other Liquid Fuel Products

Proposed Rule

The proposed rule is attached.

Reference to Applicable Forms

There are no applicable forms.

Fiscal Estimate and EIA

The fiscal estimate and EIA are attached.

Detailed Statement Explaining the Basis and purpose of the Proposed Rule, Including How the Proposed Rule Advances Relevant Statutory Goals or Purposes

The Department of Agriculture, Trade and Consumer Protection (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

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relating to the administration and enforcement of Wis. Stat. ch. 168, subch. I.

During the 1980s and early 1990s, Wisconsin's storage tanks and petroleum inspection programs were both located within the Department of Industry, Labor, and Human Relations. Those programs were transferred to the Department of 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).

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 enforced by DSPS with the approval of the Secretary of the Department of Administration. See s. 9138 (2) (fm) and (4) (f). The Legislature expected the Department to update the rules after the transfer.

The proposed rule revises ATCP 94 by updating fuel standards, as well as by fully concluding the transfer process from DSPS to the Department by placing all relevant administrative rules within the Department.

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 completing the 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.
- Provides wintertime Reid Vapor Pressure relief.
- Makes other minor updates and changes including corrections to outdated provisions.

Summary of Public Comments and the Department's Responses, Explanation of Modifications to Proposed Rules Prompted by Public Comments

Preliminary Public Hearing and Comment Period on the Statement of Scope

The June 10, 2021 hearing had one public commenter on the scope statement, whose concerns pertained to the rule itself rather than the scope statement. Therefore, the Department considered those comments when drafting the hearing rule.

Comment Period on the Economic Impact Analysis

No comments were received.

Public Hearing and Comment Period on the Preliminary Rule Draft

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 virtual 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.

The department did make two changes based on internal and public comment received at the formal public hearings. First, the department had initially considered incorporating NIST Handbook 130 by reference in s. ATCP 94.200. After further discussion about that approach, the department decided it would continue to use ASTM standards rather than adopt the NIST Handbook. Second, commenters pointed to some potentially unclear language, and the department sought to clarify those provisions.

Response to Legislative Council Staff Recommendations

The Department modified the rule draft to address all Clearinghouse concerns.

Report from the SBRRB and Final Regulatory Flexibility Analysis

The department briefed the Small Business Regulatory Review Board on the rule at its March 20, 2022 meeting and received no objections. The Small Business Regulatory Review Board did not issue a report on this rule. The Final Regulatory Flexibility Analysis also received no comments and is attached.