



Wisconsin Department of Agriculture, Trade and Consumer Protection

*Division of Trade and Consumer Protection*

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GUIDANCE DOCUMENT

### **E-Commerce Retail Sales of Bulk Produce**

*This guidance document is based on chapter(s) ATCP 90 Wis. Admin. Code. This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed.*

See attached.

November 15, 2021

Lara Sutherlin - Administrator, Choose an item.

DATE

Contributors:



# E-Commerce Retail Sales of Bulk Produce

## BUREAU OF WEIGHTS AND MEASURES

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## RESOURCES

Wis. Admin. Code ATCP 90:  
[https://docs.legis.wisconsin.gov/code/admin\\_code/atcp/090/90/Title](https://docs.legis.wisconsin.gov/code/admin_code/atcp/090/90/Title)

NIST Handbook 130:  
<https://www.nist.gov/pml/weights-and-measures/publications/nist-handbooks/other-nist-handbooks/other-nist-handbooks-2-1>

The Basics of Tare Fact Sheet:  
<https://datcp.wi.gov/Documents/BasicsTareFAQ.pdf>

### How is bulk produce labeled in an e-commerce online transaction?

While DATCP's Bureau of Weights and Measures does not have a regulation that specifically addresses the labeling of bulk produce for e-commerce transactions, [NIST Handbook 130 IV.A.11.11.1](#) offers helpful guidance retailers can utilize. NIST Handbook 130 exempts e-commerce, or "indirect sale", bulk produce items from traditional labeling requirements of unit and total price as long as the following conditions are met during the initial transaction and at the time of delivery:

- The unit price is set and established in the initial product offering; and
- The maximum possible net weight, unit price, and maximum possible price are provided to the customer in the order confirmation when ordered.
- The required information is provided to the customer on the receipt.

### What information needs to be on the package and/or customer receipt?

At the time of delivery, the following information must be provided to the customer upon receipt:

- Identity of the commodity
- Net quantity not including the weight of the wrapper/bag\*\*
- Price per pound
- Total price of the commodity

If this information is not provided on the customer receipt, the bag containing the bulk produce must be labeled as a random weight package with a declaration of identity, a declaration of net weight, the price per pound, and the total price of the package.

For reference, a "package" is defined by Wisconsin Administrative Code [ATCP 90.01\(16\)](#) as any container or wrapping in which a consumer commodity is enclosed for purposes of retail sale. Please note, this is not applicable to a container or wrapping in which consumer commodities or packages are placed after a retail customer has viewed and individually selected those commodities or packages for purchase per [ATCP 90.01\(16\)\(d\)](#).

In a direct sale, i.e. in-person, the customer would select produce themselves and the item would be weighed at the checkout point of sale system. Whereas in an e-commerce online order, store personnel perform this process.

\*Note: The language in this Fact Sheet follows NIST Handbook 130, section IV, subsection 11, which has not been officially adopted by the Bureau of Weights and Measures. However, the above guidance is relevant to e-commerce bulk sales, and should be considered.

\*\*Note: See DATCP's [Fact Sheet on Tare](#) for any questions regarding package weights and tare