

STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection

Rule No.: Ch. ATCP 94

Relating

to: Petroleum and Other Liquid Fuel Products (Permanent)

1. Description of the objective of 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 (“petroleum inspection program”) from the Department of Safety and Professional Services (“DSPS”) to the Department of Agriculture, Trade and Consumer Protection (“DATCP”). Section 9138 (3) (fm) and (4) (f) authorized the transfer of the existing administrative rule (from Chapter SPS 348 to Chapter ATCP 94).

2013 Wisconsin Act 20 also included Chapter SPS 310 becoming Chapter ATCP 93. DATCP plans to finalize those substantial rule revisions to ATCP 93 in early 2019. Since ATCP 93 makes reference to ATCP 94, it would make sense to harmonize the two rules with one another since they interact. Acting on ATCP 94 now will minimize the period where the two may conflict. During the ATCP 93 informal commentary period, a stakeholder who represents numerous businesses sought clarification on the interaction.

The current ATCP 94 refers to SPS Chapters 302 and 303. Whether DATCP should refer to another agency’s rules or adopt language into their own rules should receive discussion and investigation.

Ch. ATCP 94 incorporates by reference ASTM standards for fuel specifications and testing procedures. ASTM standards change on a regular basis, and any changes to this rule would likely update these standards to the most recently adopted ones.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

During the 1980s and early 1990s, Wisconsin’s tanks and petroleum inspection programs were housed within the Department of Industry Labor, and Human Relations (DILHR). These programs were transferred to the Department of Commerce (“Commerce”) in 1996. They were transferred from Commerce to DSPS as part of the 2011-13 biennial budget (2011 Wisconsin Act 32). SPS 348 was previously titled ILHR 48 and COMM 48 before becoming the current ATCP 94. DSPS approved a scope statement in January 2011, but the program transferred before action was taken. The DATCP Board approved a joint scope statement for ATCP 93 and ATCP 94 in September 2013, and DATCP initially considered some changes to ATCP 94. DATCP did not formally present any changes to its Board and never held a public hearing on the proposed changes.

DATCP advocates a new scope statement be created for two main reasons: first, the nature of the industry has changed; second, the current scope statement will expire in February 2020 per Wis. Stat. § 227.135 (5), and a reset of the calendar with a new scope statement will permit a thorough discussion of the rule.

DATCP may also contemplate adopting by reference the engine fuel quality standards published in NIST Handbook 130. Other states (including Illinois) have adopted this model regulation.

Per Section 1680M of 2017 Wisconsin Act 59, any gasoline-ethanol fuel blend rule must be delayed until at least July 1, 2019:

SECTION 1680M. 168.04 (4) of the statutes is created to read:

168.04 (4) (a) In this subsection, “gasoline-ethanol fuel blend” includes such a fuel blend for both automotive and nonautomotive uses.

(b) Except as provided under par. (c), compliance with the requirements, established by the department by rule under sub. (1), of ASTM D4814-17 or the most current version of testing methods adopted by the department may be demonstrated by testing a gasoline-ethanol fuel blend or testing the gasoline base stock from which the gasoline-ethanol fuel blend is produced.

(c) The department may promulgate rules that require that a gasoline-ethanol fuel blend and the gasoline base stock from which the gasoline-ethanol fuel blend is produced meet the requirements of ASTM D4814-17, or the most current version of testing methods adopted by the department. A rule promulgated under this paragraph may not take effect sooner than July 1, 2019.

3. Statutory authority for the rule (including the statutory citation and language):

Wis. Stat. § 168.04 and Wis. Stat. § 168.16 (4).

168.04 Standards.

(1) The department by rule shall prescribe minimum product grade specifications for gasoline, automotive gasoline, gasoline-alcohol fuel blends, reformulated gasoline, as defined in s. 285.37 (1), and kerosene and may prescribe product grade specifications for aviation gasoline, fuel oils, and diesel fuels.

(2) (a) Except as provided in par. (b), the rules required under sub. (1) shall prohibit gasoline, automotive gasoline, gasoline-alcohol fuel blends, and reformulated gasoline, as defined in s. 285.37 (1), beginning on August 1, 2004, from containing more than 0.5 percent, by volume, of methyl tertiary-butyl ether.

(b) The rules required under sub. (1) shall not prohibit racing fuel used at racing events or in preparation for racing events from containing any amount of methyl tertiary-butyl ether.

(3) Except as otherwise provided in this section, rules promulgated under this section shall be in conformity with nationally recognized standards, specifications, and classifications, such as those published by ASTM International, the Society of Automotive Engineers, and the U.S. Environmental Protection Agency. The department may not promulgate or enforce a rule prohibiting the placement of additional information on the dispensing device.

168.16 Standards.

(4) The department may promulgate reasonable rules relating to the administration and enforcement of this subchapter.

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule :

DATCP estimates that it will use approximately 0.25 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings, and extensive communication with affected persons and groups. DATCP has used and will continue to use existing staff to develop this rule.

5. Description of all entities that may be impacted by the rule :

This rule may impact businesses that sell or distribute petroleum and other liquid fuel products at wholesale or at retail. It may also impact businesses that manufacture, sell, or distribute chemical liquids regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). These businesses are already regulated under the existing rule, but there may be minor changes to the specific requirements if the rule is amended.

If DATCP adopts the model regulations published in NIST Handbook 130, businesses that sell or distribute engine lubricants may be impacted. The current rule contains technical specifications and requirements for fuel but not for lubricant.

DATCP contacted stakeholders on multiple occasions both formally and informally in their rewrite of ATCP 93, and it plans similar extensive outreach in regard to changes it would propose to ATCP 94. The preliminary list for ATCP 94 will include all ATCP 93 stakeholders and will be adjusted accordingly as additional interested parties self-identify or withdraw.

6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule :

The EPA regulates standards for gasoline in a number of ways. EPA regulates the amount of sulfur in gasoline and certain toxic substances that can be emitted when fuel is burned. EPA also mandates reformulated gasoline (RFG) in certain metropolitan areas. EPA also mandates that fuels sold during the summer meet certain Reid vapor pressure standards to reduce emissions that contribute to smog.

The federal Clean Air Act (CAA) authorizes 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 ASTM International standards and test methods.

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 and diminish the effects of ozone-related health problems.

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 up to 15 percent (E15) for use in MY2001 and newer light-duty vehicles. 40 CFR Part 80 establishes E15 labeling and survey requirements, and transfer document requirements for gasoline-oxygenate blends.

7. Anticipated economic impact

The proposed rule may have moderate economic impact statewide and locally. Adopting more recent fuel quality standards may have a moderate economic impact on certain businesses within the petroleum industry.

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