

Clearinghouse Rule 25-034

THE DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION'S
PROPOSED ORDER TO ADOPT PERMANENT RULES

PROPOSED ORDER

The Wisconsin Department of Agriculture, Trade and Consumer Protection proposes an order *to amend* ATCP 92.01 (10h) and (Note); and *to create* ATCP 92.01 (5m) *relating to* weights and measures and affecting small business.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutes Interpreted:

Wis. Stat. ch. 98 and s. 196.01 (5) (b) 8.

Statutory Authority:

Wis. Stats. ss. 93.07 (1); 98.01 (7); 98.03 (1) and (2); 98.04; 98.06 (1); 98.07 (4); 98.18 (1) (a) and (bm), (1h), and (2); and 196.01 (5) (b) 8.

Explanation of Agency Authority

Wisconsin Stat. s. 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. s. 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.”

The Wisconsin Department of Agriculture, Trade and Consumer Protection (department) 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.

Related Statutes and Rules

Wisconsin Stat. ch. 77, Subchapter XIII: Electric Vehicle Charging Tax

The Wisconsin Department of Revenue collects an excise tax of 3 cents per kilowatt-hour (kWh),

imposed on electricity delivered from an electric vehicle charging station into the battery or other energy storage device of an electric vehicle. This tax excludes chargers in residential homes.

Wisconsin law on weights and measures is set forth in Wis. Stat. ch. 98 and in Wis. Admin. Code chs. ATP 90, 91, and 92.

Plain Language Analysis

The department proposes to amend Wis. Admin. Code ch. ATP 92 to include regulatory standards for commercial electric vehicle charging stations as weights and measures devices. Until recently, Wisconsin statutes did not permit the department to adopt and enforce commercial weights and measures device regulations on the sale of electricity by kWh due to the devices being considered a public utility under state law. 2023 Wisconsin Act 121, s. 9 created Wis. Stat. s. 196.01 (5) (b) 8. effective March 22, 2024. Under Wis. Stat. s. 196.01 (5) (b) 8., the term "public utility" does not include a person who supplies electricity through electric vehicle charging stations to charge electric vehicles and charges a fee based on the amount of kWh 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. As a result, meters for measuring the amount of electricity consumed at such devices now fall within the Wis. Stat. s. 98.01 (7) definition of "weights and measures" and are subject to Wis. Stat. ch. 98 and the rules promulgated thereunder.

The department's Bureau of Weights and Measures is responsible for monitoring the accuracy of gas pumps, price scanners, scales, package weights, and other commercial weights and measures devices statewide to ensure a fair and balanced marketplace, as well as ensuring that consumers receive what they pay for. Wisconsin Admin. Code ch. ATP 92 helps to achieve that by adopting the National Institute of Standards and Technology (NIST) Handbook 44, *Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices*.

Wisconsin Stat. s. 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. s. 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."

This rule makes two meaningful revisions to Wis. Admin. Code ch. 92:

- incorporates section 3.40. Electric Vehicle Fueling Systems of the *NIST Handbook 44* (2024 edition) into rule, repealing previous language that specifically excluded section 3.40; and
- includes definitions related to the inclusion of electric vehicle charging stations as a weights and measures device.

Section 3.40

Incorporating section 3.40. Electric Vehicle Fueling Systems of the 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.

Presently, Wis. Admin. Code ch. ATP 92 adopts *NIST Handbook 44* (2024 edition) except for Section 3.40. Electric Vehicle Fueling Systems. This rulemaking effort focuses on adoption of standards and regulatory framework for electric vehicle charging infrastructure and looks to adopt *NIST Handbook 44* (2024 edition) in whole.

Definitions

The addition of EVSE as a weights and measures device requires an additional definition within Wis. Admin. Code s. ATP 92.01 for Electric Vehicle Supply Equipment (EVSE). The inclusion of this definition provides greater clarity to Wis. Admin. Code ch. ATP 92 while not affecting the non-EVSE aspects of the chapter.

- **Electric Vehicle Supply Equipment** or EVSE means a device or system designed and used specifically to transfer electrical energy to an electric vehicle, either as charge transferred via physical or wireless connection, by loading a fully charged battery, or by other means. That definition mirrors the definition in Appendix D. Definitions in *NIST Handbook 44* (2024 edition).

Additionally, a change to existing definition of NIST Handbook 44 in ATP 92.01 (10h) to:

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

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

2023 Wisconsin Act 121, s. 9 created Wis. Stat. s. 196.01 (5) (b) 8. effective March 22, 2024. Under the newly created Wis. Stat. s. 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. s. 196.01 (5) (b) 8., the meter for measuring the amount of kilowatt-hours consumed by a purchaser at such a charging station now falls within the Wis. Stat. s. 98.01 (7) definition of "weights and measures" devices subject to Wis. Stat. ch. 98. Therefore, under Wis. Stat. s. 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.

Summary of Comments Received during Preliminary Comment Period and at Public Hearing on Statement of Scope

The department received one comment during the preliminary comment period on the Statement of Scope. The comment pertained to the rule itself and not to the Statement of Scope.

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 definitions related to the inclusion of electric vehicle charging stations as a weights and measures device. 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 fully and fairly commercial EV fueling systems.

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

The rule will have minimal impact on owners, operators, manufacturers, installers, testers, and those who service commercial electric vehicle charging stations as they would be subject to regulations that incorporate the new standard. Individuals who do not currently have a license related to weights and measures may be required to obtain such a license. If national standards are adopted to regulate commercial electric vehicle charging stations in Wisconsin, drivers of electric vehicles could experience greater confidence when using commercial electric vehicle charging stations.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on Small Business

The Department's Regulatory Review Coordinator may be contacted by:

Email at Bradford.Steine1@wisconsin.gov

Telephone at (608) 224-5024

The Regulatory Flexibility Analysis is attached.

Department Contact Person

David A. Woldseth
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5164
E-Mail: DavidA.Woldseth@wisconsin.gov

Place Where Comments are to Be Submitted and Deadline for Submission:

Comments must be received on or before July 23, 2025, three weeks after the last hearing, to be included in the record of rulemaking proceedings. Submit comments:

By mail to:

David A. Woldseth
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5164
E-Mail: DavidA.Woldseth@wisconsin.gov

RULE TEXT

1 SECTION 1. ATPC 92.01 (5m) will be created to read:

2 **(5m)** “Electric Vehicle Supply Equipment” or “EVSE” means a device or system designed and
3 used to transfer electrical energy to an electric vehicle, either as a charge transferred via physical or
4 wireless connection, by loading a fully charged battery, or by other means.

5 SECTION 2. ATPC 92.01 (10h) and (Note) are amended to read:

6 **(10h)** “*NIST Handbook 44*” means *NIST Handbook 44* (2024 edition) published by the National
7 Institute of Standards and Technology, United States department of commerce, ~~except for Section 3.40,~~
8 ~~Electric Vehicle Fueling Systems.~~

9 SECTION 3. EFFECTIVE DATE: This rule takes effect on the first day of the month following publication.

(END OF RULE TEXT)

Dated this _____ day of April, 2025

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: Randy Romanski, Secretary