

1 Clearinghouse Rule 09-105

2 DATCP Docket No. 09-R-08
Rules Clearinghouse No. ____

Proposed Hearing Draft
October 30, 2009

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

3 The Wisconsin department of agriculture, trade and consumer protection proposes the
4 following rule *to renumber* ATCP 92.01(1e), (1m), (1s), (2), (2g), (2r), (3) to (7), and
5 (10) to (13), and 92.30(7) and (8); *to renumber and amend* 92.01(15); *to amend* ATCP
6 92.20(2)(d) and (note), 92.20(3)(intro.) and (b)1. and 2., 92.21(2)(note) and (3)(b)3.,
7 92.30(title), (2)(title), (3)(title) and (intro.), and (5)(f), and 92.31(title) and (2)(c); *to*
8 *repeal and recreate* ATCP 92.30(1), (4)(title), (5)(a) and (6), 92.31(3), and 92.43; and *to*
9 *create* ATCP 75.03(note), 92.01(8), (14) and (16), 92.12 and (note), 92.20(3)(b)3.,
10 92.30(1)(note), (6)(note), and (7) and (note), 92.31(2)(note), 92.45 and (note), ch. ATCP
11 92 subch. VI(title), ATCP 92.50, 92.52 and (note), ch. ATCP 92 subch. VII(title), and
12 ATCP 92.60 and (note); *relating to* weights and measures regulation, licensing and fees.

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

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state laws to ensure the accuracy of commercial weights and measures. DATCP adopts weights and measures rules, and licenses persons who operate or service weighing and measuring devices. DATCP may establish certain license fees and other fees by rule.

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.

Statutes Interpreted

Statutes Interpreted: ss. 93.06(1p), 93.07(1), 97.30(3m)(c)3., 98.03(2), 98.16, 98.18, 98.224, 98.245 and 98.255, Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1), 97.30(5), 98.03(2), 98.16(4), 98.18(2), 98.224(4), 98.245(9) and 98.255(2), Stats.

Explanation of Statutory Authority

General

DATCP has general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. Under s. 93.06(1p), Stats., DATCP may charge for certain services (including analytical services) provided in response to a voluntary request (in this case, fees to analyze and process voluntary requests for livestock scale construction variances).

Weights and Measures; General

DATCP administers ch. 98, Stats., related to commercial weights and measures. Under s. 98.03(2), Stats., DATCP has broad authority to adopt rules governing the construction, installation and use of commercial weights and measures (including scales and other weighing and measuring devices).

Retail Food Establishments

DATCP licenses and inspects retail food establishments for food safety purposes under s. 97.30, Stats. However, DATCP also conducts weights and measures inspections of retail food establishments. Licensed establishments must pay an annual weights and measures fee under s. 97.30(3m)(c)3., Stats. DATCP may establish that fee by rule (s. 97.30(5), Stats.).

Vehicle Scales

Vehicle scales are regulated by s. 98.16, Stats. Under s. 98.16 (as modified by Act 28), a vehicle scale operator must:

- Be annually licensed by DATCP and pay an annual license fee for each vehicle scale (DATCP may adjust license fees by rule).
- Pay a license fee surcharge for each vehicle scale if the operator is found operating that scale without a license (Act 28 authorizes DATCP to adjust that surcharge by

rule).

- Obtain a permit from DATCP before installing or relocating a vehicle scale (Act 28 authorizes DATCP to charge a permit fee).
- Comply with scale construction standards, unless DATCP grants a variance (Act 28 authorizes DATCP to charge a fee for processing variance requests).
- Pay reinspection fees for reinspections made necessary by law violations (DATCP may adopt reinspection fees by rule under s. 98.255, Stats.).

DATCP may adopt rules to establish and adjust fees, and regulate the construction and operation of vehicle scales (s. 98.16(3), Stats.).

Weights and Measures Service Companies and Technicians

Section 98.18, Stats., regulates persons engaged in the business of installing, servicing, testing or calibrating scales and other weighing and measuring devices (weights and measures service companies). Under that section:

- Weights and measures service companies must:
 - Be annually licensed by DATCP and pay an annual license fee (DATCP may adjust license fees by rule).
 - Pay a license fee surcharge if the weights and measures service company is found operating without a license (DATCP is *not* authorized to adjust that surcharge by rule).
- DATCP may adopt rules to regulate weights and measures service companies and establish license fees (s. 98.18(2), Stats.).

DATCP rules currently exempt individual weights and measures technicians from licensing if they are employed by a licensed weights and measures service company. However, individual technicians must be certified for competence (there is a certification examination fee of \$25). A certification is good for 5 years.

Vehicle tank meters

Vehicle tank meters are regulated by s. 98.224, Stats., as created by Act 28. Under that section, a vehicle tank meter operator must:

- Be annually licensed by DATCP and pay an annual license fee for each vehicle tank meter (DATCP must establish license fees by rule). An operator must pay a license fee surcharge if the operator is found operating a vehicle tank meter without a license (DATCP may establish the surcharge by rule).

- Comply with testing and reporting requirements. An operator who fails to do so must pay a license fee surcharge that DATCP must establish by rule.
- Pay reinspection fees for reinspections made necessary by law violations (DATCP may adopt reinspection fees by rule under s. 98.255, Stats.).

DATCP may adopt rules to establish and license fees and surcharges; testing, reporting and recordkeeping requirements; and standards for the construction, operation and maintenance of vehicle tank meters (s. 98.16(4), Stats.).

LP Gas Meters

LP gas meters are regulated by s. 98.245, Stats., as modified by Act 28. Under that section, LP gas meter operators must:

- Be annually licensed by DATCP and pay an annual license fee for each LP gas meter (DATCP must establish license fees by rule). An operator must pay a license fee surcharge if the operator is found operating an LP gas meter without a license (DATCP must establish the surcharge by rule).
- Comply with testing and reporting requirements. An operator who fails to do so must pay a license fee surcharge that DATCP must establish by rule.
- Pay reinspection fees for reinspections made necessary by law violations (DATCP may adopt reinspection fees by rule under s. 98.255, Stats.).

DATCP may adopt rules to establish and license fees and surcharges; testing, reporting and recordkeeping requirements; and standards for the construction, operation and maintenance of vehicle tank meters (s. 98.245(9), Stats.).

Reinspection Fees

Under s. 98.255, Stats. (as created by Act 8), DATCP may charge a reinspection fee to cover DATCP reinspection costs incurred because of a law violation found on an initial inspection of a weight or measure (including a scale or other weighing or measuring device). DATCP may establish reinspection fee amounts by rule (s. 98.255(2), Stats.). DATCP may specify different reinspection fees for different types of weighing or measuring devices. The fee for each type of device may not exceed DATCP's average cost to reinspect that type of device.

Related Statutes and Rules

Among other things, this rule establishes annual weights and measures fees for retail food establishments, which are licensed and regulated (for food safety purposes) under s.

97.30, Stats., and ch. ATCP 75, Wis. Adm. Code.

Plain Language Analysis

This rule does all of the following:

Retail Food Establishments

This rule increases the annual *weights and measures* inspection fees paid by licensed retail food establishments (it does *not* change *food safety* inspection fees). This rule does all of the following:

- Increases, from \$100 to \$420, the annual fee for a retail food establishment that has annual food sales of at least \$1 million and processes potentially hazardous food.
- Increases, from \$45 to \$55, the annual fee for a retail food establishment that has annual food sales of at least \$25,000 but less than \$1 million and processes potentially hazardous food.
- Increases, from \$25 to \$45, the annual fee for a retail food establishment that has annual food sales of at least \$25,000 and is engaged in food processing, but does not process potentially hazardous food.
- Establishes a fee of \$30 for a retail food establishment that is not engaged in food processing.

Vehicle and Livestock Scales

This rule does all of the following:

- Increases, from \$100 to \$140, the annual fee for a vehicle scale operator license (does *not* apply to livestock scales other than vehicle scales).
- Increases, from \$200 to \$350, the license fee surcharge for a person found operating a vehicle scale without a license (does *not* apply to operators of livestock scales other than vehicle scales, because those operators are not licensed).
- Establishes a license fee surcharge of \$350 for an operator who, during the previous year, failed to comply with vehicle scale testing and reporting requirements (does *not* apply to operators of livestock scales other than vehicle scales, because those operators are not licensed).
- Establishes a fee of \$160 for a permit to install or relocate a vehicle scale. This fee does *not* apply to livestock scale permits (other than vehicle scales) because the statutes do not authorize DATCP to charge fees for livestock scale permits mandated by DATCP.

- Establishes a fee of \$360 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). See ss. 93.06(1p) and 98.16(2m)(b) and (4), Stats.
- Updates and clarifies current requirements for annual testing of vehicle scales *and livestock scales*, and reporting test results to DATCP.
- Establishes a vehicle scale operator license surcharge of \$350 for an operator who fails to comply with annual scale testing and reporting requirements (does *not* apply to operators of livestock scales other than vehicle scales, because those operators are not licensed).

Weights and Measures Service Companies and Technicians

This rule increases current annual license fees for weights and measures service companies, as follows:

- Increases the basic license fee from \$250 to \$325.
- Increases the supplementary license fee for companies operating more than one business location. The fee for each additional business location is increased from \$75 to \$100.

This rule increases, from \$25 to \$35, 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.

LP Gas Meters

This rule does all of the following:

- Implements statutory licensing requirements for operators of LP gas meters.
- Establishes an annual license fee of \$140.
- Establishes a license fee surcharge of \$350 for an applicant who was found operating an LP gas meter without a required license during the previous year.
- Establishes basic annual testing and test reporting requirements related to LP gas meters, and establishes a license fee surcharge of \$350 for an applicant who failed to comply with those basic requirements in the previous year.

Vehicle Tank Meters

This rule does all of the following:

- Implements statutory licensing requirements for vehicle tank meter operators.
- Establishes an annual license fee of \$140.
- Establishes a license fee surcharge of \$350 for an applicant who was found operating a vehicle tank meter without a required license during the previous year.
- Establishes basic annual testing and test reporting requirements related to vehicle tank meters, and establishes a license fee surcharge of \$350 for an applicant who failed to comply with those basic requirements in the previous year.

Reinspection Fees

This rule 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). This rule establishes the following reinspection fees for the following types of weights and measures, based on DATCP's average cost to reinspect that type of weight or measure:

- Large capacity scale (over 5,000 lbs), \$300.
- Medium capacity scale (300-5,000lbs), \$185
- Small capacity scale (up to 300 lbs), \$150
- Vehicle tank meter, \$230.
- Liquified petroleum gas meter, \$360.
- Loading rack meter, \$300
- Retail motor fuel device (or similar liquid measuring device), \$150
- Timing device, \$150.
- Grain moisture meter, \$200.
- Package labeling accuracy, \$185.
- Price accuracy, \$255.
- Other reinspections, \$175.

Fiscal Impact

This rule will increase annual DATCP revenues by an estimated \$400,000 and will allow DATCP to cover a larger share of its costs to administer Wisconsin's weights and measures program. This rule will have no significant impact on local units of government. A complete *fiscal estimate* is attached.

Business Impact

This rule will affect businesses that operate or service weights and measures in Wisconsin. 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. A complete *business impact analysis* is attached.

Federal and Surrounding State Regulations

Federal Regulations

States have the primary responsibility for regulating weights and measures. The National Institute of Standards and Technology (NIST) provides model regulations and standards which may be adopted and enforced by the states. This rule is not mandated by federal law.

Surrounding State Regulations

Wisconsin has a well-developed weights and measures program. Wisconsin statutes authorize DATCP to license persons who operate or service weights and measures in the state and also authorize DATCP to adopt rules prescribing standards for the construction, operation and maintenance of weights and measures and to establish the fees for inspections and licenses.

Some surrounding states have less comprehensive weights and measures programs, and fewer administrative options for standardizing and regulating weights and measures. Surrounding states tend to regulate weights and measures on a more *ad hoc* basis. However, several surrounding states have established weights and measures fees to help fund their state programs

- ***Retail Food Establishments***

Illinois and Minnesota charge retail food establishment scale fees, and Minnesota charges fees for package checking. Comparable Illinois scale fees range from \$20-\$900 annually per establishment, depending upon number of scales. Minnesota scale fees range from \$35-\$1125 annually per establishment, depending upon number of scales (the fee is \$25 per scale). Minnesota package checking fees range from \$35-\$330 depending on lot size.

- ***Weights and Measures Service Companies and Technicians***

Illinois and Michigan license weights and measures service companies. Illinois has an annual license fee of \$50. Michigan has a \$300 biennial license fee. Minnesota does not have a licensing program (funding comes from general program revenue).

Illinois and Michigan both license service company technicians. Illinois has an annual technician license fee of \$25. Michigan has a \$100 technician license fee

every 2 years. Minnesota does not have a licensing program (funding comes from general program revenue).

- *Vehicle Scales*

Illinois and Minnesota both license vehicle scales. Illinois has an annual license fee of \$200. Minnesota charges a range of \$170-\$250 per license with a Place in Service fee of \$110. Michigan does not have a licensing program (funding comes from general program revenue).

- *LP Gas Meters*

Illinois and Minnesota both license LP gas meters. Illinois has an annual license fee of \$165. Minnesota has a \$150 license fee with a “place-in-service” fee of \$110. Michigan does not have a licensing program (funding comes from general program revenue).

- *Vehicle Tank Meters*

Illinois and Minnesota both license vehicle tank meters. Illinois charges a range of \$100 to \$200 for an annual license. Minnesota’s program funding comes from other sources, but does have a “place-in-service” fee of \$110. Michigan does not have a licensing program (funding comes from general program revenue).

- *Reinspection Fees*

Device	Illinois fees	Michigan fees	Minnesota fees
Vehicle Scale (large capacity)	\$200	GPR (no fee)	Avg \$388
Medium Capacity Scale	\$75-200	GPR	\$145-270
Small Capacity Scale	\$20-50	GPR	\$125-\$250
Vehicle Tank Meter	\$100-200	GPR	SEG
LPG Meter	\$165	GPR	\$250
Loading Rack Meter	\$200	GPR	SEG
Retail Motor Fuel	\$50	GPR	SEG
Timing Device	N/A	GPR	\$175/hr
Grain Moisture Meter	\$100	GPR	N/A
Package Labeling	N/A	GPR	\$235-\$530
Price Accuracy	N/A	GPR	\$175-\$190/hour
Other	N/A	GPR	\$175-190/hour

Data and Analytical Methodologies

DATCP evaluated weights and measures program costs, including costs associated with staff, equipment and travel. DATCP analyzed, by license and inspection category, the time required to perform licensing, inspection and other regulatory functions. Proposed fee charges for each program category are proportionate to weights and measures program costs for that program category, but generally cover only a portion of program costs for that category.

DATCP Contact

Questions and comments related to this rule may be directed to:

Michelle Reinen, Program & Policy Analyst
Department of Agriculture, trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5160
E-Mail: hearingcomments@datcp.state.wi.us

DATCP will publish a hearing notice announcing public hearings on this rule. DATCP will also accept written and e-mail comments for the hearing record. Hearing comments directed to the above address will be included in the official hearing record if they are received prior to a deadline date that will be specified in the hearing notice.

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1 **SECTION 1.** ATCP 75.03(3)(note) is created to read:

2 **NOTE:** A person applying for an annual retail food establishment license is
3 required to pay, in addition to the license fee under sub. (3), a weights
4 and measures inspection fee under s. ATCP 92.12. A license may not be
5 issued or renewed until all applicable fees are paid. See s. 97.30(3)(d)
6 and (3m), Stats.

7
8 **SECTION 2.** ATCP 92.01(1e), (1m), (1s), (2), (2g) and (2r) are renumbered (2) to
9 (7).

10 **SECTION 3.** ATCP 92.01(3) to (7) are renumbered (9) to (13).

11 **SECTION 3.** ATCP 92.01(8) is created to read:

12 ATCP 92.01(8) “Liquefied petroleum gas meter” means a commercial meter used
13 to measure liquefied petroleum gas sold or delivered to a consumer.

14 **SECTION 4.** ATCP 92.01(9) is renumbered (15) and amended to read:

15 ATCP 92.01(15) “Vehicle scale” means a scale designed or used to weigh loaded
16 or unloaded highway, farm or industrial vehicles, and includes above-ground scales,

1 dump scales and portable scales. “Vehicle scale” does not include a railway scale used
2 exclusively for the weighing of commodities on railroad track vehicles.

3 **SECTION 5.** ATCP 92.01(10) to (13) are renumbered (17) to (20).

4 **SECTION 6.** ATCP 92.01(14) is created to read:

5 ATCP 92.01(14) “Retail food establishment” has the meaning given in s.
6 97.30(1)(c), Stats.

7 **SECTION 7.** ATCP 92.01(16) is created to read:

8 ATCP 92.01(16) “Vehicle tank meter” has the meaning given in s. 98.224(1),
9 Stats. A vehicle tank meter does not include a liquefied petroleum gas meter.

10 **SECTION 8.** ATCP 92.12 and (note) are created to read:

11 **ATCP 92.12 Retail food establishments; weights and measures inspection**

12 **fee.** (1) ANNUAL FEE REQUIRED. Except as provided in sub.(2), an applicant for a retail
13 food establishment license under s. ATCP 75.03 shall pay the following weights and
14 measures inspection fee:

15 (a) For a retail food establishment that has annual food sales of \$1,000,000 or
16 more and that processes potentially hazardous food, an annual weights and measures
17 inspection fee of \$420.

18 (b) For a retail food establishment that has annual food sales of \$25,000 or more
19 but less than \$1,000,000 and that processes potentially hazardous food, an annual weights
20 and measures inspection fee of \$55.

21 (c) For a retail food establishment that has annual food sales of \$25,000 or more
22 and that is engaged in food processing, but that does not process potentially hazardous
23 food, an annual weights and measures inspection fee of \$45.

1 (d) For a retail food establishment that is not engaged in food processing, an
2 annual weights and measures fee of \$30.

3 (2) RETAIL FOOD ESTABLISHMENT INSPECTED BY A MUNICIPALITY. Subsection (1)
4 does not apply to a retail food establishment that is located in a municipality that has a
5 municipal department of weights and measures under s. 98.04(1), Stats., or that collects
6 fees from the retail food establishment under s. 98.04(2), Stats., for the purpose of
7 enforcing ch. 98, Stats.

8 **NOTE:** See s. 97.30(3)(d) and (3m), Stats.

9 **SECTION 9.** ATCP 92.20(2)(d) and (note) are amended to read:

10 ATCP 92.20(2)(d) ~~The~~ All fees and surcharges required under sub. (3).

11 **NOTE:** You may obtain application forms at
12 [http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/wei](http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp)
13 [ghts_measures.jsp](http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp) or by writing to:

14
15 Wisconsin Department of Agriculture, Trade and Consumer Protection
16 Division of Trade and Consumer Protection
17 Weights & Measures Program
18 P.O. Box 8911
19 Madison, WI 53708-8911

20 **SECTION 10.** ATCP 92.20(3)(intro.), (b)1. and (b)2. are amended to read:

21 ATCP 92.20(3)(intro.) A license application under sub. (2) shall include all of the
22 following applicable fees and surcharges:

23 (b)1. A basic license fee of ~~\$250~~ \$325.

24 (b)2. A supplementary fee of ~~\$75~~ \$100 per year for each additional business
25 location, in excess of one location, from which the applicant installs, services, tests or
26 calibrates weights and measures for others.

27 **SECTION 11.** ATCP 92.20(3)(b)3. is created to read:

1 ATCP 92.20(3)(b)3. Reinspection fees, if any, required under s. ATCP 92.60.

2 **SECTION 12.** ATCP 92.21(2)(note) is amended to read:

3 **NOTE:** You may obtain application forms at
4 [http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/wei](http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp)
5 [ghts_measures.jsp](http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp) or by writing to:

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9 Weights & Measures Program
10 P.O. Box 8911
11 Madison, WI 53708-8911

12 **SECTION 13.** ATCP 92.21(3)(b)3. is amended to read:

13 ATCP 92.21(3)(b)3. A ~~\$25~~ \$35 examination fee. A single fee entitles an
14 individual to take examinations in one or more certification categories on the same day.

15 **SECTION 14.** ATCP 92.30(title) is amended to read:

16 ATCP 92.30(title) VEHICLE AND LIVESTOCK SCALES: PERMITS, ~~AND~~
17 ~~CONSTRUCTION REQUIREMENTS~~ AND TESTING.

18 **SECTION 15.** ATCP 92.30(1) is repealed and recreated to read:

19 ATCP 92.30(1) VEHICLE SCALE; PERMIT REQUIRED. (a) No person may install or
20 relocate a vehicle scale or livestock scale without a permit from the department.

21 (b) A person shall apply for a permit under par. (a) in writing, on a form provided
22 by the department. The application shall include all of the following:

23 1. A nonrefundable application fee of \$160, if the application pertains to a
24 vehicle scale.

25 2. A construction plan for the vehicle scale.

26 (c) An application under par. (b) shall document that the vehicle scale or
27 livestock scale complies with the construction standards in sub. (3).

1 (d) The department shall grant or deny a permit application under par. (b) within
2 20 business days after the department receives a complete application. The department
3 may deny an application if the applicant begins to install or relocate the vehicle scale
4 while the permit application is still pending approval.

5 **SECTION 16.** ATCP 92.30(1)(note) is created to read:

6 **NOTE:** A permit application form under sub. (1)(b) may be obtained at
7 [http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/wei](http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp)
8 [ghts_measures.jsp](http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp) or by writing to:

9
10 Wisconsin Department of Agriculture, Trade and Consumer Protection
11 Division of Trade and Consumer Protection
12 Weights & Measures Program
13 P.O. Box 8911
14 Madison, WI 53708-8911

15 **SECTION 17.** ATCP 92.30(2)(title) is amended to read:

16 ATCP 92.30(2)(title) ~~CONSTRUCTION~~ MASTER CONSTRUCTION PLAN.

17 **SECTION 18.** ATCP 92.30(3)(title) and (intro.) are amended to read:

18 ATCP 92.30(3)(title) ~~CONSTRUCTION~~ VEHICLE AND LIVESTOCK SCALES;

19 CONSTRUCTION STANDARDS. Except as provided under sub. (6) or ~~(8)~~(9), every vehicle
20 scale and every livestock scale shall comply with the following construction standards:

21 **SECTION 19.** ATCP 92.30(4)(title) is repealed and recreated to read:

22 ATCP 92.30(4)(title) VEHICLE AND LIVESTOCK SCALES; TOLERANCES.

23 **SECTION 20.** ATCP 92.30(5)(title) is repealed and recreated to read:

24 ATCP 92.30(4)(title) VEHICLE AND LIVESTOCK SCALES; INSTALLATION REPORT.

25 **SECTION 21.** ATCP 92.30(5)(a) is repealed and recreated to read:

26 ATCP 92.30(5)(a) The number of the permit under sub. (1) that authorized the
27 scale installation or relocation, if the scale is a vehicle scale.

1 **SECTION 22.** ATCP 92.30(5)(f) is amended to read:

2 (f) A scale test report showing that the scale was tested and correct before it was
3 put into use. The scale test shall comply with ~~s. 98.25, Stats.~~ sub. (7).

4 **SECTION 23.** ATCP 92.30(6) is repealed and recreated to read:

5 ATCP 92.30(6) VEHICLE AND LIVESTOCK SCALES; CONSTRUCTION VARIANCES.

6 (a) The department may grant a variance from a construction requirement under sub. (3)
7 if the department determines that the variance is justified by special circumstances and
8 will not compromise the structural integrity or accuracy of the scale. The department
9 may impose any conditions on the variance, including alternative construction
10 requirements, which it considers necessary.

11 (b) A person applying for a variance under par. (a) shall submit the application in
12 writing, on a form provided by the department. The application shall include all of the
13 following:

14 1. A detailed written justification for the variance. The justification shall
15 demonstrate that the proposed variance is justified by special circumstances and will not
16 compromise the structural integrity or accuracy of the scale.

17 2. A nonrefundable variance application fee of \$360.

18 (c) The department may deny a variance application under par. (b) if the
19 requester begins construction in violation of any requirement under sub. (3) before the
20 department grants a variance from that requirement.

21 **SECTION 24.** ATCP 92.30(6)(note) is created to read:

22 **NOTE:** A variance application form under sub. (6)(b) may be obtained at
23 [http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/wei](http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp)
24 [ghts_measures.jsp](http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp) or by writing to:
25

1 Wisconsin Department of Agriculture, Trade and Consumer Protection
2 Division of Trade and Consumer Protection
3 Weights & Measures Program
4 P.O. Box 8911
5 Madison, WI 53708-8911

6 **SECTION 25.** ATCP 92.30(7) and (8) are renumbered (8) and (9).

7 **SECTION 26.** ATCP 92.30(7) and (note) are created to read:

8 ATCP 92.30(7) VEHICLE AND LIVESTOCK SCALES; ANNUAL TESTING. (a) The
9 owner or operator of a vehicle or livestock scale with a weighing capacity of 5,000
10 pounds or more that is used for the commercial weighing of commodities or livestock
11 shall at least annually cause the scale to be inspected and tested for accuracy by a person
12 licensed under s. ATCP 92.20(1). The person performing the inspection and test shall
13 prepare a written inspection and test report for the scale owner or operator.

14 (b) If a report under par. (a) shows that a scale is inaccurate, the scale may not be
15 used until a person licensed under s. ATCP 92.20(1) re-inspects and retests the scale and
16 delivers a written report to the scale owner or operator confirming that the inaccuracy has
17 been corrected.

18 (c) The owner or operator of a vehicle or livestock scale shall file with the
19 department a copy of each report prepared in connection with the inspection or testing of
20 that scale, including any report required under par. (a) or (b), not more than 15 days after
21 the owner or operator receives the test report and not more than 30 days after the reported
22 inspection or test occurred.

23 (d) If the department finds that a vehicle scale operator who is required to be
24 licensed under s. ATCP 92.31(1) has failed to file a vehicle scale inspection or test report
25 as required by par. (c), the department shall assess against that operator a license

1 surcharge of \$350. The department may not issue or renew an annual license under
2 ATCP 92.31(1) if the operator fails to include the amount of any unpaid surcharge
3 assessed under this paragraph with the operator's annual license application. The
4 department may suspend or revoke an annual license if the license holder fails to pay a
5 surcharge assessed under this paragraph within 120 days after the department assesses the
6 surcharge. A surcharge payment under this paragraph does not relieve a vehicle scale
7 operator of any other civil or criminal liability for violating sub. (1), but is not evidence
8 of a violation.

9 **NOTE:** The testing and reporting requirements under sub. (7)(a) to (c) apply to
10 all vehicle scales *and livestock scales*. However the license surcharge
11 under par. (d) applies only to vehicles scales whose operators are required
12 to be licensed under s. 92.31(1). See surcharge authorization in s.
13 98.16(3m)(c), Stats. Violations by vehicle scale or livestock scale
14 operators are also subject to penalties under s. 98.26, Stats.

15 **SECTION 27.** ATCP 92.31(title) is amended to read:

16 **ATCP 92.31(title) Vehicle scale; license to operate.**

17 **SECTION 28.** ATCP 92.31(2)(note) is created read:

18 **NOTE:** A license application form under sub. (2) may be obtained at
19 [http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/wei](http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp)
20 [ghts_measures.jsp](http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp) or by writing to:

21
22 Wisconsin Department of Agriculture, Trade and Consumer Protection
23 Division of Trade and Consumer Protection
24 Weights & Measures Program
25 P.O. Box 8911
26 Madison, WI 53708-8911

27 **SECTION 29.** ATCP 92.31(2)(c) is amended to read:

28 ATCP 92.31(2)(c) The fees and surcharges required under sub. (3).

29 **SECTION 30.** ATCP 92.31(3) is repealed and recreated to read:

30 ATCP 92.31(3) LICENSE FEES AND SURCHARGES. A person applying for a vehicle

1 scale license under sub. (1) shall pay the following fees and surcharges:

2 (a) An annual license fee of \$140 for each vehicle scale.

3 (b) A license surcharge of \$350 if the department determines that, within one
4 year before submitting the license application, the applicant operated a vehicle scale
5 without a license in violation of sub. (1). A surcharge payment under this paragraph does
6 not relieve the applicant of any other civil or criminal liability for violating sub. (1), but is
7 not evidence of a violation.

8 (c) Any unpaid license surcharge that has been assessed against the license
9 applicant under s. ATCP 92.30(7)(d).

10 (d) Reinspection fees, if any, required under s. ATCP 92.60.

11 **SECTION 31.** ATCP 92.43 is repealed and recreated to read:

12 **ATCP 92.43 Liquefied petroleum gas meter; license to operate.** (1) LICENSE
13 REQUIRED. (a) Except as provided in par. (b), no person may operate a liquefied
14 petroleum gas meter without an annual license from the department. An annual license
15 expires on November 30. A separate license is required for each liquefied petroleum gas
16 meter. A license is not transferable between persons or meters.

17 (b) Paragraph (a) does not apply to an individual who operates a liquefied
18 petroleum gas meter only as an employee of a person who holds a license under par. (a)
19 to operate that meter.

20 (2) LICENSE APPLICATION. A person shall apply for a license under sub. (1) on an
21 application form provided by the department. The application shall include a test report
22 that complies with s. ATCP 92.45 and shows the liquefied petroleum gas meter is correct.

1 **NOTE:** An application form under sub. (2) may be obtained at
2 [http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/wei](http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp)
3 [ghts_measures.jsp](http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp) or by writing to:

4
5 Wisconsin Department of Agriculture, Trade and Consumer Protection
6 Division of Trade and Consumer Protection
7 Weights & Measures Program
8 P.O. Box 8911
9 Madison, WI 53708-8911

10 (3) LICENSE FEES AND SURCHARGES. An application under sub. (2) shall include
11 the following fees and surcharges:

12 (a) A license fee of \$140 for each liquefied petroleum gas meter.

13 (b) A surcharge of \$350 if the department determines that, within one year prior
14 to submitting the application, the applicant operated the liquefied petroleum gas meter
15 without the license required under sub. (1). A surcharge payment under this paragraph
16 does not relieve the applicant of any other civil or criminal liability for violating sub. (1),
17 but is not evidence of a violation.

18 (c) A surcharge of \$350 if the department determines that, within one year prior
19 to submitting the application, the applicant failed to comply with a test reporting
20 requirement under s. ATCP 92.45. A surcharge payment under this paragraph does not
21 relieve the applicant of any other civil or criminal liability for violating s. ATCP 92.45,
22 but is not evidence of a violation.

23 (d) Reinspection fees, if any, required under s. ATCP 92.60.

24 (4) ACTION ON LICENSE APPLICATION. The department shall grant or deny a
25 license application under sub. (2) within 20 business days after the department receives a
26 complete application.

27 **SECTION 32.** ATCP 92.45 and (note) are created to read:

1 **ATCP 92.45 Liquefied petroleum gas meter; testing and reporting.** The
2 operator of a liquid petroleum gas meter shall at least annually have the meter tested for
3 accuracy by a person who is licensed under s. ATCP 92.20(1) to perform the testing. The
4 person performing the test shall provide the meter operator with a written report of test
5 results. The meter operator shall provide a copy of the test report to the department
6 within 30 days after the testing is completed, and shall retain the test report for at least 3
7 years.

8 **NOTE:** A tester may, on behalf of a meter operator, provide a copy of a test
9 report to the department as required under s. 92.45. However, the meter
10 operator is ultimately responsible for ensuring that the department receives
11 a copy of the test report.

12 **SECTION 33.** Chapter ATCP 92 subch. VI(title) is created to read:

13 **Subchapter VI – Vehicle Tank Meters**

14 **SECTION 34.** ATCP 92.50 is created to read:

15 **ATCP 92.50 Vehicle tank meter; license to operate.** (1) LICENSE REQUIRED.

16 (a) Except as provided in par. (b), no person may operate a vehicle tank meter without an
17 annual license from the department. An annual license expires on October 31. A
18 separate license is required for each vehicle tank meter. A license is not transferable
19 between persons or vehicle tank meters.

20 (b) Paragraph (a) does not apply to an individual who operates a vehicle tank
21 meter only as an employee of a person who holds a license under par. (a) to operate that
22 vehicle tank meter.

23 (2) LICENSE APPLICATION. A person shall apply for a license under par. (a) on a
24 form provided by the department. The application shall include all of the following:

1 (a) A test report that complies with s. ATCP 92.52 and shows that the vehicle
2 tank meter is accurate.

3 (b) The license fees and surcharges required under sub. (3).

4 *NOTE:* An application form under sub. (2) may be obtained at:
5 [http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/wei](http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp)
6 [ghts_measures.jsp](http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp) or by writing to:

7
8 Wisconsin Department of Agriculture, Trade and Consumer Protection
9 Division of Trade and Consumer Protection
10 Weights & Measures Program
11 P.O. Box 8911
12 Madison, WI 53708-8911

13 (3) LICENSE FEES AND SURCHARGES. An application under par. (b) shall include
14 all of the following fees and surcharges:

15 (a) A license fee of \$140 for each vehicle tank meter.

16 (b) A surcharge of \$350 if the department determines that within one year prior
17 to submitting the application, the applicant operated the vehicle tank meter without a
18 license required under par. (a). A surcharge payment under this paragraph does not
19 relieve the applicant of any other civil or criminal liability for violating sub. (1), but is not
20 evidence of a violation.

21 (c) A surcharge of \$350 if the department determines that, within one year prior
22 to submitting the application, the applicant failed to comply with the reporting
23 requirement under sub. (3). A surcharge payment under this paragraph does not relieve
24 the applicant of any other civil or criminal liability for violating s. ATCP 92.52, but is not
25 evidence of a violation.

26 (d) Reinspection fees, if any, required under s. ATCP 92.60.

1 (4) ACTION ON LICENSE APPLICATION. The department shall grant or deny a
2 license application under sub. (2) within 20 business days after the department receives a
3 complete application.

4 **SECTION 35.** ATCP 92.52 and (note) are created to read:

5 **ATCP 92.52 Vehicle tank meter; testing and reporting.** The operator of a
6 vehicle tank meter shall at least annually have the meter tested for accuracy by a person
7 who is licensed under s. ATCP 92.20(1) to perform the testing. The person performing
8 the test shall provide the meter operator with a written report of test results. The meter
9 operator shall provide a copy of the test report to the department within 30 days after the
10 testing is completed, and shall retain the test report for at least 3 years.

11 **NOTE:** A tester may, on behalf of a meter operator, provide a copy of a test
12 report to the department as required under s. 92.52. However, the meter
13 operator is ultimately responsible for ensuring that the department receives
14 a copy of the test report.

15 **SECTION 36.** Chapter ATCP 92 subch. VII(title) is created to read:

16 **Subchapter VII – Reinspection Fees**

17 **SECTION 37.** ATCP 92.60 and (note) are created to read:

18 **ATCP 92.60 Reinspection fees.** (1) REINSPECTION FEE CHARGED. If the
19 department reinspects a weight or measure because the department has found a violation
20 of this chapter or ch. 98, Stats., the department shall charge the operator of the weight or
21 measure a reinspection fee as provided in sub. (2).

22 (2) REINSPECTION FEE AMOUNT. The amount of the reinspection under sub. (1) is
23 as follows:

24 (a) For a large capacity scale (over 5,000 lbs), \$300.

25 (b) For a medium capacity scale(300-5,000lbs), \$185.

- 1 (c) For a small capacity scale (up to 300 lbs), \$150.
- 2 (d) For a vehicle tank meter, \$230.
- 3 (e) For a liquified petroleum gas meter, \$260.
- 4 (f) For a loading rack meter or similar large volume meter, \$300.
- 5 (g) For a retail motor fuel device or similar liquid measuring device, \$150.
- 6 (h) For a timing device, \$150.
- 7 (i) For a grain moisture meter, \$200.
- 8 (j) For package checking and labeling accuracy, \$185.
- 9 (k) For price accuracy, \$255.
- 10 (l) For other reinspections, \$175.

11 (3) REINSPECTION FEE PAYMENT. A reinspection fee under sub. (1) is payable
12 after the reinspection is completed and is due upon written demand from the department.
13 If the operator is licensed to operate the weighing or measuring device, the department
14 may issue a demand for payment when it issues an annual license application form to the
15 operator and the operator may include the payment with the operator’s application for
16 license renewal.

17 (4) LICENSE CONDITIONED UPON PAYMENT. The department may deny, suspend
18 or revoke a license if the license holder or applicant has failed to pay a reinspection fee
19 charged under sub. (1).

20 *NOTE:* An operator who fails to pay a reinspection fee charged under s. ATCP
21 92.60 may also be liable for penalties under s. 98.26, Stats.
22

23 **SECTION 38. EFFECTIVE DATE:** This rule takes effect on the first day of the
24 month following publication in the Wisconsin administrative register, as provided in s.
25 227.22 (2) (intro.), Stats.

Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary