

## Chapter ATCP 91

### SELLING COMMODITIES BY WEIGHT, MEASURE OR COUNT

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**Note:** Chapter Ag 54 was renumbered chapter ATCP 91 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

**Note:** This chapter is adopted under authority of ss. 93.07 (1), 98.07 (3) and (4), Stats. Violations are subject to the penalties and remedy provided under s. 98.26, Stats. See also chs. ATCP 90 (fair packaging and labeling) and ATCP 92 (weighing and measuring devices).

**ATCP 91.01 Definitions.** (1) “Commodity” means any product, good, or article of merchandise that is sold, offered for sale, or held or distributed for sale in this state. “Commodity” includes a consumer commodity as defined in s. ATCP 90.01 (5).

(2) “Department” means the state of Wisconsin department of agriculture, trade and consumer protection.

(3) “Method of sale” means the unit or system of weights or measures used in the sale of commodities to determine quantity.

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

**Note:** Copies of *NIST Handbook 130* (2018 edition) are on file with the department and the legislative reference bureau. Copies may be obtained from the U.S. Government Printing Office, Stop S50P, Washington, D.C. 20102–0001, or at [www.nist.gov](http://www.nist.gov).

(5) “Ready-to-eat food” means food that is ready for consumption without further washing, heating, thawing or other preparation. “Ready-to-eat food” does not include any of the following:

(a) Raw fruits or vegetables, except when sold as part of a ready-to-eat meal.

(b) Sliced meat or poultry, or other sliced luncheon products, except when sold as part of a ready-to-eat meal.

(c) Cheese, except when sold as part of a ready-to-eat meal.

(d) Candy or snack foods, except when sold as part of a ready-to-eat meal.

(e) Beverages in hermetically sealed containers.

(6) “Sell,” “sale,” or “sold” includes any advertising or offer to sell.

(7) “Sold at retail” means any sale of commodities directly to the consumer.

(8) “Weight” means the weight of a commodity excluding any materials, substances, or items that are not part of the commodity.

**History:** Cr. (1), (2), (4), (5), (8), (9), (10), (11) and (12), renum. and am. (3), (6) and (13) from Ag 54.02 (1), (2) and (4), renum. (7) from Ag 54.02 (3), Register, February, 1991, No. 422, eff. 3–1–91; r. and recr. (11), cr. (12m) and (14); Register, June, 1998, No. 510, eff. 7–1–98; CR 02–141: r. and recr. (1) Register August 2003 No. 572, eff. 9–1–03; CR 09–037: am. (1), r. (2), (5), (6), (8) to (10) and (12m), renum. (3), (7), (11), (12), (13), (14) to be (2), (3), (5), (6), (7), (8) and am. (5) (intro.), r. and recr. (4) Register December 2009 No. 648, eff. 1–1–10; CR 10–122: am. (4) Register July 2011 No. 667, eff. 8–1–11; CR 13–043: am. (4) Register February 2014 No. 698, eff. 5–1–14; CR 14–047: am. (4) Register May 2015 No. 713, eff. 6–1–15; CR 16–012: am. (4) Register August 2016 No. 728, eff. 9–1–16; **CR 18–019: am. (4), Register January 2020 No. 769, eff. 2–1–20.**

**ATCP 91.015 Methods of sale; general.** Except as provided in s. ATCP 91.02, 91.03, or other state or federal law:

(1) Liquid commodities shall be sold by liquid measure, except that liquid commodities may be sold by weight if that method is in general use and gives meaningful and accurate information as to the quantity of the commodity sold.

(2) Non-liquid commodities shall be sold by weight, except that non-liquid commodities may be sold by count or measure if

that method is in general use and gives meaningful and accurate information as to the quantity of the commodity sold.

**History:** Cr. Register, June, 1998, No. 510, eff. 7–1–98; CR 09–037: r. and recr. Register December 2009 No. 648, eff. 1–1–10.

#### ATCP 91.02 Bulk commodities sold by weight.

(1) Whenever a bulk or unpackaged commodity is offered for sale by weight, the price of that commodity shall be computed, advertised, and displayed according to *NIST Handbook 130*, ch. IV.B, section 1.9.

(2) If a retailer displays more than one type of bulk or unpackaged commodity for sale by weight in the same retail display, the retailer shall declare all of the prices of the displayed commodities per the same whole unit of weight.

(3) No person may sell a bulk or unpackaged commodity by weight at retail unless one of the following applies:

(a) The commodity is weighed at the time of sale.

(b) The weights of individual commodity units are accurately premarked on those units.

(c) A placard stating the guaranteed minimum individual weight of the individual commodity units displayed for sale is conspicuously posted at the display location.

(4) The weight of a bulk or unpackaged commodity sold by weight may not include the weight of the containers or wrappers, if any, in which those commodities are sold.

**Note:** For example, the weight of candy sold in bulk by weight may not include the weight of individual candy wrappers.

(5) When a bulk commodity sold by weight is delivered by vehicle to an individual purchaser, the bulk delivery shall comply with s. 98.22, Stats.

**History:** Cr. Register, July 1977, No. 259, eff. 8–1–77; renum. and am. (1), (2), (4) to Ag 54.01 (3), (6) and (13), renum. (3) to Ag 54.01 (7), (1) renum. from Ag 54.07, cr. (2) and (3) Register, February 1991, No. 422, eff. 3–1–91; r. and recr., Register, June, 1998, No. 510, eff. 7–1–98; CR 09–037: am. (1) Register December 2009 No. 648, eff. 1–1–10.

#### ATCP 91.03 Commodity types; methods of sale.

(1) **FOOD COMMODITIES.** Except as provided in sub. (2), the following food commodities shall be sold in compliance with the following requirements:

(a) *Bread.* Bread shall be sold by weight unless it is clearly identified and sold as “stale bread.”

**Note:** Section 98.21, Stats., also requires bread to be sold by weight unless it is sold as stale bread.

(b) *Butter, margarine, and like spreads.* Food commodities covered by *NIST Handbook 130*, ch. IV.B, section 1.3, shall be sold in compliance with that section.

**Note:** Butter sold in Wisconsin must also comply with grading standards under s. 97.176, Stats. Margarine sold in Wisconsin must also comply with quality standards under s. 97.18, Stats.

(c) *Cheese.* Cheese shall be sold by weight. The declared weight of cheese coated with wax may not include the wax.

**Note:** Cheese manufactured in Wisconsin must also comply with the grading standards under s. 97.177, Stats.

(d) *Dairy products.* Except as provided in pars. (b), (c), and (g), food commodities covered by *NIST Handbook 130*, ch. IV.B, sections 1.6 and 1.7, shall be sold in compliance with applicable provisions of those sections.

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

(f) *Fresh fruits and vegetables.* Fresh fruits and vegetables shall be sold at retail by weight, except that fresh fruits and vegetables identified in *NIST Handbook 130*, ch. VI., section 2.3.2, shall be sold according to that section. Berries and small fruits such as cherries, currants and cherry tomatoes, if sold by dry measure, may only be sold in containers having capacities of one-half dry pint, one dry pint or one dry quart.

**Note:** Pre-packaged fruits and vegetables, other than unprocessed fruits or vegetables sold in transparent wrappings or containers, must also comply with applicable packaging and labeling requirements under ch. ATCP 90.

(g) *Frozen desserts.* Packaged ice cream, ice milk, water ices, and frozen desserts of a similar nature shall be sold by liquid measure unless they are packaged at the time of retail sale, in which case they shall be sold by weight. This rule does not apply if the products are packaged at the time of retail sale or sold in quantities of less than one-half liquid pint.

**Note:** Section 98.12, Stats., requires prepackaged frozen desserts to be sold by liquid measure.

(h) *Meat, poultry, fish, and seafood.* Food commodities covered by *NIST Handbook 130*, ch. IV.B, sections 1.5, 1.10, and 1.11 shall be sold in compliance with applicable provisions of those sections. The declared weight of glazed, individually frozen pieces of seafood may not include any weight of ice or other glazing.

**Note:** See also ch. ATCP 109 related to freezer meat and food service plans, and the sale of “wholesale cuts” to consumers.

(i) *Pickles and pickle relishes.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 1.8, shall be sold in compliance with that section.

(j) *Pizza.* Pizza shall be sold by weight except that pizza made to order, other than frozen pizza, may be sold by weight or by count.

(2) **READY-TO-EAT FOOD.** Ready-to-eat food sold from bulk or in single servings packed at the point of sale may be sold by weight, measure, or count. For purposes of this subsection, count may include a serving count. If cooked ready-to-eat food is sold by weight, its declared weight shall be its cooked weight unless the declared weight is clearly identified as pre-cooked weight.

(3) **NON-FOOD COMMODITIES.** The following non-food commodities shall be sold in compliance with the following requirements:

(a) *Animal bedding.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.23, shall be sold in compliance with that section.

(b) *Baler twine.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.25, shall be sold in compliance with that section.

(c) *Bulk sand, rock, gravel, and stone.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.29, shall be sold in compliance with that section.

(d) *Carpet.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.11, shall be sold in compliance with that section.

(e) *Coatings.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.3, shall be sold in compliance with that section.

(f) *Communication paper.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.28, shall be sold in compliance with that section.

(g) *Fence wire products.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.2, shall be sold in compliance with that section.

(h) *Fireplace and stove wood.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.4, shall be sold in compliance with that section.

(i) *Hardwood lumber.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.12, shall be sold in compliance with that section.

(j) *Insulation.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.14, shall be sold in compliance with that section.

(k) *Liquid oxygen used for respiration.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.22, shall be sold in compliance with that section.

(m) *Mulch.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.18, shall be sold in compliance with that section.

(n) *Peat and peat moss.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.5, shall be sold in compliance with that section.

(o) *Petroleum products and motor fuel.* Petroleum products and motor fuel shall be sold in compliance with ss. 98.246 and 100.18 (6) and (8), Stats.

(p) *Polyethylene products.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.13, shall be sold in compliance with that section.

(q) *Potpourri.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.26, shall be sold in compliance with that section.

(r) *Precious metals.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.17, shall be sold in compliance with that section.

(s) *Prefabricated utility buildings.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.6, shall be sold in compliance with that section.

(t) *Roofing and roofing material.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.7, shall be sold in compliance with that section.

(u) *Sealants.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.8, shall be sold in compliance with that section.

(v) *Sod and turf.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.9, shall be sold in compliance with that section.

(w) *Softwood lumber.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.10, shall be sold in compliance with that section.

(x) *Wiping cloths.* Commodities covered by *NIST Handbook 130*, ch. IV.B, section 2.24, shall be sold in compliance with that section.

**History:** Cr. Register, July 1977, No. 259, eff. 8–1–77; am (1) (intro), r. and recr. (1) (a) to (d), cr. (1) (e) and (3), Register, February, 1991, No. 422, eff. 3–1–91; r. and recr., Register, June, 1998, No. 510, eff. 7–1–98; CR 09–037: r. and recr. Register December 2009 No. 648, eff. 1–1–10; CR 13–043: am. (3) (k), (L) Register February 2014 No. 698, eff. 5–1–14; **CR 18–019: r. (3) (L) Register January 2020 No. 769, eff. 2–1–20.**

**ATCP 91.04 Presentation of price.** Whenever an advertised, posted, or labeled price per unit of weight, measure, or count for any commodity includes a fraction of a cent, all elements of the fraction shall be prominently displayed in compliance with *NIST Handbook 130*, ch. IV.B, section 3.1.

**History:** Cr. Register, July, 1977, No. 259, eff. 8–1–77; renum. and am. (1) to (intro), r. and recr. (2), cr. (3) to (6), Register February, 1991, No. 422, eff. 3–1–91; r. and recr., Register, June, 1998, No. 510, eff. 7–1–98; CR 09–037: r. and recr. Register December 2009 No. 648, eff. 1–1–10.

**ATCP 91.05 Combination quantity declarations.** Whenever the method of sale of a commodity includes a statement of count in addition to a statement of weight, measure, or size, the method of sale shall comply with applicable requirements in *NIST Handbook 130*, ch. IV.B, section 3.2.

**History:** Cr. Register, July 1977, No. 259, eff. 8–1–77; renum. and am. Ag 54.05 to (1) (intro), cr. (1) (a) to (d) and (2), Register, February, 1991, No. 422, eff. 3–1–91; r. and recr., Register, June, 1998, No. 510, eff. 7–1–98; CR 09–037: r. and recr. Register December 2009 No. 648, eff. 1–1–10.

**ATCP 91.06 Vending machines.** Vending machines dispensing packaged commodities shall comply with *NIST Handbook 130*, ch. IV.B, section 3.3.

**History:** Cr. Register, February, 1991, No. 422, eff. 3-1-91; CR 09-037: r. and recr. Register December 2009 No. 648, eff. 1-1-10.

**ATCP 91.07 Railroad car tare weights.** Whenever stenciled tare weights on railroad freight cars are used in the sale of commodities or the assessment of freight charges, the stenciled tare weights shall comply with *NIST Handbook 130*, ch. IV.B, section 3.4.

**History:** Cr. Register, February, 1991, No. 422, eff. 3-1-91; CR 09-037: r. and recr. Register December 2009 No. 648, eff. 1-1-10.