



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

DATE: November 17, 2022

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Lara Sutherlin, Administrator, Division of Trade and Consumer Protection

SUBJECT: ATCP 90-91-92: Fair Packaging and Labeling, Selling Commodities by Weight, Measure or Count, and Weights and Measures; Rulemaking Scope Statement Approval

TO BE PRESENTED BY: David A. Woldseth, Policy Analyst

REQUESTED ACTION:

At the November 17, 2022 Board meeting, the Department of Agriculture, Trade and Consumer Protection (Department) will ask the Board to approve the attached Statement of Scope (SS 073-22) for proposed amendments to the current rules related to fair packaging and labeling, selling commodities by weight, measure or count, and weights and measures.

A scope statement explains the general purpose and scope of a proposed rule. In accordance with Wis. Stat. § 227.135 (2), the Governor approved this scope statement for permanent rule changes on August 25, 2022, thereby allowing the Department to submit this scope statement for publication in the *Wisconsin Administrative Register* and to seek approval of the scope statement by the Board.

The Department formally published this draft scope statement in the August 29, 2022 *Wisconsin Administrative Register* and filed a copy with the Department of Administration at least 10 days before the Board could consider approving the scope statement. After publication, the Joint Committee for the Review of Administrative Rules required the Department to hold a public hearing on the scope statement under Wis. Stat. § 227.136 (1). At its September meeting, the Board approved that hearing, and it was held on Thursday, October 13, 2022, at 11:00 a.m.

During the hearing, no one testified. During the comment period that ended the following day, no one submitted comments.

If the Board approves the scope statement, the Department will draft a proposed permanent rule. Approval of a scope statement is just the first, preliminary step in a lengthy process for enacting permanent rules. The Board will have at least two future opportunities to review the proposed rule after it is drafted. The Board must approve a hearing draft rule before the Department may hold public hearings on the rule proposal. The Board must also approve the final draft rule before the Department may adopt the rule. A proposed permanent rule can only take effect after the final draft has been approved by the Board, approved by the Governor, completed the legislative review process, and published.

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STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection

Rule No.: Chapters ATCP 90, 91, and 92

Relating to: Fair Packaging And Labeling; Selling Commodities By Weight, Measure Or Count; and Weights And Measures

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

n/a

2. Detailed description of the objective of the proposed rule:

The Wisconsin Department of Agriculture, Trade and Consumer Protection (department) administers a number of programs that adhere to standards set by the National Institute of Standards and Technology (NIST). In order to do that, NIST standards are incorporated by reference in a number of the Division of Trade and Consumer Protection's administrative rules. Periodically, NIST updates its standards, thus leading the department to update its rules to refer to the latest NIST standards in a particular program area.

The department will consider updating technical standards incorporated by reference in chs. ATCP 90, 91 and 92 (new editions of technical references cited in current rules).

In addition, the department will consider proposing rule changes to correct any typographical errors and update forms and website references in chs. ATCP 90, 91 and 92.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

This proposed rule plans to make minor technical changes described above. Periodically, the department updates rules to incorporate the most recent versions of NIST Handbooks. Should the department decide to implement the most recent version of the NIST Handbooks, it will seek the approval of the Attorney General as required under Wis. Stat. § 227.21 (2).

The alternative would be to continue to use national standards that may be out of date.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wis. Stat. § 93.07 (1)

- (1) REGULATIONS. 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 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.

Wis. Stat. § 98.03 (2)

- (2) The department may issue rules governing the construction, installation and use of commercial weights and measures and prescribing tolerances therefor. The specifications, tolerances and

regulations for commercial weighing and measuring devices issued by the national institute of standards and technology shall apply in this state except as modified by such rules.

Wis. Stats. §§ 98.07 (3) and (4)

- (3) With respect to commodities packaged prior to sale, the department shall issue rules permitting reasonable variations from declared quantity which unavoidably occur in good packaging and distribution practices.
- (4) In order to prevent consumer deception, the department shall prescribe, by rule, standards for determining and declaring weight, measure or count, including the conspicuousness of quantity declarations.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates that it will use approximately 200 hours of staff time to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. The department will use existing staff to develop this rule.

6. List with description of all entities that may be affected by the proposed rule:

The department is responsible for regularly monitoring the accuracy of gas pumps, price scanners, scales and package weights statewide to ensure that consumers are receiving their money's worth in Wisconsin stores. Therefore, any business in the state that fits those categories may be affected by updates to the NIST Handbooks.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

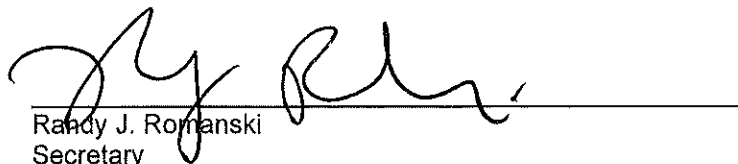
Not applicable. While NIST is a federal agency through the United States Department of Commerce, it develops national standards through participation from states and industry during annual National Conference on Weights and Measures meetings. Federal law does not consider national standards to be federal regulations.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The proposed technical changes to current rules will not have any adverse impact on persons covered by those rules. There will be no adverse impact on business or local government.

Contact Person: David A. Woldseth, Policy Analyst, Division of Trade and Consumer Protection, (608) 224-5164

Signed this 17 day of August 2022



Randy J. Romanski
Secretary
State of Wisconsin Department of Agriculture, Trade and Consumer Protection