




State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

DATE: September 21, 2023

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Randy Romanski, Secretary
Michelle Reinen, Administrator, Division of Trade and Consumer Protection 

SUBJECT: **ATCP 90-91-92: Fair Packaging and Labeling, Selling Commodities by Weight, Measure or Count, and Weights and Measures;**
Wisconsin Admin. Code Chapter ATCP 90, 91, and 92 (Hearing Draft Rule)

PRESENTED BY: David A. Woldseth, Policy Analyst

REQUESTED ACTION:

At the September 21, 2023 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) related to fair packaging and labeling, selling commodities by weight, measure or count, and weights and measures. This rule implements Wis. Stat. § 93.07 (1) which allows the department, "To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department...".

SUMMARY:

This rule makes minor technical changes to the rule. It updates the *NIST Handbooks* incorporated by reference to the most recent year, changes the notes that inform how to obtain the reference materials, corrects various typographical errors, and otherwise changes language to adhere to the *Administrative Rules Procedures Manual*.

DATCP formally published the draft scope statement in the August 29, 2022 *Wisconsin Administrative Register* and filed a copy with the Department of Administration (DOA). After publication, the Joint Committee for the Review of Administrative Rules required DATCP to hold a public hearing on the scope statement under Wis. Stat. § 227.136 (1). At its September meeting, the DATCP Board approved that hearing, and it was held on Thursday, October 13, 2022. The Board approved the scope statement November 17, 2022, and staff prepared a hearing draft rule for public hearing that it presents for approval.

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 then hold public hearings. The exact hearing dates and locations have not yet been determined.

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Following the public hearings, DATCP will prepare the final draft rule which will be presented for the Board's consideration. If the Board approves, DATCP will transmit the rule to the Governor for his written approval. After the Governor approves the final draft rule, DATCP will send the final draft rule to the Legislature for review by the appropriate legislative committees. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

THE DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION'S
PROPOSED ORDER TO ADOPT PERMANENT RULES

PROPOSED ORDER

The Wisconsin department of agriculture, trade and consumer protection proposes the following rule *to repeal* ATCP 90.10 (2) (Note 2) and ATCP 92.50 (3) (a); *to amend* ATCP 90.01 (15g) and (Note), 90.01 (15r) and (Note), 90.01 (19), 90.01 (26) and (Note), 90.04 (e), (f), (g), and (t), 90.07 (2), 90.07 (7) (a) 2. and 4., 90.08 (10) (g) and (h), 90.08 (12) (a), 90.08 (14) (a) 2. (Note), 90.08 (16) (b), 90.09 (2) (a) and (c) (Note), and 90.09 (4) (a), ATCP 91.03 (1) (e) and 91.01 (4) and (Note), ATCP 92.01 (10h) and (Note), (10p) and (Note), (10t) and (Note), (15), and (16), 92.02 (1) (Note), 92.02 (2), 92.06, 92.22 (1) (b) and (Note), 92.22 (2), 92.30 (3) (c) 2. and 3., 92.30 (3) (e) 2., and 92.43 (3) (a); *relating to* fair packaging and labeling; selling commodities by weight, measure, or count; and weights and measures; *affecting* small businesses.

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

Statutes Interpreted

Statutes Interpreted: Wis. Stat. § 93.07 (1) and Wis. Stat. ch. 98.

Statutory Authority

Statutory Authority: Wis. Stats. §§ 93.07 (1), 98.03 (2), 98.07 (3) and (4), 98.16(4), 98.18(2), 98.224(4), and 98.245(9).

Explanation of Statutory Authority

Under Wis. Stat. § 93.07 (1), the department's duties include, "To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law."

In addition, various sections in Wis. Stat. ch. 98 require or authorize the department to promulgate rules concerning commercial weights and measures. Wis. Stat. § 98.03(2) provides: “The department may issue rules governing the construction, installation, and use of commercial weights and measures and prescribing tolerances thereof. The specifications, tolerances, and regulations for commercial weighing and measuring devices issued by the national institute of standards and technology shall apply in this state except as modified by such rules or by statute.”

Wis. Stat. § 98.07(4) requires the department to promulgate rules to prevent consumer deception: “In order to prevent consumer deception, the department shall prescribe, by rule, standards for determining and declaring weight, measure or count, including the conspicuousness of quantity declarations.” Subsection (3) of that statute requires promulgating rules for commodities packaged prior to sale: “With respect to commodities packaged prior to sale, the department shall issue rules permitting reasonable variations from declared quantity which unavoidably occur in good packaging and distribution practices.”

Among the other statutes in Wis. Stat. ch. 98 requiring or authorizing the department to promulgate rules are the following: § 98.16(4), which requires promulgating rules for vehicle scales; § 98.18(2), which authorizes promulgating rules “to regulate the installation, servicing, testing and certification of weights and measures” and permits those rules to “include record-keeping and reporting requirements”; § 98.224(4), which concerns promulgating rules for vehicle tank meters; and § 98.245(9), which concerns promulgating rules for liquified petroleum gas meters.

Related Statutes and Rules

Wisconsin law on weights and measures is set forth in Wis. Stat. ch. 98 and in Wis. Admin. Code chs. ATCP 90, 91, and 92.

Plain Language Analysis

Background

The Wisconsin Department of Agriculture, Trade and Consumer Protection (department) administers Wis. Stat. ch. 98, titled *Weights and Measures*. In fulfilling that responsibility, the department has promulgated administrative rules that incorporate by reference specifications and standards set forth in handbooks published by the National Institute of Standards and Technology (NIST), which is “a science, engineering, technology, and measurement laboratory” within the United States Department of Commerce. *See* 15 U.S.C. § 272(a). NIST works with and supports the National Conference on Weights and Measures (NCWM) in developing the standards set forth in NIST handbooks. NCWM is a professional not-for-profit association of state and local weights and measures officials, federal agencies, manufacturers, retailers, and consumers. Under 15 U.S.C. § 272(b)(10) and (c)(4), NIST is directed to cooperate with states in securing uniformity of weights and measures laws and methods of inspection. In partial fulfillment of that duty, NIST publishes handbooks with standards for weights and measures. Periodically, NIST updates those handbooks, thus leading the department to update its rules to incorporate by reference the latest version of relevant NIST handbooks.

The department would like to update the NIST technical standards incorporated by reference in Wis. Admin. Code chs. ATCP 90, 91, and 92 (newer editions of technical references already cited in current rules). The code currently incorporates by reference the 2018 editions of *NIST Handbook 44*, *NIST Handbook 130*, and *NIST Handbook 133*. The proposed rule incorporates by reference the 2023 editions of those NIST publications. The department's Board approved the scope statement at its November 17, 2022 meeting.

Rule Content

This rule revision makes minor technical changes to the three rules (Wis. Admin. Code chs. 90, 91, and 92).

As previously stated, the revision updates the rules to incorporate by reference the 2023 editions of relevant *NIST Handbooks*. In addition, the revision changes the notes that explain how to obtain the handbooks, corrects various typographical errors, and makes other changes to adhere to the *Administrative Rules Procedures Manual*. For instance, the examples in § 1.06 (3) of the *Administrative Rules Procedures Manual* implicitly advise against using the percentage sign and instead recommend using the word "percent." With respect to the general topic of spelling, § 1.05(1)(g) of the Manual directs, "Use the current edition of Webster's New International Dictionary as the standard for spelling conventions." Therefore, terms such as "corn meal" and "dish cloths" became "cornmeal" and "dishcloths." *Administrative Rules Procedures Manual* § 1.06(c) reads, "Avoid using parentheses or dashes. If certain material is important to the thought or concept expressed in the rule, the material should be set apart with commas, not parentheses or dashes." Finally, NIST does not "certify" laboratories; it instead "recognizes or accredits" them. To reflect the NIST terminology, rule language has been changed.

This rule specifically does not adopt Section 3.40, Electric Vehicle Fueling Systems. The 2018 edition of *NIST Handbook 44* lists this section as tentatively adopted. However, the 2023 edition permanently adopts this section. The department believes that the adoption of the Electric Vehicle Fueling Systems section would be a substantive rather than a technical revision. Therefore, if necessary or appropriate to do so in the future, the department will commence a separate rulemaking to address that section of *NIST Handbook 44* and its incorporation into the *Wisconsin Administrative Code*.

The department also proposes to repeal part of Wis. Admin. Code §§ ATCP 92.43 (3) (a) and ATCP 92.50 (3) (a) in whole since the affected license years have passed.

Summary of and Comparison with Existing or Proposed Federal Statutes and Regulations

Not applicable. While NIST is "a science, engineering, technology, and measurement laboratory" within the United States Department of Commerce (*See* 15 U.S.C. § 272(a)), NIST develops recommended national standards through participation from state and local weights and measures officials and industry representatives during annual meetings of the National Conference on Weights and Measures. The specifications and standards set forth in NIST handbooks are themselves recommendations, not federal laws.

Summary of Comments Received during the Public Hearing on Statement of Scope

The department received no comments about the statement of scope either at the public hearing or during the following comment period.

Comparison with Rules in Adjacent States

Illinois

Illinois uses *NIST Handbook 44* and *NIST Handbook 130*.

The Uniform Packaging and Labeling Regulation and the Uniform Regulation for the Method of Sale of Commodities in the *National Institute of Standards and Technology Handbook 130*, and any of its subsequent supplements or revisions, shall be the requirements and standards governing the packaging, labeling, and method of sale of commodities for this State, except insofar as specifically modified, amended, or rejected by regulation issued by the Director.

The following sections of the Method of Sale of Commodities requirements shall not be adopted: Section 1.2 (Bread), Section 2.20 (Gasoline-Oxygenate Blends), and Section 1.9.2 (Unit Price Advertising).

Iowa

The National Institute of Standards and Technology (NIST) Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality, *Handbook 133*, Checking the Net Contents of Packaged Goods, Type Evaluation, and all supplements to these handbooks, as published by the National Institute of Standards and Technology amended or revised as of January 1, 2020, are adopted in their entirety by reference except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship.

Michigan

Michigan has passed a Weights and Measures act that regulates and provides standards for weights and measures, and the packaging and advertising of certain commodities; provides a fee system for certain inspections and tests; and provides penalties for fraud and deception in the use of false weights and measures and other violations.

Minnesota

Weighing and measuring equipment manufactured, offered, or exposed for sale or sold or given away for use in trade or commerce in Minnesota must conform to the requirements and specifications of *NIST Handbook 44*. *NIST Handbook 44* (2019), "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," as adopted by the 103rd National Conference on Weights and Measures and published by the United States Department of Commerce, National Institute of Standards and Technology, is incorporated by reference subject to some exceptions.

Summary of Factual Data and Analytical Methodologies

To develop this rule, the department reviewed the 2023 edition *NIST Handbook* standards and verified they were still correct. Because this is a technical rule revision, no further analyses were needed.

Analysis and Supporting Documents used to Determine Effect on Small Business in Preparation of an Economic Impact Analysis

Not applicable. *NIST Handbooks* are available online at no cost. Also, no major changes within the *NIST Handbooks* themselves over the past five years have required major costs for businesses.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on Small Business

A complete *regulatory flexibility analysis* is attached.

The department's Regulatory Review Coordinator may be contacted by:
Email at Bradford.Steine1@wisconsin.gov
Telephone at (608) 224-5024

Standards Incorporated by Reference

This rule incorporates by reference the 2023 editions of relevant *NIST Handbooks*. As required by Wis. Stat. ch. 227, consent will be received from the Attorney General to incorporate these standards by reference after the public hearings and prior to seeking the Governor's assent to the final draft rule. A copy of these documents will be kept on file with the department and with the Legislative Reference Bureau.

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Where Comments May Be Submitted

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After the final hearing, the department will accept written comments for an additional two weeks.

RULE TEXT

SECTION 1. ATCP 90.01 (15g) and (Note) are amended to read:

(15g) “*NIST Handbook 44*” means *NIST Handbook 44*, ~~(2018~~ 2023 ~~edition,~~) published by the National Institute of Standards and Technology, United States department of commerce.

Note: Copies of *NIST Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, ~~(2018~~ 2023 ~~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 online at <https://www.nist.gov/pml/owm/publications/nist-handbooks>.

SECTION 2. ATCP 90.01 (15r) and (Note) are amended to read:

(15r) “*NIST Handbook 133*” means *NIST Handbook 133*, ~~(2018~~ 2023 ~~edition,~~) published by the National Institute of Standards and Technology, United States department of commerce.

Note: Copies of *NIST Handbook 133, Checking the Net Contents of Packaged Goods*, ~~(2018~~ 2023 ~~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 online at <https://www.nist.gov/pml/owm/publications/nist-handbooks>.

SECTION 3. ATCP 90.01 (19) is amended to read:

(19) “Principal display panel” means that part of a package which is most likely to be displayed to, or examined by, a consumer under normal conditions of retail sale. If a package includes more than one principal display panel, “principal display panel” includes each of those panels. If a package is cylindrical in shape, “principal display panel” means that 40% percent of the cylinder circumference that is most likely to be displayed or presented to a consumer under normal conditions of sale.

SECTION 4. ATCP 90.01 (26) and (Note) are amended to read:

(26) “Unreasonable shortage” means a shortage that exceeds the maximum allowable variation specified for a commodity in ~~the~~ *NIST Handbook 133*.

Note: A copy of ~~the national institute of standards and technology handbook~~ *NIST Handbook 133, Checking the Net Contents of Packaged Goods, 2023 edition*, is on file with the department; ~~the secretary of state~~ and the legislative reference bureau. Copies may be obtained online at <https://www.nist.gov/pml/owm/publications/nist-handbooks>.

SECTION 5. ATCP 90.04 (7) (e), (f), and (g) are amended to read:

(e) Cubic centimeter cm^3

(f) Cubic decimeter dm^3

(g) Cubic meter m^3

SECTION 6. ATCP 90.04 (7) (t) is amended to read:

(t) Micrometer μm

SECTION 7. ATCP 90.07 (2) is amended to read:

(2) LOCATION AND POSITION. (a) *General*. A declaration of net quantity shall appear in the bottom 30% percent of the principal display panel, except that the declaration may appear elsewhere on the principal display panel if the panel area is 32 cm^2 (5 in^2) or less. The

declaration of net quantity shall be generally parallel to the base on which the package is designed to rest when displayed.

(b) *Spot label or header label.* If all of the required declarations under ss. ATCP 90.02 to 90.04 are contained on a spot label or header label, the declaration of net quantity may appear on the lower 30% percent of the spot label or header label, rather than on the lower 30% percent of the principal display panel.

SECTION 8. ATCP 90.07 (7) (a) 2. and 4. are amended to read:

2. For a cylindrical package, the area is 40% percent of the package height multiplied by the package circumference.

4. Except as provided under subds. 1. to 3., the area is 40% percent of the total area of the package surface, including package tops and bottoms, flanges at the tops and bottoms of cans, and the shoulders and necks of bottles or jars.

SECTION 9. ATCP 90.08 (10) (g) and (h) are amended to read:

(g) *Towels and related items.* The declaration of quantity for rectangular dish towels, ~~dish cloths~~, dishcloths, bath towels, ~~face cloths~~, facecloths, utility cloths, bath mats, and related items shall state, in centimeters or inches, the length and width of the item if the item is woven. If the item is knitted, its dimensions need not be stated.

(h) *Non-rectangular and irregular items.* 1. The declaration of quantity for textile products such as pot holders, fixture and appliance covers, slip covers, and non-rectangular diapers shall be stated in terms of count and may include size designations and dimensions.

2. The declaration of quantity for non-rectangular textile products of the types identified under pars. (a) to (g) shall state the geometric shape of the product and the dimensions that are

customarily used in describing that geometric shape. Dimensions may be stated in metric or inch-pound units corresponding to those specified under pars. (a) to (g).

SECTION 10. ATCP 90.08 (12) (a) is amended to read:

(12) PACKAGED SEED. (a) *Declaration of quantity; location on small packages.*

Notwithstanding s. ATCP 90.07 (2), the declaration of net quantity on a package of seed intended for planting shall appear in the upper 30% percent of the principal display panel if the net weight of package contents is 7 grams (1/4 ounce) or less.

SECTION 11. ATCP 90.08 (14) (a) 2. (Note) is amended to read:

Note: The “Measure Container Code” of ~~the~~ *NIST Handbook 44* is on file with the department and the legislative reference bureau. Copies may be obtained online at <https://www.nist.gov/pml/owm/publications/nist-handbooks>.

SECTION 12. ATCP 90.08 (16) (b) is amended to read:

(b) *Corn flour and ~~corn meal~~ cornmeal.* If corn flour or ~~corn meal~~ cornmeal is packaged in units of 5, 10, 25, 50, or 100 pounds, the net quantity declaration need not comply with the location requirement under s. ATCP 90.07 (2).

SECTION 13. ATCP 90.09 (2) (a) is amended to read:

(2) ENFORCEMENT SAMPLE AND INSPECTION LOT. (a) The department or a municipal sealer may determine the net contents of packaged commodities in an inspection lot based on an enforcement sample collected from that inspection lot. The enforcement sample shall be collected, tested, and analyzed according to applicable provisions of ~~the~~ *NIST Handbook 133*. Unless otherwise specified by *NIST Handbook 133*, the inspection lot shall be determined according to par. (b).

SECTION 14. ATCP 90.09 (2) (c) (Note) is amended to read:

Note: A copy of ~~the~~ *NIST Handbook 133, Checking the Net Contents of Packaged Goods, 2023 edition*, is on file with the department and the legislative reference bureau. Copies may be obtained online at <https://www.nist.gov/pml/owm/publications/nist-handbooks>.

SECTION 15. ATCP 90.09 (4) (a) is amended to read:

(4) UNREASONABLE SHORTAGES; ORDER PROHIBITING SALE. (a) If, in any enforcement sample under sub. (2) (a), the number of unreasonable shortages in individual packages exceeds the number specified for an enforcement sample of that size in ~~the~~ *NIST Handbook 133*, the department or a municipal sealer shall issue an order prohibiting the sale of the entire inspection lot from which that enforcement sample is collected.

SECTION 16. ATCP 90.10 (2) (Note 2) is repealed.

SECTION 17. ATCP 91 (Title) is amended to read: SELLING COMMODITIES BY WEIGHT, MEASURE, OR COUNT.

SECTION 18. ATCP 91.01 (4) and (Note) are amended to read:

(4) “*NIST Handbook 130*” means *NIST Handbook 130*, (~~2018~~ 2023 edition,) published by the National Institute of Standards and Technology, United States department of commerce.

Note: Copies of *NIST Handbook 130, Uniform Laws and Regulations in the areas of legal metrology and fuel quality*, (~~2018~~ 2023 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, or at www.nist.gov. online at <https://www.nist.gov/pml/owm/publications/nist-handbooks>.

SECTION 19. ATCP 91.03 (1) (e) is amended to read:

(e) *Flour, ~~corn meal~~ cornmeal, and like commodities*. Food commodities covered by *NIST Handbook 130*, ch. IV.B, section 1.4, shall be sold in compliance with that section.

SECTION 20. ATCP 92.01 (10h) and (Note) are amended to read:

(10h) “*NIST Handbook 44*” means *NIST Handbook 44*, ~~(2018~~ 2023 edition,) published by the National Institute of Standards and Technology, United States department of commerce, except for Section 3.40, Electric Vehicle Fueling Systems.

Note: Copies of *NIST Handbook 44, Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices*, ~~(2018~~ 2023 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.~~ online at <https://www.nist.gov/pml/owm/publications/nist-handbooks>.

SECTION 21. ATCP 92.01 (10p) and (Note) are amended to read:

(10p) “*NIST Handbook 130*” means *NIST Handbook 130*, ~~(2018~~ 2023 edition,) published by the National Institute of Standards and Technology, United States department of commerce.

Note: Copies of *NIST Handbook 130, Uniform Laws and Regulation in the areas of legal metrology and fuel quality*, ~~(2018~~ 2023 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.~~ online at <https://www.nist.gov/pml/owm/publications/nist-handbooks>.

SECTION 22. ATCP 92.01 (10t) and (Note) are amended to read:

(10t) “*NIST Handbook 133*” means *NIST Handbook 133*, ~~(2018~~ 2023 edition,) published by the National Institute of Standards and Technology, United States department of commerce.

Note: Copies of *NIST Handbook 133, Checking the Net Contents of Packaged Goods*, ~~(2018~~ 2023 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, online at <https://www.nist.gov/pml/owm/publications/nist-handbooks>.

SECTION 23. ATCP 92.01 (15) and (16) are amended to read:

(15) “Vehicle scale” means a commercial scale designed or used to weigh loaded or unloaded highway, farm, or industrial vehicles, and includes ~~above-ground~~ aboveground 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.

(16) “Vehicle tank meter” has the meaning given in s. 98.224 (1), Stats. A “vehicle tank² meter” does not include a liquefied petroleum gas meter.

SECTION 24. ATCP 92.02 (1) (Note) is amended to read:

Note: See s. 98.03 (2), Stats. The ~~2014~~ 2023 edition of the *NIST Handbook 44, (Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices)* *Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices*, is on file with the department and the legislative reference 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>. ~~obtained~~ online at <https://www.nist.gov/pml/owm/publications/nist-handbooks>.

SECTION 25. ATCP 92.02 (2) is amended to read:

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

(a) The chief of the office of weights and measures of ~~the~~ NIST.

(b) The national type evaluation program administered by the ~~National Conference on Weights and Measures~~ national conference on weights and measures.

Note: Devices certified under par. (b) are commonly known as “NTEP–approved” devices.

SECTION 26. ATCP 92.06 is amended to read:

ATCP 92.06 Inspection procedures and equipment.

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

(a) ~~The~~ *NIST Handbook 44*.

(b) ~~The~~ *NIST Handbook 133*.

(2) PRICE VERIFICATION SYSTEMS. Inspections of price verification systems shall comply with *NIST Handbook 130*, chapter V, section 7.

(3) INSPECTION EQUIPMENT AND STANDARDS. The department, or a laboratory ~~certified~~ recognized or accredited by the NIST, shall inspect, test, and approve testing equipment and standards used by inspectors. The department or ~~certified~~ laboratory recognized or accredited by NIST shall inspect, test, and approve the equipment at least once every 2 years unless the department specifies a different time interval for specific equipment or standards.

Note: The standards incorporated by reference in subs. (1) and (2) are on file with the department and the legislative reference bureau. Copies may be ~~purchased from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.~~ obtained online at <https://www.nist.gov/pml/owm/publications/nist-handbooks>.

SECTION 27. ATCP 92.22 (1) (b) and (Note) are amended to read:

(b) Comply with applicable requirements contained in ~~the~~ *NIST Handbook 44*.

Note: The *NIST Handbook 44*, (*Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*), ~~2016~~ 2023 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. Copies may be obtained online at~~ <https://www.nist.gov/pml/owm/publications/nist-handbooks>.

SECTION 28. ATCP 92.22 (2) is amended to read:

(2) TEST EQUIPMENT AND STANDARDS. The department, or a laboratory ~~certified~~ recognized or accredited by ~~the~~ NIST, shall inspect, test, and approve testing equipment and standards used by weights and measures service companies. The department, ~~or a certified~~ laboratory recognized or accredited by NIST, shall inspect, test, and approve the equipment at least once every 2 years unless the department specifies a different time interval for specific equipment or standards.

SECTION 29. ATCP 92.30 (3) (c) 2. and 3. are amended to read:

2. Scale pit floors and surfaces underlying ~~above-ground~~ aboveground vehicle scales shall be constructed of concrete, and shall be constructed so that they are well drained. The concrete floor or surface shall extend the full length and width of the scale. This subdivision does not apply to ~~above-ground~~ aboveground scales constructed prior to January 1, 1992.

3. A load-bearing concrete surface underlying an ~~above-ground~~ aboveground vehicle scale shall rest on a bed of compacted aggregate which is at least 6 inches ~~(15 cm)~~ or 15 centimeters thick under every portion of the load-bearing concrete surface, or on an alternative

foundation constructed according to the manufacturer's engineering drawings. This subdivision does not apply to ~~above-ground~~ aboveground scales installed prior to January 1, 1992.

SECTION 30. ATCP 92.30 (3) (e) 2. is amended to read:

2. In every ~~above-ground~~ aboveground 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~~ aboveground scales constructed prior to January 1, 1992.

SECTION 31. ATCP 92.43 (3) (a) is amended to read:

(a) ~~A license fee of \$40 for each liquefied petroleum gas meter for the license year December 1, 2011, to November 30, 2012, and a~~ A license fee of \$60 for each liquefied petroleum gas meter for license years beginning after November 30, 2012.

SECTION 32. ATCP 92.50 (3) (a) is repealed.

SECTION 33. EFFECTIVE DATE: This rule takes effect on the first day of the month following publication.

(END OF RULE TEXT)

Dated this _____ day of August, 2023.

WISCONSIN DEPARTMENT OF
AGRICULTURE, TRADE AND CONSUMER
PROTECTION

By: _____

Randy Romanski
Secretary

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date August 18, 2023</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) ATCP 90-91-92</p>	
<p>4. Subject Fair packaging and labeling; selling commodities by weight, measure, or count; and weights and measures</p>	
<p>5. Fund Sources Affected <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected</p>
<p>7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule Updates rules to incorporate by reference the most recent versions of relevant NIST Handbooks..</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The department is responsible for regular statewide testing of commercial weights and measures, including the accuracy of gas pumps, price scanners, scales, and package weights. Therefore, any business in the state that uses weights and measures for price determination will be affected by rules incorporating updates to the NIST Handbooks. Requiring accurate weights and measures is meant to ensure that both consumers and businesses receive what each pays for, as well as fair competition between businesses competing for sales.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. None.</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) The proposed technical changes to current rules will not have any adverse impact on persons covered by those rules. There will be no adverse impact on business or local government.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule Updating the rules to incorporate by reference the 2023 editions of NIST Handbooks 44, 130, and 133 will keep Wisconsin law up-to-date with recognized national standards. The alternative is to continue applying the 2018 Handbooks, which will eventually lead to Wisconsin weights and measures law being out of line with other states.</p>	
<p>16. Long Range Implications of Implementing the Rule n/a</p>	
<p>17. Compare With Approaches Being Used by Federal Government</p>	

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Not applicable. While NIST is an entity within the United States Department of Commerce, NIST does not promulgate federal regulations, but it instead develops recommended national standards for states to adopt as law. Those standards are developed during annual meetings of the National Conference on Weights and Measures, which involve state and local weights and measures officials, as well as representatives of business and consumer organizations.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
All neighboring states have Weights and Measures programs.

19. Contact Name

David A. Woldseth

20. Contact Phone Number

608-224-5164

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-

Initial Regulatory Flexibility Analysis

Rule Subject: Fair Packaging and Labeling; Selling
Commodities by Weight, Measure, or Count;
and Weights and Measures

Adm. Code Reference: ATCP 90-91-92

Rules Clearinghouse #:

DATCP Docket #: 22-R-11

Rule Summary

This rule updates the technical standards incorporated by reference in Wis. Admin. Code chs. ATCP 90, 91, and 92 (new editions of technical references cited in current rules). The rule incorporates by reference the 2023 editions of three handbooks published by the National Institute of Standards and Technology (NIST). The current rule incorporates by reference the 2018 editions of those handbooks.

Small Business Affected

Small businesses that use weights or measures to determine the price charged for goods or services offered for sale will be affected. While such small businesses will be affected, the rule will not impose any additional compliance costs. The *NIST Handbooks* incorporated by reference may be downloaded at no cost from the NIST website.

Recordkeeping requirements

Although some changes were made in formatting to the records management portion of the rule, there are no substantive changes to recordkeeping requirements.

Accommodation for Small Business

Many of the businesses affected by this rule are “small businesses.” However, given the subject matter, there are no accommodations or special exceptions that can be made for small businesses.

Conclusion

This rule will have minimal impact on affected businesses, including “small businesses.” No negative effects are expected. Because this rule will not have a significant adverse effect on “small business,” it is not subject to the delayed “small business” effective date provided in Wis. Stat. § 227.22 (2) (e).

Dated this 14th day of September, 2023.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By  _____

Michelle Reinen, Administrator
Division of Trade and Consumer Protection