

## Wisconsin Department of Agriculture, Trade and Consumer Protection

### Business Impact Analysis

**Rule Subject:** Weights and Measures Licensing Fees  
**Adm. Code Reference:** ATCP 92  
**Rules Clearinghouse #:** Not yet assigned  
**DATCP Docket #:** 09-R-08

#### *Rule Summary*

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers Wisconsin's weights and measures program, which ensures the accuracy of commercial weights and measures. According to the National Conference on Weights and Measures, the average U.S. family spends over half of its household budget on commodities that are sold by weight or measure. Consumers and other purchasers are seldom able to verify the accuracy of weights and measures on their own. Even small shortages, when aggregated over many purchasers, can have a huge aggregate impact.

DATCP inspects commodities, scales and measuring devices to ensure that businesses and consumers get what they pay for. The weights and measures program is partially funded by weights and measures license fees. But until recently, DATCP was not authorized to charge fees for some important weighing and measuring operations. This has caused a distribution of inspections costs that placed an unfair burden on those businesses that were not required to pay license fees, and has contributed to the budgetary limitations that affect the department's ability to administer the program.

For example, because of limited program budgets, some devices have been inspected infrequently resulting in unfavorable accuracy rates. Retail motor fuel pumps, which are subject to segregated fees, are inspected frequently and have an accuracy rate of over 96 percent. By contrast, LP gas meters have an accuracy rate under 89 percent, and vehicle oil tank meters have an accuracy rate under 85 percent. Until recently, the latter two meters were not subject to a license fee.

The weights and measures inspection program is funded by a combination of general program revenue (GPR), segregated funding, and program revenue (PR) derived from license fees and city contract fees. PR revenues currently fund over half of the weights and measures program. Most of the fees related to weights and measures devices have been unchanged since 2003. That, combined with inflationary pressures, means that the program's expenditures now exceed revenues. If nothing is done to address the revenue shortfall, DATCP projects that the weights and measures PR account will have a negative \$391,000 cash balance by the end of FY 2012.

The biennial budget act expanded licensing of weights and measures devices, and authorized certain fee adjustments by rule, in order to improve weights and measures

regulation and help remedy a severe budget shortfall. The budget act affects vehicle scales, vehicle tank meters and LP gas meters, among other things. It also authorizes DATCP to charge fees for reinspections made necessary by weights and measures law violations.

This rule is designed to implement the budget act. However, this rule also updates and clarifies other weights and measures rule provisions under ch. ATCP 92, Wis. Adm. Code. This rule establishes different fees for different weights and measures program and license categories, based upon an analysis of program costs associated with each category. Fees are generally proportionate to program costs in each category.

Specifically, 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.
- Liquefied 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.

### ***Business Impact***

This rule will affect businesses that operate or service weights and measures in Wisconsin. Many affected businesses 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. DATCP evaluated the costs associated with the staff, equipment and travel, in addition to the time it takes to perform inspections of the various licenses, to determine the appropriate fees to charge operators in each license program affected by this rule.

This rule will impact businesses that operate or service weights and measures in Wisconsin. Businesses will either experience an increase to the license fees they currently pay or they will be paying a newly established license fee for operating various devices. However, the fees are structured to appropriately allocate the costs to operate the regulation programs for each of the licensed areas. This allocation assures all business pay their fair share. This rule does the following to license and permit fees:

- Increases the retail food establishment inspection license fee based on the following categories:
  - Annual food sales of \$1,000,000 or more and that processes potentially hazardous food, from \$100 to \$420.
  - Annual food sales of \$25,000 or more but less than \$1,000,000, and that processes potentially hazardous food, from \$45 to \$55.
  - Annual food sales of \$25,000 or more and that is engaged in food processing, but that does not process potentially hazardous food, from \$25 to \$45.
  - Not engaged in food processing, at \$30.
- Increases the weights and measures service company license fee from \$250 to \$325.
- Increases the weights and measures service company satellite office fee from \$75 to \$100.
- Increases the weights and measures technician examination fee from \$25 to \$35.
- Increases the vehicle scale license fee from \$100 to \$140.
- Establishes a vehicle scale construction permit fee of \$160 and a vehicle scale construction variance fee of \$360.
- Establishes an annual liquefied petroleum gas meter license fee of \$140.

- Establishes an annual vehicle tank meters license fee of \$140.
- Increases and establishes at \$350 surcharges for operating without a license and violating reporting requirements.
- Establishes fees for reinspections that occur due to violations of Ch 98, Stats. as follows:
  - 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.
  - Liquefied petroleum gas meter, \$360.
  - Loading rack meter or similar large volume meter, \$300
  - Retail motor fuel device or similar liquid measuring device, \$150
  - Timing device, \$150.
  - Grain moisture meter, \$200.
  - Package checking and labeling accuracy, \$185.
  - Price accuracy, \$255.
  - Other reinspections, \$175.

#### *Accommodation for Small Business*

Overall, this rule establishes a fee structure to appropriately allocate the costs to operate the regulation programs within weights and measures for each of the licensed areas. The rule increases current fees and establishes fees for new licenses created by the 2009 Act 28.

The new license fees will enable the department to effectively ensure the accuracy of the measurement of liquefied petroleum gas and other home heating fuels delivered to consumers, and assure a more equitable competition through a reliable measure of product delivered to consumers. The new license fees also ensure a fair allocation of regulatory costs among all size businesses in the industry.

This rule not only provides better consumer protections for the citizens of Wisconsin by maintaining consumer confidence in the measurement of delivered product, but also serves to ensure businesses they will not over-deliver product to consumers and suffer lost profits.

This rule may have some adverse effects on small businesses that are required to pay an annual license fee for the first time. However, the license fees are structured to allocate the costs in a manner to ensure that everyone pays their fair share and small businesses do not pay for the regulation of larger businesses, as shown for example in the retail food establishment license fee structure.

Although this rule may have some adverse effects on some small businesses, these effects are generally minimal and are outweighed by the need to assure a fair marketplace, equitable competition, and accuracy in the delivery of goods to consumers. DATCP has not exempted small businesses because many of the affected businesses in Wisconsin are small businesses.

***Conclusion***

Overall, this rule will benefit Wisconsin consumers by assuring they get what they pay for. The rule will assure an improved accuracy rate of meters and other devices measuring consumer goods. Although this rule may have some adverse effects on some individual businesses, those effects are generally limited and are outweighed by the need to fairly allocate the cost of inspections and assuring devices are accurately measuring the goods consumers purchase.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
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Division of Trade and Consumer Protection