Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject:	**Home Improvement Practices**
Adm. Code Reference:	**ATCP 110 and ATPC 111**
Rules Clearinghouse #:	**Not yet assigned**
DATCP Docket #:	**12-R-08**

Rule Summary

ATCP 110 currently regulates home improvement practices. Pursuant to the definition of "home improvement", new residential construction is outside of the scope of the current rule and DATCP does not regulate trade practices in the construction of new homes.

Under this rule, the rights and duties contained in ATCP 110 would not apply to very large home improvement projects; those where the value of the project is more than 100% of the assessed value of the property. A typical example of this might be a contract to build a new structure on a preexisting foundation.

Under the current rule, home improvement contractors are required to obtain all required state or local building permits before work can begin under the contract. Under this proposed rule, if a home improvement contract consists of multiple subprojects, contractors may start work on the overall project before obtaining all building permits. However, they may not begin work on a subproject that requires a building permit until after they obtain the permit.

Under the current rule, sellers must provide manufacturers product warranties either at the time the buyer and seller enter into the contract or when the product is installed. Under this proposed rule, the seller has the option of providing written manufacturers' warranties at the completion of the project – as long as specified in the contract.

Under the current rule, if a home improvement contract contains liquidated damages that penalize a buyer for breaching the contract; the liquidated damages may not exceed 10% of the contract price or $100, whichever is less. This proposed rule maintains the 10% limit, but it repeals the $100 maximum.

Under the current rule, the seller may not substitute products or materials from those specified in the home improvement contract, or for those which the seller represented would be used, without prior consent from the buyer. If the home improvement contract is in writing, the prior consent must also be in writing. Under this proposed rule, the seller may deviate from the written home improvement contract; but only under certain, limited conditions:

- The buyer verbally agrees to the deviation
- The seller maintains documentation of the deviation, and that the buyer agreed to the deviation.
- The deviation does not represent any additional cost to the buyer
- The deviation does not represent a decrease in the value of the finished product.

Under the current rule, the seller is required to provide the buyer with lien waivers before accepting final payment. Further, if the contract requires partial payments at various stages in the performance of the contract; the seller is required to provide lien waivers for the proportionate value of all labor, services and products or materials furnished or delivered as of the time payment is made. This rule does not alter the current rule's treatment of lien waivers before final payment. However, it does allow the seller to forego proportionate lien waivers before partial payments as long as the seller take steps to educate the buyer about lien waivers and the buyer provides written consent to foregoing the partial waivers.

Under the current rule, sellers are required to give buyers timely notice of any impending delay in contract performance. If the home improvement contract is in writing (or required to be in writing), the buyer must agree in writing to the change in the schedule. This rule qualifies this requirement by specifying that, if the seller can show that the delay was caused by the buyer, the seller is not responsible for the delay.

The current rule contains protections for buyers in the event that the seller fails to complete the project, but also assigns the rights to collect payment to a third party. This rule does not alter this provision; but it does insert an explanatory note that includes an example of how it might be applied.

Under current rules, sellers who provide basement waterproofing services are regulated both as home improvement contractors under Ch. ATCP 110 and also under Ch. ATCP 111 – Basement Waterproofing Practices. This rule consolidates the content of Ch. ATCP 111 into a section of ATCP 110, without making any substantial changes.

Small Business Affected

The existing ATCP 110 regulates businesses that provide home improvement services. Many of these businesses are "small businesses". They include general contractors, landscapers, plumbers, roofers, window installers, cabinet makers, electricians, and many more. Some of changes to ATCP 110 proposed in this rule will have an effect on some of these businesses. However, DATCP anticipates that the majority of those effects will be beneficial. The rule streamlines existing regulations to make them easier for home improvement providers to comply. But the rule does not eliminate these regulations, thereby preserving important protections for consumers. This rule may benefit home improvement contractors in the following ways:

- General contractors working on significant reconstruction projects would no longer be regulated under this proposed rule. Currently, Ch. ATCP 110 does not

regulate new home construction but it does regulate home improvement projects. Under this proposal, major reconstructions – those projects where the price of the contract is greater than the assessed property value -- would be treated like new home construction.

- For all home improvement contractors, this rule provides some additional flexibility (as long as certain conditions are met). Including:
    - Building permits need only be obtained before work on that portion of the project concerning the building permit. Otherwise, all required building permits must be obtained before any work is completed.
    - Sellers can provide written manufacturers' warranties at the conclusion of the work. Otherwise, written manufacturers' warranties must be provided at the time the product is installed.
    - Under very limited circumstances, sellers can deviate from the written contract based on verbal agreements between the buyer and the seller.
    - The seller cannot be held responsible for delays in contract performance if the seller can demonstrate that delay was caused by actions or inactions of the buyer.

Reporting, Bookkeeping and other Procedures

Generally, reporting, bookkeeping and other procedures are the same as the current rule. However, this proposed rule does allow home improvement contractors some choices. For example under the current rule, any changes to the home improvement contract must be in writing before any work can proceed under the contract. Under the proposed rule, work can proceed, but only if the seller agrees to maintain certain documentation.

Professional Skills Required

This rule does not represent any requirements for professional skills.

Accommodation for Small Business

Many of the businesses affected by this rule are "small businesses." This rule does not make special exceptions for small businesses because the subject matter does not lend itself to treating different sized home improvement contractors differently.

Conclusion

This rule will generally benefit affected businesses, including "small businesses." Negative effects, if any, will be few and limited. 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 25 day of June, 2013.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Sandy Chalmers, Administrator
Division of Agricultural Resource Management