

STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection

Rule No.: Ch. ATCP 92

Relating to: Weights and Measures

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

The Wisconsin Department of Agriculture, Trade and Consumer Protection's (DATCP) 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 what they pay for. Wisconsin Admin. Code ch. ATCP 92 helps to achieve that by adopting the National Institute of Standards and Technology (NIST) Handbook 44, *Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices*.

Wisconsin Stat. § 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." DATCP currently regulates EV charging stations as timing devices only per Wis. Admin. Code ch. ATCP 92 and adopted standards in NIST Handbook 44 (2018 edition).

DATCP proposes to amend Wis. Admin. Code ch. ATCP 92 to include regulatory standards for electric vehicle (EV) charging stations that charge a fee based on the amount of kilowatt-hours (kWh) of electricity consumed as a weights and measures device. Until recently, Wisconsin statutes did not permit DATCP 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, § 9 created Wis. Stat. § 196.01 (5) (b) 8. effective March 22, 2024. Under Wis. Stat. § 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. As a result, meters for measuring the amount of electricity consumed at such devices now fall within the Wis. Stat. § 98.01(7) definition of "weights and measures" and are subject to Wis. Stat. ch. 98 and the rules promulgated thereunder.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Wisconsin Admin. Code ch. ATCP 92 was promulgated pursuant to and enforces Wis. Stat. ch. 98, Weights and Measures. Under those laws, DATCP is authorized to administer state weights and measures standards, operate an official measurement laboratory, and conduct an inspection and enforcement program for commercial weighing and measuring. Key provisions of Wis. Admin. Code ch. ATCP 92 include requirements related to the following: commercial weighing and measuring devices; inspection procedures; inspector hiring and training; and record keeping and reporting requirements for state and municipal inspections.

Until 2023 Wisconsin Act 121, § 9 created Wis. Stat. § 196.01 (5) (b) 8., the sale of electricity by kWh at EV charging stations was exempt from commercial weights and measures laws due to a public utilities exemption. The newly created Wis. Stat. § 196.01 (5) (b) 8. excludes a person who operates an EV charging station that charges fees by kWh from the definition of the term "public utility." Therefore, an EV charging station that imposes fees by kWh now falls within the Wis. Stat. § 98.01 (7) definition of the term "weights and measures" for purposes of Wis. Stat. ch. 98. This change in state law permits DATCP to regulate these weights and measures devices as both timing devices and as electric fuel devices selling electricity directly to consumers by kWh.

Without national EV charging consumer protection standards in place in Wisconsin, there is a risk that Wisconsin might have inaccurate devices that cause consumer harm, as well as unfair competition for those businesses with accurate devices. Adoption of the nationally recognized industry standards would help avoid such harm and meet DATCP's statutory obligation to protect consumers. Wisconsin Stat. § 98.07(4) provides that "[i]n 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 declaration."

There may be national standards adopted by industry that may be considered during the rule promulgation process, for example, NIST Handbooks and NFPA 30A, *Code for Motor Fuel Dispensing Facilities and Repair Garages* may warrant discussion. As stated, the rulemaking process could identify additional national standards that DATCP may incorporate by reference. As required, DATCP would petition the Attorney General under Wis. Stat. § 227.21 (2) for approval of any standards. DATCP may also consider incorporating Federal Trade Commission (FTC) labeling rules regarding non-liquid alternative fuels, which defines electricity as a vehicle fuel.

DATCP may also consider adopting additional definitions and may also consider amending other portions of Wis. Admin. Code ch. ATCP 92 to accommodate the inclusion of EV charging station inspections into the Weights and Measures program and any required credentialing.

If DATCP does not update Wis. Admin. Code ch. ATCP 92 to incorporate the relevant provisions of NIST Handbook (2024 edition), the Weights and Measures program will not have standards specified within Wis. Admin Code ch. ATCP 92 to regulate commercial EV charging stations that charge by kWh consumed.

DATCP may also consider how other states regulate EV charging stations.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wis. Stats. §§ 93.07 (1); 98.01 (7); 98.03 (1) and (2); 98.04; 98.06 (1); 98.07 (4); 98.18 (1) (a) and (b), (1h), and (2); and 196.01 (5) (b) 8.

93.07 (1)

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

98.01 (7)

(7) "Weights and measures" means weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories used with any or all such instruments and devices, except meters for the measurement of electricity, gas (natural and manufactured) or water when the same are operated in a public utility system.

98.03 State standards; specifications and tolerances.

(1) Weights and measures obtained by the state as standards and certified for use as such by the national institute of standards and technology shall be the state standards of weight and measure. They shall be in the custody of the department and shall be used only for verification of other standards.

(2) 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.

98.04 Municipalities.

(1) Except as provided in sub. (2), a municipality having a population of more than 5,000, according to the most recent population estimate made by the department of administration under s. 16.96, shall enforce the provisions of this chapter within its jurisdiction. For this purpose, a municipality shall establish a municipal department of weights and measures. Each municipal department of weights and measures shall have such number of qualified sealers or inspectors as will ensure compliance with this chapter. Municipal sealers or inspectors shall have the same authority as sealers or inspectors of the department of agriculture, trade and consumer protection. The selection of municipal sealers or inspectors shall be from a list of applicants whose qualifications have been certified by the state or local civil service agency under the rules of the agency. The municipality shall procure and keep at all times a complete set of standards of weight and measure conforming to the state standards and shall submit the standards for certification at regular intervals as required by the department of agriculture, trade and consumer protection. The municipality shall keep a complete record of its work and annually shall file a report thereof with the department of agriculture, trade and consumer protection. The municipality may enact ordinances that regulate weights and measures and that are not in conflict with this chapter or the rules of the department of agriculture, trade and consumer protection. The municipality may assess fees that do not exceed the actual cost of its weights and measures program.

(2) A municipality that is required to establish a department of weights and measures under sub. (1) may contract with the department of agriculture, trade, and consumer protection to enforce the provisions of this chapter within the municipality's jurisdiction instead of establishing its own department if the department of agriculture, trade and consumer protection agrees to enter into such a contract. The department of agriculture, trade and consumer protection may charge the municipality fees sufficient to cover the department's costs under the contract. A municipality may recover an amount not to exceed the cost of these fees by assessing fees on the persons who receive services under the weights and measures program.

98.06 Method of sale of commodities.

(1) Commodities in liquid form shall be sold by liquid measure and commodities not in liquid form shall be sold by weight but liquid commodities may be sold by weight and commodities not in liquid form may be sold by count or measure if such methods are in general use and give accurate information as to the quantity of commodity sold.

98.07 Declaration of quantity.

(4) 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 declaration.

98.18 Installing and servicing weights and measures.

(1) (a) License required. (a) Except as provided in par. (bm), no person may engage in the business of installing, servicing, testing or calibrating weights and measures without a license from the department. A license expires on December 31 annually.

(bm) Paragraph (a) does not apply to any of the following:

1. A person who installs, services, tests or calibrates weights and measures only as an employee of a person who is required under par. (a) to hold a license to perform those services.
2. An inspector or metrologist employed by this state, a county or a municipality to test or calibrate weights and measures.

(1) (h) LICENSE FEES. Unless the department establishes different fees by rule, the following annual license fees shall apply:

(a) If the applicant solely engages in installing, servicing, testing or calibrating weights and measures that the applicant owns, the applicant for a license under sub. (1) (a) shall pay a license fee in the amount of \$100.

(b) If the applicant installs, services, tests or calibrates weights or measures for others, the applicant for a license under sub. (1) (a) shall pay all of the following:

1. A basic license fee of \$200.
2. A supplementary license fee of \$50 for each additional business location if the applicant operates from more than one business location.

(2) RULES. The department may promulgate rules to establish license fees under sub. (1h) and to regulate the installation, servicing, testing and certification of weights and measures. The rules may include record-keeping and reporting requirements.

196.01 (5) (b) 8.

(b) "Public utility" does not include any of the following:

8. A person who satisfies all of the following:
 - a. The person supplies electricity through the person's electric vehicle charging station to charge electric vehicles.
 - b. The person charges a fee for using the electric vehicle charging station that is based on the amount of kilowatt-hours of electricity that the user consumes.
 - c. The person is a retail customer of an electric utility, as defined in s. 16.957 (1) (g), or a retail electric cooperative, as defined in s. 16.957 (1) (t).
 - d. All of the electricity supplied by the electric vehicle charging station is supplied to the person by the electric utility or electric cooperative that provides service to the person.
 - e. Other than engaging in the activity described in this subdivision, the person does not directly or indirectly provide electricity to the public.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

DATCP estimates that it will use approximately 400 hours of staff time to develop this rule.

6. List with description of all entities that may be affected by the proposed rule:

Owners, operators, manufacturers, installers, testers, and those who service commercial EV charging stations may be subject to regulations that incorporate new standards. Individuals who do not currently have a license related to weights and measures may be required to obtain such a license from DATCP. Weights and Measures service companies and their employees who engage in activities governed by rules adopted under Wis. Stat. § 98.18 (2) may be affected by this update.

If national standards are adopted to regulate commercial EV charging stations in Wisconsin, drivers of electric vehicles could experience greater confidence when using commercial EV charging stations.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The Bipartisan Infrastructure Law (BIL) enacted as the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58 (codified as 23 U.S. C. § 165) signed on November 15, 2021, assists in building a nationwide network of 500,000 commercial EV charging stations by 2030. BIL created the National Electric Vehicle Infrastructure (NEVI) program which directed states to develop a statewide plan for deploying commercial EV charging stations. The Wisconsin Electric Vehicle Infrastructure (WEVI) plan was approved by the Federal Highway Administration's Joint Office of Energy and Transportation on September 14, 2022. NEVI includes requirements that consumers be charged per kWh.

Wisconsin will comply with this federal program requirement through the enactment of 2023 Wis. Act 121. Section 9 of the act created Wis. Stat. § 196.01 (5) (b) 8. effective March 22, 2024. Under the newly created Wis. Stat. § 196.01 (5) (b) 8., the term "public utility" does not include a person who supplies electricity through the person's EV charging stations 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 EV charging station is not a "public utility" per Wis. Stat. § 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. § 98.01(7) definition of "weights and measures" devices subject to Wis. Stat. ch. 98. Therefore, under Wis. Stat. § 98.07 (4), in order to prevent consumer deception, DATCP must prescribe, by rule, standards for determining and declaring the measure of kilowatt-hours (kWh) of electricity consumed at such EV charging stations, including the conspicuousness of quantity declarations.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

DATCP expects the proposed rule may have an impact on those who own, operate, install, maintain, test, and use commercial EV charging stations. Since the devices that charge by kWh now fall under DATCP inspection authority after the passage of 2023 Wisconsin Act 121, DATCP expects some change to the industry, such as licensing fees or reinspection fees, but it does not expect the changes to be major or disruptive. Current fees applicable under Wis. Stat. ch. 98 would also be imposed upon EV charging stations and would be parallel to those seen by gasoline dispensers. As with other regulated weights and measures devices, EV charging stations that violate Wis. Stat. ch. 98 and Wis. Admin. Code ch. ATCP 92 may incur a re-inspection fee to the violating business. Individuals who do not currently require a weights and measures license may need to acquire a weights and measures license for work on EV charging stations.

Regulating such devices may affect both large and small businesses that own or operate a commercial EV charging station. Small businesses that own, operate, install, maintain, or test commercial EV charging stations may see an impact through existing regulatory fees for weights and measures devices.

Impacts to the consumer population would be positive by ensuring accurate pricing and safety, thus building confidence in the commercial EV charging marketplace and benefiting the state economy.

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