

# Wisconsin Department of Agriculture, Trade and Consumer Protection

## Business Impact Analysis

<b><i>Rule Subject:</i></b>	<b>Selling Commodities by Weight, Measure or Count</b>
<b><i>Adm. Code Reference:</i></b>	<b>ATCP 91</b>
<b><i>Rules Clearinghouse #:</i></b>	<b>09-037</b>
<b><i>DATCP Docket #:</i></b>	<b>09-R-02</b>

### ***Background***

The Department of Agriculture, Trade and Consumer Protection (DATCP) currently regulates the sale of commodities by weight, measure or count. Current DATCP rules (ATCP 91) spell out general standards for all commodities, and more specific standards for some commodities.

The National Institute of Standards and Technology (“NIST”) has published model method-of-sale standards, which are designed to promote reasonable and uniform standards between states. However, the NIST standards do not have the force of law unless adopted by the states. At least 45 other states (including all of the states surrounding Wisconsin) have adopted some or all of the NIST standards.

The current DATCP rules incorporate NIST standards, but also include some non-NIST standards (often because those standards are specifically required by Wisconsin statutes). NIST recently updated its standards. As a result, NIST standards in the current DATCP rules are now out of date. This rule incorporates the latest NIST standards wherever possible.

### ***Rule Content***

#### **Standards for Specific Commodities**

NIST has published specific method-of-sale standards for certain commodities (the standards typically address consumer protection or fair competition issues that have arisen in connection with those particular commodities). This rule incorporates current NIST standards for the following commodities (subject, in some cases, to exceptions required by Wisconsin law):

- ***Food products***
  - Meat, poultry, fish and seafood.
  - Dairy products.
  - Fresh fruits and vegetables.
  - Butter, margarine and like spreads.
  - Flour, corn meal and like products.

- Pickles and pickle relish.
- ***Non-food products***
  - Fence wire.
  - Coatings.
  - Fireplace and stove wood.
  - Peat and peat moss.
  - Prefabricated utility buildings.
  - Roofing and roofing material.
  - Sealants.
  - Sod and turf.
  - Softwood lumber.
  - Carpet.
  - Hardwood lumber (retail)
  - Polyethylene products.
  - Insulation.
  - Precious metals.
  - Mulch.
  - Liquefied petroleum gas.
  - Liquid oxygen for respiration.
  - Animal bedding.
  - Wiping cloths.
  - Baler twine.
  - Potpourri.
  - Communication paper.
  - Bulk sand, rock, gravel and stone.

### **General Standards**

This rule incorporates the following general NIST standards (or makes DATCP rules more consistent with those NIST standards):

- Price declarations for food commodities sold from bulk by weight (must be shown per whole unit, not fractional unit, of weight).
- Price presentation (showing fractions of a cent).
- Combination quantity declarations.
- Vending machine labeling.
- Railroad car tare weights.

### ***Business Impact***

This rule will benefit businesses that sell commodities in more than one state, because it incorporates NIST standards that are used in 45 other states. This rule also reorganizes and clarifies current rules, so they will be easier to read and understand.

This rule will not have a significant negative impact on small businesses or other affected businesses. However, this rule may have a slight negative impact on some sellers of firewood and mulch. Currently, firewood and mulch may be sold in Wisconsin by volume or by weight, although most businesses sell these commodities by volume. By adopting the NIST standards, this rule will require firewood and mulch to be sold by volume. Those few small businesses that do not sell firewood or mulch by volume will need to develop techniques to determine volume.

***Steps to Assist Small Business***

This rule will not have a significant impact on “small business.” However, DATCP will contact trade associations representing affected businesses (including “small businesses”), and will help them educate their members about the new rule provisions.

***Conclusion***

This rule will help maintain fair competition between competing businesses and will have few, if any, negative effects on business. This rule will have no significant 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 \_\_\_\_\_ day of \_\_\_\_\_, 2009

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Janet Jenkins, Administrator,  
Division of Trade & Consumer Protection