



State of Wisconsin  
Governor Tony Evers

**Department of Agriculture, Trade and Consumer Protection**  
Secretary Randy Romanski

### **Report From Agency**

**DATE:** May 13, 2024

**TO:** The Honorable Chris Kapenga  
President, Wisconsin State Senate  
Room 220 South, State Capitol  
PO Box 7882  
Madison, WI 53707-7882

The Honorable Robin Vos  
Speaker, Wisconsin State Assembly  
Room 217 West, State Capitol  
PO Box 8953  
Madison, WI 53708-8953

**FROM:** Randy Romanski, Secretary  
Department of Agriculture, Trade and Consumer Protection

**SUBJECT:** Clearinghouse Rule # 23-057; Final Draft Rule regarding ATCP 90, 91, and 92 relating to fair packaging and labeling; selling commodities by weight, measure, or count; and weights and measures.

#### ***Proposed Rule***

The proposed rule is attached.

#### ***Reference to Applicable Forms***

There are no applicable forms.

#### ***Fiscal Estimate and EIA***

The fiscal estimate and EIA are attached.

#### ***Detailed Statement Explaining the Basis and purpose of the Proposed Rule, Including How the Proposed Rule Advances Relevant Statutory Goals or Purposes***

Under Wis. Stat. § 93.07 (1), the department's duties include, "To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties

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of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.”

This rule revision makes minor technical changes to the three rules (Wis. Admin. Code chs. 90, 91, and 92).

The Wisconsin Department of Agriculture, Trade and Consumer Protection (department) administers Wis. Stat. ch. 98, titled *Weights and Measures*. In fulfilling that responsibility, the department has promulgated administrative rules that incorporate by reference specifications and standards set forth in handbooks published by the National Institute of Standards and Technology (NIST), which is “a science, engineering, technology, and measurement laboratory” within the United States Department of Commerce. *See* 15 U.S.C. § 272 (a). NIST works with and supports the National Conference on Weights and Measures (NCWM) in developing the standards set forth in NIST Handbooks. NCWM is a professional not-for-profit association of state and local weights and measures officials, federal agencies, manufacturers, retailers, and consumers. Under 15 U.S.C. § 272 (b) (10) and (c) (4), NIST is directed to cooperate with states in securing uniformity of weights and measures laws and methods of inspection. In partial fulfillment of that duty, NIST publishes handbooks with standards for weights and measures. Periodically, NIST updates those handbooks, thus leading the department to update its rules to incorporate by reference the latest version of relevant NIST handbooks.

The department proposed to update those NIST technical standards incorporated by reference in Wis. Admin. Code chs. ATCP 90, 91, and 92 to newer editions of technical references already cited in current rules). The code currently incorporates by reference the 2018 editions of *NIST Handbook 44 Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, *NIST Handbook 130 Uniform Laws and Regulations in the areas of legal metrology and fuel quality*, and *NIST Handbook 133 Checking the Net Contents of Packaged Goods*. The proposed rule incorporates by reference the 2024 editions of *NIST Handbook 44* and *NIST Handbook 130*. The proposed rule incorporates by reference the 2023 edition of *NIST Handbook 133*, as it is the most recent.

In addition, the revision changes the notes that explain how to obtain the handbooks, corrects various typographical errors, and makes other changes to adhere to the *Administrative Rules Procedures Manual*.

### ***Summary of Public Comments and the Department’s Responses, Explanation of Modifications to Proposed Rules Prompted by Public Comments***

#### ***Preliminary Public Hearing and Comment Period on the Statement of Scope***

The department received no comments about the statement of scope at the public hearing nor during the following comment period.

#### ***Comment Period on the Economic Impact Analysis***

No comments were received.

#### *Public Hearing and Comment Period on the Preliminary Rule Draft*

The department held the public hearing on December 4, 2023, and accepted written comments until December 18, 2023. The only comment the department received during the comment period came internally. *NIST Handbook 44* and *NIST Handbook 130* received 2024 updates and *NIST Handbook 133* did not. In the interest of using the most recent versions, the department changed the references from 2023 to 2024 editions in those two cases.

#### *Response to Legislative Council Staff Recommendations*

The department accepted the suggested formatting changes from the Clearinghouse. The Clearinghouse provided two comments for clarification by the department. First, only Wis. Admin. Code ch. ATCP 92 would be affected by the adoption of Section 3.40, Electric Vehicle Fueling Systems in *NIST Handbook 44*; Wis. Admin. Code ch. ATCP 90 would not. Therefore, the department did not change this. Second, the Clearinghouse questioned ambiguity that may already result or would result from the use of both the metric and imperial systems in the three rules. The use of both currently exists within the NIST standards that the department plans to incorporate by reference. Therefore, the department did not change this.

#### *Report from the SBRRB and Final Regulatory Flexibility Analysis*

The Small Business Regulatory Review Board did not issue a report on this rule. The Final Regulatory Flexibility Analysis also received no comments and is attached.