

Chapter ATCP 94

PETROLEUM AND OTHER LIQUID FUEL PRODUCTS

Subchapter I — Administration and Enforcement

ATCP 94.100	Scope, application, and authority.
ATCP 94.110	Petition for variance, penalties, and fees.
ATCP 94.120	Definitions.

Subchapter II — Petroleum and Other Liquid Fuel Product Specifications

ATCP 94.200	Adoption of standard specifications by reference.
ATCP 94.210	Gasoline specifications.
ATCP 94.220	Kerosene specifications.
ATCP 94.230	Fuel oil specifications.

ATCP 94.240	Diesel fuel oil specifications.
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Subchapter III — Inspection Procedures

ATCP 94.300	Labeling of dispensers and containers.
ATCP 94.310	Inspection procedures.
ATCP 94.320	Water in tanks.
ATCP 94.330	Records.

Subchapter IV — Violations

ATCP 94.400	Prohibited acts.
ATCP 94.410	Reimbursement of product-analysis and investigation costs.

Note: Chapter Ind 10 was renumbered to be chapter ILHR 48, Register, May, 1984, eff. June 1, 1984. Chapter ILHR 48 was renumbered to be chapter Comm 48 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, October, 1996, No. 490. Chapter Comm 48 was renumbered chapter SPS 348 under s. 13.92 (4) (b) 1., Stats., Register December 2011 No. 672. Chapter SPS 348 was renumbered chapter ATCP 94 under s. 13.92 (4) (b) 1., Stats., Register October 2013 No. 694, pursuant to 2013 Wis. Act 20, Section 9138 (3) (fm) and (4) (f).

Subchapter I — Administration and Enforcement

ATCP 94.100 Scope, application, and authority.

(1) **SCOPE.** This chapter primarily establishes quality standards for petroleum and other liquid fuel products that are used as liquid fuels for engines and heating equipment. It also establishes labeling requirements for used lubricating oils.

(2) **RULE-MAKING 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.

(3) **AUTHORITY TO ENTER.** The department has authority to enter any premises of any manufacturer, vendor, dealer, or user of petroleum or other liquid fuel products during the regular business hours to determine whether the fuel product has been inspected in accordance with this chapter.

(4) **AUTHORITY TO SAMPLE AND TEST.** The department has authority to obtain samples of petroleum and other liquid fuel products at any point within or without this state for the purpose of testing these products in accordance with this chapter.

(5) **AUTHORITY FOR ACCESS TO RECORDS.** The department has authority to inspect the records of every person having custody of books or records showing the shipment, receipt, and inventory of petroleum or other liquid fuel products for the purpose of determining the amount of products shipped or received.

(6) **AUTHORITY TO PERFORM INVESTIGATIONS.** Any accident or explosion involving petroleum or other liquid fuel products which comes to the knowledge of the department may be investigated by the department to determine whether there has been a violation of this chapter.

(7) **AUTHORITY TO PROVIDE ASSISTANCE TO LOCAL AUTHORITIES.** The department has authority, upon request of other state agencies or local authorities, to assist in the investigation of hazardous situations involving suspected or known liquid fuel products.

(8) **AUTHORITY TO STOP SALE.** Persons with enforcement authority under this chapter have authority to shut down liquid fuel storage tank systems by the issuance of orders, the disabling with locks, or applying a red-tag, under the following conditions:

(a) *Immediate shutdown to protect life, safety, or health.* Liquid fuel storage systems that contain products which pose an immediate danger to life, safety, or health shall be subject to immediate shutdown. Products that pose an immediate danger to life, safety, or health include all of the following:

1. Heating oil that is contaminated with gasoline.
2. Kerosene that is contaminated with gasoline.
3. Aircraft fuel that is contaminated with any substance.

(b) *Immediate shutdown to blend or remove liquid fuel products or wastes.* Liquid fuel storage systems that contain wastes or products which fail to meet the operational and technical standards of this chapter shall be shut down until a pump out or blend is completed under the supervision of a person with enforcement authority under this chapter. The system may be reopened as soon as the product contained in the tank is verified by a person with enforcement authority under this chapter as meeting this chapter's operational and technical standards.

(c) *Immediate shutdown after a prohibited act.* Liquid fuel storage systems are subject to immediate shutdown after any corresponding violation of s. ATCP 94.400 (1) or (2) occurs.

(d) *Shutdown after failure to maintain records.* Liquid fuel storage tank systems are subject to immediate shutdown if corresponding inventory, delivery, or manifest records either have been falsified or are not available for inspection within 24 hours after being requested by a person with enforcement authority under this chapter.

Note: Under sections ATCP 93.500 (9) and ATCP 94.330 (3), all product inventory records, including delivery receipts, must be kept at the site of a retail storage tank system for a duration of at least 10 years. Under sections ATCP 94.100 (5) and 94.330 (3), these records must be made available for inspection by the Department. Section ATCP 93.500 (9) also requires maintaining several other types of records for retail storage tank systems.

Note: For further requirements about the inventory verification that is required for any tank system from which fuel products are offered for sale to the public, see section ATCP 93.503. For further information about inventory control or statistical inventory reconciliation, which are prescribed methods of leak detection, see section ATCP 93.515 (2) or (6), respectively.

(e) *Shutdown after long term violation.* Liquid fuel storage systems containing fuel products for which there is a continuing code violation under this chapter are subject to shutdown if all of the following conditions are met:

1. An order is issued with a specific compliance date and a period for compliance.
2. The first reinspection made after the specified compliance date shows that compliance has not been achieved.
3. A second compliance date is set with a period for compliance.
4. Reinspection after the second compliance date shows that compliance is still not achieved.
5. The owner has not filed a written appeal with the department within 15 calendar days of the date of the order.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; emerg. cr. (7), eff. 9-13-95; cr. (7), Register, May, 1996, No. 485, eff. 6-1-96; CR 05-081: renum. from Comm 48.01, renum. (7) (c) to be (7) (d), am. (4), (5) and (7), cr. (7) (c) Register August 2006 No. 608, eff. 9-1-06; CR 10-006: am. (title), renum. (1) to (7) (c) and (d) to be (2) to (8) (c) and (e) and am., cr. (1), (8) (d) Register December 2010 No. 660, eff. 1-1-11; correction in (8) (c) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; correction in (8) (c) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

ATCP 94.110 Petition for variance, penalties, and fees. (1) **PENALTIES.** Pursuant to s. 168.15, Stats., any person who violates any provision of this chapter shall forfeit not less than \$10 nor more than \$100 for each violation. Each day a person fails to comply with any provision of this chapter is a separate violation.

(2) **FEES.** Fees for inspections shall be assessed in accordance with ch. SPS 302.

(3) **PETITION FOR VARIANCE.** The department shall consider and may grant a variance to a provision of this chapter in accordance with ch. SPS 303. The petition for variance shall include, where applicable, a position statement from the fire department having jurisdiction.

Note: Chapter SPS 303 requires the submittal of a petition for variance form (TR–WM–129) and a fee, and that an equivalency is established in the petition for variance that meets the intent of the rule being petitioned. Chapter SPS 303 also requires the department to process regular petitions within 30 business days and priority petitions within 10 business days. A position statement from the fire department is applicable when the rule being petitioned relates to fire safety issues.

Note: Form TR–WM–129 is available from the Bureau of Weights and Measures, at P.O. Box 8911, Madison, WI 53708–8911, or (608) 224–4942 or at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

History: Cr. Register, July, 1980, No. 295, eff. 8–1–80; am. Register, October, 1984, No. 346, eff. 11–1–84; renum. (5) to be (5) (a) and cr. (5) (b), Register, April, 1985, No. 352, eff. 5–1–85; r. and recr. (1), Register, February, 1986, No. 362, eff. 3–1–86; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1995, No. 479; CR 03–011: r. and recr. (5) Register December 2003 No. 576, eff. 1–1–04; CR 05–081: renum. from Comm 48.02 Register August 2006 No. 608, eff. 9–1–06; CR 10–006: renum. from Comm 48.200, am. (1), (2), r. (3), (4) Register December 2010 No. 660, eff. 1–1–11; correction to numbering made under s. 13.92 (4) (b) 1., Stats., Register December 2010 No. 660; correction in (2), (3) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.

ATCP 94.120 Definitions. In this chapter:

(1) “Alternative liquid automotive fuel” includes all of the following:

- (a) Methanol, denatured ethanol, and other alcohol;
- (b) Mixtures containing 85% or more by volume, or such other percentage, but not less than 70%, as determined by the secretary of the United States department of energy by rule, of methanol, denatured ethanol, and/or other alcohols with gasoline or other fuels;

(c) Biofuels; and

(d) Coal–derived liquid fuels.

(2) “Automotive fuel rating” means:

(a) For gasoline, the octane rating; or

(b) For an alternative liquid automotive fuel, the commonly used name of the fuel with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel.

(3) “Biodiesel fuel” means a fuel that is comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats.

(4) “Biofuels” means any fuel that is derived from biomass.

(5) “Department” means the department of agriculture, trade and consumer protection.

(6) “Inspection” means collection of product samples, qualitative determination by visual assessment and laboratory testing, and verification of associated product–shipping and storage records.

(7) “Inspector” means a duly authorized fuel–products inspector of the department.

(8) “Motor fuel” means a flammable or combustible liquid which is used in the operation of an internal combustion or turbine engine and which is regulated by either the product specifications in subch. II or the labeling requirements in s. ATCP 94.300.

(9) “Petroleum and other liquid fuel products,” “liquid fuels,” and “fuel products” means gasoline, gasoline/alcohol–ether blends, aviation gasoline, automotive gasoline, kerosene, fuel oil, burner fuel, diesel fuel, biofuels, and blends of petroleum–based fuels and biofuels.

(10) “Reclaimed used lubricating oil,” “re-cleaned used lubricating oil,” or “reconditioned used lubricating oil” means used oil which has been cleaned by cleaning methods used for the primary purpose of removing insoluble contaminants to make the oil suitable for further use. In this subsection, “cleaning method” includes settling, heating, dehydration, filtration, or centrifuging.

(11) “Red–tag” means a red tag secured to a component of a storage or dispensing system, which gives notice that the system or the product stored is under enforcement action for failure to comply with the requirements of either this chapter or ch. ATCP 93, and which prohibits operation of the system until the tag is removed by an inspector.

(12) “Rerefined used lubricating oil” means used oil on which refining processes have been used to produce high–quality base stock for lubricants. In this subsection, “refining process” includes distillation, hydrotreating, or treatments employing acid, caustic, solvent, clay, or other chemicals, or a combination of those processes.

History: Cr. Register, July, 1980, No. 295, eff. 8–1–80; cr. (6) and (7), Register, February, 1986, No. 362, eff. 3–1–86; CR 03–011: r. and recr. Register December 2003 No. 576, eff. 1–1–04; CR 05–081: renum. from Comm 48.03, renum. (1) (d), (e) and (3) to (7) to be (1) (c), (d), (5), (7), (9), (10), (12) and am., am. (1) (a), r. (1) (c), cr. (3), (4), (6), (8) and (11) Register August 2006 No. 608, eff. 9–1–06; CR 10–006: renum. from Comm 48.300 and am. (1) (intro.), (7) to (9) Register December 2010 No. 660, eff. 1–1–11; correction to numbering made under s. 13.92 (4) (b) 1., Stats., Register December 2010 No. 660; correction in (5), (8), (11) made under s. 13.92 (4) (b) 6., 7., Stats., Register December 2011 No. 672; corrections in (5), (8), (11) made under s. 13.92 (4) (b) 6., 7., Stats., October 2013 No. 694.

Subchapter II — Petroleum and Other Liquid Fuel Product Specifications

ATCP 94.200 Adoption of standard specifications by reference. (1) The following standards of the *2015 Annual Book of ASTM Standards* of the American society for testing and materials are incorporated by reference into this chapter:

- (a) ASTM 396–15c, standard specification for fuel oils.
- (b) ASTM D910–15, standard specification for aviation gasolines.
- (c) ASTM D975–15c, standard specification for diesel fuel oils.
- (d) ASTM D1655–15de1, standard specification for aviation turbine fuels.
- (e) ASTM D3699–13be1, standard specification for kerosene.
- (f) ASTM D4806–15, standard specification for denatured fuel ethanol for blending with gasolines for use as automotive spark–ignition engine fuel.
- (g) ASTM D4814–15a, standard specification for automotive spark–ignition engine fuel.
- (h) ASTM D5798–15, standard specification for ethanol fuel blends for flexible–fuel for automotive spark–ignition engines.
- (i) ASTM D6227–14, standard specification for unleaded aviation gasoline containing a non–hydrocarbon component.
- (j) ASTM D6751–15c, standard specification for biodiesel fuel blend stock (B100) for middle distillate fuels.
- (k) ASTM D7467–15c, standard specification for diesel fuel oil, biodiesel blend (B6 to B20).
- (L) ASTM D7547–15, standard specification for hydrocarbon unleaded aviation gasoline.

(2) Where no ASTM standard exists, other generally recognized national consensus standards may be used.

Note: Copies of the adopted standards are on file in the offices of the department and the legislative reference bureau. Copies of the standards may be purchased from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959, telephone 877–909–2786, e–mail service@astm.org, or Web site www.astm.org.

Note: Pursuant to section 168.07 (2) of the Statutes, inspections to determine compliance with specifications prescribed by the department must be conducted in accordance with the latest ASTM methods.

History: CR 03–011: cr. Register December 2003 No. 576, eff. 1–1–04; CR 05–081: r. and recr. Register August 2006 No. 608, eff. 9–1–06; CR 10–006: renum. from Comm 48.400 and am. (title), (1) (a) to (f), (h), (j), cr. (1) (k), (L) Register

December 2010 No. 660, eff. 1–1–11; CR 14–047: am. (1) Register May 2015 No. 713, eff. 6–1–15; CR 16–012: am. (1) (intro.), (a) to (h), (j) to (L) Register August 2016 No. 728, eff. 9–1–16.

ATCP 94.210 Gasoline specifications. (1) GASOLINE, AUTOMOTIVE GASOLINE, ALCOHOL, AND GASOLINE/ALCOHOL–ETHER BLENDS. (a) *General.* Gasoline, automotive gasoline, and gasoline/alcohol–ether blends sold or offered for sale in this state shall be visually free of undissolved water, sediment, and suspended matter, and shall be clear and bright at the ambient temperature or 70°F (21°C), whichever is higher.

(b) *Gasoline.* Any fuel product designated by name or reference as gasoline shall meet the requirements of Table 94.210.

**Table 94.210
Minimum Requirements For Gasoline**

Test	Requirement	ASTM Test Method ^{a/}
Distillation temp., deg F (deg C):		D86
Initial boiling point (max.)	131°F (55°C)	
Not less than 10% evaporation	167°F (75°C)	
Not less than 50% evaporation	284°F (140°C)	
Not less than 90% evaporation	392°F (200°C)	
End point (max.)	437°F (225°C)	
Natural residue (max.)	2%	

^{a/} Pursuant to s. 168.07, Stats., the latest revision of the Annual Book of ASTM Standards shall be used.

(c) *Automotive gasoline.* 1. Except as provided in subd. 2., any fuel product designated by name or reference as automotive gasoline shall meet the requirements of ASTM D4814.

2. Substitute a maximum sulfur level of 0.10, mass %, for the maximum sulfur level of 0.0350, mass %, in Table 2 of ASTM D4814.

Note: The maximum sulfur level of 0.0350, mass %, in Table 2 of ASTM D4814, relates to federal air–quality requirements, and may be enforced by federal authorities.

(d) *Gasoline/oxygenate blends.* 1. Anhydrous denatured alcohol may be added to gasoline if the original gasoline product meets the requirements of par. (b) or (c).

2. The alcohol content for ethyl alcohol may not exceed a concentration of 10 volume percent.

3. The alcohol content for methyl alcohol may not exceed a concentration of one volume percent.

4. Other oxygenated fuels shall be acceptable if the oxygenates are blended at the refinery in amounts allowed by the EPA and the final product conforms to the standard specification for gasoline under par. (b) or (c).

Note: See paragraph (g) for restrictions relating to methyl tertiary–butyl ether.

(e) *Ethanol.* 1. Any product designated by name or reference as denatured fuel ethanol for blending with gasoline for use as automotive spark–ignition engine fuel shall meet the requirements of ASTM D4806.

2. Any product designated by name or reference as fuel ethanol for automotive spark–ignition engines shall meet the requirements of ASTM D5798.

(f) *Documentation.* Any person who distributes gasoline products which contain one percent or more by volume of ethyl alcohol or methyl alcohol, or both, shall state on any invoice, bill of lading, shipping paper, or other documentation accompanying the shipment used in normal and customary business practices, the type and percentage of alcohol rounded to a whole number or half number equal to or less than the determined percentage.

(g) *MTBE content.* 1. Except as provided in subd. 2., gasoline, automotive gasoline, gasoline–alcohol fuel blends, and reformulated gasoline, as defined in s. 285.37 (1), Stats., beginning on August 1, 2004, may not contain more than 0.5%, by volume, of methyl tertiary–butyl ether.

2. Racing fuel used at racing events or in preparation for racing events may contain any amount of methyl tertiary–butyl ether.

(2) **AVIATION FUELS.** (a) *Aviation gasoline.* Any fuel product designated by name or reference as aviation gasoline shall meet the requirements of ASTM D910, D6227, or D7547.

(b) *Aviation turbine fuel.* Any fuel product designated by name or reference as aviation turbine fuel shall meet the requirements of ASTM D1655.

History: R. and recreate from Ind 10.03, Register, July, 1980, No. 295, eff. 8–1–80; Table 10.04–B1 reprinted to correct error, Register, September, 1980, No. 297; r. and recr. (1) (c) and Table 48.04–B1, cr. (1) (d), Register, February, 1986, No. 362, eff. 3–1–86; CR 03–011: am. (1) (b) and (2), r. Tables 48.04–B1, B2, and C, cr. (1) (e), Register December 2003 No. 576, eff. 1–1–04; CR 05–081: renum. from Comm 48.04, renum. (1) (intro.) to (e) to be (1) (a) to (d), (f) and (g) and am., Table 48.04–A to be Table 48.500, am. (1) (title) and (2), cr. (1) (a) (title) and (e) Register August 2006 No. 608, eff. 9–1–06; CR 10–006: renum. from Comm 48.500 and am. (1) (b), (c) 1., (d) 1., 4., (2) Register December 2010 No. 660, eff. 1–1–11; correction in (1) (b) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; correction in (1) (b) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

ATCP 94.220 Kerosene specifications. Any fuel product designated by name or reference as “kerosene” or “kerosine” shall meet the requirements specified in ASTM D3699.

History: R. and recr. from Ind 10.03, Register, July, 1980, No. 295, eff. 8–1–80; am. table, Register, May, 1984, No. 341, eff. 6–1–84; r. and recr. table, Register, February, 1986, No. 362, eff. 3–1–86; CR 03–011: am., r. Table 48.05 Register December 2003 No. 576, eff. 1–1–04; CR 05–081: renum. from Comm 48.05 Register August 2006 No. 608, eff. 9–1–06; CR 10–006: renum. from Comm 48.510 and am. Register December 2010 No. 660, eff. 1–1–11.

ATCP 94.230 Fuel oil specifications. Any petroleum product designated by name or reference as No. 1 fuel oil to No. 6 fuel oil shall meet the requirements specified in ASTM D396.

History: R. and recr. from Ind 10.01 and 10.02, Register, July, 1980, No. 295, eff. 8–1–80; am. table, Register, May, 1984, No. 341, eff. 6–1–84; r. and recr. table, Register, February, 1986, No. 362, eff. 3–1–86; CR 03–011: am., r. Table 48.06 Register December 2003 No. 576, eff. 1–1–04; CR 05–081: renum. from Comm 48.06 Register August 2006 No. 608, eff. 9–1–06; CR 10–006: renum. from Comm 48.520 and am. Register December 2010 No. 660, eff. 1–1–11.

ATCP 94.240 Diesel fuel oil specifications. (1) Except as provided in subs. (2) and (6), any fuel product designated by name or reference as No. 1 diesel fuel oil to No. 4 diesel fuel oil shall meet the requirements specified in ASTM D975.

(2) The flash point specification temperature for No. 2 diesel fuel oil shall be 100° Fahrenheit.

(3) Biodiesel fuel meeting the requirements specified in ASTM D6751 may be added to diesel fuel meeting the requirements specified in ASTM D975.

Note: Assuring compliance with ASTM D6751 is one of the goals of a BQ–9000 program administered by the National Biodiesel Accreditation Commission. This program includes the Commission’s accreditation of producers, and certification of marketers – following a successful formal review and audit of the capacity and commitment of an applicant to produce or market biodiesel fuel that complies with ASTM D6751. The department will accept this accreditation and certification as adequate assurance of meeting the requirements specified in ASTM D6751.

(4) Biodiesel–blended motor fuels of 6 to 20 percent biodiesel by volume shall meet the requirements of ASTM D7467.

(5) Any person who distributes petroleum–source diesel fuel mixed with non–petroleum–source diesel fuel shall state on any invoice, bill of lading, shipping paper, or other documentation accompanying the shipment used in normal and customary business practices, the type and percentage of each component rounded to a whole number or half number equal to or less than the determined percentage.

(6) Substitute a maximum sulfur level of 0.05, mass %, for the maximum sulfur level of 15 ppm in Table 1 of ASTM D975.

Note: The maximum sulfur level of 15 ppm, for No. 1 and No. 2 diesel fuels in Table 1 of ASTM D975, relates to federal air–quality requirements, and may be enforced by federal authorities.

History: Cr. Register, July, 1980, No. 295, eff. 8–1–80; r. and recr. table, Register, February, 1986, No. 362, eff. 3–1–86; CR 03–011: am., r. Table 48.06, cr. (2) to (4) Register December 2003 No. 576, eff. 1–1–04; CR 05–081: renum. from Comm

48.07, am. (1) and (3), cr. (5) Register August 2006 No. 608, eff. 9–1–06; CR 10–006: renum. from Comm 48.530 and am. (1), cr. (4) Register December 2010 No. 660, eff. 1–1–11; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register December 2010 No. 660.

Subchapter III — Inspection Procedures

ATCP 94.300 Labeling of dispensers and containers. (1) DISPENSING EQUIPMENT. (a) General. All devices dispensing liquid fuel products at motor fuel dispensing facilities, garages, or other places where liquid fuel products are sold or offered for sale shall be marked with a conspicuous label visible on both faces of the dispensing device indicating the automotive fuel rating of the fuel product. No label may be placed so that the text is sideways or upside down.

Note: The Federal Trade Commission (FTC) establishes the requirements for accurate automotive fuel ratings, which include octane ratings, certification, and posting under Title 16 CFR Part 306. Also included in Part 306 are detailed requirements for labeling retail diesel fuel dispensing devices that dispense fuel blends consisting of more than 5 percent by volume biodiesel fuel or biomass-based diesel fuel. Those detailed requirements include prescribed dispenser labels for blended fuels of 6 to 20 percent biodiesel fuel or biomass-based diesel fuel, and dispenser labels for blended fuels of more than 20 percent biodiesel fuel or biomass-based diesel fuel. The FTC requirements are available at www.ftc.gov.

Note: A single label may be used to refer to multiple grades of fuel, provided all of the requirements of this section are met.

(b) Oxygenated gasoline dispensing device labels. 1. A device that dispenses a gasoline-ethanol fuel blend of more than 2% by volume of ethanol shall be labeled with the maximum volume percent of ethanol at all times the product is offered for retail sale.

2. A device that dispenses a reformulated gasoline, as defined in s. 285.37 (1), Stats., that contains an oxygenate other than ethanol shall be labeled with the identity of the oxygenate at all times the product is offered for retail sale. If the reformulated gasoline contains multiple oxygenates, the label shall identify the predominant oxygenate based upon volume percent.

Note: Reformulated gasoline is defined in section 285.37 (1) of the Statutes, as gasoline formulated to reduce emissions of volatile organic compounds and toxic air pollutants as provided in 42 USC 7545 (k) (1) to (3). The addition of an oxygenate to a fuel alone does not create a reformulated gasoline, other criteria specified in the law must also be met.

3. The label shall be placed on the face of the dispenser next to the name and grade of the product being dispensed. No label may be placed so that the text is sideways or upside down.

4. The label shall be contrasting in color to the dispenser, and shall include lettering that complies with any applicable requirements in ch. 168, Stats.

Note: Section 168.11 (1) (b) 1. of the Statutes reads as follows: “A device that dispenses a gasoline-ethanol fuel blend for sale at retail shall be marked or labeled with the percentage of ethanol at all times when the product is offered for sale.”

5. The label shall identify the oxygenate as either “Ethanol”, “Methyl Tertiary Butyl Ether (MTBE)”, “Ethyl Tertiary Butyl Ether (ETBE)”, “Tertiary Amyl Methyl Ether (TAME)”, “Tertiary Butyl Alcohol (TBA)”, or as an other oxygenate name approved by the department.

6. A label shall be conspicuous and legible to a customer when viewed from the driver’s seat of a motor vehicle that is located within 6 feet of the dispensing device.

7. The label shall be capable of withstanding extremes of weather conditions for at least one year and shall be resistant to gasoline, oil, grease, solvents, detergents, and water. When damaged so that they are not legible, labels shall be replaced.

8. If a dispenser remains unlabeled after the expiration of orders issued by the department for labeling, and the owner does not file a written appeal within 15 calendar days of receiving the order, the department shall stop the sale of the product in accordance with s. ATCP 94.100 (8).

(c) Dual dispenser for ethanol. A dispensing device which has existed since before February 1, 2009, and which does not use a separate fueling nozzle and hose for dispensing ethanol-blended motor fuels of more than 10 percent ethanol by volume shall bear a label clearly warning any purchaser that the first gallon may have more than 10 percent ethanol by volume. This label shall be adjacent to the ethanol label that is required in par. (b), and shall

comply with the requirements in par. (b) 3., 4., 6., and 7. Enforcement of this paragraph shall be in accordance with par. (b) 8.

Note: Under chapter ATCP 93, fuel dispensers that are installed after February 1, 2009, must use a separate fueling nozzle and hose for dispensing any ethanol-blended motor fuels of more than 10 percent ethanol by volume, such as E–85, E–30, E–20, and E–15.

(2) STORAGE CONTAINERS. (a) Gasoline and similar products. All containers for storing gasoline or any other product that has a flash point of less than 100°F when tested using either an ASTM D56 or ASTM D6450 closed tester shall be metal or equally sound nonflammable material meeting the requirements of ch. ATCP 93 or SPS 314, shall have the common name of the contents clearly labeled or painted on the exterior, and shall be substantially a bright red color. These requirements do not apply to any of the following:

1. Fuel supply tanks connected to internal combustion or turbine engines, appliances, or any device consuming the fuel.

2. Containers holding one gallon or less of a liquid fuel product which were filled originally by a manufacturer or a packager and which comply with the federal standards for packaging and labeling.

3. Containers having a capacity of 275 gallons or more.

Note: Chapter SPS 314 generally regulates aboveground storage of flammable and combustible liquids in containers having a capacity of less than 110 gallons, while chapter ATCP 93 regulates this storage in tanks that have a capacity of 110 gallons or more. Both of those chapters reference national standards that specify the materials which these containers or tanks must be constructed of – such as ASTM F852, which addresses portable gasoline containers for consumer use.

(b) Flash points of 100°F or greater. Any fuel product that has a flash point of 100°F or greater when tested as stated in par. (a) may not be stored in any container which is in any manner colored red.

(3) IDENTIFICATION. (a) General. Any person receiving, unloading, using, offering for sale, or selling any liquid fuel product shall identify the product as to name or grade. Delivery of automotive fuel to a retail outlet shall include a certification of the automotive fuel rating, either by letter, or on the delivery ticket or other paper, as required by 16 CFR 306.10 (g).

Note: Under section 168.14 (2m) (c) of the Statutes, any fuel that is represented, advertised, labeled, or otherwise promoted for sale as being a blend of biodiesel and petroleum-based diesel fuel must be at least 2 percent biodiesel fuel by volume.

(b) Used oils. Any person representing, advertising, promoting for sale, offering for sale, or selling any lubricating oil which has previously been used shall identify the product as such. The label shall contain the appropriate and descriptive words of “reclaimed used lubricating oil,” “re-refined used lubricating oil,” “re-cleaned used lubricating oil,” or “reconditioned used lubricating oil.”

(4) CLEANING OF DISPENSING EQUIPMENT. Any pipeline, hose, pump, or metering device used for dispensing liquid fuel products shall be properly flushed and cleaned before dispensing a dissimilar liquid fuel product.

Note: Chapter ATCP 93 has detailed requirements that apply when converting a fuel tank to storage of fuel containing more than 10 percent ethanol by volume. Those requirements address cleaning the tank, tightness testing, and equipment compatibility.

History: Cr. Register, July, 1980, No. 295, eff. 8–1–80; renum. (1) (a) to be (4), cr. (1) (a), Register, May, 1984, No. 341, eff. 6–1–84; reprinted to correct error in (1) (a), Register, October, 1984, No. 346; r. and recr. (1), Register, February, 1986, No. 362, eff. 3–1–86; emerg. r. and recr. (1) (b), r. (1) (c), eff. 9–13–95; r. and recr. (1) (b), r. (1) (c), Register, May, 1996, No. 485, eff. 6–1–96; correction in (1) (b) 2. made under s. 13.93 (2m) (b) 7., Stats.; CR 03–011: am. (1) (a), (b) 1., 2., 3. and 5., r. and recr. (3) Register December 2003 No. 576, eff. 1–1–04; CR 05–081: renum. from Comm 48.10, am. (1) (b) 9., (2) and (3) (a) Register August 2006 No. 608, eff. 9–1–06; CR 07–029: cr. (1) (c), am. (2) (a) (intro.) Register November 2008 No. 635, eff. 2–1–09; CR 10–006: renum. from Comm 48.580 and am. (1) (a), (b) 4., 8., (c), (2) (a) 2., (b), (3) (title) (a), (4), r. (1) (b) 6. Register December 2010 No. 660, eff. 1–1–11; correction in (1) (b) 8., (2) (a) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (1) (b) 8., (2) (a) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

ATCP 94.310 Inspection procedures. (1) INSPECTION OF PETROLEUM AND OTHER LIQUID FUEL PRODUCTS. (a) General. All petroleum and other liquid fuel products imported into and received in this state shall be subject to sampling by the department prior to being unloaded, sold, offered for sale, or used.

(b) *Exceptions.* The inspection of liquid fuel products does not apply in the following situations:

1. Liquid fuel products previously inspected by the department at the refinery or at a marine or pipeline terminal within or without the state.

2. Where the department permits unloading of ships or boats due to an emergency declared by the coast guard or where a permit has been granted by the department.

3. Specialty motor fuels and liquid fuel products that will not be introduced into the wholesale or retail market stream.

(2) **NOTIFICATION FOR INSPECTION.** (a) 1. Where requested by the department, the recipient of all liquid fuel products shall notify the department's corresponding district inspection office of the receipt, between the hours of 7:45 a.m. and 4:30 p.m. on the day of the receipt, except as provided in subd. 2. or 3.

2. Where requested by the department, the department's corresponding district inspection office shall be notified of any liquid fuel products received after 4:30 p.m. or received on a Saturday, Sunday, or any legal holiday, between the hours of 7:45 a.m. and 10:00 a.m. of the next regular working day.

3. Where requested by the department, current delivery schedules for liquid fuel products delivered through a pipeline shall be made available to the department's corresponding district inspection office.

(b) If a person transfers one grade of a liquid fuel product into a container with another grade of liquid fuel product, the entire commingled product shall be deemed uninspected and the department's corresponding district inspection office shall be notified.

(c) If no sample is taken by an inspector within the time limit specified, the receiver or commingler shall take a representative sample in accordance with the procedures in sub. (3) (c).

(d) For the purpose of this section, the department shall have discretion in determining a reasonable length of time in which an inspector may take the sample.

Note: Saturdays, Sundays, and legal holidays are not considered regular business days.

(e) 1. A person who changes the fuel product dispensed from a tank system from a Class II or III liquid to a Class I liquid shall notify the department's corresponding district inspection office, and the new product shall be tested and approved before being dispensed.

2. In this paragraph, "Class I liquid" means a liquid that will give off sufficient vapor, below 100°F, to form an ignitable mixture with air near the surface of the liquid or within a test vessel; and "Class II or III liquid" means a liquid that will give off such vapor at or above 100°F.

Note: Under chapter ATCP 93, the department's corresponding district inspection office must likewise be notified, and the new product must likewise be tested and approved before being dispensed, when the product dispensed from a tank system is changed from a Class I liquid to a Class II or III liquid.

Note: See the Department Web site at https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx for the contact information for the Department's district inspection offices.

(3) **SAMPLING PROCEDURES.** (a) *General.* A representative sample of at least 8 ounces shall be taken from every shipment of liquid fuel products, including commingled products, that is imported into and received in this state.

(b) *Department procedures.* 1. The department shall inspect and test samples collected under this section, at locations and frequencies that are designed to prevent sale of fuel products in this state which do not comply with this chapter.

2. If the fuel product does not meet the standards specified in this chapter, the department will notify the person for whom the inspection was made that the product may not be sold, used, removed from storage, or transferred to any place for retail sale until compliance with the standards is established.

(c) *Sampling procedures by others.* 1. If the inspector does not, upon proper notice, after a reasonable length of time, take the sample as specified in sub. (2) (d), the recipient of the fuel product

may open the original container and take a representative sample of not less than 8 ounces of the contents. The sample shall be immediately placed in a clean container which is in compliance with s. ATCP 94.400 (6) and (7) and which is then tightly closed.

2. The container holding the sample taken under subd. 1. shall be identified with all of the following information:

a. Means of conveyance (such as from a pipeline or tank car).

b. Type of original container.

c. Product name.

d. Content quantity.

3. The sample taken under this paragraph shall be held for delivery, upon demand, to the inspector. After the sample is taken, the fuel product may be unloaded, sold, offered for sale, or used the same as if sampled by the inspector. The sample shall be retained for 7 business days and then may be discarded.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; CR 03-011: r. (1) (a) 3., am. (3) (b) (intro.) Register December 2003 No. 576, eff. 1-1-04; CR 05-081: renum. from Comm 48.09, renum. (1) (intro.) and (a) to be (1) (a) and (b), cr. (1) (b) 3., am. (2) (c), (d), (3) (intro.), (a) (intro.), 1. and (b) Register August 2006 No. 608, eff. 9-1-06; CR 10-006: renum. from Comm 48.600 and am. (1) (title), (a), (b) (intro.), 1., 3., (2) (a), (b), (3) (a), (b), (c) 1., 3., cr. (2) (e) Register December 2010 No. 660, eff. 1-1-11; correction in (3) (c) 1. made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; correction in (3) (c) 1. made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

ATCP 94.320 Water in tanks. Water may not exceed the following depths, as measured with water-indicating paste, in any tank utilized in storing the following fuels for retail sale, except as otherwise approved by the department:

(1) Gasoline-alcohol blends — 1/4 inch.

(2) Aviation gas and aviation turbine fuel — 1 inch.

(3) Gasoline, diesel, gasoline-ether, and other fuels — 2 inches.

History: CR 10-006: cr. Register December 2010 No. 660, eff. 1-1-11.

ATCP 94.330 Records. (1) **DEPARTMENT RECORDS.** The department shall keep records of each inspection made, showing all of the following:

(a) The time and place of each inspection.

(b) The product name of the liquid fuel product inspected.

(c) The name and address of the person for whom the inspection is made.

(2) **TRANSPORTATION RECORDS.** Every person transporting liquid fuel products shall maintain records showing the shipment or receipt of the fuel products. The department shall have free access to the records for the purpose of determining the amount of liquid fuel products shipped or received.

(3) **RECEIPT RECORDS.** Every person receiving fuel products shall maintain a record of the delivery of the product, together with bills of lading, waybills, and any other documents pertinent to verifying the inventory of the product, for at least 10 years, unless approval to the contrary is obtained from the department in writing. The department shall have free access to the records for the purpose of determining the amount of fuel products shipped or received.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; CR 03-011: r. (1) (b) to (d), am. (3) Register December 2003 No. 576, eff. 1-1-04; CR 05-081: renum. from Comm 48.11 Register August 2006 No. 608, eff. 9-1-06; CR 10-006: renum. from Comm 48.700 and am. Register December 2010 No. 660, eff. 1-1-11.

Subchapter IV — Violations

ATCP 94.400 Prohibited acts. (1) No person other than an operator of a refinery or terminal may deliberately deliver, unload, direct, or transfer a lower grade of a fuel product into a storage tank system labeled as containing a higher grade of fuel product unless specifically approved in writing by an inspector.

(2) Except as authorized under sub. (1), no person may deliberately deliver, unload, direct, or transfer dissimilar fuels, dissimilar octane, or a dissimilar grade of fuel products into a storage tank unless specifically approved in writing by an inspector.

(3) No person may hinder, divert, or obstruct inspectors in the performance of their duties under the authority of this chapter.

(4) No person may represent a motor fuel or fuel product in any manner that is contrary to the provisions and the adopted standards of this chapter, and the provisions of ch. 168, Stats.

(5) No person may transfer a fuel product to any place for retail sale or offer to sell that fuel product if it has been altered after being testing under this chapter, unless either approved otherwise by the department or further testing shows the altered product complies with this chapter.

Note: Blending two batches of fuel which each meet the same ASTM standard is not considered to be altering the fuel.

(6) No person may deliver, place, receive, or store in any portable container any product that has a flash point of less than 100°F when tested using either an ASTM D56 or ASTM D6450 closed tester, unless the container complies with s. ATCP 94.300 (2) (a).

(7) No person may deliver, place, receive, or store any fuel product that has a flash point of 100°F or more when tested using either an ASTM D56 or ASTM D6450 closed tester, in any portable container which is in any manner colored red.

History: CR 05-081: cr. Register August 2006 No. 608, eff. 9-1-06; CR 10-006: renum. from Comm 48.590, am. (1), (2), (4), renum. (5), (6) to be (6), (7) and am., cr. (5) Register December 2010 No. 660, eff. 1-1-11; correction in (6) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; correction in (6) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

ATCP 94.410 Reimbursement of product-analysis and investigation costs. (1) OUTSIDE TESTING. An owner or

seller of products which are subjected to a qualitative analysis that cannot be performed by department equipment and which are therefore sent to an outside testing source shall reimburse the department for the cost of the analysis and shipping, and pay any fee assessed under ch. SPS 302.

(2) MISCELLANEOUS INVESTIGATIONS. An owner or seller of a product shall pay the department any fees assessed under ch. SPS 302 for any of the following:

- (a) Investigation of product-performance complaints.
- (b) Investigation of products subject to mislabeling.
- (c) Investigation of accidents or explosions, under s. ATCP 94.100 (6).

(3) WAIVER. All reimbursements and fees under this section shall be waived if the analysis or investigation determines that the corresponding product complies with this chapter.

(4) DUE DATE. All reimbursements and fees that are due under this section shall be paid within 15 calendar days of billing.

(5) CONTINUATION OF SHUTDOWN. Failure to pay any reimbursements or fees under this section, for a liquid fuel storage tank system that has been shut down under s. ATCP 94.100 (8), shall result in a continuation of that shutdown.

History: CR 05-081: cr. Register August 2006 No. 608, eff. 9-1-06; CR 10-006: renum. from Comm 48.650 and am. (2) (c), (5) Register December 2010 No. 650, eff. 1-1-11; correction to numbering made under s. 13.92 (4) (b) 1., Stats., Register December 2010 No. 660; correction in (1), (2) (intro.), (c), (5) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (2) (c), (5) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.