

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: Flammable, Combustible and Hazardous Liquids

Adm. Code Reference: ATCP 93

Rules Clearinghouse #: Not yet assigned

DATCP Docket #: 13-R-20

Rule Summary

This rule implements Wis. Stat. § 168.23 (1), which directs the department of agriculture, trade and consumer protection (DATCP) to promulgate rules related to construction, maintenance and abandonment standards applicable to tanks for storage, handling or use of liquids that are flammable or combustible or are federally regulated hazardous substances, and to the property and facilities where the tanks are located, for the purpose of protecting the waters of the state from harm due to contamination by liquids that are flammable or combustible or are federally regulated hazardous substances. Among other things, this rule does all of the following:

- Repeals and recreates ATCP 93.
- Harmonizes Wisconsin's program with federal EPA requirements.
- Updates and overhauls an administrative rule last significantly updated in 2008.¹
- Addresses the various governmental reorganizations of the tanks inspection program.
- Updates all standards incorporated by reference.
- Eliminates unnecessary notes and provisions no longer in effect.
- Modifies outdated terms.
- Clarifies ambiguous language.

¹While the last significant update was done in 2008, DATCP has made numerous technical rule changes affecting forms and hyperlinks over the past nine years.

Summary of Changes

Changes to ATCP 93 fit into seven broad categories:

- To accept recommendations made by the Department of Safety and Professional Services prior to the program's relocation to DATCP
 - To harmonize ATCP 93 with the current federal standards, especially those set out by the Environmental Protection Agency
 - To address reorganizational changes of the program that occurred during the transfer to DATCP from DSPPS
 - 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

Small Business Affected

This rule will have a generally minimal impact on small businesses in the state. The majority of the proposed rule updates and reorganizes provisions in the current rules.

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 U.S. Environmental Protection Agency (EPA) requires many of the same standards, some businesses would likely bear this cost regardless of whether ATCP 93 requires them or not.

The new ATCP 93 updates, reorganizes, and moves portions of SPS chapters that affect the program into the DATCP 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.

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 who 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.

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 occur simply because of the update of equipment and technology.

Reporting, Bookkeeping and other Procedures

The proposed rule continues to regulate tanks in Wisconsin, and there will continue to be reporting and record keeping attributable to the testing of those tanks and tank systems.

Small businesses or business organizations may decide to purchase some of the standards incorporated by reference in the tables in Section 200.

Professional Skills Required

The proposed rule reflects some changes based on new definitions and responsibilities in subchapter VIII (Training for Operators of Underground Storage Tank Systems):

- The definitions of Class A, B, and C operators have been changed to match the definitions set forth by EPA.
- Renumbering and reorganizing the subchapter for clarity.
- Record keeping documentation methods also changed to accommodate added provisions.

An exemption in ATCP 93.820 that gave small businesses until August 8, 2012, to comply with the rule has passed and is therefore deleted.

Accommodation for Small Business

Many of the businesses affected by this rule are “small businesses.” Due to the complexity of a 100-page rule, the Department expects to do extensive training and education of staff and industry. The Department also expects to receive additional questions for clarifications and for enforcement understanding after the rule is first implemented.

DATCP shared the draft of the proposed ch. ATCP 93 with selected stakeholders in three stages and accepted input throughout the drafting process. Stakeholders such as the Wisconsin Petroleum Marketers and Convenience Store Association, Cooperative Network, and Kwik Trip represent many of these affected small businesses. DATCP considered the suggested changes or requests for clarifications and responded to the stakeholders before release of the public hearing draft rule.

Conclusion

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