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