

## 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 article of commerce.

**(2)** “Cord” means the amount of firewood that, when ranked and well stowed, occupies a space of 128 cubic feet, or a pile four feet by eight feet by four feet.

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

**(4)** “Face cord” means an amount of firewood composed of pieces of uniform length of less than four feet which, when ranked and well stowed, compose a pile eight feet wide and four feet high.

**(5)** “Firewood” means fireplace and stove wood sold for use as fuel.

**(6)** “Food” means foods as defined in s. 97.01 (6), Stats., and includes all articles or components of any article used for human consumption.

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

**(8)** “Mollusks” means oysters, clams, mussels, and snails.

**(9)** “Potpourri” means any mixture, however denominated, consisting principally of dried herbs, spices, flowers or other vegetable matter which is intended to be used as an odorizer or for decorative purposes and not intended to be eaten by humans.

**(10)** “Ranked and well stowed” means that pieces of wood are placed in a line or row with individual pieces touching and parallel to each other and stacked in a compact manner.

**(11)** “Ready-to-eat food” means food which is sold for immediate 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.

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

**(12m)** “Single serving” means an amount of food that is reasonably designed to be consumed by one individual on one eating occasion.

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

**(14)** “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.

**ATCP 91.015 Methods of sale; general. (1)** Except as provided in sub. (2) or (3), liquid commodities shall be sold by liquid measure and nonliquid commodities shall be sold by weight.

**(2)** Liquid commodities may be sold by weight, and nonliquid commodities may be sold by count or measure, if those methods of sale are in general use and give meaningful and accurate information as to the quantity of the commodity sold.

**(3)** This section does not apply to either of the following:

(a) Commodities for which methods of sale are more specifically prescribed by this chapter, or by other state or federal law.

(b) Commodities sold for immediate consumption on the premises where sold as provided in s. ATCP 91.05.

**Note:** See s. 98.06, Stats.

**History:** Cr. Register, June, 1998, No. 510, eff. 7-1-98.

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

**(1)** Whenever a bulk or unpackaged commodity is offered for sale by weight, the price for that commodity shall be declared per single whole unit of weight. The price may not be declared per fractional or multiple unit of weight.

**(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.

**ATCP 91.03 Fruits and vegetables. (1) FRESH FRUITS AND VEGETABLES.** (a) Except as provided in pars. (b) to (g), fresh fruits and vegetables shall be sold at retail by weight.

(b) The following fresh fruits and vegetables may be sold at retail by weight or by count: artichokes, avocados, cantaloupes, cauliflower, celery, corn on the cob, coconuts, cucumbers, eggplant, garlic, grapefruit, head lettuce, kiwanos, kiwi fruit, lemons, limes, loquats, mangoes, melons (whole), nectarines, oranges, papayas, peppers, persimmons, pineapples, pomegranates, prickly pear, pumpkins, quince, squash, star fruit, tangerines and ugli fruit.

(c) The following fresh vegetables may be sold at retail by weight or bunch: chard, dill, endive, escarole, green or spring onions, greens, kale, kohlrabi, leaf lettuce, leeks, parsley, root vegetables with green tops attached, spinach, thyme and watercress.

(d) The following fruits may be sold at retail by weight or by dry measure units of one quart, one pint, or one-half pint: berries, cherries, cherry tomatoes, chokecherries, currants, concord grapes and plum tomatoes.

**Note:** See s. 98.06 (2), Stats.

(e) Plums and tomatoes may be sold by weight or by dry measure in units of not less than one peck.

(f) Apples, cucumbers, peaches and pears may be sold by weight, by count or by dry measure in units of not less than one peck.

(g) Mixed whole fresh fruits or vegetables gift wrapped in baskets or other reusable containers may be sold at retail by weight or by count of the individual fruits or vegetables in the container.

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

**(2) PICKLED FRUITS AND VEGETABLES.** (a) Except as provided in par. (b), pickled fruits and vegetables shall be sold by drained weight.

(b) Pickled cucumbers and relishes shall be sold by fluid measure, except that 1 or 2 whole pickled cucumbers in transparent wrapping and pickled cucumbers sold from bulk containers may be sold by count.

**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.

**ATCP 91.04 Meat, poultry and cheese.** Meat, poultry, cheese, and food primarily composed of meat, poultry or cheese shall be sold by weight, except as otherwise provided by this chapter or other state or federal law. The declared weight of cheese coated with wax may not include the weight of the wax.

**Note:** See also ch. ATCP 109 related to freezer meat and foods service plans and the sale of "wholesale cuts" to consumers.

**History:** Cr. Register, July, 1977, No. 259, eff. 8-1-77; renun. 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.

**ATCP 91.041 Seafood. (1)** Seafood and food primarily composed of seafood shall be sold by weight, except as provided by this chapter or other state or federal law.

**(2)** Mollusks in the shell may be sold by weight, count or dry measure bushel.

**(3)** Mollusks removed from the shell shall be sold by weight, except as provided in sub. (4).

**(4)** Shelled fresh mollusks packed in liquid shall be sold by drained weight or fluid volume. The free liquid may not exceed 15 percent by weight of the package contents.

**(5)** Fresh and frozen processed mollusks on the half shell shall be sold by count or by weight, excluding the weight of the shell.

**(6)** Glazed, individually frozen pieces of seafood shall be sold by weight. No part of the declared weight may consist of ice or other glazing.

**(7)** Live fish and live shellfish may be sold by weight or by count.

**History:** Cr. Register, June, 1998, No. 510, eff. 7-1-98.

**ATCP 91.042 Pizza. (1)** Pizza shall be sold by weight, except as provided under sub. (2).

**(2)** Pizza made to order, other than dessert pizza, may be sold by weight or by count.

**History:** Cr. Register, June, 1998, No. 510, eff. 7-1-98.

**ATCP 91.05 Ready-to-eat foods. (1)** The following foods may be sold by weight, measure or count:

(a) Foods sold for immediate consumption on the premises where sold.

(b) Ready-to-eat foods sold from bulk.

(c) Ready-to-eat foods in single-serving packages that are sold as part of a meal.

**(2)** No person may misrepresent the weight, measure or count of any ready-to-eat food under sub. (1). Weight declarations for cooked ready-to-eat foods shall be declarations of cooked weight unless they are identified as declarations of precooked weight.

**History:** Cr. Register, July 1977, No. 259, eff. 8-1-77; renun. 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.

**ATCP 91.06 Frozen desserts.** Ice cream, custard, ice milk, frozen yogurt, sherbet, and other frozen desserts of a similar nature packaged at time of sale at retail shall be sold by weight.

**Note:** According to s. 98.12, Stats., ice cream, ice milk, water ices and other frozen desserts must be sold by fluid measure unless they are packaged at the time of retail sale or sold in quantities of less than one-half pint.

**History:** Cr. Register, February, 1991, No. 422, eff. 3-1-91.

**ATCP 91.07 Firewood. (1)** Firewood in quantities greater than 4 cubic feet shall be sold by one of the following units of measure:

(a) Weight.

(b) Cord or fraction of a cord.

(c) Face cord, if the measure "face cord" is qualified by a statement of the length of the pieces of wood in the face cord.

**Note:** For example, a quantity of firewood pieces 24 inches long sufficient when ranked and well stowed to make a pile 8 feet long and 4 feet high may be sold by the actual weight of the firewood, or as 1/2 cord, or as a 24" face cord.

**(2)** A seller of bulk firewood shall give to the buyer a delivery ticket or invoice for each delivery of firewood stating the name and address of the seller, the date of the delivery, the quantity of firewood delivered and the price of the firewood.

**(3)** Firewood bundled in quantities of less than 4 cubic feet shall be sold only by weight, volume or count.

**History:** Cr. Register, February, 1991, No. 422, eff. 3-1-91.

**ATCP 91.08 Roofing, roofing material and siding.**

**(1)** Roofing, roofing material and siding shall be sold at retail by the square, by the square foot if sold in inch-pound units, or by the square meter if sold in metric units.

**(2)** In this section:

(a) "Square" means the quantity of roofing, roofing material or siding that, when applied according to directions of the manufacturer, will cover an area of 100 square feet exclusive of laps or joints.

(b) "Square foot" means the quantity of roofing, roofing material or siding that, when applied according to the directions of the manufacturer, will cover an area of one square foot exclusive of laps or joints.

(c) "Square meter" means the quantity of roofing, roofing material or siding that, when applied according to the directions of the manufacturer, will cover an area of one square meter exclusive of laps or joints.

**History:** Cr. Register, February, 1991, No. 422, eff. 3-1-91.

**ATCP 91.09 Polyethylene.** (1) Each sale of polyethylene sheeting and film, other than food wrap sold in packages for consumption in the home, shall include all of the following information:

- (a) Length and width.
- (b) Area in square feet or square meters.
- (c) Thickness in mils.
- (d) Weight of the polyethylene, for polyethylene packaged or cut to size prior to sale.

(2) Each sale of polyethylene food wrap sold in consumer size packages for consumption in the home shall include all of the following information:

- (a) Length and width.
- (b) Area in square feet or square meters.

**History:** Cr. Register, February, 1991, No. 422, eff. 3-1-91.

**ATCP 91.10 Potpourri.** Potpourri shall be sold at retail by weight or by dry measure units of one dry pint or one dry quart, or fractions thereof, at the seller's option, except that no quantity declaration is required for:

(1) Potpourri sold in a package containing a vase, censer, bowl or similar article designed to be used in displaying potpourri or using potpourri as an odorizer.

(2) Potpourri sold as stuffing of a sachet or other cloth article.

(3) Potpourri sold in packages containing less than one ounce.

**History:** Cr. Register, February, 1991, No. 422, eff. 3-1-91.

**ATCP 91.11 Petroleum products and motor fuel.** A person advertising, offering for sale or selling petroleum products or motor fuel shall comply with applicable requirements under ss. 98.246 and 100.18 (6) and (8), Stats.

**Note:** See also s. ATCP 92.04.

**History:** Cr. Register, June, 1998, No. 510, eff. 7-1-98.