

**Senate Committee on Agriculture, Financial Institutions  
and Insurance**

Room 18 South State Capitol, PO Box 7882, Madison WI 53707-7882  
(608) 266-0703

***Senator Dale W. Schultz, Chairman***

Senator Ron Brown

Senator Neal Kedzie

Senator Dave Hansen

Senator Judith Robson

Members, Senate Committee on Agriculture, Financial Institutions & Insurance.

Friday May 9<sup>th</sup>, 2003

The following clearinghouse rule was referred to the Senate Committee on Agriculture Financial Institutions and Insurance. The thirty-day review period began on Thursday May 8<sup>th</sup>, 2003.

**Clearinghouse Rule 02-141 - relating to: Weights & Measures**

A hard copy of the rule is attached. The text is also available online in the FOLIO Clearinghouse Rules infobase.

The last business day for action on this rule is **Friday June 7, 2003**.

Please contact John in my office (6-0703) with any questions, concerns or to schedule a committee meeting.

Thank you.

Senator Dale Schultz  
Chairman



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE **02-141**

AN ORDER to repeal ATCP 92.01 (8); to renumber ATCP 92.01 (1), 92.03 (title) and (1) to (8), and 92.05; to amend ATCP 92.01 (5) and 92.02 (1); to repeal and recreate ATCP 92 (title) and 92.02 (2); and to create ATCP 92 (note), subchapter I (title), 92.01 (1), (1m), (2m), (2r), and (11) to (13), 92.02 (2) (b) (note), subchapters II and III, subchapter IV (title), and subchapter V (title), relating to weights and measures.

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER  
PROTECTION**

12-04-2002 RECEIVED BY LEGISLATIVE COUNCIL.

01-03-2003 REPORT SENT TO AGENCY.

RS:DLL

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached            YES             NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached            YES             NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached            YES             NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached            YES             NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached            YES             NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached            YES             NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached            YES             NO



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 02-141

#### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 2. Form, Style and Placement in Administrative Code

a. The analysis should not include s. 98.18 (3), Stats., in the list of statutes granting authority for the promulgation of this rule.

b. Where does the note created by SECTION 2 of the rule go--after the title of ch. ATCP 92? After the table of contents? After the existing note? Also, is the existing note still pertinent, or should it be repealed?

c. Note that, while the definition of "commodity" in s. ATCP 92.01 (1) is the same as that in s. ATCP 90.01 (4), it is different from that in s. ATCP 91.01 (1). Should all three definitions be made consistent? Also, note that the phrase "but is not limited to" is superfluous (it is implied by the word "includes") and so should be omitted from the definitions in ss. ATCP 90.01 (4) and 92.01 (1).

d. The Legislative Reference Bureau has recently changed the rule for capitalization in bill drafting. This new rule should be applied to rule drafting, as well. New text should observe the new rule and existing text should be corrected to comply with the new rule as the sections containing it are amended for other reasons. The new rule is as follows:

**2.03 Capitalization. (1) GENERAL.** Avoid using capitals except for proper names. For proper names, capitalize according to standard rules of English usage with one major exception: in statutes and in nonstatutory provisions do not capitalize state or

federal departments or agencies other than the University of Wisconsin System. In an analysis or relating clause, capitalize state and federal departments and agencies, but do not capitalize “department” when used alone (for example, “The bill also requires the department to . . .”) . . . . [s. 2.03 (1), Wisconsin Bill Drafting Manual, 2003-2004.]

Applying the new rule on capitalization to s. ATCP 92.02 (2), it appears that “office of weights and measures” and “national institute of standards and technology” should remain in lower case, since they are federal agencies, while “National Conference on Weights and Measures” should be capitalized, since that is a private organization.

e. The reorganization of ch. ATCP 92 into subchapters accomplished by the rule appears entirely adequate. However, the department may want to consider two additional changes. First, if subch. III started with s. ATCP 92.20, subch. IV started with s. ATCP 92.30, and subch. V started with s. ATCP 92.40, room would be left for the future insertion of additional sections in the preceding subchapters. Second, it may aid clarity to break the material in subch. IV into multiple sections. In particular, the new s. ATCP 92.18 (1) and the current s. ATCP 92.03 (3) could stand as separate sections; the remaining subsections could be made individual sections or grouped with other subsections, as appropriate. The single section of subch. V could be broken into four sections, as well, although the need for this seems less compelling.

f. Since s. ATCP 92.03 is being renumbered entirely, there seems no reason to use the subsection number “1m.” SECTION 12 of the rule should renumber s. ATCP 92.03 (title) and (1) to (8) as s. ATCP 92.18 (title) and (2) to (9). [See SECTION 17 which purports to create s. ATCP 92.18 (1) and (1m), but contains no text for the latter subsection.]

g. The note following s. ATCP 92.06 (3) should include an address where the incorporated documents can be obtained. This comment also applies to s. ATCP 92.13 (1) (b).

h. Section ATCP 92.08 (1) should be rewritten in the active voice: “A municipality shall hire inspectors . . . .”

i. The phrase “but is not limited to” should be omitted from ss. ATCP 92.11 (4) and 92.12 (7).

j. The parenthetical material in s. ATCP 92.15 (1) (e) is not substantive, and so should be placed in a note.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

Section ATCP 92.10 (1) refers to a form. If the form is new or revised, the requirements of s. 227.14 (3), Stats., should be met.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. A number of provisions of the rule add little to the requirements specifically contained in the statutes. For example, s. ATCP 92.08 (1) simply restates a requirement of the statutes. Section ATCP 92.10 does much the same--could this section be more specific as to the

nature of the records that must be kept and reported? Compare this to the much more detailed requirements of s. ATCP 92.15.

b. In s. ATCP 92.09 (2), should a reference to a commodity be added? [See s. 98.05 (2), Stats.]

c. In s. ATCP 92.11 (3) (intro.), the word "all" should be inserted after the word "include." [See also sub. (3) (b) (intro.).]

d. In s. ATCP 92.15 (2) and elsewhere in the rule, what is meant by "true copy"? Does this mean that the person submitting the copies of the report must attest in some manner that the copy is true? If so, in what manner--by certification? notarization? sworn statement? (Note that most, but not all uses of the term "true copy" in the statutes and Administrative Code use it in this sense, requiring that some standard be met to establish that something is a "true copy.")



State of Wisconsin  
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

## PUBLIC NOTICE

### FINAL DRAFT RULE TO LEGISLATURE

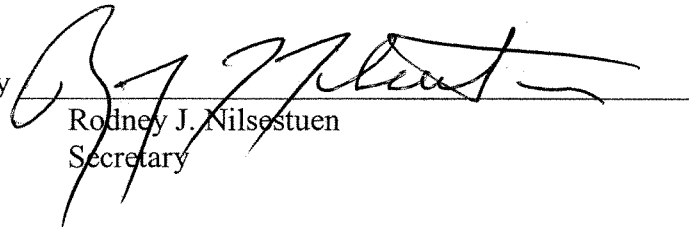
The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 237.19, Stats.:

CLEARINGHOUSE RULE #: 02-141  
SUBJECT: Weights and Measures  
ADM. CODE REFERENCE: ATCP 92  
DATCP DOCKET #: 99-R-10

Dated this 2 day of May, 2003

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND  
CONSUMER PROTECTION

By



Rodney J. Nilsestuen  
Secretary

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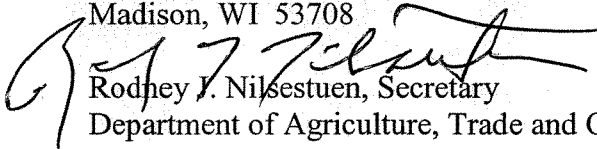
State of Wisconsin  
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

DATE: April 30, 2003

TO: The Honorable Alan J. Lasee  
President, Wisconsin State Senate  
Room 219 South, State Capitol  
PO Box 7882  
Madison, WI 53707

The Honorable John Gard  
Speaker, Wisconsin State Assembly  
Room 211 West, State Capitol  
PO Box 8952  
Madison, WI 53708

FROM:   
Rodney J. Nilsestuen, Secretary  
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Weights and Measures; Final Draft Rule  
(Clearinghouse Rule # 02-141)**

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

### **Background**

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers Wisconsin's weights and measures program under Chapter 98 of the Wisconsin Statutes, and Chapters ATCP 90-92, Wis. Adm. Code. Consumers spend almost half their net income on products sold by weight or measure. DATCP enforces weights and measures laws to ensure that buyers get what they pay for. Accurate weights and measures are also critical for businesses and agricultural producers, and for fair competition between businesses.

Under Wisconsin's weights and measures program, DATCP does all the following:

- Keeps Wisconsin's official weights and measures standards.
- Tests and certifies the accuracy of "test" weights used to check weights and measures throughout the state.

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- Tests commercial scales and measuring devices, including gasoline pumps and LP gas meters, for accuracy. DATCP inspects over 36,000 devices each year. Nearly 10 percent of the devices are inaccurate.
- Tests retail price scanners to ensure accurate pricing.
- Inspects packaged commodities to ensure accurate weights and measures labeling. DATCP inspects test lots representing approximately 1.2 million packages each year.
- Provides weights and measures inspection services to 106 Wisconsin municipalities. DATCP also trains and assists 18 municipalities that have their own weights and measures programs. Under state law, municipalities with a population of more than 5,000 must have their own programs or contract with DATCP.
- Licenses private service companies that install and service commercial weighing and measuring devices.
- Licenses vehicle scale operators.
- Coordinates weights and measures programs with the National Conference on Weights and Measures and the U.S. Dept of Commerce, National Institute of Standards and Technology (NIST).

DATCP developed this rule in consultation with 2 advisory committees – one representing municipalities and the other representing weights and measures service companies. This rule incorporates recommendations from both advisory committees.

## **Rule Contents**

### **Standards Referenced**

This rule references NIST Handbook 44, part of NIST Handbook 133 related to checking the net contents of packaged goods, and a portion of Handbook 130 establishing a testing procedure for price verification. These are standards developed by the National Weights and Measures Association and published by the National Institute of Standards and Technology. The department received consent from the Dept of Justice and the Revisor of Statutes to incorporate these standards by reference. The standards guide the consistency and accuracy of testing performed by weights and measures inspectors and service companies.

### **State and Municipal Programs**

This rule establishes minimum standards for state and municipal weights and measures programs, in order to ensure reasonable statewide uniformity. This rule includes the following new requirements:

- ***Uniform Inspection Procedures***

This rule requires all state and municipal programs to inspect packaged commodities, liquid measuring devices, scales, pricing systems, timing devices and linear measuring devices.

(Some municipal programs do not currently inspect some of these devices.) This rule also requires state and municipal inspectors to follow uniform testing and sampling procedures spelled out in state law and applicable NIST handbooks.

- ***Inspection Equipment***

This rule requires inspectors to use test equipment and standards that meet NIST requirements. DATCP or a NIST-certified laboratory must test and certify test equipment and weight standards at least once every 2 years. DATCP may set a different testing interval for specific equipment or specialized weight standards.

- ***Training Standards***

This rule requires inspectors to participate in DATCP-sponsored training to stay current with changing weights and measures standards and procedures.

- ***Sealing Procedures***

This rule clarifies the procedure for “sealing” a weighing or measuring device after the device is inspected.

- ***Reporting Requirements.***

This rule clarifies current municipal reporting requirements. Municipalities are currently required to submit annual reports to DATCP. DATCP uses these reports to help identify weights and measures compliance problems, priorities and program needs.

## **Weights and Measures Service Companies**

This rule increases license fees for weights and measures service companies, and establishes minimum standards for licensed service companies.

- ***License Required***

This rule clarifies the current license requirement for weights and measures service companies.

- A company must hold a license from DATCP to install, service, test or calibrate commercial weighing or measuring devices.
- A company must apply for a license on a form provided by the department and pay required fees.
- DATCP may deny, suspend or revoke a license for reasons specified in this rule.

- ***License Fee***

Under current law, weights and measures service companies pay the following annual license fees:

- \$100 for companies that service only their own commercial weighing and measuring devices.
- \$200 for companies that service weighing and measuring devices “for hire.” A “for hire” company must also pay a supplementary license fee of \$50 for each additional business location, if the company operates from more than one location.

This rule increases license fees for service companies by establishing an across-the-board annual fee of \$250 for every company. A “for hire” service company must also pay a supplementary fee of \$75 for each additional business location, if the company operates from more than one location.

- ***Technician Certification***

Weighing and measuring devices, and the standards that apply to them, are becoming increasingly complex. This rule creates a certification program for weights and measures service technicians. Under this rule, only a certified technician may do the following:

- Remove an official rejection tag, and restore to service a weighing or measuring device rejected by a state or municipal inspector.
- Test, calibrate or seal a weighing or measuring device.
- Verify, for purposes of this rule, the accuracy of a commercial weighing or measuring device.

The Central Weights and Measures Association (CWMA) has developed a certification exam that tests a person’s working knowledge of NIST standards and procedures (Handbooks 44 and 130). Six Midwestern states, including the surrounding states of Illinois, Minnesota, Iowa and Michigan, have adopted the CWMA technician certification program. Technicians who successfully complete the exam are recognized as “certified technicians” in participating states.

This rule requires certified technicians to successfully complete the CWMA technician certification exam (or another exam approved by the department) once every 5 years, in order to keep current on revisions to NIST standards and procedures. There is a \$25 exam administration fee. The Wisconsin City County Services Office in the Department of Employment Relations will administer and grade the exam for DATCP.

- ***Equipment Testing Procedures***

This rule requires weights and measures service companies to follow NIST testing procedures when they check the accuracy of weighing and measuring devices. Service companies must affix security seals to devices placed in service. Security seals must identify the name of the service company and technician that serviced the device. Service companies are also required to furnish a copy of the test report to the device owner or operator.

This rule requires service companies to use weights and measures standards and testing equipment that meet NIST standards. Testing equipment and standards must be tested and certified at least once every 2 years by DATCP's metrology laboratory or by a NIST-certified laboratory.

- ***Recordkeeping and Reporting***

Under this rule, a weights and measures service company must keep records on every weighing or measuring device serviced, tested or calibrated by the company. The company must keep the records for at least 2 years.

### **Vehicles Scales**

Historically, vehicle scales have had one of the worst compliance rates of all weighing and measuring devices inspected by DATCP. In 1994, the Legislature authorized DATCP to license vehicle scales and set license fees by rule. The current license fee is \$60 per year. This rule increases the annual license fee to \$100.

### **Hearings**

DATCP published a hearing notice in the Wisconsin Administrative Register, and sent written hearing notices to municipalities, licensed service companies, and various trade associations. DATCP held 3 public hearings in Eau Claire on January 14, Madison on January 16, and Green Bay on January 22.

Many people registered or testified in support of the rule. Several people also requested and received clarification of rule provisions. No one spoke in opposition. DATCP received written comments from the cities of Berlin, Neenah, Appleton and Racine. DATCP received one written comment in opposition to the fee increases. A hearing summary is attached.

### **Changes from Hearing Draft**

DATCP made several changes in the final draft in response to hearing testimony. The final rule:

- Reduces service company record retention requirements from 3 years to 2 years, consistent with most current company policies.
- Requires service companies to furnish copies of test reports to device owners within 10 days rather than 7 days. A service company must also report to DATCP or the appropriate municipality within 10 days after the company returns to service a device "tagged" by DATCP or a municipal inspector.
- Requires a service company technician examination date not later than 60 days (instead of 45 days) after the date on which the department receives an application in order to fit with the Wisconsin City County Services Office's test center dates and deadlines.
- Clarifies statutory requirements related to hiring of municipal inspectors. The final rule allows a municipality to contract with an inspector who is not a permanent civil service employee, provided that an open recruitment or bidding process is used to recruit, evaluate and certify the qualifications of prospective inspectors.

### **Response to Rules Clearinghouse Comments**

The Legislative Council Rules Clearinghouse made a number of comments on the hearing draft rule in terms of clarity, form, style and placement in the Administrative Code. The department modified the final rule to address these comments. The changes include:

- Renumbering and adding separate sections.
- Creating consistency with the definition of "commodity" in ss. ATCP 90.01(4), 91.01(1) and proposed 92.01(1).
- Clarifying the information that municipalities must provide in their annual reports to DATCP.

The Department did not add a reference to commodities in s. ATCP 92.09 related to sealing or rejecting weights and measures since this section was only intended to address the testing of devices by state or local inspectors.

The final rule makes other minor changes in response to Rules Clearinghouse comments. These changes have no substantive effect, and relate only to form, style and placement in the Administrative Code.

### **Fiscal Estimate**

This rule will:

- Increase current license fees for vehicle scales.
- Increase current license fees for weights and measures service companies.
- Require weights and measures technicians to take an exam and be certified at least once every 5 years. This rule will charge a \$25 fee to cover the cost of administering the exam.

The Honorable Alan Lasee  
The Honorable John Gard  
April 30, 2003  
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The license fee increases will generate an estimated \$97,000 in program revenue annually. The increased revenue will help cover DATCP's cost to operate Wisconsin's weights and measures program. This rule will impose some additional costs on municipalities that operate weights and measures programs. A complete fiscal estimate is attached.

### **Small Business Analysis**

This rule will affect vehicle scale operators and weights and measures service companies, many of which are small businesses. This rule will:

- Increase current license fees for vehicle scales.
- Increase current license fees for weights and measures service companies.
- Require weights and measures technicians to take an exam and be certified at least once every 5 years. This rule will charge a \$25 fee to cover the cost of administering the exam.
- Require weights and measures service companies to comply with uniform national standards.
- Require service companies to keep records.

This rule will have a significant impact on some small businesses, but the rule is needed to ensure accurate weights and measures in this state. A complete small business analysis ("final regulatory flexibility analysis") is attached.

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

1 The state of Wisconsin department of agriculture, trade and consumer protection  
2 proposes the following order to repeal ATCP 92.01(8) and 92.05(title); to renumber  
3 ATCP 92.01(1), 92.03(1) to (8) and (note), and 92.05(1) to (4); to renumber and amend  
4 92.03(title); to amend ATCP 90.01(4), 92.01(5) and 92.02(1); to repeal and recreate  
5 ATCP 91.01(1), ATCP 92 (title), (note) and 92.02(2); and to create ATCP 92 subchapter  
6 I (title), 92.01(1), (1m), (1s), (2g), (2r), and (11) to (13), 92.02(2)(b)(note), subchapters II  
7 and III, subchapter IV (title), 92.31 and subchapter V (title); relating to weights and  
8 measures.

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

Statutory Authority: ss. 93.07(1), 93.15(1), 98.03(2), 98.16(3), 98.18(1h) and (2)  
and 100.20(2), Stats.

Statutes Interpreted: ss. 93.15, 98.02 to 98.05, 98.16, 98.18 and 100.20, Stats.

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers Wisconsin's weights and measures program to ensure that commercial weights and measures are accurate. DATCP also supervises municipal weights and measures inspection programs. DATCP licenses vehicle scale operators and weights and measures service companies. DATCP has adopted rules, under ch. ATCP 92, Wis. Adm. Code, related to commercial weighing and measuring devices.

This rule modifies current weights and measures rules, and creates new requirements. Among other things, this rule does the following:

- Establishes uniform weights and measures inspection procedures, to promote uniform statewide application of weights and measures laws. The uniform procedures apply to

state and municipal weights and measures programs. The uniform procedures are based on standards developed by the National Institute of Standards and Technology (NIST).

- Requires state inspectors, municipal inspectors and private service companies to use testing equipment and weight standards that comply with NIST specifications, tolerances and regulations.
- Requires municipal inspectors to attend training on NIST procedures and related subjects.
- Clarifies licensing requirements for private weights and measures service companies, and increases annual license fees.
- Increases annual license fees for vehicle scale operators.
- Establishes a technician certification program for technicians employed by private weights and measures service companies. Technicians must pass an open-book examination developed by the Central Weights and Measures Association. There is an examination fee of \$25.

### **State and Municipal Programs**

DATCP enforces state weights and measures laws. Under s. 98.04, Stats., municipalities with a population of more than 5,000 must establish their own programs or contract with DATCP for weights and measures services. Currently, 18 municipalities have their own programs.

This rule establishes minimum standards for state and municipal weights and measures programs in order to ensure reasonable statewide uniformity. This rule includes the following new requirements:

- ***Uniform Inspection Procedures.*** Under this rule, state and municipal programs must inspect packaged commodities, liquid measuring devices, scales, pricing systems, timing devices and linear measuring devices. (Currently, some municipal programs do not perform some of these inspections.) State and municipal inspectors must follow uniform testing and sampling procedures spelled out in state law and applicable NIST handbooks.
- ***Inspection Equipment.*** This rule requires inspectors to use test equipment and weight standards that meet NIST requirements. DATCP or a NIST-certified laboratory must test and certify test equipment and weight standards at least once every 2 years. DATCP may set a different testing interval for specialized equipment or weight standards.
- ***Training Requirement.*** Under this rule, state and municipal inspectors must participate in DATCP-sponsored training to stay current with changing weights and measures standards and procedures.



- **Sealing Procedure.** This rule clarifies the procedure for “sealing” a weighing or measuring device after the device is inspected.
- **Reporting Requirements.** This rule clarifies current municipal reporting requirements. Municipalities are currently required to submit annual reports to DATCP. DATCP uses these reports to help identify weights and measures compliance problems, priorities and program needs.

### **Weights and Measures Service Companies**

DATCP currently licenses weights and measures service companies under s. 98.18, Stats. This rule increases license fees and establishes minimum licensing standards.

- **License Required**

This rule clarifies that a weights and measures service company must hold a DATCP license to install, service, test or calibrate commercial weighing or measuring devices. A service company must apply for a license and pay required fees, according to this rule. DATCP may deny, suspend or revoke a license for reasons specified in this rule.

- **License Fee**

Under current law, weights and measures service companies pay the following annual license fees:

- \$100 for companies that service only their own commercial weighing and measuring devices.
- \$200 for companies that service weighing and measuring devices “for hire.” A “for hire” company must also pay a supplementary license fee of \$50 for each additional business location, if the company operates from more than one location.

This rule increases license fees for service companies. This rule establishes an annual fee of \$250 for every company. A “for hire” service company must pay a supplementary fee of \$75 for each additional business location, if the company operates from more than one location.

- **Technician Certification**

This rule creates a certification program for weights and measures service technicians. A weights and measures service company is responsible for having its technicians certified. Under this rule, a technician may not do any of the following unless the technician is certified:

- Restore to service a weighing or measuring device rejected by a state or municipal inspector.
- Place a new commercial weighing or measuring device in service.

- Verify the accuracy of a commercial weighing or measuring device.

A technician must be certified in one or more appropriate categories, based on the types of devices that the technician services. The Central Weights and Measures Association (CWMA) has developed certification exams that test a person's working knowledge of NIST standards and procedures (NIST Handbook 44) in various categories. Six Midwestern states have adopted the CWMA technician certification program. Technicians who successfully complete the exam are recognized as "certified technicians" in participating states.

This rule requires certified technicians to pass the CWMA technician certification exam (or another exam approved by DATCP) in each applicable category once every 5 years. There is a \$25 exam fee. The Wisconsin Department of Employment Relations, City and County Services Office, will administer the exam for DATCP. Exams are administered at locations statewide.

- ***Equipment Testing Procedures***

Under this rule, weights and measures service companies must follow NIST testing procedures when they test weighing and measuring devices. Service companies must affix security seals to devices placed in service. Security seals must identify the name of the service company and technician that serviced the device.

This rule requires service companies to use testing equipment and standards that meet NIST requirements. Equipment and standards must be tested and certified at least once every 2 years by DATCP's metrology laboratory, or by a NIST-certified laboratory.

- ***Recordkeeping and Reporting.***

Under this rule, a weights and measures service company must prepare a written report whenever the company installs, services, tests or calibrates a weighing or measuring device. The technician who does the work must prepare and sign the report. The report must include relevant information required by this rule.

Within 10 business days after it completes the work, the service company must give a copy of the report to the owner or operator of the device. If the service company restores a "rejected" device to service, the service company must also give a copy to DATCP or to the municipality that rejected the device. The service company must keep a copy of the report for at least 2 years.

- ***Prohibited Practices.*** No person who sells, installs, services, tests or calibrates a weighing or measuring device may do any of the following:
  - Cause the device to be incorrect.
  - Misrepresent that the device is correct.
  - Misrepresent, directly or by implication, that the person has determined whether the device is correct.

- Fail to comply with this chapter or ch. 98, Stats.
- Remove any reject tag or mark applied by a state or municipal inspector unless the person first does one of the following:
  - \* Adjusts the device to make it correct.
  - \* Obtains express authorization from DATCP or, if the reject tag or mark was applied by a municipal inspector, from that municipality.

### **Vehicle Scales**

DATCP currently licenses vehicle scale operators under s. 98.16, Stats. The current license fee is \$60 per year per vehicle scale. This rule increases the license fee to \$100 per year per vehicle scale.

### **Standards Incorporated by Reference**

Pursuant to s. 227.21, Stats., DATCP has requested and received permission from the attorney general and the revisor of statutes to incorporate the following standards by reference in this rule:

- The national institute of standards and technology handbook 44 (specifications, tolerances, and other technical requirements for weighing and measuring devices), 2003 edition.
- The national institute of standards and technology handbook 133 (checking the net contents of packaged goods), 2003 edition.
- Section 7 “test procedures” from the chapter titled “examination procedure for price verification,” national institute of standards and technology handbook 130 (uniform laws and regulation in the areas of legal metrology and engine fuel quality), 2003 edition.

Copies of these standards are on file with DATCP, the secretary of state and the revisor of statutes.

**SECTION 1.** ATCP 90.01(4) is amended to read:

ATCP 90.01(4) “Commodity” means any product or commodity that is sold, offered for sale, or held or distributed for sale in this state. “Commodity” includes, ~~but is not limited to,~~ a consumer commodity.

**SECTION 2.** ATCP 91.01(1) is repealed and recreated to read:



1 (b) A municipal weights and measures sealer or inspector under s. 98.04(1), Stats.

2 SECTION 8. ATCP 92.01(5) is amended to read:

3 ATCP 92.01(5) "Person" means an individual, corporation, partnership, ~~firm or~~  
4 ~~association~~ cooperative association, limited liability company, or other legal organization  
5 or entity.

6 SECTION 9. ATCP 92.01(8) is repealed.

7 SECTION 10. ATCP 92.01(11) to (13) are created to read:

8 ATCP 92.01(11) "Weighing or measuring device" means any device used to  
9 determine the weight or measure of a commodity, for commercial purposes. "Weighing or  
10 measuring device" includes a scale, meter, measuring device or timing device that affects  
11 the determination of weight or measure.

12 (12) "Weights and measures" has the meaning given in s. 98.01(7), Stats.

13 (13) "Weights and measures service company" means a person that is required to  
14 be licensed under s. ATCP 92.20(1).

15 SECTION 11. ATCP 92.02(1) is amended to read:

16 ATCP 92.02(1) Except as provided in this chapter, ~~commercial~~ weighing and  
17 measuring devices shall comply with the applicable specifications, tolerances and other  
18 technical requirements set forth in ~~the current edition of~~ the National Institute of Standards  
19 and Technology Handbook 44 (Specifications, Tolerances and Other Technical  
20 Requirements for Weighing and Measuring Devices), 2003 edition.

21 SECTION 12. ATCP 92.02(2) is repealed and recreated to read:

22 ATCP 92.02(2) Except as provided in sub. (3), no person may sell, offer for sale,  
23 use or distribute for use in this state a weighing or measuring device unless the device is a  
24 type or model certified by one of the following:

1 (a) The chief of the office of weights and measures of the national institute of  
2 standards and technology.

3 (b) The national type evaluation program administered by the National Conference  
4 on Weights and Measures.

5 **SECTION 13.** ATCP 92.02(2)(b)(note) is created to read:

6 **NOTE:** Devices certified under par. (b) are commonly known as "NTEP-  
7 approved" devices.

8  
9 **SECTION 14.** ATCP 92.03(title) is renumbered 92.30(title) and amended to read:

10 **ATCP 92.30 Vehicle and livestock scales; permits and construction**  
11 **requirements.**

12 **SECTION 15.** ATCP 92.03(1) to (8) and (note) are renumbered 92.30(1) to (8) and  
13 (note).

14 **SECTION 16.** ATCP 92.05(title) is repealed.

15 **SECTION 17.** ATCP 92.05(1) to (4) are renumbered ATCP 92.40 to 92.43.

16 **SECTION 18.** Chapter ATCP 92 subchapter II is created to read:

17 **SUBCHAPTER II**  
18 **STATE AND MUNICIPAL PROGRAMS**

19  
20 **ATCP 92.04 Municipal program components.** A municipal weights and  
21 measures program under s. 98.04, Stats., shall inspect and test all the following for  
22 compliance with applicable requirements under ch. 98, Stats., this chapter, and chs. ATCP  
23 90 and 91:

24 (1) Commodities.

25 (2) Liquid measuring devices.

26 (3) Scales.

27 (4) Weighing, measuring and price verification systems.

1 (5) Timing devices.

2 (6) Linear measuring devices.

3 **ATCP 92.06 Inspection procedures and equipment.** (1) GENERAL. Inspectors  
4 shall inspect weights and measures according to ch. 98, Stats., this chapter, and chs. ATCP  
5 90 and 91. An inspection, and the equipment used to make it, shall comply with all of the  
6 following that apply to that type of inspection:

7 (a) The national institute of standards and technology handbook 44 (specifications,  
8 tolerances, and other technical requirements for weighing and measuring devices), 2003  
9 edition.

10 (b) The national institute of standards and technology handbook 133 (checking the  
11 net contents of packaged goods), 2003 edition.

12 (2) PRICE VERIFICATION SYSTEMS. Inspections of price verification systems shall  
13 comply with section 7 "test procedures" from the chapter titled "examination procedure for  
14 price verification," national institute of standards and technology handbook 130 (uniform  
15 laws and regulation in the areas of legal metrology and engine fuel quality), 2003 edition.

16 (3) INSPECTION EQUIPMENT AND STANDARDS. The department, or a laboratory  
17 certified by the national institute of standards and technology, shall inspect, test and  
18 approve testing equipment and standards used by inspectors. The department or certified  
19 laboratory shall inspect, test and approve the equipment at least once every 2 years unless  
20 the department specifies a different time interval for specific equipment or standards.

21 **NOTE:** The standards incorporated by reference in subs. (1) and (2) are on file  
22 with the department, the secretary of state and the revisor of statutes.  
23 Copies may be obtained from the U.S. Government Printing Office, Stop  
24 SSOP, Washington, D.C. 20402-0001.

25  
26 **ATCP 92.08 Inspector hiring and training.** (1) HIRING. A municipality that has  
27 a weights and measures program under s. 98.04, Stats., shall hire its inspectors from a list

1 of applicants whose qualifications have been certified by the state or local civil service  
2 agency under the rules of the agency. A municipality may hire or contract with an  
3 inspector who is not a permanent civil service employee, provided that an open recruitment  
4 or bidding process is used to recruit, evaluate and certify the qualifications of prospective  
5 inspectors.

6 **NOTE:** See s. 98.04, Stats.

7 (2) TRAINING. Inspectors shall complete weights and measures training prescribed  
8 by the department. The department may approve training programs offered by other  
9 entities, including governmental, private or educational entities. The department shall issue  
10 completion certificates to inspectors who complete prescribed training.

11 **ATCP 92.09 Sealing or rejecting weights and measures.** An inspector may do  
12 any of the following after inspecting weights and measures:

13 (1) Apply a seal or mark of approval to weights or measures that comply with  
14 applicable requirements under ch. 98, Stats., and this chapter.

15 (2) Mark or tag as "rejected" those weights and measures that fail to comply with  
16 applicable requirements under ch. 98, Stats., or this chapter.

17 **ATCP 92.10 Recordkeeping and reporting.** (1) ANNUAL REPORT. A  
18 municipality that operates a weights and measures program under s. 98.04(1), Stats., shall  
19 submit to the department an annual report by August 1 of each year. The report shall cover  
20 the 12 months ending June 30 of that year. The report shall describe, in a form prescribed  
21 by the department, the activities and findings of the municipal program during the period  
22 covered by the report. The report shall include all of the following:

23 (a) The names of all supervisory and inspection personnel assigned to perform  
24 weights and measures program activities.



1 (b) The number and types of devices or equipment inspected, and a summary of  
2 compliance data related to those inspections.

3 (c) The number and types of establishments inspected.

4 (d) The number and types of commodities inspected, and a summary of compliance  
5 data related to those inspections.

6 (e) A summary of weights and measures prosecutions and enforcement actions.

7 (f) A summary of training activities in which inspection personnel participated  
8 during the period covered by the report.

9 (g) The estimated annual operating budget for the program.

10 (h) Other relevant information required by the department.

11 **NOTE:** You may obtain a copy of the Annual Report form for Municipal  
12 Departments of Weights and Measures by writing to:

13  
14 Wisconsin Department of Agriculture, Trade and Consumer Protection  
15 Division of Trade and Consumer Protection  
16 Weights & Measures Program  
17 P.O. Box 8911  
18 Madison, WI 53708-8911.

19 (2) RECORDS AND AUDITS. A municipality that operates a weights and measures  
20 program under s. 98.04, Stats., shall keep complete and accurate records of its activities and  
21 findings under that program. The department may audit and evaluate municipal weights  
22 and measures programs, as it deems necessary, to ensure compliance with this chapter and  
23 ch. 98, Stats.

24 **SECTION 19.** Chapter ATCP 92 subchapter III is created to read:

25 **SUBCHAPTER III**  
26 **WEIGHTS AND MEASURES SERVICE COMPANIES**

27 **ATCP 92.20 Weights and measures service company; license. (1) LICENSE**  
28  
29 **REQUIRED.** Except as provided in sub. (5), no person may install, service, test or calibrate

1 weights and measures without a current annual license from the department, as required  
2 under s. 98.18, Stats. A license expires on December 31 of each year. A license is not  
3 transferable between persons or business locations.

4 (2) LICENSE APPLICATION. A person seeking a license under sub. (1) shall apply on  
5 a form provided by the department. The application shall include all the following:

6 (a) The applicant's correct legal name and every trade name under which the  
7 applicant engages in activities under sub. (1).

8 (b) The address of each business location from which the applicant engages in  
9 activities under sub. (1).

10 (c) The full name, birthdate, and date of certification of each technician who  
11 engages in activities under s. ATCP 92.21 on behalf of the applicant.

12 (d) The fees required under sub. (3).

13 **NOTE:** You may obtain application forms 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 (3) LICENSE FEES. A license application under sub. (2) shall include all of the  
21 following applicable fees:

22 (a) A fee of \$250 if the applicant is engaged solely in installing, servicing, testing  
23 or calibrating weights and measures that the applicant owns.

24 (b) Each of the following fees if the applicant installs, services, tests or calibrates  
25 weights and measures for others:

26 1. A basic license fee of \$250.

1           2. A supplementary fee of \$75 per year for each additional business location, in  
2 excess of one location, from which the applicant installs, services, tests or calibrates  
3 weights and measures for others.

4           (c) A surcharge of \$200 if the department determines that, within one year before  
5 submitting the license application, the applicant operated without a license in violation of  
6 sub. (1).

7           (d) A late renewal fee of \$50 if the applicant is applying for the renewal of a  
8 license that has already expired.

9           **NOTE:** See s. 93.21(5), Stats. The late renewal fee of \$50 is 20% of the basic  
10 license fee of \$250.

11           (4) DENYING, SUSPENDING OR REVOKING A LICENSE. The department may deny,  
12 suspend or revoke a license under sub. (1) for cause, pursuant to s. 93.06(7), Stats., and ch.  
13 ATCP 1. Cause may include a violation of this chapter or ch. 98, Stats.

14           (5) EXEMPTIONS. Subsection (1) does not apply to any of the following:

15           (a) A person who installs, services, tests or calibrates weights and measures only as  
16 an employee of a person licensed under sub. (1).

17           (b) An inspector or metrologist employed by this state, or by a county or  
18 municipality, to test or calibrate weights and measures.

19           **ATCP 92.21 Weights and measures technicians; certification. (1)**

20           **CERTIFICATION REQUIRED.** (a) No weights and measures service company may employ or  
21 direct an individual to do any of the following, with respect to a weighing or measuring  
22 device, unless the department has certified that individual in a category under sub. (4) that  
23 includes that device:  
24

25           1. Remove an official rejection tag or mark applied under s. ATCP 92.09(2).  
26



1 (b) An individual, or a weights and measures service company on behalf of an  
2 individual, may apply to have the individual take an examination required under par. (a).  
3 The applicant shall apply to the department, on a form provided by the department. The  
4 application shall include, for each individual, all the following:

5 1. The individual's full name (first, middle and last) and birth date.

6 2. An address and telephone number at which the applicant may be contacted to  
7 schedule the examination.

8 3. A \$25 examination fee. A single fee entitles an individual to take examinations  
9 in one or more certification categories on the same day.

10 **NOTE:** You may obtain exam application forms by writing to:

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

17 (c) Whenever the department receives a complete application under par. (b), the  
18 department or its agent shall schedule an examination date with the applicant. The  
19 examination date shall be not later than 60 days after the date on which the department  
20 receives the complete application, unless the applicant agrees to a later date.

21 (4) CERTIFICATION CATEGORY. The department may certify an individual in one or  
22 more of the device categories for which the central weights and measures association  
23 provides examinations.

24 **NOTE:** Currently, the Central Weights and Measures Association provides  
25 examinations in the following device categories: retail computing scales,  
26 medium capacity scales, livestock scales, vehicle scales, railroad track  
27 scales, belt conveyor scales, retail motor fuel dispensers, vehicle tank  
28 meters, LPG meters, and agricultural chemical and mass flow meters.  
29

1 (5) ACTION ON CERTIFICATION. The department shall grant or deny an application  
2 under sub. (2) within 45 days after the examination date under sub. (3)(c) except that, if no  
3 examination is required under sub. (3), the department shall grant or deny an application  
4 under sub. (2) within 45 days after the department receives a complete application.

5 (6) CERTIFICATION EXPIRES. A certification under sub. (1) expires 5 years after the  
6 department issues that certification.

7 (7) DENYING, SUSPENDING OR REVOKING A CERTIFICATION. The department may  
8 deny, suspend or revoke a certification under sub. (1) for cause, pursuant to s. 93.06(7) and  
9 ch. ATCP 1. Cause may include a violation of this chapter or ch. 98, Stats.

10 **ATCP 92.22 Weights and measures service companies; test procedures and**  
11 **equipment.** (1) GENERAL. Whenever a weights and measures service company installs,  
12 services, tests or calibrates a weighing or measuring device, the service company shall do  
13 all the following:

14 (a) Comply with this chapter and ch. 98, Stats.

15 (b) Comply with applicable requirements contained in the national institute of  
16 standards and technology handbook 44 (specifications, tolerances, and other technical  
17 requirements for weighing and measuring devices), 2003 edition.

18 *NOTE:* The national institute of standards and technology handbook 44, 2003  
19 edition, is on file with the department, the secretary of state and the revisor  
20 of statutes. You may purchase copies of this handbook from the U.S.  
21 Government Printing Office, Stop SSOP, Washington, D.C. 20402-0001.

22 (c) Use equipment and standards that comply with sub. (2).

23 (d) Affix a security seal to any adjustment mechanism that is designed to be sealed.  
24 The security seal shall identify the weights and measures service company and individual  
25 technician by name, initials or other unique identifiers.  
26

27 (e) Prepare a report according to s. ATCP 92.23.

1           (2) TEST EQUIPMENT AND STANDARDS. The department, or a laboratory certified by  
2 the national institute of standards and technology, shall inspect, test and approve testing  
3 equipment and standards used by weights and measures service companies. The  
4 department or certified laboratory shall inspect, test and approve the equipment at least  
5 once every 2 years unless the department specifies a different time interval for specific  
6 equipment or standards.

7           **ATCP 92.23 Weights and measures service companies; reports. (1) REPORT**  
8 **REQUIRED.** A weights and measures service company shall prepare a written report  
9 whenever it installs, services, tests or calibrates a weighing or measuring device. The  
10 weights and measures technician who performs the work on behalf of the service company  
11 shall prepare and sign the report. The report shall include all the following:

12           (a) The name of the device owner or operator, the location of the device, and a  
13 uniquely identifying description of the device.

14           (b) The date on which the service company installed, serviced, tested or calibrated  
15 the device.

16           (c) The nature of the work performed on the device.

17           (d) A statement that an inspector had marked or sealed the device as "rejected," if  
18 that is the case. The report shall include the date of the "rejected" mark or seal, if known.  
19 The report shall state whether the service company returned the device to service and, if it  
20 did return the device to service, the date on which it did so.

21           (e) The level of accuracy and correctness found at the beginning of each test and  
22 after any adjustments to the device .

1 (f) A statement clearly indicating whether the device was correct when the service  
2 company completed its work. If the service company did not determine whether the device  
3 was correct, the report shall indicate that fact.

4 (g) The name of the service company technician who installed, serviced, tested or  
5 calibrated the device.

6 (2) GIVING COPIES. Within 10 days after a weights and measures service company  
7 installs, services, tests or calibrates a weighing or measuring device, the service company  
8 shall mail or deliver a copy of its report under sub. (1) to each of the following:

9 (a) The owner or operator of the device.

10 (b) The department if the service company returns to service a device rejected by  
11 the department.

12 (c) The municipality if the service company returns to service a device rejected by  
13 the municipality.

14 (3) KEEPING COPIES. A weights and measures service company shall keep a copy  
15 of every report under sub. (1) for at least 2 years after the report is created.

16 **ATCP 92.24 Prohibited practices.** No person who sells, installs, services, tests or  
17 calibrates a weighing or measuring device may do any of the following:

18 (1) Cause the device to be incorrect.

19 (2) Misrepresent that the device is correct.

20 (3) Misrepresent, directly or by implication, that the person has determined  
21 whether the device is correct.

22 (4) Fail to comply with this chapter or ch. 98, Stats.

23 (5) Remove any reject tag or mark applied by a state or municipal inspector unless  
24 the person first does one of the following:



1 (a) Adjusts the device to bring it into compliance with this chapter and ch. 98,  
2 Stats.

3 (b) Obtains express authorization from the department or, if the reject tag or mark  
4 was applied by a municipal inspector, from that municipality.

5 SECTION 20. Chapter ATCP 92 subchapter IV (title), inserted prior to s. ATCP  
6 92.30, is created to read:

7 **SUBCHAPTER IV**  
8 **VEHICLE AND LIVESTOCK SCALES**  
9

10 SECTION 21. ATCP 92.31 is created to read:

11 **ATCP 92.31 Vehicle scale license.** (1) LICENSE REQUIRED. No person may  
12 operate a vehicle scale without a license from the department, as provided under s. 98.16,  
13 Stats. A separate license is required for each scale. A license is not transferable between  
14 persons, scales or scale locations. A license expires on March 31 annually.

15 (2) LICENSE APPLICATION. A person applying for a license under sub. (1) shall  
16 apply on a form provided by the department. The application shall include all the  
17 following:

18 (a) The applicant's correct legal name and business address, and any trade name  
19 under which the applicant proposes to operate the vehicle scale.

20 (b) The nature and location of the vehicle scale.

21 (c) The fees required under sub. (3).

22 (d) Other information that the department reasonably requires for licensing  
23 purposes.

24 (3) LICENSE FEES. A person applying for a vehicle scale license under sub. (1) shall  
25 pay an annual license fee of \$100 per vehicle scale. The applicant shall also pay a license  
26 fee surcharge under s. 98.16(2)(c), Stats., if that surcharge applies.



**Fiscal Estimate — 2001 Session**

- Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number Ch. ATCP 92

**Subject**

General requirements for municipal weights and measures programs and private service companies

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.

Yes       No

Decrease Costs

Local:  No Local Government Costs

1.  Increase Costs  
 Permissive       Mandatory  
2.  Decrease Costs  
 Permissive       Mandatory

3.  Increase Revenues  
 Permissive       Mandatory  
4.  Decrease Revenues  
 Permissive       Mandatory

5. Types of Local Governmental Units Affected:

- Towns       Villages       Cities  
 Counties       Others  
 School Districts       WTCS Districts

**Fund Sources Affected**

- GPR       FED       PRO       PRS       SEG       SEG-S

Affected Chapter 20 Appropriations

20.115(1)(j)

**Assumptions Used in Arriving at Fiscal Estimate**

Vehicle scale operators and businesses which install, service, test or calibrate weighing and measuring devices are licensed and regulated by DATCP under ss. 98.16 and 98.18, Stats. These laws authorize the department to adjust license fees by rule and to regulate the business practices of vehicle scale operators and service companies.

Currently, the department licenses an estimated 2011 vehicle scales and 208 service companies. Among the service company licenses issued by DATCP, companies that do business on a "for hire" basis comprise 153 of these licenses. Businesses which only install, service and calibrate their own commercial devices comprise an additional 54 licensees. These license fees generate an estimated \$160,000 annually for DATCP's weights and measures inspection program.

This rule increases the annual fee for vehicle scales from \$60 to \$100, and increases the yearly license fee for both types of service companies to \$250. "For hire" service companies with multiple locations currently pay \$50 for each additional location. The fee for these multiple site licenses is increased from \$50 to \$75. The fee increases are expected to generate an additional \$97,000 program revenue annually.

This rule also establishes standards for state and municipal weights and measures inspection programs, and codifies acceptable practices governing the installation, servicing, testing and certification of weighing and measuring devices. Included is a requirement for certification of service company technicians, consistent with National Institute of Standards and Technology (NIST) standards and a voluntary service company technician testing program developed by the Central Weights and Measures Assn. The rule imposes a \$25 processing fee for testing and certifying service company technicians, and requires recertification of technicians every five years..

The Department has identified 1,164 technicians employed by service companies. An estimated 800 technicians are likely to participate in the voluntary service company technician certification and testing program. The processing fee would generate about \$20,000 during each five-year interval, and cover costs associated with administration and grading of the tests.

**Long-Range Fiscal Implications**

None anticipated

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Authorized Signature <i>Barbara Knapp</i>	Telephone No. 224-4746	Date (mm/dd/ccyy) 9-19-02

**Fiscal Estimate Worksheet — 2001 Session**  
 Detailed Estimate of Annual Fiscal Effect

Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number ATCP 92 Revisions

**Subject**

Related to general requirements for municipal weights and measures programs and private service companies

**One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

Local costs associated with testing equipment purchases or personnel requirements to meet municipal weights and measures inspection program standards will be limited and voluntary.

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>		
State Operations — Salaries and Fringes	\$ 0.	\$ - 0
(FTE Position Changes)	( 0.00 FTE )	(- 0.00 FTE )
State Operations — Other Costs	4,000	- 0
Local Assistance	0	- 0
Aids to Individuals or Organizations	0	- 0
<b>Total State Costs by Category</b>	\$ 4,000	\$ - 0
<b>B. State Costs by Source of Funds</b>	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS	4,000	- 0
SEG/SEG-S		-
<b>State Revenues</b>	Increased Revenue	Decreased Revenue
<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		
GPR Taxes	\$ 0	\$ - 0
GPR Earned	0	- 0
FED	0	- 0
PRO/PRS	101,000	- 0
SEG/SEG-S	0	- 0
<b>Total State Revenues</b>	\$ 101,000	\$ -

**Net Annualized Fiscal Impact**

	State	Local
Net Change in Costs	\$ 4,000	\$ 0
Net Change in Revenues	\$ 101,000	\$ 0

Prepared By:	Telephone No.	Agency
Tom Stoebig, Regulation & Safety Section	224-4944	DATCP
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
<i>Barbara Knapp</i>	224-4746	9-19-02

# Wisconsin Department of Agriculture, Trade and Consumer Protection

## Final Regulatory Flexibility Analysis

**Rule Subject:** Weights and Measures  
**Adm. Code Reference:** ATCP 92  
**Rules Clearinghouse #:** 02-141  
**DATCP Docket #:** 99-R-10

### Rule Description

This rule modifies current weights and measures rules, including rules related to municipal weights and measures programs, private service companies and vehicle scale operators. Among other things, this rule:

- Develops uniform procedures and standards for municipal weights and measures programs.
- Creates uniform operating procedures for service companies, including record-keeping and reporting requirements.
- Creates a voluntary technician certification program for technicians employed by private service companies to ensure that they have the necessary skills to perform certain procedures on weighing and measuring devices.
- Increases the license fees for private service companies and for vehicle scale operators.

This rule increases the license fees as follows:

- Private service companies that install, service or calibrate solely their own devices currently pay a license fee of \$100 per year. This fee will increase to \$250 per year.
- Service companies that do business on a "for-hire" basis currently pay a license fee of \$200 per year plus a supplemental fee of \$50 per year for each additional business location the company operates. These fees will increase to \$250 per year plus a supplemental fee of \$75 per year for each additional business location the company operates.
- Vehicle scale operators currently pay a license fee of \$60 per year. This fee will increase to \$100 per year.

### Small Businesses Affected by this Rule

This rule affects service companies that install, service, test or calibrate weighing and measuring devices. Currently, the department licenses 54 private service companies, and 153 "for hire" service companies in the state. Additionally, 54 site licenses are issued to service companies with multiple business locations. Licensees include large dairy and food production operations, scale manufacturers, petroleum equipment sales businesses and other corporations.

The department estimates that less than half of the service companies that install, service or calibrate their own devices meet the definition of "small business" in s. 227.114(1)(a), Stats. Service companies operating on a "for hire" basis also include many large corporations. However, most of the "for hire" service companies are smaller businesses with fewer than 25 employees or less than \$2.5 million in gross annual sales.

This rule also affects vehicle scale operators. The department currently licenses 2,011 vehicle scales, many of which are owned or operated by "small businesses" as defined in s. 227.114(1)(a).

### **Effects on Small Business**

This rule will affect service companies and vehicle scale operators, many of which are small businesses.

#### **Service companies.**

Currently, private service companies that only install, service or calibrate their own weights and measures devices pay a license fee of \$100 per year. Service companies that operate on a for-hire basis pay a license fee of \$200 per year, plus a supplemental fee of \$50 per year for each additional business location. This rule increases the license fees to an across-the-board \$250 per year for both types of businesses. The supplemental fee for service companies that operate at multiple locations will increase to \$75 per location per year.

These fee increases are needed in order for the department to recoup its expenses in administering and enforcing weights and measures regulations that apply to these companies, and to more equitably spread program costs among both large and small service companies. These fees have not been revised since 1997. Without adjustments, the department projects a weights and measures program deficit by the end of the 1993-94 fiscal year.

The department considered keeping the existing dual fee structure with a lower license fee for companies that only service their own commercial devices. While fewer in number, most of these licensees are larger businesses and generate similar program management workloads for the department. A uniform license fee for service companies will eliminate confusion and simplify the licensing process.

Similarly, the fee increase for service companies doing business on a for-hire basis is smaller but somewhat compensated by the increase in the supplemental license fee for larger businesses with multiple locations. This also adds equity and fairness to the current service company license fee structure.

#### **Service company technician certification.**

Currently, there are no training or testing requirements for service company technicians doing business in Wisconsin. Technician training remains the option of individual service companies. Larger service companies often operate internal training programs, but there are no required statewide or national standards for these technicians.

Under this rule, only certified technicians may service, repair or calibrate commercial weights and measures devices. To become a certified technician, an employee of a service company must successfully complete the Central Weights and Measures Association (CWMA) service company technician testing and certification program as part of the service company licensing process. Service companies are required to pay a \$25 processing fee for each employee of the company who takes the exam. Technicians are required to be recertified every five years under the rule.

The department has identified an estimated 1,150 technicians who are employed with service companies doing business in Wisconsin. Based on the experience of other states that have adopted the CWMA service company technician certification program, DATCP estimates that 600-800 of these employees will participate in this competency testing program.

### **Vehicle scale operators.**

The department currently licenses more than 2,000 vehicle scales. This rule increases the vehicle scale license fee from \$60 to \$100 per year. This license fee has not been adjusted since 1997. Vehicle scales continue to have one of the worst compliance rates among commercial weights and measures devices, and the department spends a significant amount of staff time and resources inspecting and monitoring vehicle scales and reviewing permit applications for new vehicle scales for compliance with current regulations. Revenues generated from the fee increases will go toward the purchase of a new vehicle scale test truck and other resources to enhance weights and measures program compliance efforts.

### **Steps to Assist Small Business**

The fee increases for private and for-hire service companies are aimed at more equitably spreading the costs of the department's weights and measures program among both large and small businesses.

To assist small business, the department will sponsor additional NIST Handbook 44 training for specific commercial devices on a more regular basis and make these training opportunities more available to service company personnel.

The department has revised the rule to ease proposed record keeping and reporting requirements for service companies.

The department will also implement the Central Weights and Measures Association's testing and certification program for service company technicians as a way to improve minimum competencies for those servicing commercial devices. This will allow for technician certification recognition among participating states which include Illinois, Minnesota, Iowa and Michigan.

### **Conclusion**

The fee increases for private and "for-hire" service companies are not expected to have a significant effect on small businesses. The service company testing and recordkeeping


requirements in the rule are consistent with NIST standards and surrounding states, are considered good business practices and common within the industry, and should not present an unreasonable burden to small businesses.

The fee increase for vehicle scale owners could have a small to moderate effect on small businesses. However, many vehicle scale owners often rent their scales to larger businesses which, in turn, pay for the use and maintenance of these scales. This usage trend will continue to grow, thus reducing the impact of vehicle scale fee increases on small business.

Dated this 18<sup>th</sup> day of March, 2003

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE & CONSUMER PROTECTION

By

  
\_\_\_\_\_  
Jim Rabbitt, Acting Administrator  
Division of Trade & Consumer Protection



ubchapter V (title); relating to weights and measures.

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

Statutory Authority: ss. 93.07(1), 93.15(1), 98.03(2), 98.16(3), 98.18(1h), (2) and (3), and 100.20(2), Stats.

Statutes Interpreted: ss. 93.15, 98.02 to 98.05, 98.16, 98.18 and 100.20, Stats.

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers Wisconsin's weights and measures program, to ensure that commercial weights and measures are accurate. DATCP also supervises municipal weights and measures inspection programs. DATCP licenses vehicle scale operators and weights and measures service companies. DATCP has adopted rules, under ch. ATCP 92, Wis. Adm. Code, related to commercial weighing and measuring devices.

This rule modifies current weights and measures rules, and creates new requirements. Among other things, this rule does the following:

- Establishes uniform weights and measures inspection procedures, to promote uniform statewide application of weights and measures laws. The uniform procedures apply to state and municipal weights and measures programs. The uniform procedures are based on standards developed by the National Institute of Standards and Technology (NIST).
- Requires state inspectors, municipal inspectors and private service companies to use testing equipment and weight standards that comply with NIST specifications, tolerances and regulations.
- Requires municipal inspectors to attend training on NIST procedures and related subjects.
- Clarifies licensing requirements for private weights and measures service companies, and increases annual license fees.
- Increases annual license fees for vehicle scale operators.
- Establishes a technician certification program for technicians employed by private weights and measures service companies. Technicians must pass an open-book examination developed by the Central Weights and Measures Association. There is an examination fee of \$25.

**State and Municipal Programs**

DATCP enforces state weights and measures laws. Under s. 98.04, Stats., municipalities with a population of more than 5,000 must establish their own programs or contract with DATCP for weights and measures

services. Currently, 18 municipalities have their own programs.

This rule establishes minimum standards for state and municipal weights and measures programs, in order to ensure reasonable statewide uniformity. This rule includes the following new requirements:

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