Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis

Rule Subject: **Selling Commodities by Weight, Measure or Count**
Adm. Code Reference: **ATCP 91**
Rules Clearinghouse #: **------**
DATCP Docket #: **09-R-02**

Background

Current DATCP rules (ATCP 91) regulate the sale of commodities by weight, measure or count. The current rules spell out general standards for all commodities, and more specific standards for some commodities.

The National Institute of Standards and Technology ("NIST") has published model method-of-sale standards, which are designed to promote reasonable and uniform standards between states. However, the NIST standards do not have the force of law unless adopted by the states. At least 45 other states (including all of the states surrounding Wisconsin) have adopted some or all of the NIST standards.

Current DATCP rules are, in some respects, inconsistent with NIST. The Wisconsin statutes also include some requirements that differ from NIST. Within statutory limits, this rule modifies current DATCP rules (ATCP 91) to make them more consistent with NIST. This rule also makes non-substantive changes to reorganize and clarify current rules.

Rule Content

Standards for Specific Commodities

NIST has published specific method-of-sale standards for certain commodities (these standards typically address consumer protection or fair competition issues that have arisen in connection with those particular commodities). This rule incorporates current NIST standards for the following commodities (subject, in some cases, to exceptions required by Wisconsin law):

- ***Food products***
    - Meat, poultry, fish and seafood.
    - Dairy products.
    - Fresh fruits and vegetables.
    - Butter, margarine and like spreads.
    - Flour, corn meal and like products.
    - Pickles and pickle relish.

- ***Non-food products***

  - Fence wire.
  - Coatings.
  - Fireplace and stove wood.
  - Peat and peat moss.
  - Prefabricated utility buildings.
  - Roofing and roofing material.
  - Sealants.
  - Sod and turf.
  - Softwood lumber.
  - Carpet.
  - Hardwood lumber (retail)
  - Polyethylene products.
  - Insulation.
  - Precious metals.
  - Mulch.
  - Liquefied petroleum gas.
  - Liquid oxygen for respiration.
  - Animal bedding.
  - Wiping cloths.
  - Baler twine.
  - Potpourri.
  - Communication paper.
  - Bulk sand, rock, gravel and stone.

General Standards

This rule incorporates the following general NIST standards (or makes DATCP rules more consistent with those standards):

- Price declarations for food commodities sold from bulk by weight (must be shown per whole unit, not fractional unit, of weight).
- Price presentation (showing fractions of a cent).
- Combination quantity declarations.
- Vending machine labeling.
- Railroad car tare weights

Business Impact

This rule will benefit businesses that sell commodities in more than one state, because it incorporates many of the NIST model standards and thus makes Wisconsin standards more consistent with standards used in 45 other states. This rule also reorganizes and clarifies current rules, so they will be easier to read and understand.

This rule will not have a significant negative impact on small businesses or other affected businesses. However, this rule may have a slight negative impact on some sellers of firewood and mulch. Currently, firewood and mulch may be sold in Wisconsin by volume or by weight, although most businesses sell these commodities by volume. By adopting the NIST standards, this rule will require firewood and mulch to be sold by volume. Those few small businesses that do not sell firewood or mulch by volume will need to develop techniques to determine volume.

Steps to Assist Small Business

The department will contact associations whose membership includes small businesses that sell commodities and offer information that my serve to educate their members concerning the changes in ch. ATCP 91.

Conclusion

This rule will help maintain fair competition between competing businesses and will have few, if any, negative effects on business. This rule will have no significant effect on "small business," and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

Dated this _____ day of _____, 2009

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Janet Jenkins, Administrator,
Division of Trade & Consumer Protection