State of Wisconsin
Governor Scott Walker

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

DATE: May 2, 2013

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
Sandy Chalmers, Administrator, Trade and Consumer Protection Division

SUBJECT: **Chs. ATCP 90, 91, 92, 113 and 136;** Fair packaging and labeling; selling commodities by weight, measure or count; weights and measures; gasoline advertising; and mobile air conditioners, reclaiming or recycling refrigerant (Hearing Draft)

PRESENTED BY: Michelle Reinen

REQUESTED ACTION:

At the May 14, 2013 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to authorize public hearings on a proposed rule (copy attached) for chs. 90, 91, 92, 113 and 136, related to fair packaging and labeling; selling commodities by weight, measure or count; weights and measures; gasoline advertising; and mobile air conditioners, reclaiming or recycling refrigerant,

SUMMARY:

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

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 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. It also corrects references to specific sections (in the case of 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 NIST Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," (2011 edition). 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 on 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 they are not required to submit their construction plans).

This rule also modifies the definition of "vehicle scale" to make it clear that ch. ATCP 92 does not apply to scales that are not in commercial service.

Chapter ATCP 113 - Gasoline Advertising

The current 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 updates references to ASTM standards.

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 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.

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-1234fy (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 will request 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.

Next Steps

If the Board authorizes public hearings on this rule, DATCP will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the Wisconsin Administrative Register. DATCP will hold public hearings on the dates and at the locations specified in the hearing notice. The hearing dates and locations have not yet been determined.

Following the public hearings, the department will evaluate all comments received at the hearings and prepare a final draft rule for the Board's consideration. If the Board approves a final draft rule, the department will transmit the final draft rule for the Governor's approval. After the Governor's approval, the final draft will be submitted for legislative committee review. If the Legislature has no objections to the rule, the Secretary will sign the final rulemaking order and transmit it for publication. The rule will take effect upon publication in the Wisconsin Administrative Register unless the final draft rule specifies a later effective date.

DATCP Docket No. 12-R-11 **Proposed Hearing Draft**
Rules Clearinghouse No. _____ **May 2, 2013**

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

The Wisconsin department of agriculture, trade and consumer protection proposes the following ***to renumber and amend*** ATCP 113.02, ***to amend*** ATCP 90.01 (26), 91.01 (4) and (Note), 91.03 (3) (k) and (L), the prefatory note to Ch. 92, 92.01 (15), 92.02 (1) and (Note), 92.06 (1) (a) and (b) and (2), 92.20 (2) (d) (Note), 92.21 (2) (b) (Note) and (4) (Note), 92.22 (1) (b), 92.30 (1) (c) and (d) (Note), (3) (e) 2., and (6) (title) and (c) (Note), 92.31 (2) (d) (Note), 92.43 (2) (Note), 92.50 (2) (b) (Note) and (3) (d), 136.10 (1), 136.12 (3) (e); ***to repeal and recreate*** ATCP 136.02 (4) (Note), 136.08 (7) (Note) and ***to create*** ATCP 113.02 (1), (2), (3) and (Note), 136.01 (11m), 136.12 (3) (f) and (g), and 136.14 (1) (c) ; ***relating to*** fair packaging and labeling; selling commodities by weight, measure or count; weights and measures; gasoline advertising; and mobile air conditioners, reclaiming or recycling refrigerant; various minor and technical rule changes; and affecting small business.

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

This rule makes minor and technical changes to a number of current rules administered by the department of agriculture, trade and consumer protection ("DATCP").

Statutes Interpreted

Statutes Interpreted: s. 97.03, Ch. 98, ss. 100.20 and 100.45, Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1), 97.09(1) and (4), 97.42 (4) (j), 98.03 (2), 98.07 (3) and (4), 98.16 (4), 98.18 (2), 98.224 (4), 98.245 (9), 100.20 (2), and 100.45 (5) (a) and (e), Stats.

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction.

DATCP has authority under s. 97.09 (1), Stats., to define or adopt standards of identity, composition, quality and fill of food containers. DATCP has general authority, under s. 97.09 (4), Stats., to adopt rules specifying standards to protect the public from the sale of adulterated or misbranded foods. DATCP has authority under s. 97.42 (4) (j), Stats., to administer inspections of animals, poultry and carcasses.

DATCP has authority under s. 98.03 (2), Stats., to issue rules governing the construction, installation and use of commercial weights and measures and prescribing tolerances. DATCP has authority under s. 98.07 (3) and (4), Stats., to issue rules specifying tolerances for variations from quantities stated on packages. DATCP has authority under s. 98.16 (4), Stats., to regulate the construction, operation, testing, and maintenance of vehicle scales. DATCP has authority under s. 98.18 (2), Stats., to regulate the installation, servicing, testing and certification of weights and measures. DATCP has authority under s. 98.224 (4), Stats., to promulgate rules that establish standards for the construction, operation, and maintenance of vehicle tank meters, and authority under s. 98.245 (9), Stats., to establish standards for liquefied petroleum gas meters.

DATCP has authority under s. 100.20 (2) (a), Stats., to forbid unfair methods of competition and unfair trade practices.

DATCP has authority under s. 100.45 (5) (a), Stats., to promulgate rules establishing standards for recycled refrigerant based on recognized national industry standards, and qualifications for individuals and businesses that service mobile air conditioners. However, s. 100.45 (5e) (b), Stats., prohibits DATCP from promulgating rules that prohibit the sale of refrigerant that is a substitute for ozone-depleting refrigerant in a container holding less than 15 pounds.

Related Statutes and Rules

This proposed rule updates a number of existing rule chapters and is related to several statutes and rules.

Chapter ATCP 90, Fair Packaging and Labeling, requires certain information be included on product labels. This rule is related to ch. 97 Food Regulation and ch. 98 Weights and Measures, Stats.

Chapter ATCP 91, Selling Commodities by Weight, Measure or Count, regulates how a seller communicates quantity of product to the buyer. This rule is related to ch. 98, Stats., Weights and Measures.

Chapter ATCP 92, Weights and Measures, regulates the accuracy of scales, tank meters, and other measuring devices. It contains license or certification programs for devices, technicians and service companies. This rule is related to Ch. 98, Stats., Weights and Measures.

Chapter ATCP 113, Gasoline Advertising, prohibits gasoline sellers from misrepresenting the octane rating of gasoline. This rule is promulgated under s. 100.20, Unfair Trade Practices, Stats. Gasoline octane is also regulated under Ch. 168, Stats., Oil Inspection, and ch. SPS 348, Petroleum and Other Liquid Fuel Products.

Chapter ATCP 136, Mobile Air Conditioners; Reclaiming or Recycling Refrigerant, regulates the repair or service of motor vehicle air conditioners and trailer refrigeration equipment. This rule relates to s. 100.45, Stats., Mobile Air Conditioners.

Plain Language Analysis

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

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 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. It also corrects references to specific sections (in the case of 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 NIST Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," (2011 edition) 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 on 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 they are not required to submit their construction plans).

This rule also modifies the definition of "vehicle scale" to make it clear that ch. ATCP 92 does not apply to scales that are not in commercial service.

Chapter ATCP 113 - Gasoline Advertising

The current 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 updates references to ASTM standards.

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 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.

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-1234fy (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 will request 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 also available online at http://www.nist.gov/index.html. SAE International publications are also 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.

DATCP Contact

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Place Where Comments are to be Submitted and Deadline for Submission

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

Kevin LeRoy
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-4928
E-Mail: kevin.leroy@wisconsin.gov

Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this rule is approved by the Board of Agriculture, Trade and Consumer Protection.

SECTION 1. ATCP 90.01 (26) is amended to read:

ATCP 90.01 (26) "Unreasonable shortage" means a shortage that exceeds the maximum allowable variation specified for a commodity in the national institute of standards and technology handbook 133, "Checking the Net Contents of Packaged Goods~~.~~," 2013 Edition.

SECTION 2. ATCP 91.01 (4) and (Note) are amended to read:

ATCP 91.01 (4) "NIST Handbook 130" means *NIST Handbook 130 (~~2011~~ 2013 edition)* published by the national institute of standards and technology, United States department of commerce.

Note: Copies of NIST Handbook 130 (~~2009~~ 2013 edition) are on file with the department and the legislative reference bureau. Copies may be obtained from

the U.S. Government Printing Office, Stop SSOP, Washington, D.C. 20102-0001, website www.nist.gov.

SECTION 3. ATCP 91.03 (3) (k) and (L) are amended to read:

ATCP 91.03 (3) (k) *Liquid oxygen used for respiration.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.22, shall be sold in compliance with that section.

(L) ~~*LP gas*~~ *Liquefied petroleum (LP) gases.* Commodities covered by NIST Handbook 130, ch. ~~IV.B, section 2.21~~ IV.G, section 2.8, shall be sold in compliance with that section.

SECTION 4. Chapter ATCP 92 Prefatory Note relating to statutory authority is amended to read:

Note: This chapter is adopted under authority of ss. 93.07 (1), 93.15 (1), 98.03 (2), ~~98.16 (3),~~ 98.16 (4), 98.18 (1h) and (2), and 100.20 (2), Stats. Violations of this chapter are subject to the penalties and remedies provided under ss. 98.16, 100.20 (5) and (6), and 100.26 (3) and (6), Stats.

SECTION 5. ATCP 92.01 (15) is amended to read:

ATCP 92.01 (15) "Vehicle scale" means a commercial scale designed or used to weigh loaded or unloaded highway, farm, or industrial vehicles, and includes above-ground scales, dump scales, and portable scales. "Vehicle scale" does not include a railway scale used exclusively for the weighing of commodities on railroad track vehicles.

SECTION 6. ATCP 92.02 (1) and (Note) are amended to read:

ATCP 92.01 (1) Except as provided in this chapter, weighing and measuring devices shall comply with applicable specifications, tolerances and other technical requirements set forth in the national institute of standards and technology handbook 44 (specifications, tolerances and other technical requirements for weighing and measuring devices), ~~2011~~ 2013 edition.

NOTE: See s. 98.03 (2), Stats. The current edition of the National Institute of Standards and Technology Handbook 44 (Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices) is on file with the department and the legislative reverence bureau. Copies may be purchased from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box

371954, Pittsburgh, PA 15250-7954. Excerpts can be viewed at http://www.nist.gov/index.html.

SECTION 7. ATCP 92.06 (1) (a) and (b), and (2) are amended to read:

ATCP 92.06 (1) (a) The national institute of standards and technology handbook 44 (specifications, tolerances, and other technical requirements for weighing and measuring devices), ~~2011~~ 2013 edition.

(b) The national institute of standards and technology handbook 133 (checking the net contents of packaged goods), ~~2011~~ 2013 edition.

(2) PRICE VERIFICATION SYSTEMS. Inspections of price verification systems shall comply with 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), ~~2011~~ 2013 edition.

SECTION 8. ATCP 92.20 (2) (d) (Note) is amended to read:

ATCP 92.20 (2) (d) **Note:** You may obtain application forms at ~~http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp~~ http://datcp.wi.gov/consumer/weights_and_Measures/index.aspx or by writing to:

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

SECTION 9. ATCP 92.21 (2) (b) (Note) is amended to read:

ATCP 92.21 (2) (b) **Note:** You may obtain application forms at ~~http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp~~ http://datcp.wi.gov/consumer/weights_and_Measures/index.aspx or by writing to:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Trade and Consumer Protection
Weights & Measures Program
P.O. Box 8911

Madison, WI 53708-8911

SECTION 10. ATCP 92.21 (4) (Note) is amended to read:

ATCP 92.21 (4) **Note:** Currently, the Central Weights and Measures Association provides examinations in the following device categories: HB44 general code, retail computing scales, medium capacity scales, livestock scales, vehicle scales, railroad track scales, belt conveyor scales, retail motor fuel dispensers, vehicle tank meters, LPG meters, loading rack meters, and agricultural chemical and mass flow meters.

SECTION 11. ATCP 92.22 (1) (b) and (Note) are amended to read:

ATCP 92.22 (1) (b) Comply with applicable requirements contained in the national institute of standards and technology handbook 44 (specifications, tolerances, and other technical requirements for weighing and measuring devices), ~~2011~~ 2013 edition.

Note: The national institute of standards and technology handbook 44 (specifications, tolerances, and other technical requirements for weighing and measuring devices) ~~2011~~ 2013 edition, is on file with the department and the legislative reference bureau. You may purchase copies of this handbook from the U.S. Government Printing Office, Superintendent of Document Sales, P.O. Box 371954, Pittsburgh, PA 15250-7954.

SECTION 12. ATCP 92.30 (1) (c) and (d) (Note), (3) (e) 2., and (6) (title) and (c) (Note) are amended to read:

ATCP 92.30 (1) (c) An application under par. (b) shall document that the vehicle scale ~~or livestock scale~~ complies with the construction standards in sub. (3).

(d) **Note:** A permit application form under sub. (1) (b) may be obtained at ~~http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp~~ http://datcp.wi.gov/consumer/weights_and_Measures/index.aspx or by writing to:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Trade and Consumer Protection
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(3) (e) 2. In every above-ground vehicle scale, there shall be a clearance of not less than 6 inches (15 cm) between the top surface of the base slab and the bottom of the load receiving element. This subdivision does not apply to above-ground scales constructed prior to January 1, 1992.

(6) VEHICLE ~~AND LIVESTOCK~~ SCALES; CONSTRUCTION VARIANCES.

(c) **Note:** A variance application form under sub. (6) (b) may be obtained at ~~http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_mesures.jsp~~ http://datcp.wi.gov/consumer/weights_and_Measures/index.aspx or by writing to:

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Division of Trade and Consumer Protection
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P.O. Box 8911
Madison, WI 53708-8911

SECTION 13. ATCP 92.31 (2) (d) (Note) is amended to read:

ATCP 92.31 (2) (d) **Note:** A license application form under sub. (2) (d) may be obtained at ~~http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp~~ http://datcp.wi.gov/consumer/weights_and_Measures/index.aspx or by writing to:

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SECTION 14. ATCP 92.43 (2) (Note) is amended to read:

ATCP 92.43 (2) **Note:** An application form under sub. (2) may be obtained at ~~http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.jsp~~ http://datcp.wi.gov/consumer/weights_and_Measures/index.aspx or by writing to:

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SECTION 15. ATCP 92.50 (2) (b) (Note) and (3) (d) are amended to read:

ATCP 92.50 (2) (b) **Note:** An application form under sub. (2) may be obtained at ~~http://www.datcp.state.wi.us/cp/consumerinfo/cp/weights_measures/weights_measures.~~jsp http://datcp.wi.gov/consumer/weights_and_Measures/index.aspx or by writing to:

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P.O. Box 8911
Madison, WI 53708-8911

(3) (d) A surcharge of $200 if the department determines that, within one year prior to submitting the application, the applicant failed to comply with the reporting requirement under ~~sub. (3)~~ ATCP 92.52. A surcharge payment under this paragraph does not relieve the applicant of any other civil or criminal liability for violating s. ATCP 92.52, but is not evidence of a violation.

SECTION 16. ATCP 113.02 is renumbered ATCP 113.02 (intro) and amended to read:

ATCP 113.02 The test methods prescribed in s. ATCP 113.01 (1) and (3) are set forth in ~~the book "ASTM Manual for Rating Motor Fuels by Motor and Research Methods", published 1956, copies of which are on file at the offices of the state department of agriculture, trade and consumer protection and revisor of statutes, and which may be obtained from American Society for Testing Materials International, 100 Barr Harbor Dr., PO Box C700, West, Conshohocken, PA 19428-2959.~~ in the following publications:

SECTION 17 ATCP 113.02 (1), (2), (3) and (Note) are created to read:

ATCP 113.02 (1) ASTM D4814-12 Standard Specifications for Automotive Spark-Ignition Engine Fuel.

(2) ASTM D2699-12 Standard Test Method for Research Octane Number of Spark Ignition Engine Fuel.

(3) ASTM D2700-12 Standard Test Method for Motor Octane Engine Fuel.

Note: Copies of the publications listed in 113.02 (a) to (c) are on file at the offices of the Wisconsin Department of Agriculture, Trade and Consumer Protection. They are also on file at the Legislative Reference Bureau. In Addition, copies may be obtained from ASTM International, 100 Barr Harbor Dr., PO Box C700 West, Conshohocken, PA 19428-2959, www.astm.org.

SECTION 18. ATCP 136.01 (11m) is created to read:

ATCP 136.01 (11m) "Ozone-depleting refrigerant" means a substance used in refrigeration that is or contains a class I substance, as defined in 42 USC 7671 (3) or a class II substance, as defined in 42 USC 7671 (4).

SECTION 19. ATCP 136.02 (4) (Note) is repealed and recreated to read:

ATCP 136.02 (4) **Note:** An application form under sub. (4) may be obtained at http://datcp.wi.gov/consumer/weights_and_Measures/index.aspx or by writing to:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Trade and Consumer Protection
Weights and Measures Program
P.O. Box 8911
Madison, WI 53708-8911

SECTION 20. ATCP 136.08 (7) (Note) is repealed and recreated to read:

ATCP 136.08 (7) **Note:** You may obtain a list of approved training programs at http://datcp.wi.gov/consumer/weights_and_Measures/index.aspx or by writing to:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Trade and Consumer Protection
Weights and Measures Program
P.O. Box 8911
Madison, WI 53708-8911

SECTION 21. ATCP 136.10 (1) is amended to read:

ATCP 136.10 (1) CONTAINER SIZE; GENERAL. No person may buy, sell or consign refrigerant in a container holding less than 15 pounds of ozone-depleting refrigerant.

SECTION 22. ATCP 136.12 (3) (e) is amended to read:

ATCP 136.13 (3) (e) Equipment used to recover refrigerant other than R-12 ~~or~~, R-134a or HFO1234fy shall meet or exceed the standards specified by the air conditioning heating and refrigeration institute in ~~"Performance of Refrigerant Recover, Recycling and/or Reclaim Equipment, ARI Standard 740-1993"~~ AHRI 740-1998: Refrigerant Recover/Recycling Equipment.

SECTION 23. ATCP 136.12 (3) (f) and (g) are created to read:

ATCP 136.13 (3) (f) Equipment used to recycle HFO-1234fy refrigerant shall meet or exceed the standards specified by the society of automotive engineers in "R-1234fy (HFO-1234yf) Recovery/Recycling/Recharging Equipment for Flammable Refrigerants for Mobile Air-Conditioning Systems," SAE J2843-2013.

(g) Equipment used to recover but not recycle HFO-1234fy refrigerant shall meet or exceed the standards specified by the society of automotive engineers in "Recovery Equipment for Contaminated Refrigerant from Mobile Automotive Air-Conditioning Systems," SAE J2851-2012.

SECTION 24. ATCP 136.14 (1) (c) is created to read:

ATCP 136.14 (c) HFO-1234fy refrigerant shall meet or exceed the standards specified by the society of automotive engineers in "R1234yf (HFO-1234yf) New Refrigerant Purity and Container Requirements for Use in Mobile Air-Conditioning Systems," SAE J2844-2013.

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

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By:_____
Ben Brancel
Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule 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**

Adm. Code Reference: **ATCP 90, 91, 92, 113, and 136**

Rules Clearinghouse #: **Not yet assigned**

DATCP Docket #: **12-R-11**

Rule Summary

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

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 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. It also corrects references to specific sections (in the case of 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 NIST Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," (2011 edition). 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 on 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 they are not required to submit their construction plans).

This rule also modifies the definition of "vehicle scale" to make it clear that ch. ATCP 92 does not apply to scales that are not in commercial service.

Chapter ATCP 113 - Gasoline Advertising

The current 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 updates references to ASTM standards.

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 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.

Small Business Affected

DATCP anticipates that this rule will have only a minimal effect on small businesses. These effects are likely to be minor and beneficial rather than significant and adverse. This proposed rule maintains regulatory consistency between Wisconsin and neighboring states that use the

same nationally accepted technical standards and also regulatory consistency between the state statutes and administrative code. The rule might potentially affect the following types of businesses in the following ways:

Businesses that sell packaged consumer products or commodities.

Current rules regulate product labeling (ATCP 90) and weighing & measuring commodities for sale (ATCP 91). These current rules rely on universal technical standards established by NIST (National Institute of Standards and Technology). This proposed rule updates the references to the most recent versions of these technical standards. However, these updated references do not represent any significant change for the regulated businesses.

Businesses that service weights & measures equipment (such as flow meters or scales)

Currently, ATCP 92 regulates weights and measures devices and service companies. ATCP 92 references universal technical standards established by NIST (National Institute of Standards and Technology). This proposed rule updates the references to the most recent versions of these technical standards. However, these updated references do not represent any significant change for the regulated businesses.

Businesses that sell gasoline

Currently, ATCP 113 – Gasoline Advertising, relies on nationally recognized standards for octane rating published by ASTM. However, the current rule relies on standards that are outdated and are, 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.

Businesses that service mobile air conditioners

Currently, ATCP 136 regulates businesses that service mobile air conditioners. This proposed rule updates ATCP 136 to conform to recent changes in state statute and allow these businesses to service units that require the new refrigerant HFO-1234yf. This product was only recently approved by EPA.

Reporting, Bookkeeping and other Procedures

The proposed rule does not make any changes to existing reporting, bookkeeping or other procedures.

Professional Skills Required

The proposed rule does not make any changes to existing professional skills required.

Accommodation for Small Business

This proposed rule does not represent any change from existing policies and requirements and, therefore, does not contain any accommodations for small businesses.

Conclusion

DATCP anticipates that this rule will have only a minimal effect on small businesses. This rule will not have a significant adverse effect on "small business," and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

Dated this 2 day of May, 2013.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Sandra S. Chalmers, Administrator
Division of Trade and Consumer Protection