



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Randy Romanski, Secretary

DATE: November 8, 2010

TO: Bruce Hoesly, Legislative Reference Bureau
1 East Main Street, Suite 200

FROM: Randy Romanski, Secretary

SUBJECT: **Weights and measures regulation, licensing and fees; Final Rule for Publication (Clearinghouse Rule No.09-105)**

The Department of Agriculture, Trade and Consumer Protection (DATCP) hereby submits the following rule for publication:

CLEARINGHOUSE RULE #: 09-105
SUBJECT: Weights and measures regulation, licensing and fees
ADM. CODE REFERENCE: ATCP 92
DATCP DOCKET #: 09-R-08

We are enclosing a copy of the final rule, as adopted by DATCP. We are also providing the following information for publication with the rule, as required by s. 227.114(6), Stats.

Final Regulatory Flexibility Analysis (Summary)

This rule modifies current DATCP weights and measures rules. Among other things, this rule implements 2009 Wis. Act 28 (biennial budget act). Act 28 changed state weights and measures laws, including laws related to vehicle scales, weights and measures service companies, vehicle tank meters and liquefied petroleum (LP) gas meters. Act 28 created new license requirements, and authorized DATCP to establish certain license fees and surcharges by rule. Act 28 also authorized DATCP to charge reinspection fees to help pay for reinspections made necessary by weights and measures law violations. The rule does the following:

- Creates new license fee categories and increases the annual fees for *weights and measures* inspections of licensed retail food establishments (it does *not* change *food safety* inspection fees or license categories).
- Increases the annual fee for a vehicle scale operator license and establishes a fee for a permit to install or relocate a vehicle scale (neither fee applies to livestock scales other than vehicle scales).
- Updates and clarifies current requirements for annual testing of vehicle scales and *livestock scales* and reporting test results to DATCP. The rule establishes a vehicle scale operator

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license surcharge for an operator who fails to comply with the annual reporting requirements (does not apply to operators of livestock scales other than vehicle scales).

- Establishes a fee to process a request, by a vehicle scale operator *or livestock scale operator*, for a variance from an applicable scale construction standards (this rule does not change current construction standards).
- Increases current annual license fees for weights and measures service companies and the current examination fee for certification of an individual weights and measures technician (5-year certification). The examination fee may be paid by the weights and measures service company that employs the technician.
- Implements statutory licensing requirements and establishes annual license fees for operators of LP gas meters. This rule establishes a license fee surcharge for an applicant who is found to have operated an LP gas meter without a license during the previous year. In addition, it establishes basic annual testing and test reporting requirements related to LP gas meters.
- Implements statutory licensing requirements and establishes annual license fees for vehicle tank meter operators. In addition, it establishes basic annual testing and test reporting requirements related to vehicle tank meters. This rule establishes a license fee surcharge for an applicant who is found to have operated a vehicle tank meter without a license during the previous year or who has failed to comply with the basic testing and test reporting requirements during the previous year.
- Establishes reinspection fees to cover DATCP reinspection costs incurred because of law violations found on an initial inspection of a weight or measure (including a scale or other weighing or measuring device).

DATCP has not incorporated a small business enforcement policy in this rule. This rule will affect businesses that operate or service weights and measures in Wisconsin, most of which are small businesses. Many affected business will pay higher fees, or will pay fees for the first time. However, the fee increases are not expected to have a major impact on overall business costs. Fees for each business category are proportionate to weights and measures program costs for that business category, and cover only a portion of program costs. DATCP will seek voluntary compliance.

Comments from Legislative Committees (Summary)

On April 21, 2010, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Agriculture and Higher Education and to the Assembly Committee on Consumer Protection. The Assembly Committee on Consumer Protection held a hearing on May 18, 2010 and an executive session June 22, 2010 where they voted to send the rule back for modifications to the fee increases. On June 28, 2010 DATCP agreed to consider modifications to the rule. The Senate Committee on Agriculture and Higher Education held a

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public hearing on July 28, 2010 and took no action. Beginning July 16, 2010 DATCP started meeting with key industry stakeholders to discuss modifications to the fee increases. On September 14, 2010 DATCP delivered a modified rule to both the assigned Senate and Assembly Committees for review. Neither committee held any hearings or took any action on this modified rule.