



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

Report From Agency

DATE: June 20, 2025

TO: The Honorable Chris Kapenga
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The Honorable Robin Vos
Speaker, Wisconsin State Assembly
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FROM: Randy Romanski, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Flammable, combustible, and hazardous liquids. Wis. Admin. Code ch. ATCP 93; Final Draft Rule (Clearinghouse Rule #24-034)

Introduction

The Department of Agriculture, Trade and Consumer Protection ("DATCP") is transmitting this rule for legislative committee review, as provided in Wis. Stat. § 227.19 (2) and (3). DATCP will publish notice of this referral in the *Wisconsin Administrative Register*, as provided in Wis. Stat. § 227.19 (2). This rule revises Wis. Admin. Code ch. ATCP 93, which regulates flammable, combustible, and hazardous liquids storage.

Background

The department repealed and recreated ch. ATCP 93 in November 2019. This marked the last time the department revised the rule. The current revision is appropriate for at least two reasons. First, the department periodically updates rules to consider and usually to adopt the most recent versions of standards it incorporates into its rules by reference. Second, recent departmental reviews identified areas of the rule that lacked statutory authority and required amendment and rewrite. This rule revision achieves both goals.

Rule Content

The Department of Agriculture, Trade and Consumer Protection considered modifications to ch. ATCP 93 in

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three areas:

- Incorporation of Standards by Reference
- Resolution of 2017 Wisconsin Act 108 Issues
- Forms Management

Incorporation of Standards by Reference

Chapter ATPC 93 of Wisconsin Administrative Code incorporates industry standards by reference, and those standards frequently update due to recommended changes by national and international experts in the industry. The department researched to discover which standards in Wis. Admin. Code § ATPC 93.200 had updated since the November 2019 revision. The standards in question are generally accepted by industry and are readily available in published form through the publishers or online.

Per guidance from the Environmental Protection Agency (EPA) on flammable, combustible, and hazardous liquids storage, “Industry standards are technical guidelines created by experts in a particular industry for use throughout that industry. These guidelines assist in establishing common levels of safety and common practices for manufacture, maintenance, and repair. Standards-developing organizations use a consensus process to establish the minimum accepted industry practice.”

Wisconsin Admin. Code § ATPC 93.200 incorporates the standards from 13 nationally and internationally recognized organizations into rule. Each organization adopts its standards after its own rigorous processes with public comment.

This rule updates 41 of the standards incorporated by reference in Wis. Admin. Code § ATPC 93.200 to the most current version of the standard. As required by Wis. Stat. § 227.21 (2), consent has been received from the Attorney General to incorporate these standards by reference since the department has represented to the Attorney General that “... the standards are established by a technical society or organization of recognized national standing.”

Due to a public comment received, the department decided to delay until July 1, 2027, the full adoption of API RP 1637, *Using the API Color–Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals* by creating Wis. Admin. Code § ATPC 93.210 (2m).

Resolution of 2017 Wisconsin Act 108 Issues

Wisconsin Stat. § 227.29 (1) requires the department to review the administrative rules promulgated or administered for rules that conflict with another rule, state statute, federal statute, or regulation. In the department’s March 31, 2021 letter to the Joint Committee on the Review of Administrative Rules (JCRAR),

the department identified two areas. The first addressed issues with tank size, and the second specified authority granted by the department to those outside the agency who conduct inspections.

Until October 1, 2019, the department regulated aboveground storage tanks with a capacity of 110 gallons or more through the regulatory framework of Wis. Admin. Code ch. ATCP 93. In compliance with the department's obligations under 2017 Wisconsin Act 108, the department identified that it cannot regulate aboveground storage tanks with a capacity of less than 5,000 gallons per Wis. Stat. § 168.22 (3). As such, the department ceased regulating such tanks on that date. This rule revision resolves the conflict between rule and statute.

For years, the department has not solely inspected all tank systems in Wisconsin. Instead, the department also contracted with some private entities as local program operators (LPOs) and permitted municipal entities to create their own inspection programs. Wisconsin Admin. Code § ATCP 93.110 (1) (a) authorized private entities who had a contract with the department to act with the authority of the department. However, because Wis. Stat. § 93.06 (11) (a) does not authorize private entities to enforce department rules, the department amended Wis. Admin. Code § ATCP 93.110 (1) (a). Given that amendment, the definition of an LPO in Wis. Admin. Code § ATCP 93.050 (66) was also changed to reflect that private entities cannot fulfill the function of an LPO and that only certain public entities may do so.

Forms Management

For ease of industry compliance and clarity in enforcement, the department elected not to remove form identification numbers from the substantive rules and will continue to reference form identification numbers within the rule. The department has kept references in the Notes explaining how to obtain these forms. In this way, readers and users of the rule will find the forms readily.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

The federal government relies on many of the industry standards that DATCP proposes to adopt in the tables listed in Wis. Admin. Code § ATCP 93.200.

Federal regulations for both aboveground and underground storage tank systems address groundwater and surface water protection. The planned rule changes are not expected to conflict with these federal regulations.

Comparison with Rules in Adjacent States

Illinois

Illinois has a similar program reflected in administrative rules found in the Illinois Fire Protection code section (Title 41), particularly 41 Ill. Adm. Code 172 to 180.

Iowa

Iowa has a similar program as reflected in administrative rules found in code sections pertaining to the State Fire Marshal, particularly 661 Iowa Administrative Code sections 221 to 228. Other rules governing underground storage tanks appear in 567 Iowa Administrative Code sections 134 to 136, which pertain to the Iowa Department of Natural Resources.

Michigan

Michigan has a similar program as reflected in rules within the administrative code sections pertaining to the Michigan Department of Licensing and Regulatory Affairs, particularly Mich. Administrative Code R 29.2101 to 29.2174, R 29.5601 to R 29.5917, and R29.6101 to R 29.6156.

Minnesota

In Minnesota, administrative rules governing a similar program may be found in the Minnesota Pollution Control Agency section (Minnesota rules part 7105, Underground Storage Tanks; Training; part 7150, Underground Storage Tanks; Program; and part 7151, Aboveground Storage of Liquid Substances). To a limited degree, the State Fire Marshal, working out of the Minnesota Department of Public Safety, promulgates other rules dealing with the safety of storage tanks.

Summary of Factual Data and Analytical Methodologies

To develop this rule, the department reviewed all standards that had been updated since the prior rule revision. As this is a technical rule revision, no analyses needed to be done outside review of these standards.

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

The *fiscal estimate and EIA* are attached.

Effect on Small Business

A complete *regulatory flexibility analysis* is attached.

Small Business Regulatory Review Report

The Small Business Regulatory Review Board did not issue a report or raise objections.

Hearings

On May 8, 2024, the department held a public hearing on the hearing draft rule. No one spoke at the hearing. After the hearing, the department accepted public comments for two weeks. It received public comments from KwikTrip, the Wisconsin Fuel & Retail Association, the Wisconsin Transportation Builders Association, and Wisconsin Manufacturers and Commerce.

Changes from Hearing Draft

Multiple public comments identified that the department, in its efforts to remove tank size references identified as part of its 2017 Wisconsin Act 108 review, proposed some changes to mobile, movable, and portable tanks that inadvertently made changes or that could create new 2017 Wisconsin Act 108 issues. The final draft rule corrects those errors.

Failure to adopt updated standards would lead industry to be required by law to build outdated tank systems using outmoded specifications. Rather than require compliance with obsolete standards, the department intends to adopt updated standards and revised the plain language analysis in the final draft rule to identify the changes made in the 41 updated standards. One exception to this general approach was made based on industry stakeholder comments about RP 1637 published by the American Petroleum Institute. The department will therefore delay the implementation date for compliance with the new standard until July 1, 2027.

The department accepted the suggested formatting changes from the Clearinghouse.