



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

DATE: January 30, 2025

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Randy Romanski, Secretary

SUBJECT: **Approval of Statement of Scope for ATCP 94: Petroleum and Other Liquid Fuel Products**

PRESENTED BY: David Woldseth, Program and Policy Analyst, Division of Trade and Consumer Protection

REQUESTED ACTION:

At the Board meeting on January 30, 2025, the Department will request approval of the attached Statement of Scope, regarding Wis. Admin. Code ch. ATCP 94 relating to petroleum and other liquid fuel products.

SUMMARY:

At the December 12, 2024 Board meeting, the DATCP Board approved the Department to hold a preliminary public hearing and comment period on the Statement of Scope for ch. ATCP 94. The Governor had previously approved the Statement of Scope (SS 110-24) on October 31, 2024. The Department held the public hearing on January 7, 2025. The comment period started December 16, 2024, and ended January 10, 2025. During this period, the Department received only one comment, which was in support of the efforts to update ch. ATCP 94 from the American Petroleum Institute.

Wisconsin Stat. § 168.04(1) directs the Department to prescribe minimum product grade specifications for various forms of gasoline and kerosene, and it authorizes the Department to prescribe minimum product grade specifications for diesel fuel, fuel oils, and aviation gasoline. Wisconsin Stat. § 168.04(3) provides, "Except as otherwise prohibited 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 proposes to consider an industry request to amend Wis. Admin. Code ch. ATCP 94 to update its Section 200 and the standards incorporated by reference.

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STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection

Rule No.: Chapter ATCP 94

Relating to: Petroleum and Other Liquid Fuel Products

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

The objective of the proposed rule is to prescribe the appropriate minimum product grade specifications for petroleum products offered for sale in Wisconsin in compliance with Wis. Stat. ch. 168, subch. I.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) administers numerous rules that adopt recognized national and international standards by incorporating them through reference. Wisconsin Admin. Code ch. ATCP 94 adopts standards set by ASTM International (ASTM, formerly known as the American Society for Testing and Materials until 2001) for the specification, composition, and testing methods of the regulated petroleum and liquid fuel products. Since Wis. Admin. Code ch. ATCP 94 was last revised in February 2024, several of these ASTM standards have updated. DATCP may consider adopting updated versions of these standards.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Wisconsin Stat. § 168.04 (1) directs DATCP to prescribe minimum product grade specifications for various forms of gasoline and kerosene, and it authorizes DATCP to prescribe minimum product grade specifications for diesel fuel, fuel oils, and aviation gasoline. Wisconsin Stat. § 168.04 (3) provides, "Except as otherwise prohibited 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."

This proposed rule may consider the most recent versions in the *Annual Book of ASTM Standards*. Should DATCP decide to incorporate the most recent versions by reference, it will seek the approval of the Attorney General as required under Wis. Stat. § 227.21 (2).

The alternative is to continue use of ASTM standards that are not the most up-to-date.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wis. Stats. §§ 168.04 and 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.

(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.

168.16 Standards.

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

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

DATCP estimates that it would use approximately 200 hours of staff time to develop this rule.

6. List with description of all entities that may be affected by the proposed rule:

This rule may affect businesses that sell or distribute petroleum and other liquid fuel products at wholesale or at retail. It may also affect businesses that manufacture, sell, or distribute chemical liquids regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act.

These businesses are already regulated under the existing rule.

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

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

The federal Clean Air Act authorizes EPA to establish emissions standards for motor vehicles to address air pollution that may be reasonably 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 federal regulations incorporate by reference ASTM standards and test methods.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

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

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Signed this 14 day of October 2024



Randy J. Romanski

Secretary

State of Wisconsin Department of Agriculture, Trade and Consumer Protection