



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

DATE: July 9, 2026

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Randy Romanski, Secretary

SUBJECT: ATCP 90, Fair Packaging and Labeling; ATCP 91, Selling Commodities by Weight, Measure, or Count; and ATCP 92, Weights and Measures

PRESENTED BY: David Woldseth, Program and Policy Analyst, Division of Trade and Consumer Protection

REQUESTED ACTION:

At the July 9, 2026 Board meeting, the Department will request approval of a scope statement, regarding Wis. Admin. Code chs. ATCP 90, 91, and 92

SUMMARY:

Wisconsin Stat. § 98.03 (1) states, “Weights and measures obtained by the state as standards and certified for use as such by the national institute of standards and technology shall be the state standards of weight and measure.” In addition, Wis. Stat. § 98.03 (2) provides, in part, that “[t]he specifications, tolerances, and regulations for commercial weighting and measuring devices issued by the national institute of standards and technology shall apply in this state except as modified by . . . rules or by statute.”

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) administers weights and measures programs that adhere to standards set by the National Institute of Standards and Technology (NIST). To do that, NIST standards are incorporated by reference in some administrative rules administered by the Bureau of Weights and Measures, which is a bureau within the Division of Trade and Consumer Protection. Periodically, NIST updates its standards, thus leading the department to update its rules to incorporate the latest standards.

DATCP therefore proposes to consider updating Wis. Admin. Code chs. ATCP 90, 91, and 92 to adopt the most recent NIST Handbooks. The last update was the June 2025 promulgation that updated to the 2024 editions of *NIST Handbook 44* and *130* and the 2023 edition of *NIST Handbook 133*.

DATCP published this draft scope statement in the April 29, 2026 edition of the *Wisconsin Administrative Register*. After publication, the Joint Committee for the Review of Administrative Rules requested the Department hold a public hearing on the scope statement under Wis. Stat. § 227.136 (1). The hearing was held on Thursday, May 28, 2026. No one attended, and no one commented before the June 1, 2026 deadline.

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Statement of Scope

Department of Agriculture, Trade and Consumer Protection

Rule No.: ATCP 90, 91, and 92

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

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

n/a

2. Detailed description of the objective of the proposed rule:

The Wisconsin Department of Agriculture, Trade and Consumer Protection (department) administers programs that adhere to standards set by the National Institute of Standards and Technology (NIST). In order to do that, NIST standards are incorporated by reference in some Division of Trade and Consumer Protection administrative rules. Periodically, NIST updates its standards, thus leading the department to update its rules to incorporate the latest NIST standards.

The department may consider updating the technical standards incorporated by reference in chs. ATCP 90, 91, and 92. Currently, the three rules incorporate the 2024 editions of *NIST Handbook 44* and *130* and the 2023 edition of *NIST Handbook 133*.

Since it is part of updating the standards, the department may also consider proposing rule changes to the methods of sale for commodities in ch. ATCP 91. Current ch. ATCP 91 references method of sale for specific commodities from *NIST Handbook 130*.

In addition, the department may consider proposing rule changes to correct typographical errors and update forms and website references in chs. ATCP 90, 91, and 92.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Wisconsin Stat. § 98.03 (1) states, "Weights and measures obtained by the state as standards and certified for use as such by the national institute of standards and technology shall be the state standards of weight and measure."

This proposed rule plans to make minor technical changes described above. Periodically, the department updates rules to incorporate the most recent versions of *NIST Handbooks*. Should the department decide to implement the most recent version of the *NIST Handbooks*, it will seek the approval of the Attorney General as required under Wis. Stat. § 227.21 (2).

The alternative would be to continue using standards that may be out of date.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wis. Stat. § 93.07 (1)

- (1) REGULATIONS. 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.

Wis. Stats. §§ 98.03 (1) and (2)

- (1) Weights and measures obtained by the state as standards and certified for use as such by the national institute of standards and technology shall be the state standards of weight and measure. They shall be in the custody of the department and shall be used only for verification of other standards.
- (2) The department may issue rules governing the construction, installation and use of commercial weights and measures and prescribing tolerances therefor. 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.

Wis. Stats. §§ 98.07 (3) and (4)

- (3) 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.
- (4) 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.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates that it will use approximately 200 hours of staff time to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. The department will use existing staff to develop this rule.

6. List with description of all entities that may be affected by the proposed rule:

The department is responsible for regularly monitoring the accuracy of gas pumps, price scanners, scales, and package weights statewide. Therefore, any business in the state that fits those categories may be affected by updates to the NIST Handbooks.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Not applicable. While NIST is part of the United States Department of Commerce, it does not promulgate federal regulations for inclusion in the Code of Federal Regulations.

The National Institute of Standards and Technology (NIST) 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.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

Given the rules already incorporate a version of the NIST standards, the department anticipates there will be no adverse impact on persons covered by this rule, businesses, or local government.

Contact Person: David A. Woldseth, Policy Analyst, Division of Trade and Consumer Protection, (608) 224-5164

Signed this 7th day of April 2026



Randy Romanski
Secretary
State of Wisconsin Department of Agriculture,
Trade and Consumer Protection



Tony Evers

Office of the Governor | State of Wisconsin

April 17, 2026

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following permanent statements of scope pursuant to Wis. Stat. § 227.135(2):

- A statement of scope by the Department of Justice, submitted April 2, 2026, relating to handgun transfers (Wis. Admin. Code ch. Jus 10); and
- A statement of scope by the Department of Agriculture, Trade and Consumer Protection, submitted April 16, 2026, relating to fair packaging and labeling, selling commodities by weight, measure, or count, and weights and measures (Wis. Admin. Code chs. ATPCP 90-92); and
- A statement of scope by the Department of Agriculture, Trade and Consumer Protection, submitted April 16, 2026, relating to bovine identification (Wis. Admin. Code ch. ATPCP 10).

On this day, I approved the following permanent and emergency statements of scope pursuant to Wis. Stat. § 227.135(2):

- A statement of scope by the Department of Safety and Professional Services, submitted April 14, 2026, relating to real property appraiser qualification criteria (Wis. Admin. Code chs. SPS 85-87).

On this day, I approved the following proposed administrative rules pursuant to Wis. Stat. § 227.185, and, hereby, direct their finalization and filing with the Legislative Reference Bureau pursuant to Wis. Stat. § 227.20:

- A proposed rule by the Controlled Substances Board, submitted April 10, 2026, relating to scheduling seven fentanyl-related substances (Wis. Admin. Code ch. CSB 2.012); and
- A proposed rule by the Architects, Landscape Architects, Professional Engineers, Designers, Professional Land Surveyors, and Registered Interior Designers Examining Board, submitted April 15, 2026, relating to certificates of authorization (Wis. Admin. Code ch. A-E 2.03 (5)).

Please direct any questions about this letter to my policy director, Jacob Pankratz.

Sincerely,

A handwritten signature in dark ink, reading "Tony Evers". The signature is fluid and cursive, with the first name "Tony" and last name "Evers" clearly distinguishable.

Tony Evers
Governor

cc: Mel Barnes, chief legal counsel (mel.barnes@wisconsin.gov)
Jacob Pankratz, policy director (jacob.pankratz@wisconsin.gov)
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