

Wisconsin Department of Agriculture, Trade and Consumer Protection

Regulatory Flexibility Analysis

<i>Rule Subject:</i>	Flammable, Combustible, and Hazardous Liquids
<i>Adm. Code Reference:</i>	ATCP 93
<i>Rules Clearinghouse No.:</i>	
<i>DATCP Docket No.:</i>	24-R-06

Rule Summary

Under Wis. Stat. ch. 168, subch. II, the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) is responsible for regulating tanks for the storage, handling, or use of liquids that are flammable, combustible, or federally regulated hazardous substances.

Wisconsin Stat. § 168.23 (1) directs DATCP to promulgate rules imposing standards for the construction, maintenance, and abandonment of such tanks, as well as standards for the property and facilities where such tanks are located, to protect the waters of this state from contamination. In compliance with that statutory directive, DATCP promulgated Wis. Admin. Code ch. ATCP 93.

Wisconsin Admin. Code ch. ATCP 93 protects the waters of this state and provides "... fire and life safety through the safe storage, display, installation, operation, use, maintenance and transportation of flammable, combustible, and hazardous liquids and the equipment, facilities, buildings, and premises that are used to store, transfer and dispense them." See Wis. Admin. Code § ATCP 93.010. Those existing policies of protecting the waters of this state from contamination, reducing fire hazards, and protecting human life are proposed to be included in the revised rule.

The rule revision:

- Changes definitions.
- Clarifies cross references between aboveground storage tank systems (ASTs) and underground storage tank systems (USTs)
- Changes and clarifies spill and overfill prevention requirements.
- Adds and repeals standards incorporated by reference
- Revises storage tank credentialing and certification requirements.
- Clarifies requirements for temporarily out of service (TOS) tanks and abandoned tanks.
- Modifies the plan review process.
- Makes style changes to streamline the rule.

Small Businesses Affected

This rule is anticipated to have a minimal impact on small businesses within the state. The majority of proposed modifications serve mainly to update and reorganize provisions in the current rule. There are a few modifications of note:

- The definition of “closure” under s. ATCP 93.050 (29) has been proposed to change. The change would permit capping and leaving in place. This could have a minimal effect and perhaps a positive one.
- The term “multi-stage project” will now be defined in s. ATCP 93.050 (73m). Due to the time and size of these projects, inspectors perform multiple inspections including multiple final inspections. There will be increased visits to ensure safety.
- The definition of “temporarily out of service” in s. ATCP 93.050 (120m) has been amended to eliminate the 24-month provision. This could have a minimal effect and perhaps a positive one.
- As a result of some clarifications of phrasing and requirements, the needs for using certain DATCP forms have been eliminated. This should assist small businesses.
- Under an amended s. ATCP 93.115 (3), DATCP proposes to have the ability to have stored product removed in the event of a shutdown.
- DATCP proposes that industry include a copy of a deed with its plan review under a new s. ATCP 93.140 (3) (bm). There may be a cost if an owner does not have a copy of the deed.
- The tables in s. ATCP 93.200 have been restructured. Some standards have been repealed, and a few new standards have been proposed. Depending upon the nature of the entity, a business may need to bear the cost of purchasing the copyrighted document in which a given standard is published. However, businesses will only need to purchase those publications applicable to their needs. Therefore, business costs will depend on purchasing decisions.
- DATCP proposes to eliminate the requirements in s. ATCP 93.230 that operators conduct inspections required by PEI RP 500 and 900. Instead, operators should use DATCP forms. The department expects cost savings for owners and operators who will not need to purchase those two standards any longer.
- Altered and clarified requirements in s. ATCP 93.410 (1) may have an impact since the requirements on alarms and gauges have been proposed for change. There may be additional challenges for older systems depending on the type of tank and equipment installed.
- In s. ATCP 93.510 (2) (am), DATCP would now require some replacements due to the 12-month annual functionality verification cycle if equipment is no longer manufactured. This could affect older systems.

Reporting, Bookkeeping, and Other Procedures

Like the current rule, the proposed rule continues to require certain types of reporting and record keeping that are associated with the testing of tanks and tank systems.

As previously mentioned, many small businesses or business organizations will decide to purchase some of the standards-related publications that are indicated in the tables in Section 200.

Professional Skills Required

The proposed rule does not change any professional requirements. The proposed rule reorganizes Section 240 and creates subchapter IX. Many small businesses found Section 240 confusing; subchapter IX reorganizes the important information and should clarify credentialing. This change should reduce administrative burden by making requirements easier to find in the updated rule.

Accommodation for Small Business

Many of the businesses affected by this rule are “small businesses.” DATCP shared details of the proposed ATPC 93 with stakeholders twice before seeking its Board’s approval to hold hearings on the hearing draft rule. Many stakeholders are represented through organizations such as the Wisconsin Fuel and Retail Association and the Cooperative Network and industry leaders.

Because of the inevitable complexity of the tanks inspection program, DATCP expects to undertake an extensive training and informational program for the benefit of Department staff and industry personnel. DATCP also expects to receive ongoing inquiries concerning the interpretation and enforcement of the rule and will devote resources to fielding those inquiries.

Conclusion

This proposed rule will likely benefit businesses, including small businesses, since an effort has been made by the Department to clarify and simplify the rule. Negative impacts, if any, will be few and limited. Accordingly, the proposed rule is not subject to the delayed small business effective date provided in Wis. Stat. § 227.22 (2) (e).

Dated this 17th day of August, 2026.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 

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