

Chapter ATCP 94

PETROLEUM AND OTHER LIQUID FUEL PRODUCTS

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Note: Chapter Ind 10 was renumbered to be chapter ILHR 48, *Register*, May, 1984, eff. June 1, 1984. Chapter ILHR 48 was renumbered to be chapter Comm 48 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., *Register*, October, 1996, No. 490. Chapter Comm 48 was renumbered chapter SPS 348 under s. 13.92 (4) (b) 1., Stats., *Register* December 2011 No. 672. Chapter SPS 348 was renumbered chapter ATCP 94 under s. 13.92 (4) (b) 1., Stats., *Register* October 2013 No. 694, pursuant to 2013 Wis. Act 20, Section 9138 (3) (fm) and (4) (f).

Subchapter I — Administration and Enforcement**ATCP 94.100 Scope, application, and authority. (1)**

SCOPE. This chapter primarily establishes quality standards for petroleum and other liquid fuel products that are used as liquid fuels for engines and heating equipment. It also establishes labeling requirements for used lubricating oils.

(2) RULE-MAKING AUTHORITY. Under ch. 168, Stats., the department has authority to promulgate rules relating to grade specifications for petroleum and other liquid fuel products, and to administer and enforce the rules.

(3) AUTHORITY TO ENTER. The department has authority to enter any premises of any manufacturer, vendor, dealer, or user of petroleum or other liquid fuel products during the regular business hours to determine whether the fuel product has been inspected in accordance with this chapter.

(4) AUTHORITY TO SAMPLE AND TEST. The department has authority to obtain samples of petroleum and other liquid fuel products at any point within or without this state for the purpose of testing these products in accordance with this chapter.

(5) AUTHORITY FOR ACCESS TO RECORDS. The department has authority to inspect the records of every person having custody of books or records showing the shipment, receipt, and inventory of petroleum or other liquid fuel products for the purpose of determining the amount of products shipped or received.

(6) AUTHORITY TO PERFORM INVESTIGATIONS. Any accident or explosion involving petroleum or other liquid fuel products which comes to the knowledge of the department may be investigated by the department to determine whether there has been a violation of this chapter.

(7) AUTHORITY TO PROVIDE ASSISTANCE TO LOCAL AUTHORITIES. The department has authority, upon request of other state agencies or local authorities, to assist in the investigation of hazardous situations involving suspected or known liquid fuel products.

(8) AUTHORITY TO STOP SALE. Persons with enforcement authority under this chapter have authority to shut down liquid fuel

storage tank systems by the issuance of orders, the disabling with locks, or applying a red-tag, under the following conditions:

(a) *Immediate shutdown to protect life, safety, or health.* Liquid fuel storage systems that contain products which pose an immediate danger to life, safety, or health shall be subject to immediate shutdown. Products that pose an immediate danger to life, safety, or health include all of the following:

1. Heating oil that is contaminated with gasoline.
2. Kerosene that is contaminated with gasoline.
3. Aircraft fuel that is contaminated with any substance.

(b) *Immediate shutdown to blend or remove liquid fuel products or wastes.* Liquid fuel storage systems that contain wastes or products which fail to meet the operational and technical standards of this chapter shall be immediately shut down until a pump out or blend is completed under the supervision of a person with enforcement authority under this chapter. The system may be re-opened as soon as the product contained in the tank is verified by a person with enforcement authority under this chapter as meeting this chapter's operational and technical standards.

Note: To obtain supervision of a person with enforcement authority under this chapter, contact the department. See the department website at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx for the contact information for the inspectors.

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

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

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

Note: For further requirements about the inventory verification that is required for any tank system from which fuel products are offered for sale to the public, see section ATCP 93.503. For further information about inventory control or statistical inventory reconciliation, which are prescribed methods of leak detection, see section ATCP 93.515 (2) or (6), respectively.

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

(f) *Shutdown after continued violation.* 1. Tank systems or

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components are subject to shutdown for a continuing code violation under this chapter, provided all of the following conditions are met:

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

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

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

(g) *Appeals*. Any appeal to a shutdown order must be filed pursuant to s. [ATCP 93.190](#).

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; emerg. cr. (7), eff. 9-13-95; cr. (7), Register, May, 1996, No. 485, eff. 6-1-96; CR 05-081: renum. from Comm 48.01, renum. (7) (c) to be (7) (d), am. (4), (5) and (7), cr. (7) (c) Register August 2006 No. 608, eff. 9-1-06; CR 10-006: am. (title), renum. (1) to (7) (c) and (d) to be (2) to (8) (c) and (e) and am., cr. (1), (8) (d) Register December 2010 No. 660, eff. 1-1-11; correction in (8) (c) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; correction in (8) (c) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694; CR 21-096: am. (8) (b) to (d), r. and recr. (8) (e), cr. (8) (f), (g) Register February 2024 No. 818, eff. 3-1-24.

ATCP 94.110 Penalties, fees, and petitions for variance. (1) **PENALTIES.** Pursuant to s. [168.15](#), Stats., any person who violates any provision of this chapter shall forfeit not less than \$10 nor more than \$100 for each violation. Each day a person fails to comply with any provision of this chapter is a separate violation.

(2) **FEES.** Fees for requested inspections, including complaint-driven inspections, shall be assessed in accordance with s. [ATCP 94.410](#).

(3) **PETITIONS FOR VARIANCE.** (a) The department may grant a variance to a provision of this chapter. A separate petition for variance must be submitted to the department for each fuel type and shall include all of the following:

1. Requester's name and address.
2. Type of business.
3. Product description, intended use and specification sheet.
4. Evidence that an equivalency is established in the petition for variance that meets the intent of the rule being petitioned.
5. Reason for the request.
6. Signature and title of the requester.
7. Date of the request.
8. The fee of \$300.

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

Note: Form TR-WM-129 is available from the Bureau of Weights and Measures, at P.O. Box 8911, Madison, WI 53708-8911, or (608) 224-4942 or at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; am. Register, October, 1984, No. 346, eff. 11-1-84; renum. (5) to be (5) (a) and cr. (5) (b), Register, April, 1985, No. 352, eff. 5-1-85; r. and recr. (1), Register, February, 1986, No. 362, eff. 3-1-86; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1995, No. 479; CR 03-011: r. and recr. (5) Register December 2003 No. 576, eff. 1-1-04; CR 05-081: renum. from Comm 48.02 Register August 2006 No. 608, eff. 9-1-06; CR 10-006: renum. from Comm 48.200, am. (1), (2), r. (3), (4) Register December 2010 No. 660, eff. 1-1-11; correction to numbering made under s. 13.92 (4) (b) 1., Stats., Register December 2010 No. 660; correction in (2), (3) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; CR 21-096: am. (title), (2), renum. (3) to (3) (a) (intro.) and am., cr. (3) (a) 1. to 8., (b) Register February 2024 No. 818, eff. 3-1-24.

ATCP 94.120 Definitions. In this chapter:

(1) "Alternative liquid automotive fuel" includes all of the following:

(a) Mixtures containing more than 16.1 percent by volume of butanol or 15 percent by volume of methanol, denatured ethanol,

other alcohols, or any combination thereof with gasoline or other fuels.

(b) Biodiesel over B5.

(c) Coal-derived liquid fuels.

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

(2) "Automotive fuel rating" means:

(a) For gasoline, the octane rating.

(b) For an alternative liquid automotive fuel other than biodiesel, biomass-based diesel, biodiesel blends, biomass-based diesel blends, and ethanol flex fuels, the commonly used name of the fuel with a disclosure of the amount, expressed as the minimum percentage by volume, of the principal component of the fuel. A disclosure of other components, expressed as the minimum percentage by volume, may be included, if desired.

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

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

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

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

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

(6) "Biodiesel blend" means a fuel comprised of biodiesel fuel with petroleum-based diesel fuel, designated BXX. In the abbreviation BXX, the XX represents the percent by volume of biodiesel fuel in the blend.

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

(8) "Biofuels" means any fuel that is derived from biomass.

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

(10) "Butanol" means butyl alcohol, the chemical compound C_4H_9OH , a colorless substance existing in four isomeric forms.

(11) "Department" means the Wisconsin department of agriculture, trade and consumer protection.

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

(13) "Dissimilar fuel products" means fuel products with different oxygenates, different oxygenate content by volume, different octane rating, different ASTM specifications, different biomass content by volume, or different definitions under this chapter.

(14) "E15" means gasoline containing more than ten percent ethanol by volume but not more than fifteen percent ethanol by volume.

(15) "E85" means high-level ethanol-gasoline blends containing 51 percent to 83 percent ethanol by volume, depending on geography and season.

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

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

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

(19) “Finished fuels” means fuels that are ready to be used without requiring additional chemical or physical processing to meet adopted specifications.

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

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

(22) “Gasoline-oxygenate blend” means a fuel consisting primarily of gasoline along with more than one percent by volume oxygenate, or more than 0.3 percent by volume methanol not to exceed the total oxygen content permitted by applicable laws and regulations.

(23) “Inspection” means collection of product samples, qualitative determination by visual assessment and laboratory testing, and verification of associated product-shipping and storage records.

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

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

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

(27) “Methanol” means methyl alcohol.

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

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

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

(31) “Petroleum and other liquid fuel products,” “liquid fuels,” and “fuel products” means gasoline, gasoline/alcohol-ether gasoline-oxygenate blends, aviation gasoline, aviation turbine fuel, automotive gasoline, kerosene, fuel oil, burner fuel, diesel fuel, biofuels, other liquid motor fuels, and blends of petroleum-based fuels and biofuels.

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

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

(34) “Red-tag” means a red tag secured to a component of a storage or dispensing system, which gives notice that the system

or the product stored is under enforcement action for failure to comply with the requirements of either this chapter or ch. ATCP 93, and which prohibits operation of the system until the red tag is removed by or under the direction of an inspector.

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

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; cr. (6) and (7), Register, February, 1986, No. 362, eff. 3-1-86; CR 03-011: r. and recr. Register December 2003 No. 576, eff. 1-1-04; CR 05-081: renun. from Comm 48.03, renun. (1) (d), (e) and (3) to (7) to be (1) (c), (d), (5), (7), (9), (10), (12) and am., am. (1) (a), r. (1) (c), cr. (3), (4), (6), (8) and (11) Register August 2006 No. 608, eff. 9-1-06; CR 10-006: renun. from Comm 48.300 and am. (1) (intro.), (7) to (9) Register December 2010 No. 660, eff. 1-1-11; correction to numbering made under s. 13.92 (4) (b) 1., Stats., Register December 2010 No. 660; correction in (5), (8), (11) made under s. 13.92 (4) (b) 6., 7., Stats., Register December 2011 No. 672; corrections in (5), (8), (11) made under s. 13.92 (4) (b) 6., 7., Stats., October 2013 No. 694; CR 21-096: r. and recr. Register February 2024 No. 818, eff. 3-1-24.

Subchapter II — Petroleum and Other Liquid Fuel Product Specifications

ATCP 94.200 Adoption of standard specifications by reference. (1) The following standards of the 2023 *Annual Book of ASTM Standards* of ASTM International are incorporated into this chapter:

- (a) ASTM D396-21, standard specification for fuel oils.
- (b) ASTM D910-21, standard specification for aviation gasolines.
- (c) ASTM D975-22, standard specification for diesel fuel oils.
- (d) ASTM D1655-22, standard specification for aviation turbine fuels.
- (e) ASTM D3699-19, standard specification for kerosene.
- (f) ASTM D4806-21a, standard specification for denatured fuel ethanol for blending with gasolines for use as automotive spark-ignition engine fuel.
- (g) ASTM D4814-21c, standard specification for automotive spark-ignition engine fuel.
- (h) ASTM D5798-21 standard specification for ethanol fuel blends for flexible-fuel for automotive spark-ignition engines.
- (i) ASTM D6227-18, standard specification for unleaded aviation gasoline containing a non-hydrocarbon component.
- (j) ASTM D6751-20a, standard specification for biodiesel fuel blend stock (B100) for middle distillate fuels.
- (k) ASTM D7467-20a, standard specification for diesel fuel oil, biodiesel blend (B6 to B20).
- (L) ASTM D7547-21, standard specification for hydrocarbon unleaded aviation gasoline.

(1m) All finished fuels must meet the adopted standard specifications at the time they are offered for sale.

(a) Fuels sold from terminals, bulk plants, or other wholesale operations shall meet the required specification for the fuel type indicated on the delivery records required in s. ATCP 94.340.

(b) Fuels sold at retail shall meet the required specification for the fuel type indicated by the dispenser labeling required in s. ATCP 94.300 (1).

(2) Where no ASTM standard exists, other generally recognized national consensus standards may be used.

Note: Copies of the adopted standards are on file in the offices of the department and the legislative reference bureau. Copies of the ASTM standards may be purchased from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959, telephone 877-909-2786, e-mail service@astm.org, or website www.astm.org.

Note: Pursuant to section 168.07 (2) of the Statutes, inspections to determine compliance with specifications prescribed by the department must be conducted in accordance with the latest ASTM methods.

History: CR 03-011: cr. Register December 2003 No. 576, eff. 1-1-04; CR 05-081: r. and recr. Register August 2006 No. 608, eff. 9-1-06; CR 10-006: renum. from Comm 48.400 and am. (title), (1) (a) to (f), (h), (j), cr. (1) (k), (L) Register December 2010 No. 660, eff. 1-1-11; CR 14-047: am. (1) Register May 2015 No. 713, eff. 6-1-15; CR 16-012: am. (1) (intro.), (a) to (h), (j) to (L) Register August 2016 No. 728, eff. 9-1-16; CR 18-019: am. (1) (intro.), (a) to (d), (f) to (L) Register January 2020 No. 769, eff. 2-1-20; CR 21-096: am. (1), cr. (1m) Register February 2024 No. 818, eff. 3-1-24.

ATCP 94.210 Gasoline specifications. (1) GASOLINE, AUTOMOTIVE GASOLINE, AND GASOLINE CONTAINING UP TO 10 PERCENT OXYGENATE BY VOLUME. (c) Automotive gasoline. Any fuel product designated by name or reference as automotive gasoline shall meet the requirements specified in ASTM D4814.

(d) *Gasoline containing up to 10 percent oxygenate by volume.* Other oxygenated fuels shall be acceptable if the oxygenates are blended in a manner approved by the department in amounts allowed by the EPA and the final product conforms to the standard specification for gasoline under par. (c).

(3) REID VAPOR PRESSURE FOR GASOLINE-ETHANOL BLENDS CONTAINING UP TO 10 PERCENT OXYGENATE BY VOLUME. The blend shall meet ASTM D4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel," except that the maximum vapor pressure shall not exceed the ASTM D4814 limits by more than 1.0 psi for blends containing one or more percent by volume ethanol for volatility classes A, B, C, D, and E from September 16 through May 31.

History: R. and recreate from Ind 10.03, Register, July, 1980, No. 295, eff. 8-1-80; Table 10.04-B1 reprinted to correct error, Register, September, 1980, No. 297; r. and recr. (1) (c) and Table 48.04-B1, cr. (1) (d), Register, February, 1986, No. 362, eff. 3-1-86; CR 03-011: am. (1) (b) and (2), r. Tables 48.04-B1, B2, and C, cr. (1) (e), Register December 2003 No. 576, eff. 1-1-04; CR 05-081: renum. from Comm 48.04, renum. (1) (intro.) to (e) to be (1) (a) to (d), (f) and (g) and am., Table 48.04-A to be Table 48.500, am. (1) (title) and (2), cr. (1) (a) (title) and (e) Register August 2006 No. 608, eff. 9-1-06; CR 10-006: renum. from Comm 48.500 and am. (1) (b), (c) 1., (d) 1., 4., (2) Register December 2010 No. 660, eff. 1-1-11; correction in (1) (b) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; correction in (1) (b) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694; CR 21-096: r. and recr. Register February 2024 No. 818, eff. 3-1-24.

ATCP 94.215 E15 specifications. (1) REQUIREMENTS. Any fuel product designated by name or reference or defined as "E15" shall meet the requirements specified in ASTM D4814. Any person who distributes E15 shall state on any invoice, bill of lading, shipping paper, or other documentation accompanying the shipment used in normal and customary business practices, the maximum percent by volume of ethanol.

(2) REID VAPOR PRESSURE FOR E15. The blend shall meet ASTM D4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel," except that the maximum vapor pressure shall not exceed the ASTM D4814 limits by more than 1.0 psi for blends containing one or more percent by volume ethanol for volatility classes A, B, C, D, and E from September 16 through May 31.

History: CR 21-096: cr. Register February 2024 No. 818, eff. 3-1-24.

ATCP 94.220 Kerosene specifications. Any fuel product designated by name or reference as "kerosene" or "kerosine" shall meet the requirements specified in ASTM D3699.

History: R. and recr. from Ind 10.03, Register, July, 1980, No. 295, eff. 8-1-80; am. table, Register, May, 1984, No. 341, eff. 6-1-84; r. and recr. table, Register, February, 1986, No. 362, eff. 3-1-86; CR 03-011: am., r. Table 48.05 Register December 2003 No. 576, eff. 1-1-04; CR 05-081: renum. from Comm 48.05 Register August 2006 No. 608, eff. 9-1-06; CR 10-006: renum. from Comm 48.510 and am. Register December 2010 No. 660, eff. 1-1-11.

ATCP 94.230 Fuel oil specifications. Any petroleum product designated by name or reference as No. 1 fuel oil to No. 6 fuel oil shall meet the requirements specified in ASTM D396.

History: R. and recr. from Ind 10.01 and 10.02, Register, July, 1980, No. 295, Published under s. 35.93, Stats. Updated on the first day of each month. Entire code is always current. The Register date on each page is the date the chapter was last published.

eff. 8-1-80; am. table, Register, May, 1984, No. 341, eff. 6-1-84; r. and recr. table, Register, February, 1986, No. 362, eff. 3-1-86; CR 03-011: am., r. Table 48.06 Register December 2003 No. 576, eff. 1-1-04; CR 05-081: renum. from Comm 48.06 Register August 2006 No. 608, eff. 9-1-06; CR 10-006: renum. from Comm 48.520 and am. Register December 2010 No. 660, eff. 1-1-11.

ATCP 94.240 Diesel fuel specifications. (1) Any fuel product designated by name or reference as No. 1 diesel fuel to No. 4 diesel fuel shall meet the requirements specified in ASTM D975.

(3) Biodiesel fuel meeting the requirements specified in ASTM D6751 may be added to diesel fuel meeting the requirements specified in ASTM D975.

(4) (a) Biodiesel blends of greater than 5 but not more than 20 percent biodiesel by volume shall meet the requirements of ASTM D7467.

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

(5) Any person who distributes petroleum-source diesel fuel mixed with non-petroleum-source diesel fuel shall accurately state on any invoice, bill of lading, shipping paper, or other documentation accompanying the shipment used in normal and customary business practices, the type and maximum volume percent of each component.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; r. and recr. table, Register, February, 1986, No. 362, eff. 3-1-86; CR 03-011: am., r. Table 48.06, cr. (2) to (4) Register December 2003 No. 576, eff. 1-1-04; CR 05-081: renum. from Comm 48.07, am. (1) and (3), cr. (5) Register August 2006 No. 608, eff. 9-1-06; CR 10-006: renum. from Comm 48.530 and am. (1), cr. (4) Register December 2010 No. 660, eff. 1-1-11; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register December 2010 No. 660; CR 21-096: am. (title), (1), r. (2), renum. (4) to (4) (a) and am., cr. (4) (b), am. (5), r. (6) Register February 2024 No. 818, eff. 3-1-24.

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

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

History: CR 21-096: cr. Register February 2024 No. 818, eff. 3-1-24.

ATCP 94.260 Racing gasoline. This section only applies to racing gasoline.

(1) OCTANE RATING. The octane rating of racing gasoline shall not be less than any of the following:

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

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

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

(3) LEAD AND LEAD SUBSTITUTE. (a) *Minimum lead content to be termed leaded.* Gasoline and gasoline oxygenate blends sold as leaded shall contain a minimum of 0.013 grams of lead per liter or 0.05 grams per U.S. gallon.

(b) *Labeling.* Each dispensing device from which gasoline or gasoline-oxygenate blends containing lead shall display the following legend, "Contains lead." The lettering of this legend shall not be less than 12.7 millimeters or 1/2 inch in height and the color of the lettering shall be in definite contrast to the background color to which it is applied.

(c) *Use of lead substitute must be disclosed.* Each dispensing device from which gasoline or gasoline-oxygenate blends containing a lead substitute is dispensed shall display the following legend: “Contains Lead Substitute.” The lettering of this legend shall not be less than 12.7 millimeters or 1/2 inch in height and the color of the lettering shall be in definite contrast to the background color to which it is applied.

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

History: CR 21-096: cr. Register February 2024 No. 818, eff. 3-1-24; correction in numbering in (3) made under s. 13.92 (4) (b) 1., Stats., Register February 2024 No. 818, eff. 3-1-24.

ATCP 94.270 E85 specifications. Any fuel product designated by name or reference or defined as “E85” shall meet the requirements specified in ASTM D5798. Any person who distributes E85 shall state on any invoice, bill of lading, shipping paper, or other documentation accompanying the shipment used in normal and customary business practices, the actual volume percent of ethanol.

History: CR 21-096: cr. Register February 2024 No. 818, eff. 3-1-24.

Subchapter III — Inspection Procedures

ATCP 94.300 Labeling of dispensers and containers. (1) **DISPENSING EQUIPMENT.** (a) *General.* All devices dispensing liquid fuel products at motor fuel dispensing facilities, garages, or other places where liquid fuel products are sold or offered for sale shall be marked with a conspicuous label visible on both faces of the dispensing device accurately indicating the actual automotive fuel rating of the fuel product. No label may be placed so that the text is sideways or upside down.

Note: A single label may be used to refer to multiple grades of fuel, provided all of the requirements of this section are met.

(b) *Oxygenated gasoline dispensing device labels.* 1. A device that dispenses a gasoline-ethanol fuel blend of more than one percent by volume of ethanol shall be labeled with the maximum percent by volume of ethanol at all times the product is offered for retail sale.

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

Note: Reformulated gasoline is defined in section 285.37 (1) of the Statutes, as gasoline formulated to reduce emissions of volatile organic compounds and toxic air pollutants as provided in 42 USC 7545 (k) (1) to (3). The addition of an oxygenate to a fuel alone does not create a reformulated gasoline, other criteria specified in the law must also be met.

3. The label shall be placed on the face of the dispenser next to the name and grade of the product being dispensed. No label may be placed so that the text is sideways or upside down.

4. The label shall be contrasting in color to the dispenser, and shall include lettering that complies with any applicable requirements in ch. 168, Stats.

Note: Section 168.11 (1) (b) 1. of the Statutes reads as follows: “A device that dispenses a gasoline-ethanol fuel blend for sale at retail shall be marked or labeled with the percentage of ethanol at all times when the product is offered for sale.”

5. The label shall identify the oxygenate as either “Ethanol”, “Methyl Tertiary Butyl Ether (MTBE)”, “Ethyl Tertiary Butyl Ether (ETBE)”, “Tertiary Amyl Methyl Ether (TAME)”, “Tertiary Butyl Alcohol (TBA)”, or as an other oxygenate name approved by the department.

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6. A label shall be conspicuous and legible to a customer when viewed from the driver’s seat of a motor vehicle that is located within 6 feet of the dispensing device.

7. The label shall be capable of withstanding extremes of weather conditions for at least one year and shall be resistant to gasoline, oil, grease, solvents, detergents, and water. When damaged so that they are not legible, labels shall be replaced.

9. a. Labeling. Any retailer or wholesaler who sells, dispenses, or offers for sale or dispensing E15 shall comply with labeling requirements in 40 CFR 1090.1510.

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

10. A dispensing device which has existed since before February 1, 2009, and which does not use a separate fueling nozzle and hose for dispensing ethanol-blended motor fuels of more than 15 percent ethanol by volume shall bear a label clearly warning any purchaser that the first gallon may have more than 15 percent ethanol by volume. This label shall be adjacent to the ethanol label that is required in par. (b), and shall comply with the requirements in par. (b) 3., 4., 6., and 7.

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

a. A label satisfying the requirements under s. 168.11 (1) (b) 3., Stats., is prominently affixed to the dispensing device stating “Passenger Vehicles Only. Use in Other Vehicles, Engines and Equipment May Violate Federal Law.”; the retail station provides a device having at least one fueling nozzle and hose that dispenses only gasoline-ethanol fuel blends containing no more than ten percent ethanol by volume; and the retail station displays signs informing customers of the availability and location of the device required under this subd. 11. a.

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

Note: Under chapter ATCP 93, fuel dispensers that are installed after February 1, 2009, must use a separate fueling nozzle and hose for dispensing any ethanol-blended motor fuels of more than 10 percent ethanol by volume, such as E-85, E-30, E-20, and E-15.

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

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

2. Containers holding a liquid fuel product which were filled originally by a manufacturer or a packager and which comply with the federal standards for packaging and labeling.

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

(b) *Flash points of 100°F or greater.* Any fuel product that

has a flash point of 100°F or greater when tested as stated in par. (a) may not be stored in any container which is in any manner colored red.

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

Note: Under section 168.14 (2m) (c) of the Statutes, any fuel that is represented, advertised, labeled, or otherwise promoted for sale as being a blend of biodiesel and petroleum-based diesel fuel must be at least 2 percent biodiesel fuel by volume.

(b) *Used oils.* Any person representing, advertising, promoting for sale, offering for sale, or selling any lubricating oil which has previously been used shall identify the product as such. The label shall contain the appropriate and descriptive words of “reclaimed used lubricating oil,” “rerefined used lubricating oil,” “reclaimed used lubricating oil,” or “reconditioned used lubricating oil.”

(4) **CLEANING OF DISPENSING EQUIPMENT.** (a) Any pipeline, hose, pump, or metering device used for dispensing liquid fuel products shall be properly flushed and cleaned before dispensing a dissimilar liquid fuel product.

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

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

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; renum. (1) (a) to be (4), cr. (1) (a), Register, May, 1984, No. 341, eff. 6-1-84; reprinted to correct error in (1) (a), Register, October, 1984, No. 346; r. and recr. (1), Register, February, 1986, No. 362, eff. 3-1-86; emerg. r. and recr. (1) (b), r. (1) (c), eff. 9-13-95; r. and recr. (1) (b), r. (1) (c), Register, May, 1996, No. 485, eff. 6-1-96; correction in (1) (b) 2, made under s. 13.93 (2m) (b) 7., Stats.; CR 03-011: am. (1) (a), (b) 1., 2., 3. and 5., r. and recr. (3) Register December 2003 No. 576, eff. 1-1-04; CR 05-081: renum. from Comm 48.10, am. (1) (b) 9., (2) and (3) (a) Register August 2006 No. 608, eff. 9-1-06; CR 07-029: cr. (1) (c), am. (2) (a) (intro.) Register November 2008 No. 635, eff. 2-1-09; CR 10-006: renum. from Comm 48.580 and am. (1) (a), (b) 4., 8., (c) (2) (a) 2., (b) (3) (title) (a), (4), r. (1) (b) 6. Register December 2010 No. 660, eff. 1-1-11; correction in (1) (b) 8., (2) (a) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (1) (b) 8., (2) (a) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694; CR 21-096: am. (1) (a), (b) 1., 2., r. (1) (b) 8., cr. (1) (b) 9., renum. (1) (c) to (1) (c) 1. and am., cr. (1) (c) 2., am. (2) (a) (intro.), 2., renum. (4) to (4) (a), cr. (4) (b) Register February 2024 No. 818, eff. 3-1-24; correction in (1) (b) 9. a., 11. a. made under s. 35.17, Stats., renum. (1) (c) 1., 2. to (1) (b) 10., 11. under s. 13.92 (4) (b) 1., Stats., and (1) (c) 1. (title), 2. (title) removed under s. 13.92 (4) (b) 2., Stats., Register February 2024 No. 818.

ATCP 94.310 Inspection procedures. (1) **INSPECTION OF PETROLEUM AND OTHER LIQUID FUEL PRODUCTS.** (a) *General.* All petroleum and other liquid fuel products imported into and received in this state shall be subject to sampling by the department prior to being unloaded, sold, offered for sale, or used.

(b) *Exceptions.* The inspection of liquid fuel products does not apply in the following situations:

1. Liquid fuel products previously inspected by the department at the refinery or at a marine or pipeline terminal within or outside the state.

2. Where the department permits unloading of ships or boats due to an emergency declared by the coast guard or where a permit has been granted by the department.

3. Specialty motor fuels and liquid fuel products that will not be introduced into the wholesale or retail market stream.

(2) **NOTIFICATION FOR INSPECTION.** (a) 1. Where requested by the department, the recipient of all liquid fuel products shall notify the inspector of the receipt, between the hours of 7:45 a.m.

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and 4:30 p.m. on the day of the receipt, except as provided in subd. 2. or 3.

2. Where requested by the department, the inspector shall be notified of any liquid fuel products received after 4:30 p.m. or received on a Saturday, Sunday, or any legal holiday, between the hours of 7:45 a.m. and 10:00 a.m. of the next regular working day.

3. Where requested by the department, current delivery schedules for liquid fuel products delivered through a pipeline shall be made available to the inspector.

(b) If a person transfers one grade of a liquid fuel product into a container with another grade of liquid fuel product, the entire commingled product shall be deemed uninspected and the inspector shall be notified.

(d) For the purpose of this section, the department shall have discretion in determining a reasonable length of time in which an inspector may take the sample.

Note: Saturdays, Sundays, and legal holidays are not considered regular business days.

(e) 1. A person who changes the fuel product dispensed from a tank system from a Class II or III liquid to a Class I liquid shall notify the inspector, and the new product shall be tested and approved before being dispensed.

2. In this paragraph, “Class I liquid” means a liquid that will give off sufficient vapor, below 100°F, to form an ignitable mixture with air near the surface of the liquid or within a test vessel; and “Class II or III liquid” means a liquid that will give off such vapor at or above 100°F.

Note: Under chapter ATCP 93, the inspector must likewise be notified, and the new product must likewise be tested and approved before being dispensed, when the product dispensed from a tank system is changed from a Class I liquid to a Class II or III liquid.

Note: See the Department website at http://datcp.wi.gov/Consumer/Weights_and_Measures/index.aspx for the contact information for inspectors.

(3) **SAMPLING PROCEDURES.** (a) *General.* A representative sample may be taken from any shipment of liquid fuel products, including commingled products that are imported into and received in this state.

(b) *Department procedures.* 1. The department shall inspect and test samples collected under this section, at locations and frequencies that are designed to prevent sale of fuel products in this state which do not comply with this chapter.

2. If the fuel product does not meet the standards specified in this chapter, the department will notify the person for whom the inspection was made that the product may not be sold, used, removed from storage, or transferred to any place for retail sale until compliance with the standards is established.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; CR 03-011: r. (1) (a) 3., am. (3) (b) (intro.) Register December 2003 No. 576, eff. 1-1-04; CR 05-081: renum. from Comm 48.09, renum. (1) (intro.) and (a) to be (1) (a) and (b), cr. (1) (b) 3., am. (2) (c), (d), (3) (intro.), (a) (intro.), 1. and (b) Register August 2006 No. 608, eff. 9-1-06; CR 10-006: renum. from Comm 48.600 and am. (1) (title), (a), (b) (intro.), 1., 3., (2) (a), (b), (3) (a), (b), (c) 1., 3., cr. (2) (e) Register December 2010 No. 660, eff. 1-1-11; correction in (3) (c) 1. made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; correction in (3) (c) 1. made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694; CR 21-096: am. (1) (b) 1., (2) (a), (b), r. (2) (c), am. (2) (e) 1., am. (3) (a), r. (3) (c) Register February 2024 No. 818, eff. 3-1-24.

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

History: CR 10-006: cr. Register December 2010 No. 660, eff. 1-1-11; CR 21-096: r. and recr. Register February 2024 No. 818, eff. 3-1-24.

ATCP 94.330 Department records. The department shall keep records of each inspection made, showing all of the following:

(1) The date and place of each inspection.

Entire code is always current. The Register date on each page is the date the chapter was last published.

(2) The product name of the liquid inspected.

(3) The name and address of the person for whom the inspection is made.

Note: Chapter 98, Stats., has detailed requirements that apply to delivery of certain liquid fuels.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; CR 03-011: r. (1) (b) to (d), am. (3) Register December 2003 No. 576, eff. 1-1-04; CR 05-081: renum. from Comm 48.11 Register August 2006 No. 608, eff. 9-1-06; CR 10-006: renum. from Comm 48.700 and am. Register December 2010 No. 660, eff. 1-1-11; CR 21-096: r. and rec. Register February 2024 No. 818, eff. 3-1-24.

ATCP 94.340 Documentation and records. (1)

GENERAL. Any person receiving, unloading, using, offering for sale, or selling any liquid fuel product shall accurately identify the product as to name or grade. Delivery of automotive fuel to a retail outlet shall include a certification of the automotive fuel rating, either by letter, or on the delivery ticket or other paper, as required by 16 CFR 306.12.

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

(3) **TRANSPORTATION RECORDS.** Every person transporting liquid fuel products shall maintain accurate and complete records showing the shipment or receipt of the fuel products. The department shall have free access to the records for the purpose of determining the amount of liquid fuel products shipped or received.

(4) **RECEIPT RECORDS.** Every person receiving fuel products shall maintain an accurate and complete record of the delivery of the product, together with bills of lading, waybills, and any other documents pertinent to verifying the inventory of the product, for at least 10 years, unless approval to the contrary is obtained from the department in writing. The department shall have free access to the records for the purpose of determining the amount of fuel products shipped or received.

Note: See s. 98.225, Stats., for additional detailed requirements for deliveries of certain liquid fuels.

History: CR 21-096: cr. Register February 2024 No. 818, eff. 3-1-24; correction in (1) made under s. 35.17, Stats., Register February 2024 No. 818.

Subchapter IV — Violations

ATCP 94.400 Prohibited acts. (1) No person other than an operator of a refinery or terminal may deliver, unload, direct, or transfer a fuel product into a storage tank system labeled as containing dissimilar fuel product unless specifically approved in writing by an inspector.

(2) Except as authorized under sub. (1), no person may deliver, unload, direct, or transfer dissimilar fuel products into a storage tank unless specifically approved in writing by an inspector.

(3) No person may hinder, divert, or obstruct inspectors in the performance of their duties under the authority of this chapter.

(4) No person may represent a motor fuel or fuel product in any manner that is contrary to the provisions and the adopted standards of this chapter, and the provisions of ch. 168, Stats.

(5) Except as authorized under sub. (1), no person may transfer a fuel product to any place for retail sale or offer to sell that fuel product if it has been contaminated with a dissimilar product or altered after being tested under this chapter, unless either ap-

proved otherwise by the department or further testing shows the product complies with this chapter.

(8) No person may fail to maintain accurate and complete records and reports required under this chapter.

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

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

(11) Except as authorized under sub. (1), no person may blend a fuel product in an underground storage tank.

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

History: CR 05-081: cr. Register August 2006 No. 608, eff. 9-1-06; CR 10-006: renum. from Comm 48.590, am. (1), (2), (4), renum. (5), (6) to be (6), (7) and am., cr. (5) Register December 2010 No. 660, eff. 1-1-11; correction in (6) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; correction in (6) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694; CR 21-096: am. (1), (2), (5), r. (6), (7), cr. (8) to (12) Register February 2024 No. 818, eff. 3-1-24.

ATCP 94.410 Reimbursement of product-analysis and investigation costs. (1) INVESTIGATIONS AND TESTING.

An owner or seller of a product shall reimburse the department for all of the following, as specified in sub. (2):

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

(b) Investigation and testing of mislabeled products.

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

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

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

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

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

(3) **OUTSIDE TESTING.** An owner or seller of products which are subjected to an analysis that cannot be performed by department equipment and which are therefore sent to an outside testing source shall reimburse the department for the actual cost of the analysis, the cost of shipping, the fee specified in sub. (2), and pay any fee assessed under this chapter.

(4) **DUE DATE.** All reimbursements and fees that are due under this section shall be paid within 15 calendar days of billing.

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

(6) **WAIVER.** All reimbursements and fees under this section shall be waived if the analysis or investigation determines that the corresponding product complies with this chapter.

History: CR 05-081: cr. Register August 2006 No. 608, eff. 9-1-06; CR 10-006: renum. from Comm 48.650 and am. (2) (c), (5) Register December 2010 No. 650, eff. 1-1-11; correction to numbering made under s. 13.92 (4) (b) 1., Stats., Register December 2010 No. 660; correction in (1), (2) (intro.), (c), (5) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (2) (c), (5) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694; CR 21-096: renum. (1) to (3) and am., r. (2), cr. (1) and (2), renum. (3) to (6), am. (5) Register February 2024 No. 818, eff. 3-1-24; correction in (2) (b) made under s. 35.17, Stats., Register February 2024 No. 818.