



State of Wisconsin
Jim Doyle, Governor

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

DATE: April 20, 2010

TO: The Honorable Fred Risser
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The Honorable Michael Sheridan
Speaker, Wisconsin State Assembly
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FROM: Rodney J. Nilsestuen, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Weights and Measures Licensing and Fees**
(Clearinghouse Rule #09-105)

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.).

This rule implements law changes contained in 2009 Wis. Act 28 (biennial budget act). This rule increases weights and measures fees in order to help fund Wisconsin's weights and measures program.

Background

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

Agriculture generates \$51.5 billion for Wisconsin

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. The unchanged fees, combined with inflationary pressures, means 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.

Rule Contents

This rule does all of the following:

Retail Food Establishments

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

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

Vehicle and Livestock Scales

This rule does all of the following:

- Increases, from \$100 to \$140, the annual fee for a vehicle scale operator license (does *not* apply to livestock scales other than vehicle scales).
- Increases, from \$200 to \$350, the license fee surcharge for a person found operating a vehicle scale without a license (does *not* apply to operators of livestock scales other than vehicle scales, because those operators are not licensed).
- Establishes a license fee surcharge of \$350 for an operator who, during the previous year, failed to comply with vehicle scale testing and reporting requirements (does *not* apply to operators of livestock scales other than vehicle scales, because those operators are not licensed).
- Establishes a fee of \$160 for a permit to install or relocate a vehicle scale. This fee does *not* apply to livestock scale permits (other than vehicle scales) because the statutes do not authorize DATCP to charge fees for livestock scale permits mandated by DATCP.
- Establishes a fee of \$360 to process a request, by a vehicle scale operator *or livestock scale operator*, for a variance from an applicable scale construction standards (this rule does not change current construction standards). See ss. 93.06(1p) and 98.16(2m)(b) and (4), Stats.
- Updates and clarifies current requirements for annual testing of vehicle scales *and livestock scales*, and reporting test results to DATCP.
- Establishes a vehicle scale operator license surcharge of \$350 for an operator who fails to comply with annual scale testing and reporting requirements (does *not* apply to operators of livestock scales other than vehicle scales, because those operators are not licensed).

Weights and Measures Service Companies and Technicians

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

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

This rule increases, from \$25 to \$35, the current examination fee for certification of an individual weights and measures technician (5-year certification). The examination fee may be paid by the weights and measures service company that employs the technician.

LP Gas Meters

This rule does all of the following:

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

Vehicle Tank Meters

This rule does all of the following:

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

Reinspection Fees

This rule establishes reinspection fees to cover DATCP reinspection costs incurred because of law violations found on an initial inspection of a weight or measure (including a scale or other weighing or measuring device). This rule establishes the following reinspection fees for the following types of weights and measures, based on DATCP's average cost to reinspect that type of weight or measure:

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

Public Hearings

DATCP held three public hearings on this rule. DATCP held the hearings in Madison on January 11, 2010, in Wausau on January 12, 2010 and in Milwaukee on January 15, 2010. DATCP also accepted written comments until January 29, 2010.

Three persons attended the Madison hearing; however only two provided comments. No one attended the Milwaukee or Wausau hearings. However, 185 other persons submitted written comments for the hearing record (most submitted nearly identical comments related to retail food establishment fees).

Hearing draft comments expressed concern over increased license fees. Most comments focused on retail food establishment fees. A few comments (including trade association comments) focused on liquid propane gas meter fees and vehicle tank meter fees.

Changes from Hearing Draft

DATCP made no changes to the proposed fee amounts, because the proposed fees reflect actual weights and measures program costs, including costs associated with staff, equipment and travel. DATCP made minor editorial changes in response to comments from the Legislative Council Rules Clearinghouse.

Response to Rules Clearinghouse Comments

DATCP modified the final draft rule to address the comments from the Legislative Council Rules Clearinghouse.

Fiscal Impact

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

Business Impact

This rule will affect businesses that operate or service weights and measures in Wisconsin. Many affected business will pay higher fees, or will pay fees for the first time. However, the fee increases are not expected to have a major impact on overall business costs. Fees for each business category are proportionate to weights and measures program costs for that business category, and cover only a portion of program costs. A complete *business impact analysis* is attached.

Federal and Surrounding State Regulations

Federal Programs

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

Surrounding State Programs

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

Surrounding states have established weights and measures fees to help fund their state programs. Some surrounding states have less comprehensive weights and measures programs, and fewer administrative options for standardizing and regulating weights and measures.

Over the last several years, Iowa's weights and measures program has had organizational difficulties. For example, Iowa's metrology lab failed to meet NIST standards and has been closed.

- *Retail Food Establishments*

Illinois, Minnesota and Iowa charge retail food establishment scale fees, and Minnesota charges fees for package checking. Comparable Illinois scale fees range from \$20-\$900 annually per establishment, depending upon number of scales. Minnesota scale fees range from \$35-\$1125 annually per establishment, depending upon number of scales (\$25 per scale). Iowa scale fees range from \$9 to \$648 (\$9 per scale). Minnesota package checking fees range from \$35-\$330 depending on lot size. Michigan's funding comes from general purpose revenue.

- *Weights and Measures Service Companies and Technicians*

Illinois, Michigan and Iowa license weights and measures service companies. Illinois has an annual license fee of \$50. Michigan has a \$300 biennial license fee. Iowa has a \$5 annual license fee. Minnesota does not have a licensing program (funding comes from general program revenue).

Illinois, Michigan and Iowa license service company technicians. Illinois has an annual technician license fee of \$25. Michigan has a \$100 technician license fee every 2 years. Iowa has a \$5 annual technician fee. Minnesota does not have a licensing program (funding comes from general program revenue).

- *Vehicle Scales*

Illinois and Iowa license vehicle scales. Illinois has an annual license fee of \$200. Minnesota charges an inspection fee that averages about \$185 range annually. Iowa charges a range of \$84-\$106.50 per annual license. Michigan does not have a licensing program (funding comes from general program revenue).

- *LP Gas Meters*

Illinois and Iowa license LP gas meters. Illinois has an annual license fee of \$165. Iowa has an annual license fee of \$52.50. Michigan does not have a licensing program (funding comes from general program revenue). Minnesota does not have a licensing program.

- *Vehicle Tank Meters*

Illinois and Iowa license vehicle tank meters. Illinois charges a range of \$100 to \$200 for an annual license. Minnesota's program funding comes from other sources. Iowa charges a \$9.00 annual license fee. Michigan does not have a licensing program (funding comes from general program revenue).

- *Reinspection Fees*

<i>Device</i>	<i>Iowa (if device fails reinspection)</i>	<i>Illinois</i>	<i>Michigan</i>	<i>Minnesota</i>
Vehicle Scale (large capacity)	\$84-106.50	\$200	GPR (no fee)	Avg \$388
Medium Capacity Scale	\$16.50-46.50	\$75-200	GPR	\$145-\$270
Small Capacity Scale	\$9.00	\$20-50	GPR	\$125-\$250
Vehicle Tank Meter	\$9.00	\$100-200	GPR	SEG
LPG Meter	\$52.5	\$165	GPR	\$250
Loading Rack Meter	\$9.00	\$200	GPR	SEG
Retail Motor Fuel	\$9.00	\$50	GPR	SEG
Timing Device	N/A	N/A	GPR	\$175/hr
Grain Moisture Meter	\$24.00	\$100	GPR	N/A
Package Labeling	N/A	N/A	GPR	\$235-\$530
Price Accuracy	N/A	N/A	GPR	\$175-\$190/hour
Other	N/A	N/A	GPR	\$175-190/hour