



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: October 15, 2013

TO: The Honorable Mike Ellis
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The Honorable Robin Vos
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FROM: Ben Brancel, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Fair packaging and labeling; selling commodities by weight, measure or count; weights and measures; gasoline advertising; and mobile air conditioners, reclaiming or recycling refrigerant (Clearinghouse Rule #13-043)

Introduction

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is transmitting this rule for legislative committee review, as provided in s. 227.19 (2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19 (2), Stats.

Rule Content

General

This rule modifies existing rules with a number of technical updates and minor changes. It does not represent any significant shift in the overall goals or policies of the existing rules.

Chapter ATCP 90 - Fair Packaging and Labeling

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Under current rules, the definition of “unreasonable shortage” as it relates to Fair Packaging and Labeling, refers to the maximum allowable variation specified for a commodity in the National Institute of Standards and Technology (NIST) Handbook 133, “Checking the Net Contents of Packaged Goods.” However, the current rule does not specify which edition of the NIST Handbook 133 it is referencing. This rule modifies the definition of “unreasonable shortage” to specifically reference NIST Handbook 133, “Checking the Net Contents of Packaged Goods,” (2013 edition).

Chapter ATCP 91 - Selling Commodities by Weight, Measure or Count

The current rule lists a number of commodities and incorporates references to NIST Handbook 130, “Uniform Laws and Regulations in the Area of Legal Metrology and Engine Fuel Quality,” (2011 edition). This rule updates these references to the 2013 Edition. The proposed rule also corrects references to specific sections related to liquid oxygen used for respiration and liquefied petroleum gases.

Chapter ATCP 92 - Weights and Measures

The current rule regulates weighing and measuring devices, state and municipal inspection programs, and licensing requirements for service companies. The current rule incorporates references to the 2011 edition of NIST Handbook 44, “Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices,”. This rule updates these references to the 2013 Edition.

The current rule contains several “notes” informing the reader how to obtain license applications and similar documents from DATCP. This rule updates these notes to conform to changes in DATCP web pages and other changes.

Chapter ATCP 92, Subchapter IV regulates vehicle scales and livestock scales. However, there are some significant differences between the two. Installing or relocating a vehicle scale requires a permit from DATCP. DATCP also collects installation reports for vehicle scales, and reviews request for variances from the construction standards contained in the rule. This rule clarifies that there is no need for operators to request variances for livestock scales because there is no permit requirement and because operators are not required to submit construction plans for livestock scales.

This rule also modifies the definition of “vehicle scale” to make clear that ch. ATCP 92 t applies only to scales that are in commercial service.

Chapter ATCP 113 - Gasoline Advertising

The proposed rule affirms that it is an unfair trade practice for sellers of gasoline to mislead buyers regarding the octane rating of gasoline, claim that the gasoline is suitable for aviation if it is not, or claim the gasoline is of greater value because it contains high octane components

without clearly stating the octane value of the total product. The current rule references octane standards contained in “ASTM Manual for Rating Motor Fuels by Motor and Research Methods”, published 1956.

This rule replaces the references to ASTM standards with references to ch. SPS 348 – Petroleum and Other Liquid Fuel Products. Pursuant to the 2013-15 Budget Bill; DATCP now administers this chapter of the administrative code as part of the petroleum inspection program that was transferred from the Department of Safety and Professional Services to DATCP.

Chapter ATCP 136 - Mobile Air Conditioners; Reclaiming or Recycling Refrigerant

Pursuant to s. 100.45, Stats., DATCP regulates the use of refrigerants in mobile air conditioners. Under the current rule, among other things, no person may buy, sell or consign any refrigerant in a container holding less than 15 pounds (this is sometimes informally referred to as the “small can ban”). However, 2011 Wisconsin Act 187 restricts DATCP’s authority to prohibit sales of non-ozone-depleting refrigerants. Therefore, under the proposed rule, only ozone depleting refrigerants are prohibited from being sold in containers less than 15 pounds.

The current rule regulates the types of equipment that can be used to reclaim or recycle refrigerants from mobile air conditioners. Recently, the Environmental Protection Agency (“EPA”) has approved a new type of refrigerant (“HFO-1234fy”). This rule updates the current rule to recognize the new product and associated specifications and equipment standards.

Public Hearings

DATCP held one public hearing on the proposed rule on August 7, 2013 in Madison. There were no attendees at the hearing.

DATCP accepted written comments until August 21, 2013. Two individuals commented in writing on the proposed rule. Neither of the comments expressed a position on the proposed rule. One pointed out some typographical errors, and the other had a question about the applicability of ch. ATCP 113 under the current version and under the proposed rule.

DATCP’s Rule Changes in Response to Public Hearings and Rules Clearinghouse Comments

The Rules Clearinghouse made a number of comments on technical aspects of the rule. DATCP incorporated all of these suggestions and corrections into the final draft rule.

Other changes from the hearing draft include:

- The final draft corrects some minor typographical errors contained in the hearing draft. For example, Ch. ATCP 136, as amended, is supposed to refer to the technical standard for HFO-1234yf. In a couple places, the hearing draft erroneously referred to HFO-1234fy.
- The final draft revises Ch. ATCP 113 to link to fuel octane standards contained in Ch. SPS 348, Petroleum and Other Liquid Fuel Products, Wis. Adm. Code. The hearing draft had, instead, incorporated 2012 ASTM International specifications and test methods. As of July 1, 2013, DATCP is the agency responsible for enforcing SPS 348. Therefore, DATCP now has two mechanisms for enforcing fuel quality standards. The final rule ensures that both mechanisms rely on the same technical specifications and test methods.

Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not issue a report on this rule.

Summary of, and comparison with, existing or proposed federal statutes and regulations.

This rule updates references to weights and measures technical standards published by the National Institute of Standards and Technology (“NIST”). By incorporating the latest NIST standards, this rule keeps Wisconsin standards consistent with applicable national standards.

The fuel octane standards incorporated by reference by this rule into ch. ATCP 113 are identical to standards used by the EPA to regulate fuel quality.

This rule update’s Wisconsin’s mobile air conditioner rules to conform to the most recent EPA standards.

Comparison with rules in adjacent states

Generally, this rule updates standards incorporated by reference contained in several chapters of the Wisconsin Administrative Code. Most states, including all of Wisconsin’s neighbors, recognize the same accepted standards in their statutes and rules.

This rule brings Wisconsin’s rules relating to mobile air conditioning refrigerants into conformity with neighboring states’ rules.

Summary of Factual Data and Analytical Methodologies

This rule does not depend on any complex analysis of data. This rule makes minor or technical changes to current rules.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

This rule simply updates references and makes other technical changes to existing rules and does not make significant changes to existing policies. Therefore, this rule is not anticipated to have an economic impact.

Effect on Small Business

This rule updates references to technical standards to the most recent editions of those standards without significant changes. This rule simply continues policies already in place in current rules or updates rules to conform to recent changes in the statutes. Except as noted below, this rule does not have an effect on small businesses.

Chapter ATCP 113 – Gasoline Advertising, updating references to most recent standards may increase the enforceability of the rule. Chapter ATCP 113 relies on nationally recognized standards for octane rating published by ASTM. However, the current rule relies on standards that are outdated and is, therefore, difficult to enforce. Updating the standards, as proposed in this rule, will improve the enforceability. By making it easier to punish any business that might mislead consumers about the octane rating or value, this rule should benefit honest sellers of gasoline.

This rule will benefit businesses that service mobile air conditioners. Under this rule, these businesses can service units that require the new refrigerant HFO-1234yf. This product was only recently approved by EPA.

Environmental Impact

This rule does not have an environmental impact.

Standards Incorporated by Reference

This rule incorporates, by reference, the following standards:

- Air Conditioning, Heating and Refrigeration Institute (AHRI)
 - AHRI 740-1998 Refrigerant Recover / Recycling Equipment.
- ASTM International
 - ASTM D4814-12 Standard Specifications for Automotive Spark-Ignition Engine Fuel.
 - ASTM D2699-12 Standard Test Method for Research Octane Number of Spark Ignition Engine Fuel.
 - ASTM D2700-12 Standard Test Method for Motor Octane Engine Fuel.
- NIST (National Institute of Standards and Technology), 2013 editions:
 - Handbook 44, Specifications, Tolerances, and other Technical Requirements for Weights and Measures.
 - Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality.

- Handbook 133, Checking the Net Contents of Packaged Goods.
- SAE International
 - SAE J2843-2013 (R-1234yf (HFO1234yf)) Recovery/Recycling/Recharging Equipment for Flammable Refrigerants for Mobile Air-Conditioning Systems).
 - SAE J2851-2012 (Recovery Equipment for Contaminated Refrigerant from Mobile Automotive Air-Conditioning Systems).

DATCP has obtained consent from the Attorney General to incorporate these standards by reference. A copy of these documents will be kept on file with DATCP and the Legislative Reference Bureau. NIST publications are available online at <http://www.nist.gov/index.html>. SAE International publications are available online at <http://www.sae.org>. ASTM International publications are available online at <http://www.astm.org>. AHRI publications are available online at <http://www.ahrinet.org>.