



State of Wisconsin  
Governor Tony Evers

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**Department of Agriculture, Trade and Consumer Protection**  
Secretary Randy Romanski

**DATE:** November 18, 2021

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Randy Romanski, Secretary  
Lara Sutherlin, Administrator, Division of Trade and Consumer Protection

**SUBJECT:** Petroleum and Other Liquid Fuel Products;  
Wisconsin Admin. Code Chapter ATCP 94 (Hearing Draft)

**PRESENTED BY:** David A. Woldseth and Alicia Clark

**REQUESTED ACTION:**

At the November 18, 2021 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to authorize public hearings on a proposed rule (copy attached) related to petroleum and other liquid fuel products. This rule implements the provisions of Wis. Stat ch. 168 that prescribe minimum product grade specifications for petroleum and other liquid fuel products.

**SUMMARY:**

During the 1980s and early 1990s, Wisconsin's tanks and petroleum inspection programs were housed within the Department of Industry, Labor, and Human Relations. These 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). SPS 348 was previously titled ILHR 48 and COMM 48 before becoming the current ATCP 94.

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 DATCP. Act 20 authorized the transfer of existing administrative rules with the approval of the Secretary of the Department of Administration. [See Section 9138 (2) (fm) and (4) (f).] The Legislature expected DATCP to update the rules as part of the transfer.

To develop this rule, DATCP reviewed federal and state laws related to fuel quality specifications, current fuel quality inspection practices, national and international fuel quality standards and test methods, and stakeholder input. The Department also considered comments offered to its scope statement and offered during various industry meetings and phone calls with staff. In June 2020, a draft and redline were sent to industry stakeholders to seek informal comments before presentation to the DATCP Board for permission to hold public hearings on the draft hearing rule. On December 18, 2020, DATCP sent responses to those comments, a new hearing draft rule, and a redline of changes. From January 5 to 19, 2021, the fiscal estimate and regulatory flexibility analysis posted on the DATCP website. DATCP received no comments to either.

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In its own internal review, DATCP staff discovered that scope statement may arguably have been insufficient to encompass all the revisions that might be needed. Therefore, at the request of the Department, its Board approved a new scope statement at its July 22, 2021 meeting after holding a hearing on the new scope statement. DATCP again sent the rule and a redline to its stakeholders on August 9, 2021, and received no informal comments. At the request of the Wisconsin Biofuels Association, DATCP staff met with them on September 14, 2021, to discuss the proposed hearing draft rule. From August 31 to September 14, 2021, the fiscal estimate and regulatory flexibility analysis posted on the DATCP website. DATCP received no comments.

### *Next Steps*

If the Board authorizes public hearings on this rule, DATCP will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the Wisconsin Administrative Register. DATCP will hold public hearings after the first of the year. The exact hearing dates and locations have not yet been determined.

Following the public hearings, DATCP will prepare the final draft rule which will be presented for the Board's consideration. If the Board approves, DATCP will transmit the rule to the Governor for his written approval. After the Governor approves the final draft rule, DATCP will send the final draft rule to the Legislature for review by the appropriate legislative committees. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

THE DEPARTMENT OF AGRICULTURE, TRADE  
AND CONSUMER PROTECTION'S  
PROPOSED ORDER TO ADOPT PERMANENT RULES

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PROPOSED ORDER

1 The Wisconsin department of agriculture, trade and consumer protection proposes the following  
2 rule **to repeal** ATCP 94.110 (3) (Note1), 94.200 (1) (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) and  
3 (k), 94.210 (1) (b), Table 94.210, 94.210 (1) (c) 2., and (Note), 94.210 (2), (3) (Note), (6), and (6)  
4 (Note), 94.300 (1) (b) 8., (2) (a) 3. Note, 94.310 (2) (c), 94.310 (3) (c), 94.400 (6) and (7), and  
5 94.410 (2); **to renumber** 94.200 (2) (Note1) and (Note2) to 94.200 (4) (Note1) and (Note2), 94.300  
6 (4) (Intro.) to 94.300 (4) (a), 94.330 (1) (b) to 94.330 (2), 94.330 (1) (c) to 94.330 (3), 94.330 (2)  
7 to 94.340 (3), 94.330 (3) to 94.340 (4), and 94.410 (3) to 94.410 (6); **to renumber and amend**  
8 ATCP 94.110 (3), 94.240 (4), 94.300 (1) (c), 94.300 (4) (Note), 94.330 (1) (a), 94.410 (1) and (3);  
9 **to amend** ATCP 94.100 (8) (b), (c), (d) (Title) and (Note1), 94.110 (Title) and (3) (Title), 94.200  
10 (1) (Intro.) and (1) (L), 94.200 (4) (Note1), 94.210 (1) (Title), (1) (a), (1) (c) 1., (1) (d) (Title), 2.,  
11 3., and 4., (1) (e) 1. and 2., and (1) (f), 94.220, 94.230, 94.240 (Title), (1), (3), and (5), 94.300 (1)  
12 (a) and (Note), 94.300 (1) (b) 1. and 2., 94.300 (2) (a), 94.310 (1) (b) 1., 94.310 (2) (a) 1., 2., 3.,  
13 and (b), and (e) 1. and 2. (Note1) and (Note2), 94.310 (3) (a), 94.330 (Title) and (1) (a) and (2),  
14 94.400 (2) and (5), and 94.410 (5); **to repeal and recreate** ATCP 94.100 (8) (e), 94.120, and 94.200  
15 (2), 94.320; **to create** ATCP 94.100 (8) (f) and (g), 94.110 (3) (a) 1., 2., 3., 4., 5., 6., 7., 8. and (b),  
16 94.200 (3) and (4), 94.210 (3), 94.215, 94.240 (4) (b), 94.250, 94.260, 94.270, 94.300 (1) (b) 9.,  
17 (1) (c) 2., and (4) (b), 94.320 (1), 94.330 (3) (Note), 94.340 (1), (2), and (4) (Note.), 94.400 (8),

18 (9), (10), (11), and (12), and 94.410 (1) and (2); *relating to* petroleum product inspections, and  
19 affecting small businesses.

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**Analysis Prepared by the Department  
of Agriculture, Trade and Consumer Protection**

This rule implements Wis. Stat. ch. 168,, subch. I, which directs the department of agriculture, trade and consumer protection (DATCP) to promulgate rules related to minimum product grade specifications of petroleum and other liquid fuels.

***Statutes Interpreted***

**Statutes Interpreted:** Wis. Stat. ss. 168.04 and 168.16.

***Statutory Authority***

**Statutory Authority:** Wis. Stat. ss. 168.04 and 168.16.

***Explanation of Statutory Authority***

DATCP has authority, under Wis. Stat. s. 168.04, to promulgate rules that prescribe minimum product grade specifications for petroleum and other liquid fuel products. DATCP has authority, under Wis. Stat. s. 168.16, to promulgate reasonable rules relating to the administration and enforcement of Wis. Stat. ch. 168, subchapter I.

***Related Statutes and Rules***

Wis. Stat. s. 93.06 (1p) allows the department to charge a fee to cover its cost to provide inspection, diagnostic, analytical or testing services if the service is requested and is related to an authorized department program and serves program objectives.

Wis. Stat. s. 93.06 (1pm) allows the department to establish a schedule of fees for the performance or contract for performance of testing of petroleum products other than testing provided under ch. 168.

Wis. Stat. ch. 168, Subchapter I, Petroleum Product Inspections, grants the department authority to promulgate rules related to product grade specifications, and administration and enforcement of the subchapter.

Wis. Admin. Code ch. ATCP 93 implements Wis. Stat. ch. 168, Subchapter II, Storage of Dangerous Substances. Chapter ATCP 93 establishes the appeals process for a system shutdown, which applies to both storage systems and the fuels contained within them.

## *Plain Language Analysis*

### **Background**

During the 1980s and early 1990s, Wisconsin's tanks and petroleum inspection programs were housed within the Department of Industry, Labor, and Human Relations. These 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). SPS 348 was previously titled ILHR 48 and COMM 48 before becoming the current ATCP 94.

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 DATCP. Act 20 authorized the transfer of existing administrative rules with the approval of the Secretary of the Department of Administration. [See Section 9138 (2) (fm) and (4) (f).] The Legislature expected DATCP to update the rules as part of the transfer.

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 never formally presented any changes to its Board and never held a public hearing on any proposed changes. Work completed on ATCP 93, the storage tanks inspection program, with the rule's promulgation in November 2019.

Per Wis. Stat. s. 168.04 (4) (c), no gasoline-ethanol fuel blend rule could take effect sooner than July 1, 2019.

Per 2019 Wisconsin Act 64, Wis. Stat. s. 168.105 permits nozzles to dispense differing blends.

The DATCP Board approved a new scope statement for this rule at its November 7, 2019 meeting. DATCP had advocated a new scope statement be created for two main reasons: first, the nature of the industry had changed since September 2013; second, the current scope statement would have expired in February 2020, per Wis. Stat. s. 227.135 (5), and a reset of the calendar with a new scope statement best benefited a thorough re-discussion of the rule.

During the ensuing rulemaking discussions, proposed amendments, and informal sharing of those revisions with industry stakeholders, DATCP staff discovered that so much in the industry had changed that the 2019 Wis. Admin. Code ch. ATCP 94 scope statement might arguably be insufficient to encompass all the revisions that might be needed to address the respective needs and interests of those in the petroleum products industry, the consumers of those products, and the broader public.

Therefore, at the request of the Department, its Board approved a new scope statement at its July 22, 2021 meeting.

## **Rule Content**

### **General**

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 per 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.
- Codifies the Reid Vapor Pressure waiver.
- Makes other minor updates and changes including corrections to outdated provisions.

### **Standards Incorporated by Reference**

This rule adopts Section IV. G. of NIST Handbook 130 (2020 edition) in Wis. Admin. Code s. ATCP 94.200 to reference the most current ASTM standards for fuel. This rule repeals the direct adoption of individual ASTM standards and flexibly permits new standards to be adopted and implemented more quickly. References throughout the rule to ASTM standards have been updated. In some cases, the new rule adopts phrasing directly from these and other national standards. NIST has announced that the 2020 edition will continue through 2021 due to the cancellation of the 2020 annual meeting of the National Conference on Weights and Measures.

### **Creation of Definitions**

This rule creates and expands definitions of important terms used throughout the chapter. The current ATCP 94 defines 12 terms; the new rule, if adopted, will define 35 terms. This rule adopts many definitions from NIST Handbook 130 and others that have been used throughout industry such as the Federal Trade Commission. Wisconsin definitions will therefore more closely match those adopted and used nationally. With the adoption of these definitions, it clarifies the understanding of the rule.

### **Petition for Variance and Fee Authority per Transfer from DSPS**

This rule repeals now-outdated procedures and creates specific requirements for requesting a variance. This rule clarifies the fee requirement and authority to request a variance. This rule repeals outdated references to Wis. Admin. Code chs. SPS 302 and SPS 305, which set fees for a variety of DSPS services and established variance procedures for a variety of DSPS programs. The fees do not increase, but the fee authority now appears in a DATCP rule rather than a DSPS rule. The rule therefore makes DATCP less reliant on another agency's rules and helps complete the transfer of the program to DATCP authority as required by 2013 Wisconsin Act 20.

### **Water in Tanks**

This rule updates limits for water in tanks of several fuel types to match the limits specified in Wis. Admin. Code s. ATCP 93.605 (1) (g), which DATCP promulgated in November 2019. In the future, by referring to another rule, it eliminates potential contradictions between the two administrative rules and requires no additional costs since the two standards match.

## **E15 and E85**

This rule defines E15, creates sections that address E15 specifications (Wis. Admin. Code s. ATCP 94.215) and E85 specifications (Wis. Admin. Code s. ATCP 94.270), and sets labeling and dispensing requirements (Wis. Admin. Code s. ATCP 94.300) that government and industry have long wanted and DATCP has long needed to create.

## **Aviation Fuel and Racing Fuel**

In the current rule, the standards for aviation fuels were included in Wis. Admin. Code s. ATCP 94.210 (2). In the new proposed rule, aviation fuel specifications have been expanded and moved to a newly created section (Wis. Admin. Code s. ATCP 94.250). Also, due to numerous questions about racing fuels, a new section, Wis. Admin. Code s. ATCP 94.260, has been created in an effort to make the rule match the changing needs of industry.

## **Record Keeping and Documentation**

Records and documentation requirements have been clarified and streamlined in a newly created Wis. Admin. Code s. ATCP 94.340. The rule does this by renumbering portions of s. ATCP 94.330 into the new section but leaves a few provisions in the old Wis. Admin. Code s. ATCP 94.330 and renames it “Department records.”

## **Reid Vapor Pressure Waiver**

In March 2020 due to the COVID-19 crisis, Governor Evers allowed the Department to grant a waiver providing gasoline sellers extra time before they must shift to selling gasoline with low Reid Vapor Pressure. In October 2020, the Department revised the guidance document to extend the waiver. The proposed rule change would make the waiver permanent.

## **Other Changes**

The proposed rule makes other minor clarifying and corrective changes to the rule as well as typical, cosmetic changes that occur during rulemaking.

Since the DATCP Board approved a joint scope statement for ATCP 93 and ATCP 94 in September 2013, there had been an expectation that the two rules would follow a similar path. As DATCP promulgated ATCP 93 in November 2019, the new ATCP 94 harmonizes with changes adopted in ATCP 93 so that the two will not conflict.

The rule also makes changes based on new state or federal guidelines. For instance, 2019 Wisconsin Act 64 created Wis. Stat. s 168.105 to permit nozzles to dispense differing blends. In order to reflect this change, it required the creation of Wis. Admin. Code s. ATCP 94.300 (1) (c) 2.

The rule change also attempts to anticipate emerging technologies.

## ***Summary of and Comparison with Existing or Proposed Federal Statutes and Regulations***

### **Federal Programs**

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 indirect 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.

### ***Summary of Comments Received during Preliminary Comment Period and at Public Hearing on Statement of Scope***

During the June 10, 2021 hearing on the statement of scope, only Preston Searles from the American Petroleum Institute testified. His stated concerns pertained to the rule itself rather than the scope statement.

### ***Comparison with Rules in Adjacent States***

#### ***Illinois***

Illinois adopts by reference the most recent revisions of ASTM standards regarding motor fuel. Illinois adopts by reference sections of the most current revision of NIST Handbook 130, including the standards and test methods regarding gasoline-ethanol blends, which include E15 as gasoline. Illinois allows the sale of E15 as gasoline. Illinois requires fuel to meet specifications at base and blend.

#### ***Iowa***

Iowa adopts ASTM standards and test methods regarding motor fuel. Iowa allows the sale of E15 as gasoline. Iowa requires fuel to meet specifications at base and blend.

#### ***Michigan***

Michigan adopts standards and test methods regarding gasoline, motor fuel additives and grading. Michigan allows the sale of E15 as gasoline. Michigan requires fuel to meet specifications at base and blend.

#### ***Minnesota***

Minnesota requires petroleum products to meet ASTM standards, and allows for gasoline-ethanol blends to be blended up to any percentage specifically authorized by an EPA waiver under the



Clean Air Act. Minnesota allows the sale of E15 as gasoline. Minnesota requires fuel to meet specifications at base or blend.

### ***Summary of Factual Data and Analytical Methodologies***

To develop this rule, DATCP reviewed federal and state laws related to fuel quality specifications, current fuel quality inspection practices, national and international fuel quality standards and test methods, and stakeholder input. The Department also considered comments offered to its scope statement and offered during various industry meetings and phone calls with staff. In June 2020, a draft and redline were sent to industry stakeholders to seek informal comments before presentation to the DATCP Board for permission to hold public hearings on the draft hearing rule. On December 18, 2020, DATCP sent responses to those comments, a new hearing draft rule, and a redline of changes. From January 5 to 19, 2021, the fiscal estimate and regulatory flexibility analysis posted on the DATCP website. DATCP received no comments to either.

However, in its own internal review, DATCP staff discovered the Wis. Admin. Code ch. ATCP 94 scope statement might arguably be insufficient to encompass all the revisions that might be needed to make these proposed changes. Therefore, at the request of the Department, its Board approved a new scope statement at its July 22, 2021 meeting after holding a June 10, 2021 hearing on the new scope statement. DATCP again sent the rule and a redline to its stakeholders on August 9, 2021, and received no informal comments. At the request of the Wisconsin Biofuels Association, DATCP staff met with them on September 14, 2021, to discuss the proposed hearing draft rule.

### ***Analysis and Supporting Documents used to Determine Effect on Small Business in Preparation of an Economic Impact Analysis***

The effect on small business was determined by reviewing stakeholder input and internal discussion as to how the proposed changes would affect regulated industries. From August 31 to September 14, 2021, the fiscal estimate and regulatory flexibility analysis posted on the DATCP website. DATCP received no comments.

### ***Fiscal Estimate and Economic Impact Analysis***

The Fiscal Estimate and Economic Impact Analysis is attached.

### ***Effect on Small Business***

This rule may impact businesses that sell or distribute petroleum and other liquid fuel products, either at wholesale or retail. These businesses are already regulated under the existing rule, but they may need to make minor changes to comply with updated requirements.

Many of the businesses affected by this rule are “small businesses.” However, given the subject matter, there are very few accommodations or special exceptions that can be made for small businesses by the Department. Therefore, the Department does not propose any.

A complete *regulatory flexibility analysis* is attached.

The Department's Regulatory Review Coordinator may be contacted by:

Email at [Bradford.Steine1@wisconsin.gov](mailto:Bradford.Steine1@wisconsin.gov)

Telephone at (608) 224-5024

### **Standards Incorporated by Reference**

This rule incorporates, by reference, portions of *NIST Handbook 130* (2020 edition) published by the National Institute of Standards and Technology, United States Department of Commerce. As required by Wis. Stat. ch. 227, consent will be requested from the Attorney General to incorporate these standards by reference after the public hearings and prior to seeking the Governor's assent to the final draft rule. A copy of these documents will be kept on file with DATCP and the Legislative Reference Bureau. *NIST Handbook 130* is also available in electronic format at: [www.nist.gov](http://www.nist.gov).

### ***DATCP Contact***

David A. Woldseth  
Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911  
Telephone (608) 224-5164  
E-Mail: [DavidA.Woldseth@wisconsin.gov](mailto:DavidA.Woldseth@wisconsin.gov)

### ***Where Comments May Be Submitted***

David A. Woldseth  
Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911  
Telephone (608) 224-5164  
E-Mail: [DavidA.Woldseth@wisconsin.gov](mailto:DavidA.Woldseth@wisconsin.gov)

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### **RULE TEXT**

20           **SECTION 1.** ATCP 94.100 (8) (b), (c), and (d) (Title) are amended to read:

21           ATCP 94.100 (8) (b) *Immediate shutdown to blend or remove liquid fuel products or*  
22 *wastes.* Liquid fuel storage systems that contain wastes or products which fail to meet the  
23 operational and technical standards of this chapter shall be immediately shut down until a pump  
24 out or blend is completed under the supervision of a person with enforcement authority under this

25 chapter. The system may be reopened as soon as the product contained in the tank is verified by  
26 a person with enforcement authority under this chapter as meeting this chapter's operational and  
27 technical standards.

28 Note: To obtain supervision of a person with enforcement authority under this chapter,  
29 contact the department. See the Department website at  
30 [https://datcp.wi.gov/Pages/Programs\\_Services/PetroleumHazStorageTanks.aspx](https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx) for the contact  
31 information for the inspectors.

32 (c) *Immediate shutdown after a prohibited act.* Liquid fuel storage systems are subject  
33 to immediate shutdown after any corresponding violation of s. ATCP 94.400 ~~(1) or (2)~~ occurs.

34 (d) ~~*Immediate Shutdown*~~ *shutdown after failure to maintain records.* Liquid fuel storage  
35 tank systems are subject to immediate shutdown if corresponding inventory, delivery, or manifest  
36 records either have been falsified or are not available for inspection within 24 hours after being  
37 requested by a person with enforcement authority under this chapter.

38 Note: Under sections ATCP 93.500 (9) and ATCP ~~94.330 (3)~~ 94.340 (4), all product  
39 inventory records, including delivery receipts, must be kept at the site of a retail storage tank  
40 system for a duration of at least 10 years. Under sections ATCP 94.100 (5) and ~~94.330 (3)~~ 94.340  
41 (4), these records must be made available for inspection by the Department. Section ATCP 93.500  
42 (9) also requires maintaining several other types of records for retail storage tank systems.

43 **SECTION 2.** ATCP 94.100 (8) (e) is repealed and recreated to read:

44 (e) *Immediate shutdown for labeling discrepancies.* Liquid fuel storage tank systems  
45 are subject to immediate shutdown if the product identification at the tank fill is labeled differently  
46 than the product identification at the device dispensing fuel from the tank.

47 **SECTION 3.** ATCP 94.100 (8) (f) and (g) are created to read:

48 ATCP 94.100 (8) (f) *Shutdown after continued violation.*

49 1. Tank systems or components are subject to shutdown for a continuing code violation  
50 under this chapter, provided all of the following conditions are met:

51 a. An order, allowing a period for compliance of at least 15 days, is issued with a specific  
52 compliance date.

53 b. The reinspection made after the specified compliance date shows that compliance has  
54 not been achieved.

55 2. If compliance is not achieved by the 15-day compliance date as in subd. 1. a., any  
56 additional inspections may result in a reinspection fee per the special inspection fees listed in s.  
57 ATCP 93.1605 (5).

58 (g) *Appeals.* Appeals to a shutdown order must be filed pursuant to s. ATCP 93.190.

59 SECTION 4. ATCP 94.110 (Title), (2), and (3) (Title) are amended to read:

60 **ATCP 94.110 ~~Petition~~ Penalties, fees and petitions for variance, penalties and fees.**

61 (2) FEES. Fees for requested inspections, including but not limited to complaint-driven  
62 requests, shall be assessed in accordance with ~~ch. SPS 302~~ s. ATCP 94.410.

63 (3) ~~PETITION~~ PETITIONS FOR VARIANCE.

64 SECTION 5. ATCP 94.110 (3) is renumbered ATCP 94.110 (3) (a) and amended to read:

65 ATCP 94.110 (3) (a) The department ~~shall consider and~~ may grant a variance ~~to a provision~~  
66 ~~of this chapter in accordance with ch. SPS 303~~ for the sale of engine fuels designed for special use  
67 that do not have ASTM or other national consensus standards applying to their quality or usability.

68 A separate petition for variance must be submitted on form TR-WM-129 for each fuel type and  
69 shall include:

70 SECTION 6. ATCP 94.110 (3) (a) 1., 2., 3., 4., 5., 6., 7., 8., and (b) are created to read:

71 ATCP 94.110 (3) (a) 1. Requester's name and address.

- 72 2. Type of business.
- 73 3. Product description, intended use and specification sheet.
- 74 4. Evidence that an equivalency is established in the petition for variance that meets the  
75 intent of the rule being petitioned.
- 76 5. Reason for the request.
- 77 6. Signature and title of the requester.
- 78 7. Date of the request.
- 79 8. The fee of \$300.

80 (b) The department will respond within 30 days of receipt of complete petitions.

81 **SECTION 7.** ATCP 94.110 (3) (Note1) is repealed.

82 **SECTION 8.** ATCP 94.120 is repealed and recreated to read:

83 **ATCP 94.120 Definitions.** In this chapter:

84 (1) “Alternative liquid automotive fuel” includes all of the following:

85 (a) Mixtures containing more than 15 percent by volume of methanol, denatured  
86 ethanol, and/or other alcohols with gasoline or other fuels;

87 (b) Biofuels over B5;

88 (c) Coal-derived liquid fuels;

89 (d) Other liquid automotive fuels not defined by this chapter.

90 (2) “Automotive fuel rating” means:

91 (a) For gasoline, the octane rating;

92 (b) For an alternative liquid automotive fuel other than biodiesel, biomass-based diesel,  
93 biodiesel blends, biomass-based diesel blends, and ethanol flex fuels, the commonly used name of  
94 the fuel with a disclosure of the amount, expressed as the minimum percentage by volume, of the

95 principal component of the fuel. A disclosure of other components, expressed as the minimum  
96 percentage by volume, may be included, if desired;

97 (c) For biomass-based diesel, biodiesel, biomass-based diesel blends with more than 5  
98 percent biomass-based diesel, and biodiesel blends with more than 5 percent biodiesel, a disclosure  
99 of the biomass-based diesel or biodiesel component, expressed as the percentage by volume; or

100 (d) For ethanol flex fuels, a disclosure of the ethanol component, expressed as the  
101 percentage by volume and the text “Use Only in Flex-Fuel Vehicles/May Harm Other Engines.”

102 (3) “Automotive gasoline” means a type of gasoline suitable for use in spark ignition  
103 automobile engines and also commonly used in marine and non-automotive applications.

104 (4) “Aviation gasoline” means a type of gasoline suitable for use as a fuel in an aviation  
105 spark-ignition internal combustion engine.

106 (5) “Aviation turbine fuel” means a refined middle distillate suitable for use as a fuel in  
107 an aviation gas turbine internal combustion engine.

108 (6) “Biodiesel blend” means a fuel comprised of biodiesel fuel with petroleum-based  
109 diesel fuel, designated BXX. In the abbreviate, BXX represents the percent by volume of biodiesel  
110 fuel in the blend.

111 (7) “Biodiesel fuel” means a fuel comprised of at least 99 percent by volume mono-alkyl  
112 esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100 or B99.

113 (8) “Biofuels” means any fuel that is derived from biomass.

114 (9) “Biomass” means biological material including any material other than fossil fuels  
115 which is or was a living organism or component or product of a living organism.

116 (10) “Butanol” means butyl alcohol, the chemical compound  $C_4H_9OH$ , a colorless  
117 substance existing in four isomeric forms.

118 (11) “Department” means the Wisconsin department of agriculture, trade and consumer  
119 protection.

120 (12) “Diesel fuel” means a refined hydrocarbon suitable for use as a fuel in a  
121 compression-ignition (diesel) internal combustion engine that may contain a combination of  
122 biodiesel, renewable diesel, and fuel additives.

123 (13) “Dissimilar fuel product” means fuel products with different oxygenates, different  
124 oxygenate content by volume, different octane rating, different ASTM specifications, different  
125 biomass content by volume, or different definitions under this chapter.

126 (14) “E15” means gasoline containing more than ten percent by volume but not more than  
127 fifteen percent ethanol by volume.

128 (15) “E85” means a term that refers to high-level ethanol-gasoline blends containing 51  
129 percent to 83 percent ethanol, depending on geography and season. It can be used in flexible fuel  
130 vehicles.

131 (16) “EPA” means the United States environmental protection agency.

132 (17) “Ethanol” and “denatured fuel ethanol” means ethyl alcohol.

133 (18) “Ethanol flex fuel” means blends of ethanol and hydrocarbons restricted for use as  
134 fuel in ground vehicles equipped with flexible-fuel spark-ignition engines.

135 (19) “Fuel oil” means refined oil middle distillates, heavy distillates, or residues of  
136 refining, or blends of these, suitable for use as a fuel for heating or power generation.

137 (20) “Gasoline” means a volatile mixture of liquid hydrocarbons generally containing  
138 small amounts of additives suitable for use as a fuel in a spark-ignition internal combustion engine.

139 (21) “Gasoline-oxygenate blend” means a fuel consisting primarily of gasoline along with  
140 a substantial amount more than one percent by volume oxygenate, or more than 0.3 percent by

141 volume methanol not to exceed the total oxygen content permitted by applicable laws and  
142 regulations. Examples of oxygenates used in gasoline-alcohol blends are ethanol and butanol.

143 (22) “Inspection” means collection of product samples, qualitative determination by visual  
144 assessment and laboratory testing, and verification of associated product–shipping and storage  
145 records.

146 (23) “Inspector” means a duly authorized fuel products inspector of the department.

147 (24) “Kerosene” and “kerosine” means a refined middle distillate suitable for use as a fuel  
148 for heating or illuminating.

149 (25) “Lead substitute” means an EPA-registered gasoline additive suitable, when added in  
150 small amounts to fuel, to reduce or prevent exhaust valve recession or seat wear in automotive  
151 spark-ignition internal combustion engines designed to operate on leaded fuel.

152 (26) “Methanol” means methyl alcohol.

153 (27) “Motor fuel” means a flammable or combustible liquid which is used in the operation  
154 of an internal combustion or turbine engine and which is regulated by either the product  
155 specifications in subch. II or the labeling requirements in s. ATCP 94.300.

156 (28) “MTBE” means methyl tertiary-butyl ether.

157 (29) “NIST Handbook 130” means NIST Handbook 130 (2020 edition) Chapter IV. G.  
158 “Uniform Engine Fuels and Automotive Lubricants Regulations,” published by the National  
159 Institute of Standards and Technology, United States department of commerce.

160 (30) “Oxygenate” means an oxygen-containing, ashless, organic compound, such as an  
161 alcohol or ether, which can be used as a fuel or fuel supplement.

162 (31) “Petroleum and other liquid fuel products,” “liquid fuels,” and “fuel products” means  
163 gasoline, gasoline/alcohol-ether gasoline-oxygenate blends, aviation gasoline, aviation turbine



164 fuel, automotive gasoline, kerosene, fuel oil, burner fuel, diesel fuel, biofuels, other liquid motor  
165 fuels, and blends of petroleum-based fuels and biofuels.

166 (32) “Racing gasoline” means a specialty fuel typically used in non-road racing vehicles  
167 that is generally of lower volatility, has a narrower boiling range and a higher octane rating than  
168 gasolines made for use in conventional passenger vehicles.

169 (33) “Reclaimed used lubricating oil,” “re-cleaned used lubricating oil,” or “reconditioned  
170 used lubricating oil” means used oil which has been cleaned by cleaning methods used for the  
171 primary purpose of removing insoluble contaminants to make the oil suitable for further use. In  
172 this subsection, “cleaning method” includes settling, heating, dehydration, filtration, or  
173 centrifuging.

174 (34) “Red-tag” means a red tag secured to a component of a storage or dispensing system,  
175 which gives notice that the system or the product stored is under enforcement action for failure to  
176 comply with the requirements of either this chapter or ch. ATCP 93, and which prohibits operation  
177 of the system until the red tag is removed by or under the direction of an inspector.

178 (35) “Rerefined used lubricating oil” means used oil on which refining processes have been  
179 used to produce high-quality base stock for lubricants. In this subsection, “refining process”  
180 includes distillation, hydrotreating, or treatments employing acid, caustic, solvent, clay, or other  
181 chemicals, or a combination of those processes.

182 **SECTION 9.** ATCP 94.200 (1) is repealed and recreated to read:

183 (1) The following standard of the 2020 Annual Book of ASTM Standards of ASTM  
184 International is incorporated by reference into this chapter: ASTM D7547-17a, standard  
185 specification for hydrocarbon unleaded aviation gasoline.

186 **SECTION 10.** ATCP 94.200 (2) is repealed and recreated to read:

187 (2) The following portions of NIST Handbook 130 are adopted by reference into this  
188 chapter:

189 (a) Section 2. “Standard Specifications”, excluding specifications pertaining to lubricants  
190 and compressed gases; including natural gas, liquid natural gas, liquid propane and hydrogen.

191 (b) The following portions of Section 3. “Classification and Labeling for Sale of Petroleum  
192 Products”:

193 1. Par. 3.1.4 “Nozzle Requirements for Automotive Gasoline, Gasoline-Oxygenate Blends,  
194 and Diesel Fuel Dispensers”.

195 2. Subs. 3.4 “Aviation Turbine Fuels”.

196 3. Subs. 3.5 “Aviation Gasoline”.

197 4. Subs. 3.7 “Kerosene”.

198 5. Par. 3.15.2.4 “Biodiesel Blends”.

199 6. Par. 3.15.3 “Documentation for Dispenser Labeling Purposes”.

200 7. Subs. 4.3 “Dispenser Filters”.

201 **SECTION 11.** ATCP 94.200 (3) and (4) are created to read:

202 ATCP 94.200 (3) All finished fuels must meet the adopted standard specifications at the  
203 time they are offered for sale.

204 ATCP 94.200 (4) Where no ASTM or NIST Handbook 130 standard exists, other generally  
205 recognized national consensus standards may be used.

206 **SECTION 12.** ATCP 94.200 (2) (Note1) and (Note2) are renumbered ATCP 94.200 (4)  
207 (Note1) and (Note2).

208 **SECTION 13.** ATCP 94.200 (4) (Note1) is amended to read:

209 **Note:** Copies of the adopted standards are on file in the offices of the department and the  
210 legislative reference bureau. Copies of the ASTM standards may be purchased from ASTM

211 International, 100 Barr Harbor Drive, PO Box C700, West Conshokocken, PA 19428–2959,  
212 telephone 877–909–2786, e–mail [service@astm.org](mailto:service@astm.org), or website [www.astm.org](http://www.astm.org). Copies of NIST  
213 Handbook 130 may be obtained from the U.S. Government Printing Office, Stop SSOP,  
214 Washington, D.C. 20102-0001, website: [www.nist.gov](http://www.nist.gov).

215 **SECTION 14.** ATCP 94.210 (1) (Title) and (a) are amended to read:

216 ATCP 94.210 (1) (Title) GASOLINE, AUTOMOTIVE GASOLINE, ~~ALCOHOL,~~ AND  
217 ~~GASOLINE/ALCOHOL-ETHER~~ GASOLINE-OXYGENATE BLENDS.

218 (a) *General.* Gasoline, automotive gasoline, and ~~gasoline/alcohol-ether~~ gasoline-  
219 oxygenate blends sold or offered for sale in this state shall be visually free of undissolved water,  
220 sediment and suspended matter and shall be clear and bright at the ~~ambient temperature or 70~~  
221 ~~degrees F (21 degrees C), whichever is higher~~ fuel temperature at the point of custody transfer or  
222 a lower temperature agreed upon by the purchaser and seller.

223 **SECTION 15.** ATCP 94.210 (1) (b) and Table 94.210 are repealed.

224 **SECTION 16.** ATCP 94.210 (1) (c) 1. is amended to read:

225 ATCP 94.210 (1) (c) 1. ~~Except as provided in subd. 2., any~~ Any fuel product designated  
226 by name or reference as automotive gasoline shall meet the requirements specified in ASTM  
227 D4814 given in NIST Handbook 130.

228 **SECTION 17.** ATCP 94.210 (1) (c) 2. and (1) (c) 2. (Note) are repealed.

229 **SECTION 18.** ATCP 94.210 (1) (d) (Title), (1) (d) 2., 3., 4., (1) (e) 1., and 2. are amended  
230 to read:

231 ATCP 94.210 (1) (d) (title) ~~Gasoline/oxygenate~~ Gasoline-oxygenate blends.

232 1. Anhydrous denatured alcohol may be added to gasoline if the original gasoline product  
233 meets the requirements of par. ~~(b)~~ or (c).

234 2. The alcohol content for ethyl alcohol may not exceed a concentration of 10 ~~volume~~  
235 percent by volume.

236 3. The alcohol content for ~~methyl alcohol~~ gasoline-methanol blends may not exceed a  
237 concentration of one ~~volume~~-percent by volume.

238 4. Other oxygenated fuels shall be acceptable if the oxygenates are blended ~~at the refinery~~  
239 in a manner approved by the department in amounts allowed by the EPA and the final product  
240 conforms to the standard specification for gasoline under par. ~~(b)~~ ~~or~~ (c).

241 (e) *Ethanol*. 1. Any product designated by name or reference as denatured fuel ethanol for  
242 blending with gasoline for use as automotive spark-ignition engine fuel shall meet the requirements  
243 ~~of ASTM D4806~~ given for denatured fuel ethanol in NIST Handbook 130.

244 2. Any product designated by name or reference as ethanol flex fuel for automotive spark-  
245 ignition engines shall meet the requirements ~~of ASTM D5798~~ given for ethanol flex fuel in NIST  
246 Handbook 130.

247 (f) *Documentation*. Any person who distributes gasoline products which contain one  
248 percent or more by volume of ethyl alcohol or methyl alcohol, or both, shall state on any invoice,  
249 bill of lading, shipping paper, or other documentation accompanying the shipment used in normal  
250 and customary business practices, the type and maximum ~~percentage of alcohol rounded to a whole~~  
251 ~~number or half number equal to or less than the determined percentage~~ percent by volume of  
252 alcohol.

253 **SECTION 19.** ATCP 94.210 (2) is repealed.

254 **SECTION 20.** ATCP 94.210 (3) is created to read:

255 **(3) REID VAPOR PRESSURE FOR GASOLINE-ETHANOL BLENDS.** When gasoline  
256 is blended with ethanol, the ethanol shall meet ASTM D4806, "Standard Specification for

257 Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine  
258 Fuel,” and the blend shall meet ASTM D4814, “Standard Specification for Automotive Spark-  
259 Ignition Engine Fuel,” with the following permissible exception that the maximum vapor pressure  
260 shall not exceed the ASTM D4814 limits by more than 1.0 psi for blends containing one or more  
261 percent by volume ethanol for volatility classes A, B, C, D, and E from September 16 through May  
262 31.

263 **SECTION 21.** ATCP 94.215 is created to read:

264 **ATCP 94.215 E15 specifications.** (1) REQUIREMENTS. Any fuel product designated  
265 by name or reference or defined as “E15” in s. ATCP 94.120 (14) shall meet the requirements  
266 specified in ASTM D4814 given in NIST Handbook 130. Any person who distributes E15 shall  
267 state on any invoice, bill of lading, shipping paper, or other documentation accompanying the  
268 shipment used in normal and customary business practices, the maximum percent by volume of  
269 ethanol.

270 (2) REID VAPOR PRESSURE FOR E15. When gasoline is blended with ethanol, the  
271 ethanol shall meet ASTM D4806, “Standard Specification for Denatured Fuel Ethanol for  
272 Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel,” and the blend shall  
273 meet ASTM D4814, “Standard Specification for Automotive Spark-Ignition Engine Fuel,” with  
274 the following permissible exception that the maximum vapor pressure shall not exceed the ASTM  
275 D4814 limits by more than 1.0 psi for blends containing one or more percent by volume ethanol  
276 for volatility classes A, B, C, D, and E from September 16 through May 31.

277 **SECTION 22.** ATCP 94.220 and 94.230 are amended to read:

278           **ATCP 94.220 Kerosene specifications.** Any fuel product designated by name or  
279 reference as “kerosene” or “kerosine” shall meet the requirements ~~specified in ASTM D3699~~ given  
280 for kerosene in NIST Handbook 130.

281           **ATCP 94.230 Fuel oil specifications.** Any petroleum product designated by name or  
282 reference as No. 1 fuel oil to No. 6 fuel oil shall meet the requirements ~~specified in ASTM D396~~  
283 given for fuel oil in NIST Handbook 130.

284           **SECTION 23.** 94.240 (Title) and (1) are amended to read:

285           **ATCP 94.240 Diesel fuel ~~oil~~ specifications.**

286           (1) ~~Except as provided in subs. sub. (2) and (6), any~~ Any fuel product designated by name  
287 or reference as No. 1 diesel fuel ~~oil~~ to No. 4 diesel fuel ~~oil~~ shall meet the requirements ~~specified~~  
288 in ASTM D975 given for diesel fuel in NIST Handbook 130.

289           **SECTION 24.** 94.240 (2) is repealed.

290           **SECTION 25.** 94.240 (3) is amended.

291           ATCP 94.240 (3) Biodiesel fuel meeting the requirements ~~specified in ASTM D6751~~ given  
292 for biodiesel in NIST Handbook 130 may be added to diesel fuel meeting the requirements  
293 ~~specified in ASTM D975~~ given for diesel fuel in NIST Handbook 130.

294           **SECTION 26.** ATCP 94.240 (3) (Note) is repealed.

295           **SECTION 27.** ATCP 94.240 (4) is renumbered ATCP 94.240 (4) (a) and amended to read:

296           ATCP 94.240 (4) (a) ~~Biodiesel-blended Biodiesel motor fuels blends of 6-greater than 5~~ to  
297 20 percent biodiesel by volume shall meet the requirements ~~of ASTM D7467~~ given for biodiesel  
298 blends in NIST Handbook 130.

299           **SECTION 28.** ATCP 94.240 (4) (b) is created to read:

300           ATCP 94.240 (4) (b) The retailer shall be provided, at the time of delivery of the fuel, a  
301 declaration of the percent by volume biodiesel on an invoice, bill of lading, shipping paper, or  
302 other document. This documentation is for dispenser labeling purposes only; it is the  
303 responsibility of any potential blender to determine the amount of biodiesel in the diesel fuel prior  
304 to blending.

305           **SECTION 29.** ATCP 94.240 (5) is amended to read:

306           ATCP 94.240 (5) Any person who distributes petroleum-source diesel fuel mixed with  
307 non-petroleum-source diesel fuel shall state on any invoice, bill of lading, shipping paper, or other  
308 documentation accompanying the shipment used in normal and customary business practices, the  
309 type and ~~percentage~~ maximum volume percent of each component ~~rounded to a whole number~~  
310 ~~or half number equal to or less than the determined percentage.~~

311           **SECTION 30.** ATCP 94.240 (6) and (Note) are repealed.

312           **SECTION 31.** ATCP 94.250, ATCP 94.260, and ATCP 94.270 are created to read:

313           **ATCP 94.250 Aviation fuels.** (1) AVIATION GASOLINE. Any fuel product designated by  
314 name or reference as aviation gasoline shall meet the requirements of ASTM D910, D6227, or  
315 D7547.

316           (2) AVIATION TURBINE FUEL. Any fuel product designated by name or reference as  
317 aviation turbine fuel shall meet the requirements of ASTM D1655.

318           **ATCP 94.260 Racing gasoline.** (1) OCTANE RATING. The octane rating of the gasoline  
319 shall not be less than any of the following:

320           (a) The octane rating posted on the product dispenser.

321 (b) The certification [on the invoice, bill of lading, shipping paper, or other  
322 documentation.

323 (2) SPECIFICATIONS. The product specification limits shall be those as declared by the  
324 manufacturer's product specifications. Upon the request by the department, each supplier of racing  
325 gasoline shall provide a copy of the manufacturer's product specifications.

326 (3) LEAD AND LEAD SUBSTITUTE. (a) *Minimum Lead Content to Be Termed Leaded.*  
327 Gasoline and gasoline oxygenate blends sold as leaded shall contain a minimum of 0.013 grams  
328 of lead per liter or 0.05 grams per U.S. gallon.

329 (b) *Labeling.* Each dispensing device from which gasoline or gasoline-oxygenate blends  
330 containing lead shall display the following legend, "Contains lead." The lettering of this legend  
331 shall not be less than 12.7 millimeters or ½ inch in height and the color of the lettering shall be in  
332 definite contrast to the background color to which it is applied.

333 (c) *Use of Lead Substitute Must be Disclosed.* Each dispensing device from which gasoline  
334 or gasoline-oxygenate blends containing a lead substitute is dispensed shall display the following  
335 legend: "Contains Lead Substitute." The lettering of this legend shall not be less than 12.7  
336 millimeters or ½ inch in height and the color of the lettering shall be in definite contrast to the  
337 background color to which it is applied.

338 (d) *Nozzle Requirements for Leaded Fuel.* Each dispensing device from which gasoline or  
339 gasoline oxygenate blends that contain lead in amounts sufficient to be considered leaded gasoline,  
340 or lead substitute engine fuel, is sold shall be equipped with a nozzle spout having a terminal end  
341 with an outside diameter of not less than 23.63 millimeters or 0.93 inches.

342 **ATCP 94.270 E85 specifications.** Any fuel product designated by name or reference or  
343 defined as "E85" in s. ATCP 94.120 (15) shall meet the requirements specified in ASTM D5798



344 given in NIST Handbook 130. Any person who distributes E85 shall state on any invoice, bill of  
345 lading, shipping paper, or other documentation accompanying the shipment used in normal and  
346 customary business practices, the actual volume percent of ethanol.

347 **SECTION 32.** ATCP 94.300 (1) (a) is amended to read:

348 **ATCP 94.300 Labeling of dispensers and containers.** (1) DISPENSING  
349 EQUIPMENT. (a) *General.* All devices dispensing liquid fuel products at motor fuel dispensing  
350 facilities, garages, or other places where liquid fuel products are sold or offered for sale shall be  
351 marked with a conspicuous label visible on both faces of the dispensing device indicating the  
352 proper automotive fuel rating of the fuel product as established under Title 16 CFR Part 306. No  
353 label may be placed so that the text is sideways or upside down.

354 **SECTION 33.** ATCP 94.300 (1) (a) (Note) is amended to read:

355 ATCP 94.300 (1) (a) (Note) Note: The Federal Trade Commission (FTC) establishes the  
356 requirements for accurate automotive fuel ratings, which include octane ratings, certification and  
357 posting under Title 16 CFR Part 306. Also included in Part 306 are detailed requirements for  
358 labeling retail diesel fuel dispensing devices that dispense fuel blends consisting of more than 5  
359 percent by volume biodiesel fuel or biomass-based diesel fuel. Those detailed requirements  
360 include prescribed dispenser labels for blended fuels of ~~6~~greater than 5 to 20 percent biodiesel  
361 fuel or biomass-based diesel fuel, and dispenser labels for blended fuels of more than 20 percent  
362 biodiesel fuel or biomass-based diesel fuel. The FTC requirements are available at www.ftc.gov.

363 **SECTION 34.** ATCP 94.300 (1) (b) 1. and 2. are amended to read:

364 ATCP 94.300 (1) (b) *Oxygenated gasoline dispensing device labels.* 1. A device that  
365 dispenses a gasoline-ethanol fuel blend of more than ~~2%~~one percent by volume of ethanol shall  
366 be labeled with the maximum ~~volume~~ percent by volume of ethanol at all times the product is

367 offered for retail sale.

368 2. A device that dispenses a reformulated gasoline, as defined in s. 285.37 (1), Stats., that  
369 contains an oxygenate other than ethanol shall be labeled with the identity of the oxygenate at all  
370 times the product is offered for retail sale. If the ~~reformulated~~ gasoline contains multiple  
371 oxygenates, the label shall identify the ~~predominate~~ predominant oxygenate based upon percent by  
372 volume ~~percent~~.

373 **SECTION 35.** ATCP 94.300 (1) (b) 8. is repealed.

374 **SECTION 36.** ATCP 94.300 (1) (b) 9. is created to read:

375 ATCP 94.300 (1) (b) 9. a. Labeling. Any retailer or wholesaler who sells, dispenses, or  
376 offers for sale or dispensing E15 shall comply with labeling requirements in 40 CFR 1090.1510.

377 b. Placement. The label shall be placed on the upper two-thirds of each fuel dispenser  
378 where the consumer will see the label when selecting a fuel to purchase. For dispensers with one  
379 nozzle, the label shall be placed above the button or other control used for selecting E15, or in any  
380 other manner which clearly indicates which control is used to select E15. For dispensers with  
381 multiple nozzles, the label shall be placed in the location that is most likely to be seen by the  
382 consumer at the time of selection of E15.

383 **SECTION 37.** ATCP 94.300 (1) (c) is renumbered ATCP 94.300 (1) (c) 1. and amended to  
384 read:

385 ATCP 94.300 (1) (c) 1. ~~Dual dispenser for alcohol.~~ Dispensing gasoline-ethanol fuel  
386 blends. 1. A dispensing device which has existed since before February 1, 2009, and which does  
387 not use a separate fueling nozzle and hose for dispensing ethanol-blended motor fuels of more than  
388 ~~10~~ 15 percent ethanol by volume shall bear a label clearly warning any purchaser that the first  
389 gallon may have more than ~~10~~ 15 percent ethanol by volume. This label shall be adjacent to the

390 ethanol label that is required in par. (b), and shall comply with the requirements in par. (b) 3., 4.,  
391 6. and 7. ~~Enforcement of this paragraph shall be in accordance with par. (b) 8.~~

392 **SECTION 38.** ATCP 94.300 (1) (c) 2. is created to read:

393 2. Same Nozzle Permitted. A dispensing device at a retail station may be used to dispense  
394 through the same fueling nozzle and hose gasoline-ethanol fuel blends containing greater than 10  
395 percent and not more than 15 percent ethanol by volume, gasoline containing no ethanol, and  
396 gasoline-ethanol fuel blends containing not more than 10 percent ethanol by volume if either of  
397 the following applies:

398 a. The retail station provides a device having at least one fueling nozzle and hose that  
399 dispenses only gasoline-ethanol fuel blends containing no more than 10 percent ethanol by volume;  
400 a label satisfying the requirements under s. 168.11 (1) (b) 3., Stats. is prominently affixed to the  
401 dispensing device stating “Passenger Vehicles Only. Use in Other Vehicles, Engines and  
402 Equipment May Violate Federal Law.”; the retail station displays signs informing customers of  
403 the availability and location of the device required under subd. 1; or

404 b. A label satisfying the requirements under s. 168.11 (1) (b) 3., Stats. is prominently  
405 affixed to the dispensing device that states that a minimum purchase of 4 gallons is required.

406 **SECTION 39.** ATCP 94.300 (2) (a) is amended to read:

407 (a) *Gasoline and similar products.* All containers for storing gasoline or any other product  
408 that has a flash point of less than 100°F when tested using either an ASTM D56, ~~or~~ ASTM D93,  
409 ASTM D6450, or ASTM D7094 closed tester shall be metal or equally sound nonflammable  
410 material meeting the requirements of ch. ATCP 93 or SPS 314, shall have the common name of the  
411 contents clearly labeled or painted on the exterior, and shall be substantially a bright red color.  
412 These requirements do not apply to any of the following:

413 1. Fuel supply tanks connected to internal combustion or turbine engines, appliances,  
414 or any device consuming the fuel.

415 2. Containers holding ~~one gallon or less~~ of a liquid fuel product which were filled  
416 originally by a manufacturer or a packager and which comply with the federal standards for  
417 packaging and labeling.

418 3. Containers having a capacity of 275 gallons or more.

419  
420 **SECTION 40.** ATCP 94.300 (2) (a) 3. (Note) is repealed.

421 **SECTION 41.** ATCP 94.300 (4) (Intro.) is renumbered ATCP 94.300 (4) (a).

422 **SECTION 42.** ATCP 94.300 (4) (b) is created to read:

423 ATCP 94.300 (4) (b) A person who changes the fuel product dispensed from a tank system  
424 to a dissimilar fuel product shall notify the inspector, and the new product shall be tested and  
425 approved before being dispensed.

426 **SECTION 43.** ATCP 94.300 (4) (Note) is renumbered ATCP 94.300 (4) (b) (Note) and  
427 amended to read:

428 ATCP 94.300 (4) (b) (Note): Chapter ATCP 93 has detailed requirements that apply when  
429 converting a fuel tank to storage of fuel containing more than 10 percent ethanol by volume and more  
430 than five percent biodiesel by volume. Those requirements address cleaning the tank, tightness  
431 testing, and equipment compatibility.

432 **SECTION 44.** ATCP 94.310 (1) (b) 1. is amended to read:

433 ATCP 94.310 (1) (b) 1. Liquid fuel products previously inspected by the department at the  
434 refinery or at a marine or pipeline terminal within or ~~without~~ outside the state.

435 **SECTION 45.** ATCP 94.310 (2) (a) 1., 2., 3., (b), (e) 1., and 2. (Notes) are amended to read:

436 ATCP 94.310 (2) NOTIFICATION FOR INSPECTION. (a) 1. Where requested by the  
437 department, the recipient of all liquid fuel products shall notify the ~~department's corresponding~~  
438 ~~district inspection office~~ inspector of the receipt, between the hours of 7:45 a.m. and 4:30 p.m. on  
439 the day of the receipt, except as provided in subd. 2. or 3.

440 (a) 2. Where requested by the department, the ~~department's corresponding district~~  
441 ~~inspection office~~ inspector shall be notified of any liquid fuel products received after 4:30 p.m. or  
442 received on a Saturday, Sunday or any legal holiday, between the hours of 7:45 a.m. and 10:00  
443 a.m. of the next regular working day.

444 3. Where requested by the department, current delivery schedules for liquid fuel products  
445 delivered through a pipeline shall be made available to the ~~department's corresponding district~~  
446 ~~inspection office~~ inspector.

447 (b) If a person transfers one grade of a liquid fuel product into a container with another  
448 grade of liquid fuel product, the entire commingled product shall be deemed uninspected and the  
449 ~~department's corresponding district inspection office~~ inspector shall be notified.

450 (e) 1. A person who changes the fuel product dispensed from a tank system from a Class  
451 II or III liquid to a Class I liquid shall notify the ~~department's corresponding district inspection~~  
452 ~~office,~~ inspector, and the new product shall be tested and approved before being dispensed.

453 2. Note: Under chapter ATCP 93, the ~~department's corresponding district inspection office~~  
454 inspector must likewise be notified, and the new product must likewise be tested and approved  
455 before being dispensed, when the product dispensed from a tank system is changed from a Class I  
456 liquid to a Class II or III liquid.

457 2. Note: See the Department ~~Web site~~ website at  
458 [http://datcp.wi.gov/Consumer/Weights\\_and\\_Measures/index.aspx](http://datcp.wi.gov/Consumer/Weights_and_Measures/index.aspx). for the contact information  
459 for the ~~Department's district inspection offices~~ inspectors.

460 **SECTION 46.** ATCP 94.310 (2) (c) is repealed.

461 **SECTION 47.** ATCP 94.310 (3) (a) is amended to read:

462 ATCP 94.310 (3) (a) SAMPLING PROCEDURES. (a) *General.* A representative  
463 sample of at least 8 ounces ~~shall~~ may be taken from ~~every~~ any shipment of liquid fuel products,  
464 including commingled products that ~~is~~ are imported into and received in this state.

465 **SECTION 48.** ATCP 94.310 (3) (c) is repealed.

466 **SECTION 49.** ATCP 94.320 is repealed and recreated to read:

467 ATCP 94.320 Water in tanks. Water may not exceed the depths specified in ch. ATCP  
468 93.605 in any tank utilized for storing fuels for retail sale, except as otherwise approved by the  
469 department.

470 **SECTION 50.** ATCP 94.330 (Title) is amended to read:

471 ATCP 94.330 Department records. ~~Records.~~

472 **SECTION 51.** ATCP 94.330 (1) (a) is renumbered ATCP 94.330 (1) and amended to read:

473 The date ~~time~~ and place of each inspection.

474 **SECTION 52.** ATCP 94.330 (1) (b) is renumbered ATCP 94.330 (2).

475 **SECTION 53.** ATCP 94.330 (1) (c) is renumbered ATCP 94.330 (3).

476 **SECTION 54.** ATCP 94.330 (2) is renumbered ATCP 94.340 (3).

477 **SECTION 55.** ATCP 94.330 (3) is renumbered ATCP 94.340 (4).

478 **SECTION 56.** ATCP 94.330 (3) (Note). is created to read:

479 **Note:** Wis. Stat. ch. 98 has detailed requirements that apply to delivery of certain liquid

480 fuels.

481 **SECTION 57.** ATCP 94.340 (1) and (2) are created to read:

482 **ATCP 94.340 Documentation and records.**

483 (1) GENERAL. Any person receiving, unloading, using, offering for sale, or selling any  
484 liquid fuel product shall identify the product as to name or grade. Delivery of automotive fuel to a  
485 retail outlet shall include a certification of the automotive fuel rating, either by letter, or on the  
486 delivery ticket or other paper, as required by 16 CFR 306.10 (g).

487 (2) OXYGENATE DISCLOSURE. Any person who distributes fuel products which contain one  
488 percent or more by volume of an oxygenate, shall state on any invoice, bill of lading, shipping  
489 paper, or other documentation accompanying the shipment used in normal and customary business  
490 practices, the type of oxygenate and maximum percent by volume contained in the fuel.

491 **SECTION 58.** ATCP 94.340 (4) (Note) is created to read:

492 **Note:** See Wis. Stat. s. 98.225 for additional detailed requirements for deliveries of certain  
493 liquid fuels.

494 **SECTION 59.** ATCP 94.400 (2) is amended to read:

495 ATCP 94.400 (2) Except as authorized under sub. (1), no person may ~~deliberately~~ deliver,  
496 unload, direct, or transfer dissimilar ~~fuels~~ fuel products, ~~dissimilar octane, or a dissimilar grade of~~  
497 ~~fuel products~~ into a storage tank unless specifically approved in writing by an inspector.

498 **SECTION 60.** ATCP 94.400 (5) is amended to read:

499 ATCP 94.400 (5) No person may transfer a fuel product to any place for retail sale or offer  
500 to sell that fuel product if it has been contaminated with a dissimilar product or altered after being  
501 ~~testing~~ tested under this chapter, unless either approved otherwise by the department or further  
502 testing shows the ~~altered~~ product complies with this chapter.

503           **SECTION 61.** ATCP 94.400 (5) (Note), (6), and (7) are repealed.

504           **SECTION 62.** ATCP 94.400 (8), (9), (10), (11), and (12) are created to read:

505           ATCP 94.400 (8) No person may falsify any records and reports required under this  
506 chapter.

507           (9) No person may remove or tamper with any red-tag without written authorization from  
508 the department.

509           (10) No person may fail to comply with an administrative order issued by the department.

510           (11) No person may blend a fuel product in an underground storage tank.

511           (12) No person may remove contaminated product from a storage tank system without  
512 first notifying the department.

513           **SECTION 63.** ATCP 94.410 (1) is renumbered ATCP 94.410 (3) and is amended to read:

514           ATCP 94.410 ~~(1)~~ (3) OUTSIDE TESTING. An owner or seller of products which are subjected  
515 to a ~~qualitative~~ an analysis that cannot be performed by department equipment and which are  
516 therefore sent to an outside testing source shall reimburse the department for the actual cost of the  
517 analysis, the cost of ~~and~~ shipping, the fee specified in sub. (2), and pay any fee assessed under ~~ch.~~  
518 ~~SPS 302~~ this chapter.

519           **SECTION 64.** ATCP 94.410 (2) is repealed.

520           **SECTION 65.** ATCP 94.410 (1) and (2) are created to read:

521           (1) INVESTIGATIONS AND TESTING. An owner or seller of a product shall reimburse  
522 the department for the following, as specified in sub. (2):

523           (a) Investigation and testing of fuel specification failures, misdeliveries, and  
524 contaminated fuel.

525           (b) Investigation and testing of mislabeled products.



526 (c) Investigation and testing related to accidents or explosions under s. ATCP 94.100  
527 (6).

528 (d) Investigation and testing requested by the owner or seller of the product.

529 (2) COSTS. An owner or seller of a product shall reimburse the department the cost of  
530 shipping plus:

531 (a) \$80 per hour for investigations and testing by the department conducted between 7:45  
532 a.m. and 4:30 p.m. on weekdays Monday through Friday.

533 (b) \$120 per hour for investigations and testing performed by the department on Saturdays,  
534 Sundays, holidays and at times other than scheduled from 7:45 a.m. and 4:30 p.m. on weekdays  
535 Monday through Friday.

536 **SECTION 66.** ATCP 94.410 (3) is renumbered ATCP 94.410 (6).

537 **SECTION 67.** ATCP 94.410 (5) is amended to read:

538 (5) CONTINUATION OF SHUTDOWN. Failure to pay any reimbursements or fees  
539 required under this section, for a liquid fuel storage tank system that has been shut down under s.  
540 ATCP 94.100 (8), shall result in a continuation of that shutdown.

541 **SECTION 68. EFFECTIVE DATE:** This rule takes effect on the first day of the month  
542 following publication.

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(END OF RULE TEXT)

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Dated this 9<sup>th</sup> day of November, 2021.

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

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By: \_\_\_\_\_

Randy Romanski  
Secretary

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<b>1. Type of Estimate and Analysis</b> <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	<b>2. Date</b> November 18, 2021
<b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b> ATCP 94	
<b>4. Subject</b> Petroleum and Other Liquid Fuel Products	
<b>5. Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>6. Chapter 20, Stats. Appropriations Affected</b>
<b>7. Fiscal Effect of Implementing the Rule</b> <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
<b>8. The Rule Will Impact the Following (Check All That Apply)</b> <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>	
<b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b> \$	
<b>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>11. Policy Problem Addressed by the Rule</b> 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 the Department of Safety and Professional Services (DSPS) to DATCP. Act 20 also authorized the transfer of existing administrative rules relating to this program with the approval of the Secretary of the Department of Administration. The Legislative Reference Bureau used its authority to renumber the affected rule from ch. SPS 348 to ch. ATCP 94.  Other aspects of the transfer must be addressed through administrative rulemaking. DATCP rule revisions make technical and organizational changes to portions of ch. ATCP 94. These changes integrate the petroleum inspection program into DATCP's other regulatory programs and provide clarity to regulated industries.  The amendments to ATCP 94 also clarify Wisconsin law on E15 and address ongoing producer concerns about base versus blend.	
<b>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.</b> None at this time. The fiscal estimate and flexibility analyses will be posted with the draft rule, and the concerns of the regulated community will be identified and addressed more thoroughly.	
<b>13. Identify the Local Governmental Units that Participated in the Development of this EIA.</b> None involved. Because the program is a state responsibility, DATCP does not expect local governments to have any additional expenses.	

## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

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14. 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)

This rule will impact businesses that sell or distribute petroleum and other liquid fuel products, either at wholesale or retail. Although these businesses are already regulated under the existing rule, they might need to make minor changes to comply with updated requirements, such as a reduction in the water levels permitted in tanks containing certain fuels.

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

#### *Benefits*

Eliminating outdated standards that conflict with national and federal standards benefits producers, wholesalers, and retailers of petroleum and other liquid fuel products by reducing confusion and the overall burden of compliance. Those businesses also benefit from updates in the rule that clarify definitions and processes, including fee authority and the process by which to request a variance. In addition, updates allow for the sale of E15 as gasoline.

This rule benefits manufacturers and sellers of vehicles and small engines that should never use E15 by adopting and enforcing EPA requirements that aim to prevent mis-fueling with E15.

This rule benefits consumers of petroleum and other liquid fuel products by ensuring that the Wisconsin Administrative Code is consistent with national standards. Consumers also benefit from the option to choose E15 for use in appropriate vehicles and from regulations protecting vehicles and small engines that should never use E15.

#### *Alternatives*

Do nothing. If the department does not implement the numerous technical updates, the rule will be more difficult to understand than necessary, and it will remain inconsistent with the latest national standards. In addition, if the department does not implement the rule, businesses that wish to sell or dispense E15 as gasoline (rather than as alternative fuel) will be unable to do so easily. Finally, numerous changes have been made in state statute concerning fuel quality. Without adoption of this rule, ATCP 94 will continue to be outdated and inconsistent with statute.

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16. Long Range Implications of Implementing the Rule

There are no expected long-term implications to implementing this rule.

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17. Compare With Approaches Being Used by Federal Government

The federal Clean Air Act (CAA) authorizes the 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.

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

EPA regulates the vapor pressure of gasoline sold at retail stations during the summer ozone season. The EPA does so to reduce evaporative emissions from gasoline that contribute to ground-level ozone and to 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 and up to 15 percent (E15) for use in MY2001 and newer light-duty vehicles. 40 CFR Part 80 establishes E15 labeling and survey requirements, as well as transfer document requirements for gasoline-oxygenate blends.

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

### *Illinois*

Illinois adopts by reference the most recent revisions of ASTM standards regarding motor fuel. Illinois adopts by reference sections of the most current revision of NIST Handbook 130, including the standards and test methods regarding gasoline-ethanol blends, which include E15 as gasoline. Illinois allows the sale of E15 as gasoline. Illinois requires fuel to meet specifications at base and blend.

### *Iowa*

Iowa adopts ASTM standards and test methods regarding motor fuel. Iowa allows the sale of E15 as gasoline. Iowa requires fuel to meet specifications at base and blend.

### *Michigan*

Michigan adopts standards and test methods regarding gasoline, motor fuel additives, and grading. Michigan allows the sale of E15 as gasoline. Michigan requires fuel to meet specifications at base and blend.

### *Minnesota*

Minnesota requires petroleum products to meet ASTM standards, and allows for gasoline-ethanol blends to be blended up to any percentage specifically authorized by an EPA waiver under the Clean Air Act. Minnesota allows the sale of E15 as gasoline. Minnesota allows fuel to meet specifications at base or blend.

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19. Contact Name

David A. Woldseth

20. Contact Phone Number

608-224-5164

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This document can be made available in alternate formats to individuals with disabilities upon request.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

None.

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
-

## Initial Regulatory Flexibility Analysis

**Rule Subject:** Petroleum and Other Liquid Fuel Products  
**Adm. Code Reference:** ATCP 94  
**Rules Clearinghouse #:** n/a  
**DATCP Docket #:** 21-R-06

### *Rule Summary*

This rule does all of the following:

- Adds standard definitions and applies consistent use of terminology.
- Adopts by reference portions of National Institute of Standards and Technology (NIST) Handbook 130 (2020 edition).
- Creates new section on E15.
- Updates petition of variance and fee requirements to conform to DATCP policies and authority.
- Updates allowance for water in tanks to match national standards and standards established in ATCP 93.

### **Other changes**

The proposed rule makes other minor clarifying and corrective changes to the rule.

### *Small Business Affected*

This rule will apply to businesses that sell or distribute petroleum and other liquid fuel products, either at wholesale or at retail. Although these businesses are already regulated under the existing rule, they might need to make minor changes to comply with updated requirements, such as a reduction in the water levels permitted in tanks containing certain fuels.

Recalibration of water sensors in tanks will pose the greatest impact on businesses selling petroleum and other liquid fuel products. Sellers are already required to complete annual checks of fueling systems, at which time a recalibration of water sensors to meet the new standard can be done, thereby avoiding the cost of additional visits from service providers.

The new rule also largely eliminates the need to consult SPS rules in the assessment of fees. This should help small businesses in reviewing relevant rules.

***Recordkeeping requirements***

There are no changes to recordkeeping requirements.

***Accommodation for Small Business***

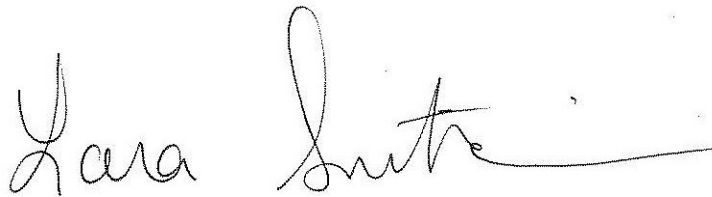
Many of the businesses affected by this rule are “small businesses.” However, given the subject matter, there are very few accommodations or special exceptions that can be made for small businesses.

***Conclusion***

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

Dated this 8th day of November, 2021.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

A handwritten signature in black ink, appearing to read "Lara Sutherlin". The signature is written in a cursive style with a long horizontal line extending to the right.

Lara Sutherlin, Administrator  
Division of Trade and Consumer Protection