

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

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PROPOSED ORDER

The Wisconsin department of agriculture, trade and consumer protection proposes an order *to amend* ATCP 92.01 (10h) and *to create* ATCP 92.01 (5m) and ATCP 92, Subchapter VIII *relating to* weights and measures and affecting small business.

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

***Statutes Interpreted:***

Wis. Stat. ss. 98.01 (7), 98.03 (2), 98.07 (4), and 196.01 (5) (b) 8.

***Statutory Authority:***

Wis. Stat. ss. 93.07 (1); 98.03 (2); and 98.07 (4).

***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 law on weights and measures is set forth in Wis. Stat. ch. 98 and in Wis. Admin. Code chs. ATCP 90, 91, and 92. With respect to weighing and measuring devices, Wis. Admin. Code s. ATCP 92.02 (1) reads, "Except as provided in this chapter, weighing and measuring devices shall comply with applicable specifications, tolerances, and other technical requirements set forth in *NIST Handbook 44*." Therefore, the Wis. Admin. Code s. ATCP 92.01 (10h) definition of the term "*NIST Handbook 44*" is critical.

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.

### *Plain Language Analysis*

The department proposes to amend Wis. Admin. Code ch. ATCP 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 that for which they pay. Wisconsin Admin. Code ch. ATCP 92 helps to achieve that by, unless explicitly provided otherwise, adopting the National Institute of Standards and Technology (NIST) Handbook 44, *Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices*.

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
- 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. in Clearinghouse Rule 23-057, which promulgated July 1, 2025. The department thought it should provide affected businesses with additional time to prepare for the requirements of Section 3.40. regarding DC EVSE.

Wisconsin Admin. Code ch. ATCP 92, as affected by Clearinghouse Rule 23-057, adopted *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 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 s. 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 EVSE in Wisconsin, it recognizes the need for exemptions and delays so industry may prepare for those requirements which have been updated in the *NIST Handbook 44* (2025 edition) and incorporates labeling requirements established by the Federal Trade Commission.

*NIST Handbook 44* Section 3.40. standards have been known since 2014 but have not been in wide practice prior to 2023. In July 2022, the National Council on Weights and Measures 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 draft rule modifications to balance full adoption of Section 3.40. with Wis. Stat. s. 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, 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.

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.

### ***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 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.

### ***Summary of Comments Received during Public Hearings and Comment Period***

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 or three weeks after the final hearing.

Three individuals spoke using the virtual hearing option at the hearing held in Madison and requested a delayed implementation of provisions that would be adopted with the removal of the exemption for Section 3.40. in *NIST Handbook 44* (2024 edition). No one attended any of the three solely in-person hearings.

The department received public comments from Electrify America, LLC, Tesla, Inc., and ChargePoint, Inc. after the scope statement was approved but prior to scheduling the hearing dates. After the hearing schedule was announced, the department met with those entities prior to the first hearing and during the comment period. Additional written comments were received from the same stakeholders during the public comment period.

Industry requested two changes to the rule:

- Add additional language to Wis. Admin. Code s. ATCP 92.02 (3) to provide an exemption for existing EV chargers.
- Amend Wis. Admin. Code s. ATCP 92.02 (5m) to exclude non-publicly available EVSEs from the definition of EVSE.

Stakeholder comments indicated that some states that adopt *NIST Handbook 44* have given longer periods to comply, given that *NIST Handbook 44* Section 3.40. standards were known since 2014 but not in wide practice prior to 2023. In response, the department made draft rule modifications to DC EVCS accuracy requirements to balance full adoption with the statutory requirement under Wis. Stat. s. 98.03 to adopt NIST standards in subchapter VIII.

On November 24, 2025, DATCP provided its revisions to the commenters for review, and reply comments were received on December 3 and 9, 2025. After considering those replies, DATCP remained confident that Wis. Admin. Code § ATCP 92.02 (3) (c) permits DATCP to grant conditional approval of non-NTEP approved devices on a device-by-device basis without additional code changes. Under that rule, if adequate written documentation is provided, DATCP may conditionally approve commercially used EVSE in Wisconsin that does not have NTEP approval. The department believes this addresses the concerns of commenters.

The department accepted both the suggested formatting changes from the Clearinghouse. The Clearinghouse suggested that the rule should not define “Electric Vehicle Supply Equipment” or “EVSE” since the term was not used elsewhere in the rule. 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.

### ***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. The new rules also establish a labeling requirement. If national standards are incorporated in state rules regulating 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](mailto:Bradford.Steine1@wisconsin.gov)

Telephone at (608) 224-5024

The Regulatory Flexibility Analysis is attached.

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***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:**

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**RULE TEXT**

- 1 **SECTION 1.** ATCP 92.01 (5m) is created to read:
- 2 **(5m)** “Electric Vehicle Supply Equipment” or “EVSE” means a commercial device or system designed and
- 3 used to transfer electrical energy to an electric vehicle, either as a charge transferred via physical or wireless
- 4 connection, by loading a fully charged battery, or by other means.

5 **SECTION 2.** ATCP 92.01 (10h) is amended to read:

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

9 **SECTION 3.** ATCP 92, Subchapter VIII is created to read:

10 **SUBCHAPTER VIII – ELECTRIC VEHICLE SUPPLY EQUIPMENT (EVSE)**

11 **ATCP 92.70 Testing accuracy. (1) AC SYSTEMS.** AC systems shall meet the prescribed *NIST Handbook*  
12 *44* tolerances.

13 **(2) DC SYSTEMS. (a)** DC systems installed after June 30, 2026, shall meet the prescribed *NIST Handbook*  
14 *44* tolerances.

15 **(b)** DC systems installed prior to July 1, 2026, shall meet an acceptance and maintenance tolerance of plus  
16 or minus 5 percent until January 1, 2034, at which point all DC systems shall meet the prescribed *NIST*  
17 *Handbook 44* tolerances.

18 **92.75 Labeling requirements.** All EVSE must be labeled in accordance with 16 CFR Part 309 Labeling  
19 Requirements for Alternative Fuels and Alternative Fueled Vehicles.

20 **SECTION 4. EFFECTIVE DATE:** This rule takes effect on the first day of the month following publication.

(END OF RULE TEXT)

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Dated this \_\_\_\_\_ day of January 2026

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

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By: Randy Romanski, Secretary