



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

Report From Agency

DATE: February 18, 2026

TO: The Honorable Mary Felzkowski
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The Honorable Robin Vos
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FROM: Randy Romanski, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Weights and Measures; Wis. Admin. Code ch. ATCP 92; Final Draft Rule (Clearinghouse Rule #25-034)

Introduction

The Department of Agriculture, Trade and Consumer Protection (the department) is transmitting this rule for legislative committee review, as provided in Wis. Stats. § 227.19 (2) and (3). The department 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 92, which regulates weights and measures.

Background

Wisconsin Stat. § 98.03 (2) states, “The department may issue rules governing the construction, installation, and use of commercial weights and measures and prescribing tolerances therefor. The specifications, tolerances, and regulations for commercial weighing and measuring devices issued by the national institute of standards and technology shall apply in this state except as modified by such rules or by statute.”

Wisconsin Stat. § 98.07 (4) provides, “In order to prevent consumer deception, the department shall prescribe, by rule, standards for determining and declaring weight, measure or count, including the conspicuousness of quantity declarations.”

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The Wisconsin Department of Agriculture, Trade and Consumer Protection currently regulates electric vehicle (EV) charging stations as timing devices per Wis. Admin. Code ch. ATCP 92 and adopted standards in *NIST Handbook 44*. A change to the statutory definition of the term “public utility” means the department must expand its regulation of such devices to include the sale of electricity by kilowatt-hours.

Rule Content

This rule makes three significant revisions to Wis. Admin. Code ch. 92:

- Incorporates Section 3.40. Electric Vehicle Fueling Systems of *NIST Handbook 44* (2024 edition) into rule by repealing the previous language that specifically excluded Section 3.40. from the definition of *NIST Handbook 44*.
- Changes the definition of *NIST Handbook 44* and creates a definition of Electrical Vehicle Supply Equipment (EVSE)
- Creates subchapter VIII to govern Electric Vehicle Supply Equipment

Section 3.40.

Incorporating Section 3.40. Electric Vehicle Fueling Systems of *NIST Handbook 44* (2024 edition) provides a nationally recognized framework for electric vehicle supply equipment (EVSE) maintenance, operation, and regulation within the state of Wisconsin.

NIST Handbook 44 first included Section 3.40. in its 2015 edition as a “tentative code.” These tentative requirements for electric vehicle chargers have been known for a decade, and businesses in Wisconsin actively participated in the drafting of *NIST Handbook 44* Section 3.40. per documents published by the National Council on Weights and Measures (NCWM). In 2023, NIST published Section 3.40. as fully adopted in *NIST Handbook 44*. The department did not include *NIST Handbook 44* (2024 edition) Section 3.40. Electric Vehicle Fueling Systems (EVFS) in Clearinghouse Rule 23-057, which promulgated July 1, 2025. This rulemaking effort focuses on adoption of standards and regulatory framework for electric vehicle charging infrastructure and looks now to adopt *NIST Handbook 44* (2024 edition) in whole.

Definitions

This rule changes the existing definition of *NIST Handbook 44* in Wis. Admin. Code § ATCP 92.01 (10h) to:

(10h) “*NIST Handbook 44*” means *NIST Handbook 44*, 2024 edition, published by the National Institute of Standards and Technology, United States department of commerce.

Thus, the amended definition of “*NIST Handbook 44*” includes Section 3.40. Electric Vehicle Fueling Systems in the 2024 edition.

The rule also creates a definition of Electric Vehicle Supply Equipment for use in a newly created subchapter VIII.

Subchapter VIII

While the department proposes *NIST Handbook 44* (2024 edition) Section 3.40. should be used to regulate electric vehicle supply equipment (EVSE) in Wisconsin, it recognizes the need for a period with exemptions and delays so industry may prepare for those requirements. The department reviewed the *NIST Handbook 44* (2025 edition) and utilized language published in the 2025 edition to develop exemptions for DC charging systems. The department also incorporates labeling requirements established by the Federal Trade Commission.

NIST Handbook 44 Section 3.40. standards have been known as tentative standards since 2014 but have not been in wide practice prior to 2023. In July 2022, NCWM changed the classification of Section 3.40. from “tentative” to “permanent” effective January 1, 2023. After hearing from industry, the department decided additional accommodation should be made for tolerance testing of DC systems. It creates them in the new subchapter VIII.

The department made modifications to the draft rule to balance full adoption of Section 3.40. with Wis. Stat. § 98.03, which provides NIST standards apply in Wisconsin unless modified by statute or rule. NIST administers the National Type Evaluation Program (NTEP), ensuring weights and measures devices meet NIST standards in terms of specifications and tolerances. Electric vehicle charging devices that were put in service before 2023 might not have NTEP approval and could have larger variances in electricity delivery to consumers than NTEP-approved electric vehicle charging devices. The department determined that a later implementation date for DC EVCS would be appropriate for businesses to adapt to the new electric vehicle charging device regulations in *NIST Handbook 44*, while maintaining consumer protection in the state.

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

2023 Wisconsin Act 121, § 9 created Wis. Stat. § 196.01 (5) (b) 8. effective March 22, 2024. Under the newly created Wis. Stat. § 196.01 (5) (b) 8., the term "public utility" does not include a person who supplies electricity through the person's EVSE to fuel electric vehicles and imposes a fee that is based on the amount of kilowatt-hours of electricity consumed, provided that is the only electricity the person sells to the public and the person only sells electricity received as a retail customer of a public utility or retail electric cooperative. Because a person who operates any such EVSE is not a "public utility" per Wis. Stat. § 196.01 (5) (b) 8., the meter for measuring the amount of kilowatt-hours (kWh) consumed by a purchaser

at such a charging station now falls within the Wis. Stat. § 98.01 (7) definition of "weights and measures" devices subject to Wis. Stat. ch. 98. Therefore, under Wis. Stat. § 98.07 (4), to prevent consumer deception, the department must prescribe, by rule, standards for determining and declaring the measure of kWh of electricity consumed at such EVSE, including the conspicuousness of quantity declarations.

The Federal Trade Commission also has labeling requirements for alternative fuels and alternative fueled vehicles in Title 16, Chapter I, Subchapter C, Part 309 of the Code of Federal Regulations.

Comparison with Rules in Adjacent States

Illinois

Illinois adopts the most recent version of *NIST Handbook 44* in Title 8, Chapter 1, Subchapter p, Part 600, Section 600.330 National Institute of Standards and Technology Handbook 44.

Iowa

Iowa's Administrative Code Chapter 85: Weights and Measures, 21.85.50 Electric vehicle charging stations was effective January 17, 2024, and prescribes EVSE testing procedures for the state. In this administrative code, Iowa adopts an older version of *NIST Handbook 44* but still adheres to the EVSE testing procedures within the Handbook. This is also upheld in Iowa Administrative Code, s. 452A.41.

Michigan

Michigan incorporates, by reference, *NIST Handbook 44* (2023 edition) which includes similar EVSE requirements to the 2025 edition in the Weights and Measures Act, Public Act 283.

Minnesota

Minnesota Administrative Rule s. 7601.1000 incorporates *NIST Handbook 44* (2019 edition). This edition includes EVSE requirements as tentative and not as a required part of the handbook.

Summary of Factual Data and Analytical Methodologies

To develop this rule, the department reviewed the most current editions of *NIST Handbook* standards and verified accuracy. This rule incorporates Section 3.40. Electric Vehicle Fueling Systems of the *NIST Handbook 44* (2024 edition) and includes electric vehicle charging stations as weights and measures devices. If the department does not update Wis. Admin. Code ch. 92 to incorporate the relevant provisions of *NIST Handbook 44*, the Weights and Measures program will not have standards specified to regulate commercial EV fueling systems fully and fairly.

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

The department held four public hearings on the hearing draft rule:

- June 24, 2025—Madison, in-person at the Prairie Oaks State Office Building and virtually
- June 26, 2025—Howard, DNR Building
- June 30, 2025—Waukesha, Lee Sherman Dreyfus Office Building
- July 2, 2025—Eau Claire, 1300 W. Clairemont Street

Public comments were received until July 23, 2025, or three weeks after the final hearing.

Changes from Hearing Draft

Stakeholder comments indicated that some states that adopted *NIST Handbook 44* Section 3.40. standards provided longer periods to comply, doing so because those standards were known as tentative standards since 2014 and not in wide practice prior to 2023. In response, the department made draft rule modifications to DC EVCS accuracy requirements to balance full and immediate adoption with the need for time to comply.

The department accepted both of the Clearinghouse's suggested formatting changes. The Clearinghouse suggested that the rule should not define "Electric Vehicle Supply Equipment" or "EVSE" because the term was not used elsewhere in the rule. However, after the public comments led the department to create subchapter VIII on EVSE to address testing accuracy and Federal Trade Commission labeling requirements, the term is now used in the rule, so the department decided the definition is needed.