



State of Wisconsin  
Jim Doyle, Governor

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**Department of Agriculture, Trade and Consumer Protection**  
Rod Nilsestuen, Secretary

**DATE:** November 2, 2009

**TO:** Bruce Hoesly, Legislative Reference Bureau  
1 East Main Street, Suite 200

**FROM:** Rodney J. Nilsestuen, Secretary

**SUBJECT:** **Selling Commodities by Weight, Measure or Count; Final Draft Rule for Publication** (*Clearinghouse Rule No.09-037*)

The Department of Agriculture, Trade and Consumer Protection (DATCP) hereby submits the following rule for publication:

**CLEARINGHOUSE RULE #:** 09-037  
**SUBJECT:** Selling Commodities by Weight, Measure  
or Count  
**ADM. CODE REFERENCE:** ATCP 91  
**DATCP DOCKET #:** 09-R-02

We are enclosing a copy of the final draft rule, as adopted by DATCP. We are also providing the following information for publication with the rule, as required by s. 227.114(6), Stats.

**Final Regulatory Flexibility Analysis (Summary)**

This rule changes current rules, which regulate methods of sale of commodities (including required methods of sale by weight, measure or count), to make them consistent with standards published by the National Institute of Standards and Technology (“NIST”) and adopted by 45 other states. This rule also updates and clarifies current rule coverage.

NIST has published specific method-of-sale standards for certain commodities (these 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.

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.

DATCP has not incorporated a small business enforcement policy in this rule. This rule will benefit businesses that sell commodities in more than one state, because it incorporates many of the NIST model standards and thus makes Wisconsin standards more consistent with standards used in 45 other states. While this rule does add some new standards to current rules, those

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standards are based on NIST standards with which most affected businesses are already complying.

**Comments from Legislative Committees (Summary)**

On August 13, 2009, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection and to the Assembly Committee on Agriculture. The Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection did not hold a hearing and took no action. The Assembly Committee on Agriculture did not hold a hearing and also took no action.