

**Clearinghouse Rule 25-035**

**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 the following rule *to amend* ATCP 94.100 (2) and ATCP 94.200 (1) (intro.), (a), (b), (c), (d), (e), (g), (h), (i), (j), (k), and (L) *relating to* petroleum product inspections and affecting small businesses.

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

This rule implements Wis. Stat. ch. 168, subch. I, which directs the department of agriculture, trade and consumer protection (department) to promulgate rules related to minimum product grade specifications of petroleum and other liquid fuels.

***Statutes Interpreted***

**Statutes Interpreted:** Wis. Stat. ss. 168.04 and 168.16 (4).

***Statutory Authority***

**Statutory Authority:** Wis. Stat. ss. 168.04 and 168.16 (4).

***Explanation of Statutory Authority***

The department has authority, under Wis. Stat. s. 168.04 (1), to promulgate rules that prescribe minimum product grade specifications for petroleum and other liquid fuel products. Wisconsin Stat. s. 168.04 (3) states that, except as otherwise provided in this section, rules promulgated under this section shall be in conformity with nationally recognized standards, specifications, and classifications, such as those published by ASTM International. The department has authority, under Wis. Stat. s. 168.16 (4), to promulgate reasonable rules relating to the administration and enforcement of Wis. Stat. ch. 168, subch. I.

***Related Statutes and Rules***

Wisconsin Stat. ch. 168, subch. I, titled *Petroleum Product Inspections*, grants the department authority to promulgate rules related to product grade specifications and to administration and enforcement of the subchapter.

Wisconsin Admin. Code ch. ATPC 93 implements Wis. Stat. ch. 168, subch. II, titled *Storage of Dangerous Substances*. Wisconsin Admin. Code ch. Chapter ATPC 93 establishes the appeals process for a system shutdown, which applies to both storage systems and the fuels contained within them.

### ***Plain Language Analysis***

#### **Background**

The department administers numerous rules that adopt recognized national and international standards by incorporating them through reference. Wisconsin Admin. Code ch. ATPC 94 adopts standards set by ASTM International for the specification, composition, and testing methods of the regulated petroleum and liquid fuel products. Since Wis. Admin. Code ch. ATPC 94 was last revised in February 2024, most of these ASTM standards have updated.

#### **Rule Content**

##### *General*

This rule updates standards incorporated by reference and makes other minor clarifying and corrective changes, as well as typical stylistic changes that may occur during rulemaking.

##### *Standards Incorporated by Reference*

Chapter ATPC 94 of Wisconsin Administrative Code incorporates ASTM standards by reference, and those standards frequently update due to recommended changes by national and international experts in the industry. Quoting the Environmental Protection Agency (EPA), “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.”

The department researched which standards in Wis. Admin. Code s. ATPC 94.200 updated since the February 2024 revision. The standards in question are readily available in published form through the publishers or online. The department compared the current standards to the proposed updated standards and recommends the adoption of all. The following table highlights changes:

STANDARD	TITLE	STAKEHOLDERS	EFFECT
ASTM D396-24	Standard Specification for Fuel Oils	Fuel refineries, terminals, and retailers	Removal of EPA reference to 40 CFR Part 80.
ASTM D910-24	Standard Specification for Leaded Aviation Gasolines	Fuel refineries, terminals, and retailers; Aviation industry	Removal and replacement of a leaded aviation test method.
ASTM D975-24a	Standard Specification for Diesel Fuel	Fuel refineries, terminals, and retailers	Updated reference to EPA 40 CFR Part 1090. Additional test methods added.
ASTM D1655-24b	Standard Specification for Aviation Turbine Fuels	Fuel refineries, terminals, and retailers; Aviation industry	New definitions added and minor editorial changes.
ASTM D3699-24	Standard Specification for Kerosine	Fuel refineries, terminals, and retailers	New test methods added due to discontinuation of laboratory equipment.
ASTM D4806-21a	Standard Specification for Denatured Fuel Ethanol for Blending with Gasoline for Use as Automotive Spark-Ignition Engine Fuel	Fuel refineries and terminals	Not Changed
ASTM D4814-24b	Standard Specification for Automotive Spark-Ignition Engine Fuel	Fuel refineries, terminals, and retailers	Lowering minimum T50 distillation temperature from 150°F to 145°F for Class D and E fuels. Changes to United States volatility schedule. No changes for Wisconsin volatility.
ASTM D5798-21	Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines	Fuel refineries, terminals, and retailers	Not changed
ASTM D6227-24a	Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component	Fuel refineries, terminals, and retailers	Added definitions and table reformatting for ease of reading.

ASTM D6751-24	Standard Specification for Biodiesel Fuel Blendstock (B100) for Middle Distillate Fuels	Fuel refineries and terminals	Added definitions and table reformatting for ease of reading.
ASTM D7467-23	Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)	Fuel refineries, terminals, and retailers	Clarification of biodiesel grades and alignment with other ASTM specifications.
ASTM D7547-23	Standard Specification for Hydrocarbon Unleaded Aviation Gasoline	Fuel refineries, terminals, and retailers; Aviation industry	Clarification of dye color and amount used in hydrocarbon unleaded aviation gasoline.

### ***Summary of and Comparison with Existing or Proposed Federal Statutes and Regulations***

The federal Clean Air Act (CAA) authorizes the EPA to establish emissions standards for motor vehicles to address air pollution that may reasonably be anticipated to endanger public health or welfare. EPA also has authority to establish fuel controls to address such air pollution. 40 CFR Parts 79, 85, 86, and 1090 establish fuel quality and emissions standards by rule, which are enforced by EPA. These rules incorporate by indirect reference ASTM International standards and test methods.

To reduce the risk of ozone-related health problems, EPA regulates the vapor pressure of gasoline sold at retail stations during the summer ozone season to reduce evaporative emissions from gasoline that contribute to ground-level ozone, which might contribute to ozone-related health problems.

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

During the January 7, 2025, hearing on the statement of scope and the comment period, only the American Petroleum Institute commented. They supported the department efforts to update the rule to the most recent standards.

### ***Comparison with Rules in Adjacent States***

#### **Illinois**

Illinois adopts by reference the most recent revisions of ASTM standards regarding motor fuel. Illinois adopts by reference sections of the most current revision of NIST Handbook 130.

#### **Iowa**

Iowa adopts ASTM standards and test methods regarding motor fuel.

#### **Michigan**

Michigan adopts ASTM standards and test methods regarding gasoline, motor fuel additives, and grading.

#### **Minnesota**

Minnesota requires petroleum products to meet ASTM standards.

### ***Summary of Factual Data and Analytical Methodologies***

To develop this rule, department staff determined the most recent ASTM standards at the time of drafting.

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

The fiscal estimate and economic impact analysis will be posted on the department website in compliance with EO 50.

### ***Fiscal Estimate and Economic Impact Analysis***

The Fiscal Estimate and Economic Impact Analysis is attached.

### ***Effect on Small Business***

This rule may impact businesses that sell or distribute petroleum and other liquid fuel products, either at wholesale or retail. These businesses are already regulated under the existing rule, but they may need to make minor changes to comply with updated requirements.

Many of the businesses affected by this rule are “small businesses.” However, given the subject matter, there are very few accommodations or special exceptions that can be made for small businesses by the department. Therefore, the department does not propose any.

A complete *regulatory flexibility analysis* is attached.

The department’s Regulatory Review Coordinator may be contacted by:

Email at [Bradford.Steinel@wisconsin.gov](mailto:Bradford.Steinel@wisconsin.gov)

Telephone at (608) 224-5024

### ***Standards Incorporated by Reference***

This rule updates the ASTM standards incorporated by reference in Wis. Admin. Code s. ATCP 94.200 to reference the most current standards. This rule directly adopts individual ASTM standards at the time of approval by the department of agriculture, trade, and consumer protection’s Board. As required by Wis. Stat. ch. 227, consent will be received from the Attorney General to incorporate these standards by reference after the public hearings and prior to seeking Board approval and the Governor’s assent to the final draft rule. A copy of these documents will be kept on file with the department and the Legislative Reference Bureau.

### ***Department Contact***

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### *Where Comments May Be Submitted*

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After the June 24, 2025, hearing, the department will accept formal written comments for an additional two weeks and close the public comment period on July 8, 2025.

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### RULE TEXT

**SECTION 1.** ATCP 94.100 (2) is amended to read:

**(2) ~~RULE-MAKING~~ RULEMAKING 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.

**SECTION 2.** ATCP 94.200 (1) (a), (b), (c), (d), (e), (g), (h), (i), (j), (k), and (L) are amended to read:

**ATCP 94.200 Adoption of standard specifications by reference.**

(1) The following standards of the ~~2023~~ 2025 Annual Book of ASTM Standards of ASTM International are incorporated by reference into this chapter:

- (a) ASTM D396-~~21~~ 24, standard specification for fuel oils.
- (b) ASTM D910-~~21~~ 24, standard specification for leaded aviation gasolines.
- (c) ASTM D975-~~22~~ 24a, standard specification for diesel fuel ~~oils~~.
- (d) ASTM D1655-~~22~~ 24b, standard specification for aviation turbine fuels.
- (e) ASTM D3699-~~19~~ 24, standard specification for kerosene.
- (g) ASTM D4814-~~21e~~ 24b, 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 24a, standard specification for unleaded aviation gasoline containing a non-hydrocarbon component.

(j) ASTM D6751-20a 24, standard specification for biodiesel fuel blend stock (B100) for middle distillate fuels.

(k) ASTM D7467-20a 23, standard specification for diesel fuel oil, biodiesel blend (B6 to B20).

(L) ASTM D7547-24 23, standard specification for hydrocarbon unleaded aviation gasoline.

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

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(END OF RULE TEXT)

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Dated this \_\_\_\_\_ day of April, 2025.

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By: \_\_\_\_\_  
Randy Romanski  
Secretary