



State of Wisconsin  
Governor Scott Walker

## Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

**DATE:** September 2, 2015

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Ben Brancel, Secretary  
John Petty, Administrator, Agricultural Resource Management Division

**SUBJECT:** Fertilizer Content Deficiencies, Ch. ATCP 40.14; Final Draft Rule

**PRESENTED BY:** Amy Basel and Robby Personette

### REQUESTED ACTION:

At the September 23, 2015 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a final draft rule (Attachment A), amending s. ATCP 40.14 (1) and (3), Wis. Admin. Code, related to the standards for the nutrient content of fertilizer.

### SUMMARY:

This rule amends s. ATCP 40.14 (1) and (3), Wis. Admin. Code, relating to fertilizer content deficiencies. The department of agriculture, trade and consumer protection ("DATCP" or "department") regulates the manufacture and sale of fertilizer, pursuant to s. 94.64 Stats. DATCP regulates fertilizer to protect farmers and consumers against unfair and deceptive sales practices. Regulation is designed to prevent fraudulent sales of products, deceptive ingredient and performance claims, and latent safety hazards.

This rule will:

- Update the standards that are used for verifying the nutrient content of a fertilizer product.
- Revise the title of one standard to reflect the type of index that is currently used for determining the formulation multiplier of the nutrient content of a fertilizer product.

### Rule Contents

This proposed rule amends s. ATCP 40.14 (1) and (3), Wis. Admin. Code, relating to fertilizer content deficiencies. The following is a summary of the rule changes in order by section. The proposed rule does the following:

#### Economic Value Guarantee Percentage

The proposed rule reduces the guarantee percentage in s. ATCP 40.14 (1) (c), Wis. Admin. Code, from the current requirement of 98%, to 97%. In a prior rule, the department utilized the guarantee of 97%.

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Additionally, this change would make our requirements consistent with the percentage used by other states, such as Minnesota and Illinois.

**“Economic Value” Title**

The formula referenced in s. ATCP 40.14 (1) (c) and the title of the formula in s. ATCP 40.14 (3) is changed from “economic value” to “combined nutrient index.” This change would aid industry in recognizing that their product value is based on an index rather than a specific pricing model.

**Economic Value Formula**

In place of the 2:2:1 ratio of N, P, and K, in the current s. ATCP 40.14 (3), Wis. Admin. Code, the proposed rule will update the current ratio with a ratio 1:1:1 of N, P, and K:

Current formula: Economic value = {[total nitrogen (N) guarantee] x 2} +  
{[available phosphate (P<sub>2</sub>O<sub>5</sub>) guarantee] x 2} + {soluble potash (K<sub>2</sub>O) guarantee}

to

Amended formula: Combined Nutrient Index = {total nitrogen (N) guarantee} +  
{available phosphate (P<sub>2</sub>O<sub>5</sub>) guarantee} + {soluble potash (K<sub>2</sub>O) guarantee}

The proposed formula more accurately reflects the actual value of fertilizer ingredients in the marketplace than the current formula, which was developed over forty years ago.

***Public Hearing***

DATCP held one public hearing on the original rule on June 30, 2015, in Madison. DATCP accepted written comments until July 21, 2015. A total of four people attended and registered at the public hearing (Attachment B), two of whom spoke and submitted written comments. No other written comments were submitted. Additionally, no comments were received when the economic impact analysis was posted. The department received both general comments related to the rule and specific comments related to certain provisions within the rule. The general comments were supportive of the rule revision. Specific comments were also in support of the rule revision with a suggestion to include an additional percentage of variance for bagged fertilizer (Attachment C).

The department heard a suggestion expressed at the public hearing for a separate threshold value of 96% for bagged fertilizer products. However, the department did not incorporate this suggestion into the rule revision. An analysis of the sample results from bagged and bulk fertilizer, setting a 96% threshold did not show a significant decrease in bagged fertilizer failure rates than that of bulk or liquid set at the same threshold. The department maintains that a decrease of the overall threshold variance to 97% addresses the concerns relating to bagged fertilizer.

*DATCP's Rule Changes in Response to  
Public Hearings, Rules Clearinghouse, and DATCP Board Comments*

DATCP considered all comments received through the DATCP board presentation, Legislative Council Rules Clearinghouse (Clearinghouse), and public hearing. The changes recommended by the Clearinghouse were made. As suggested by the board, the title of the formula being revised in this rule did not accurately represent the information used for the formula. The title "combined nutrient index" provides for a better description of the information used within the formula. Accordingly, the term "combined nutrient index" will replace economic value in the proposed rule in s. 40.14, Wis. Admin. Code.

*Summary of Factual Data and Analytical Methodologies*

DATCP developed this rule in consultation with an industry working group that included representative members from agricultural associations and fertilizer manufacturers and distributors. A listening session was held with representatives of multiple agrichemical associations, fertilizer manufacturers and suppliers. Some members of this group previously had brought to the department its concerns over the economic value calculation that has been in use by the department since the 1970s. They questioned the effects that the current pricing structure has on the labeling of fertilizer content, when compared with how prior pricing models had affected the calculation of the economic value on numerous fertilizer blends over recent years.

The department reviewed the current relative average wholesale prices for primary plant nutrients N, P, and K, using statistics and information gathered from the United States Department of Agriculture (USDA) regarding fertilizer ingredient pricing. The department later considered data from statistics and information that were specific to the regional pricing of fertilizer ingredients as published within the annual Wisconsin Agricultural Statistics Bulletin. The formula used to determine the economic value of the fertilizers was no longer found to be accurate in relation to the multipliers used in the formula for the primary nutrients N and P. Additionally, it was found that the prices for these primary nutrients, as well as that of K, were similar to one another.

The department heard concerns over the value used in calculating the threshold percentage of the economic value guarantee, which addressed variations such as granular size, overall availability of nutrients, and the lack of consistency between lots of primary nutrients. The department reviewed sample results of the past years to show that a change from 98% to 97% would be a change taking into account the variation in granular size and the lack of consistency between lots of primary nutrients, while continuing to ensure that the fertilizer contains the nutrients guaranteed on the product label.

*Analysis and Supporting Documents Used to Determine Effects on Small Business*

To determine the economic value of the primary nutrients, DATCP considered data on wholesale nutrient prices obtained from USDA reports referenced in the listening session, and later considered the regional pricing of fertilizer ingredients as published in the Wisconsin Agricultural Statistics Bulletin.

### *Fiscal Impact*

This rule will have no fiscal impact on DATCP or local units of government. This rule will clarify existing regulations and improve program administration. DATCP does not anticipate any additional costs or staffing needs. A complete fiscal estimate and economic impact analysis is attached (Attachment D).

### *Business Impact*

The proposed rule will continue to benefit certain small businesses such as farmers, landscape and lawncare companies, farm supply stores, and cooperatives. This rule revision is designed to update the formulas used in analyzing fertilizer for its economic value and content deficiencies. This rule will continue to prevent unfair and deceptive sales practices, while adjusting formulas used to reflect updated fertilizer ingredient costs.

There are approximately 700 persons licensed to manufacture or distribute fertilizers in Wisconsin. Up to 30% of these license holders may be small businesses. Affected businesses include farm centers and cooperatives, lawncare businesses, and manufacturers of nonagricultural and specialty fertilizers.

The fertilizer industry serves about 30,000 Wisconsin farmers, many of whom are small businesses. This rule will benefit farmers by continuing to prevent unfair and deceptive sales practices, while adjusting formulas used to reflect current fertilizer ingredient costs.

Because this rule will not have a significant adverse impact on small business, it is not subject to the delayed small business effective date provision in s. 227.22 (2) (e), Stats. A business analysis ("final regulatory flexibility analysis") is attached.

### *Comparison with Existing or Proposed Federal Statutes and Regulation*

There are no established federal laws regulating the content deficiencies for fertilizer, although there is regulation by other states (see below).

### *Comparison with Rules in Adjacent States*

State fertilizer regulators have organized a national Association of American Plant Food Control Officials (AAPFCO) to promote uniform state laws related to fertilizer. Most surrounding states follow AAPFCO principles and have similar basic laws which benefit consumers, fertilizer manufacturers and distributors doing business in multiple states. However, there are minor variations in fertilizer regulations between states.

#### **Illinois**

Illinois requirements look at the total combined value of the fertilizer as well as the value for each fertilizer ingredient, and the product is deficient if the actual amount is 97% or less than the guarantee for both the individual ingredient and the total combined value.

**Iowa**

Iowa uses a combined nutrient index value (called relative value) which is determined based on a formula that is identical to the current Wisconsin requirements, with a formula of relative value equal to  $2N + 2P + K$  and a 98% deficiency threshold allowed between the actual and guaranteed relative values.

**Michigan**

Michigan has adopted the AAPFCO requirements that deem fertilizer deficient if the overall index value of the fertilizer is below 98%. The overall index value is calculated by comparing the guarantee of the nutrients to the actual value found within the sample. Michigan uses unit values for each of the fertilizer nutrients. These values vary and are based on annual publications of the annual values per unit of each primary nutrient.

**Minnesota**

Minnesota uses the same formula and multipliers as the current Wisconsin requirements, but considers a fertilizer deficient if the overall economic value is below 97% of the guaranteed value.

*Next Steps*

If the Board approves this final draft rule, DATCP will refer a copy of the rule to the Governor's Office of Regulatory Compliance. If the Governor's office approves the final draft rule, the department will then submit the rule to the Legislature for Legislative Council Rules Clearinghouse and publish a hearing in the Wisconsin Administrative Register. If the legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

*Attachments*

- A – Final draft rule
- B – Persons registered submitting testimony or comments
- C – Summary ATCP 40 Public Comments
- D – Fiscal estimate and economic impact analysis
- E – Regulatory Flexibility Analysis

**PROPOSED ORDER OF THE WISCONSIN DEPARTMENT OF  
AGRICULTURE, TRADE AND CONSUMER PROTECTION  
AMENDING RULES**

- 1 The Wisconsin department of agriculture, trade and consumer protection proposes the
- 2 following order to amend ATCP 40.14 (1) (c) and (3), relating to the manufacture and
- 3 distribution of fertilizer.

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**Analysis Prepared by the Department of Agriculture,  
Trade and Consumer Protection**

This rule amends s. ATCP 40.14 (1) and (3), Wis. Admin. Code, relating to fertilizer content deficiencies. The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) regulates the manufacture and sale of fertilizer, pursuant to s. 94.64, Stats. DATCP regulates fertilizer to protect farmers and consumers against unfair and deceptive sales practices. Regulation is designed to prevent fraudulent sales of products, deceptive ingredient and performance claims, and latent safety hazards.

This rule updates standards for the nutrient content of fertilizer.

***Statutes Interpreted***

Statutes interpreted: s. 94.64, Stats.

***Statutory Authority***

Statutory authority: ss. 93.07 (1), and 94.64 (9), Stats.

***Explanation of Agency Authority***

DATCP has authority under s. 93.07 (1), Stats., to make regulations as necessary for the proper enforcement of Chapters 93 to 100, Stats., including the administration of the fertilizer program under s. 94.64, Stats. DATCP has express authority to promulgate rules regulating the sale and labeling of fertilizer, governing methods of sampling, testing and analyzing fertilizer and prescribing the manner in which grade and guaranteed analysis are declared on the product label. See s. 94.64 (9), Stats.

### *Related Statutes and Rules*

Wisconsin statutes and rules relating to the manufacture, distribution, and use of fertilizer are set forth in ss. 94.64 to 94.645, Stats., and ch. ATCP 40, Wis. Admin. Code.

### *Plain Language Analysis*

Under current fertilizer rules, a manufacturer or distributor that labels fertilizer is required to list percent guarantees of primary nutrients on the fertilizer's label. Primary nutrients consist of nitrogen ("N"), phosphorus ("P"), and potassium ("K"). Current rules also require that DATCP collect and analyze various samples of fertilizers.

The department analyzes fertilizer samples to determine if the content of the sample meets the guarantees of N, P, and K listed on the label. If the sample tested is found to be deficient in content of N, P, or K because it fails to meet one or more of the three standards in the rule, then the fertilizer is considered "misabeled" under s. ATCP 40.14 (1), Wis. Admin. Code.

After convening a group of representatives of the fertilizer industry and agricultural associations, and reviewing recent data concerning the wholesale prices of primary nutrients, the group concluded that the existing rule contains an outdated formula for the economic value of fertilizer. That formula was based on average wholesale prices of primary plant nutrients prior to its enactment in the 1970s.

### **Rule Content**

This rule amends s. ATCP 40.14 (1) and (3), Wis. Admin. Code, relating to fertilizer content deficiencies.

This rule will do the following:

1. Replace the term "economic value" with "combined nutrient index" wherever it appears in s. ATCP 40.14, Wis. Admin. Code. The proposed new term represents a more accurate description of the index used in developing the multipliers within the formula.
2. In place of the 2:2:1 ratio of N, P, and K, in the current s. ATCP 40.14 (3), Wis. Admin. Code, the proposed rule substitutes a ratio 1:1:1 of N, P, and K:

Current formula: Economic value = {[total nitrogen (N) guarantee] x 2} + {[available phosphate (P<sub>2</sub>O<sub>5</sub>) guarantee] x 2} + {soluble potash (K<sub>2</sub>O) guarantee}

to

Amended formula: Combined Nutrient Index = {total nitrogen (N) guarantee}  
+ {available phosphate (P<sub>2</sub>O<sub>5</sub>) guarantee} + {soluble  
potash (K<sub>2</sub>O) guarantee}

The amended formula more accurately reflects the value of fertilizer ingredients sold in the marketplace than the current formula, which was developed over forty years ago.

3. The proposed rule changes the standard in s. ATCP 40.14 (1) (c), Wis. Admin. Code, for the economic value (proposed combined nutrient index) formula, so that the guarantee percentage, which currently is listed in the rule as 98%, is reduced to 97%. This conforms to the department's prior guarantee percentage in the rule, and is consistent with the percentage used by other states, such as Minnesota and Illinois.

### *Comparison with Existing or Proposed Federal Statutes and Regulation*

There are no established federal laws regulating the content deficiencies for fertilizer, although there is regulation by other states (see below).

### *Comparison with Rules in Adjacent States*

State fertilizer regulators have organized a national Association of American Plant Food Control Officials (AAPFCO) to promote uniform state laws related to fertilizer. Most surrounding states follow AAPFCO principles and have similar basic laws which benefit consumers, fertilizer manufacturers and distributors doing business in multiple states. However, there are minor variations in fertilizer regulations between states.

#### **Illinois**

Illinois requirements look at the total combined value of the fertilizer as well as the value for each fertilizer ingredient, and the product is deficient if the actual amount is 97% or less than the guarantee for both the individual ingredient and the total combined value.

#### **Iowa**

Iowa uses a combined nutrient index value (called relative value) which is determined based on a formula that is identical to the current Wisconsin requirements, with a formula of relative value equal to  $2N + 2P + K$  and a 98% deficiency threshold allowed between the actual and guaranteed relative values.

#### **Michigan**

Michigan has adopted the AAPFCO requirements that deem fertilizer deficient if the overall index value of the fertilizer is below 98%. The overall index value is calculated by comparing the guarantee of the nutrients to the actual value found within the sample. Michigan uses unit values for each of the fertilizer nutrients. These values vary and are based on annual publications of the annual values per unit of each primary nutrient.

## **Minnesota**

Minnesota uses the same formula and multipliers as the current Wisconsin requirements, but it considers a fertilizer deficient if the overall economic value is below 97% of the guaranteed value.

### *Summary of Factual Data and Analytical Methodologies*

DATCP developed this rule in consultation with an industry working group that included representative members from agricultural associations and fertilizer manufacturers and distributors. A listening session was held with representatives of multiple agrichemical associations, fertilizer manufacturers and suppliers. Some members of this group previously had brought to the department its concerns over the economic value calculation that has been in use by the department since the 1970s. They questioned the effects that the current pricing structure has on the labeling of fertilizer content, when compared with how prior pricing models had affected the calculation of the economic value on numerous fertilizer blends over recent years.

The department reviewed the current relative average wholesale prices for primary plant nutrients N, P, and K, using statistics and information gathered from the United States Department of Agriculture (USDA) regarding fertilizer ingredient pricing. The department later considered data from statistics and information that were specific to the regional pricing of fertilizer ingredients as published within the annual Wisconsin Agricultural Statistics Bulletin. The formula used to determine the economic value of the fertilizers was no longer found to be accurate in relation to the multipliers used in the formula for the primary nutrients N and P. Additionally, it was found that the prices for these primary nutrients, as well as that of K, were similar to one another.

The department heard concerns over the value used in calculating the threshold percentage of the economic value guarantee, which addressed variations such as granular size, overall availability of nutrients, and the lack of consistency between lots of primary nutrients. The department reviewed sample results of the past years to show that a change from 98% to 97% would be a change taking into account the variation in granular size and the lack of consistency between lots of primary nutrients, while continuing to ensure that the fertilizer contains the nutrients guaranteed on the product label.

### *Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis*

DATCP considered data on wholesale nutrient prices obtained from USDA reports referenced in the listening session (See Summary of Data and Analytical Methodologies, above), and later considered data from statistics of regional prices of fertilizer in our area of the country, published in the Wisconsin Agricultural Statistics Bulletin. No comments were received through the economic impact analysis comment period.

### *Fiscal Impact*

This rule will have no fiscal impact on DATCP or local units of government. This rule will clarify existing regulations and improve program administration. DATCP does not anticipate any additional costs or staffing needs. A complete fiscal estimate and economic impact analysis is attached.

### *Effects on Small Business*

DATCP anticipates that this rule revision will have no negative economic impact on small business. The proposed rule will continue to benefit certain small businesses such as farmers, landscape and lawncare companies, farm supply stores, and cooperatives. This rule revision is designed to update the formulas used in analyzing fertilizer for its economic value and content deficiencies. This rule will continue to prevent unfair and deceptive sales practices, while adjusting formulas used to reflect updated fertilizer ingredient costs.

There are approximately 700 persons licensed to manufacture or distribute fertilizers in Wisconsin. Up to 30% of these license holders may be small businesses. Affected businesses include farm centers and cooperatives, lawncare businesses, and manufacturers of nonagricultural and specialty fertilizers.

The fertilizer industry serves about 30,000 Wisconsin farmers, many of whom are small businesses. This rule will benefit farmers, by continuing to prevent unfair and deceptive sales practices, while adjusting formulas used to reflect current fertilizer ingredient costs.

Because this rule will not have a significant adverse impact on small business, it is not subject to the delayed small business effective date provision in s. 227.22 (2) (e), Stats. A business analysis ("final regulatory flexibility analysis") is attached.

### *DATCP Contact Information*

Questions and comments related to this rule may be directed to:

Amy Basel  
Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911  
Telephone: (608) 224-4541  
E-mail: [amy2.basel@wisconsin.gov](mailto:amy2.basel@wisconsin.gov)

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1 SECTION 1. ATCP 40.14 (1) (c) is amended to read:

1           ATCP 40.14 (1) (c) The ~~economic value~~ combined nutrient index of primary  
2 nutrients actually present is less than ~~98%~~ 97% of the ~~economic value~~ combined nutrient  
3 index of the amounts guaranteed, where ~~economic value~~ the combined nutrient index is  
4 calculated according to sub. (3).

5           **SECTION 2.** ATCP 40.14 (3) is amended to read:

6           ATCP 40.14 (3) ~~ECONOMIC VALUE~~ COMBINED NUTRIENT INDEX. ~~Economic~~  
7 value Combined nutrient index, for purposes of sub. (1) (c), equals  $\{\{\text{total nitrogen (N)}$   
8  $\text{guarantee} \times 2\} + \{\{\text{available phosphate (P}_2\text{O}_5\} \text{guarantee} \times 2\} + \{\text{soluble potash (K}_2\text{O)}$   
9  $\text{guarantee}\}$ .

10           **SECTION 3. EFFECTIVE DATE.** This rule takes effect on the first day of the month  
11 following publication in the Wisconsin administrative register, as provided under s.  
12 227.22 (2) (intro.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Ben Brancel  
Secretary

**Persons Registered, Submitting Testimony or Comments  
Proposed ATCP 40 Revision**

**Tuesday, June 30, 2015 2:00 pm – 4:00 pm  
Madison, WI**

<b>Public Hearing</b>					
	<b>Submitted Registration Cards</b>	<b>Support Proposal</b>	<b>Oppose Proposal</b>	<b>Favors with Modifications</b>	<b>No Position or Listen Only</b>
1	John Manske Cooperative Network 1 South Pinckney St. Suite 810 Madison, WI 53703			X Oral testimony and letter	
2	Steve Hunsley Eau Claire Coop Oil 4970 Kave Road Eau Claire, WI 54703			X Oral testimony and letter	
3	Heather Thompson Growmark/ Frontier-Servco FS 1701 Towanda Ave. Boomington, IL 61701	X			
4	Tom Bressner - Wisconsin Agri- Business Association 2801 International Lane Suite 105 Madison, WI 53704	X			

	<b>Written Comments (Accepted Until 7/21/15)</b>	<b>Support Proposal</b>	<b>Oppose Proposal</b>	<b>Favors with Modifications</b>	<b>No position</b>
1	Cooperative Network 1 South Pinckney St. Suite 810 Madison, WI 53703			X	
2	Eau Claire Coop Oil 4970 Kave Road Eau Claire, WI 54703			X	

### **Public Hearing Summary**

The ATCP 40 Rule Revision hearing began at 2:00 pm, on June 30, 2015. The opening statement and a summary of the rule were read by the hearing officer, Amy Basel. All four persons in attendance filled out appearance cards and two gave oral testimony. Both testimonies were provided to the department in the form of official correspondence.

John Manske and Steve Hunsley provided oral testimony (audio recording time at 7:25 and 10:31, respectively) and submitted written comments. Oral testimony from both individuals indicated that they supported the proposed rule revisions, and had an additional request that DATCP establish a separate economic value threshold of 96%, rather than 97%, for bagged fertilizer products. The basis of this suggestion was derived from the amount of additional materials that are present in bagged fertilizer products. These materials include, but are not limited to binders for pesticide products. Additionally, the lower threshold was substantiated due to the diversity of ingredient particle sizes, and the density of other ingredients present in bagged fertilizers. These variations are not, typically, present in the bulk shipments of fertilizer products.

### **Public Comment Summary**

The public comment period for the rule was open until 4:30 pm, July 21, 2015. Other than the two letters that were submitted during the Public Hearing, DATCP did not receive any comments related to the revision of ATCP 40.

**Summary of ATCP 40 Public Comments**

The ATCP 40 rule revision public hearing was held on June 30, 2015 in Madison, WI. The public comment period remained open until July 21, 2015. Table 1 summarizes the number of people that attended the hearing, submitted testimony or registered their comments.

**Table 1: Attendance at Public Hearings and Written Comments Submitted**

Public Hearing Location	Hearing Attendance	Registration/Comment Cards Submitted	Speakers on Record	Mailed or Emailed Comments
Madison	4	4	2	0
Written Comments Submitted	0	0	0	0
Economic Impact Analysis Comments	0	0	0	0
<b>Total</b>	<b>4</b>	<b>4</b>	<b>2</b>	<b>0</b>

Table 2 summarizes comments provided at the public hearing and the written comments submitted to the department, including those submitted as part of the economic impact analysis and the Legislative Council Rules Clearinghouse. If an individual's submittal referenced multiple sections of ATCP 40, each idea was separately tallied in Table 2. The DATCP response column outlines what actions were taken to address public comments in the final rule language.

**Table 2: Summary of Public Comments Received**

Proposed Change	Support Proposal	Support Proposal with Changes	Oppose Proposal	Total Comments	Alternatives Suggested	DATCP Response
Legislative Council Rules Clearinghouse Comments				1	Suggested edits for 1) form, style and placement in administrative code, and 2) clarity, grammar, punctuation and use of plain language.	DATCP revised rule text to incorporate all suggested edits.

Proposed Change	Support Proposal	Support Proposal with Changes	Oppose Proposal	Total Comments	Alternatives Suggested	DATCP Response
Public Comments		X		2	Suggestion given to create an additional economic value with a threshold of 96% for bagged fertilizer materials. Reasoning for suggestion was to accommodate for the variability, and number of product ingredients within bagged fertilizer products when compared with bulk fertilizers.	The department heard a suggestion expressed at the public hearing for a separate threshold value of 96% for bagged fertilizer products, however the department did not incorporate this suggestion into the rule revision. The analysis of the sample results from bagged and bulk fertilizer, set at a 96% threshold did not show a significant decrease in bagged fertilizer failure rates than that of bulk or liquid set at the same threshold. The department maintains that a decrease of the overall threshold variance to 97% addresses the concerns relating to bagged fertilizer.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ADMINISTRATIVE RULES**  
**FISCAL ESTIMATE AND**  
**ECONOMIC IMPACT ANALYSIS**

1. Type of Estimate and Analysis

Original  Updated  Corrected

2. Administrative Rule Chapter, Title and Number

Chapter ATCP 40, Fertilizer and Related Products

3. Subject

Fertilizer Content Deficiencies

4. Fund Sources Affected

GPR  FED  PRO  PRS  SEG  SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.115 (7)(r)

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect  Increase Existing Revenues  Increase Costs  
 Indeterminate  Decrease Existing Revenues  Could Absorb Within Agency's Budget  
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy  Specific Businesses/Sectors  
 Local Government Units  Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes  No

9. Policy Problem Addressed by the Rule

After convening a group of representatives of the fertilizer industry and agrichemical associations, and reviewing recent data concerning the wholesale prices of primary nutrients, the group concluded that the existing rule contains an outdated formula for the economic value of fertilizer. That formula was based on average wholesale prices of primary plant nutrients prior to its enactment in the 1970s.

This rule will do the following:

1. Replace the term "economic value" with "combined nutrient index" wherever it appears in s. ATCP 40.14, Wis. Admin. Code. The proposed new term represents a more accurate description of the index used in developing the multipliers within the formula.
2. In place of the 2:2:1 ratio of N, P, and K, in the current s. ATCP 40.14 (3), Wis. Admin. Code, the proposed rule substitutes a ratio 1:1:1 of N, P, and K:

Current formula: Economic value = {[total nitrogen (N) guarantee] x 2} +  
{[available phosphate (P<sub>2</sub>O<sub>5</sub>) guarantee] x 2} + {soluble potash (K<sub>2</sub>O)  
guarantee}

to

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

Amended formula; Combined Nutrient Index = {total nitrogen (N) guarantee}  
+ {available phosphate (P<sub>2</sub>O<sub>5</sub>) guarantee} + {soluble potash (K<sub>2</sub>O) guarantee}

The amended formula more accurately reflects the value of fertilizer ingredients sold in the marketplace than the current formula, which was developed over forty years ago.

3. The proposed rule changes the standard in s. ATCP 40.14 (1) (c), Wis. Admin. Code, for the economic value (proposed combined nutrient index) formula, so that the guarantee percentage, which currently is listed in the rule as 98%, is reduced to 97%. This conforms to the department's prior guarantee percentage in the rule, and is consistent with the percentage used by other states, such as Minnesota and Illinois.

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10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

DATCP developed this rule in consultation with an industry working group that included representative members from agricultural associations and fertilizer manufacturers and distributors. A listening session was held with representatives of multiple agrichemical associations, fertilizer manufacturers and suppliers. A hearing was held in which additional representatives voiced support for the rule change and suggested an additional lower threshold of variance for bagged fertilizer materials.

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11. Identify the local governmental units that participated in the development of this EIA.

None. No impact on local governmental units is anticipated.

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The rule will positively impact fertilizer manufacturers and distributors. There are approximately 700 Wisconsin businesses licensed to manufacture or distribute fertilizers, including farm centers and cooperatives. This rule will allow for a variance from the label guarantee that is based on current relative market values of primary nutrients, rather than the relative market values of primary nutrients during the 1970s. The anticipated impact is that a lower percentage of fertilizer products tested by the department will be considered "mis-labeled" because the formula has been adjusted to account for updated nutrient prices. This rule will continue to benefit farmers by preventing deceptive sales practices due to mislabeled fertilizer. No implementation or compliance costs are expected to be incurred by these businesses. Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole are not expected to be impacted economically by this rule.

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13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Fertilizer manufacturer and distributor businesses will benefit from the alignment of the economic value formula with current fertilizer input costs. (See no. 12, above.) Additionally, farmers and other consumers of fertilizer would benefit from accurately labeled fertilizer products. If DATCP takes no action, the current rule will remain in effect. However, there will continue to be an outdated formula in use to determine the overall fertilizer content value, giving a weighted cost to plant nutrients that have since equalized in cost.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

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14. Long Range Implications of Implementing the Rule

It is not anticipated that there will be any long-term implications in the implementation of this rule. The variances in overall fertilizer content values and the formula used in determining the economic index value of the fertilizer product will continue to protect fertilizer consumers from mislabeled fertilizer products. Additionally, DATCP will continue to conduct periodic wholesale price surveys in an effort to ensure that all multipliers used in the economic index value formula are comparable with current industry practices.

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15. Compare With Approaches Being Used by Federal Government

Currently, the Federal Government has no significant oversight of fertilizer products.

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16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

State fertilizer regulators have organized a national Association of American Plant Food Control Officials (AAPFCO) to promote uniform state laws related to fertilizer. Most surrounding states follow AAPFCO principles and have similar basic laws which benefit consumers, fertilizer manufacturers and distributors doing business in multiple states. However, there are minor variations in fertilizer regulations between states.

**Illinois**

Illinois requirements look at the total combined value of the fertilizer as well as the value for each fertilizer ingredient, and the product is deficient if the actual amount is 97% or less than the guarantee for both the individual fertilizer ingredient and the total combined value.

**Iowa**

Iowa uses a combined nutrient index value (called relative value) which is determined based on a formula that is identical to the current Wisconsin requirements, with a formula of relative value equal to  $2N + 2P + K$  and a 98% deficiency threshold allowed between the actual and guaranteed relative values.

**Michigan**

Michigan has adopted the AAPFCO requirements that deem fertilizer deficient if the overall index value of the fertilizer is below 98%. The overall index value is calculated by comparing the guarantee of the nutrients to the actual value found within the sample. Michigan uses unit values for each of the fertilizer nutrients. These values vary and are based on annual publications of the annual values per unit of each primary nutrient.

**Minnesota**

Minnesota uses the same formula and multipliers as the current Wisconsin requirements, but considers a fertilizer deficient if the overall economic value is below 97% of the guaranteed value.

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17. Contact Name

Amy Basel

18. Contact Phone Number

608-224-4541

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This document can be made available in alternate formats to individuals with disabilities upon request.

**ATTACHMENT A**

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

No Implementation or Compliance Costs and no negative Fiscal Impact to Small Businesses are expected.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Information submitted on behalf of the various members in attendance at the listening session held on February 2, 2015, was used in determining the proposed rule changes. These members included representatives from the fertilizer manufacturer and distribution sectors, along with multiple industry association representatives. These industry associations are direct representatives for various businesses within the fertilizer sale/production/distribution sectors, up to thirty percent of whom are considered small businesses. The department also presented information gathered from the United States Department of Agriculture concerning statistics on fertilizer ingredient pricing and variations of pricing that has occurred throughout a number of years.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

The proposed changes would not affect any reporting, design, or operational standards that are currently being used for the manufacturing, distribution and sales of a fertilizer product.

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

None. The Department does not anticipate that the rule change will create a need for any fertilizer businesses, regardless of size, to change their current practices.

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5. Describe the Rule's Enforcement Provisions

The enforcement provisions within the current rule will not change.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
-

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

*Rule Subject:* Fertilizer Content Deficiencies  
*Adm. Code Reference:* ATCP 40  
*Rules Clearinghouse #:* 15-045  
*DATCP Docket #:* 14-R-14

*Rule Summary*

This rule amends s. ATCP 40.14 (1) and (3), Wis. Admin. Code, relating to fertilizer content deficiencies.

This rule will do the following:

1. Replace the term “economic value” with “combined nutrient index” wherever it appears in s. ATCP 40.14, Wis. Admin. Code. The proposed new term represents a more accurate description of the index used in developing the multipliers within the formula.
2. In place of the 2:2:1 ratio of N, P, and K, in the current s. ATCP 40.14 (3), Wis. Admin. Code, the proposed rule substitutes a ratio 1:1:1 of N, P, and K:

Current formula: Economic value = {[total nitrogen (N) guarantee] x 2} + {[available phosphate (P<sub>2</sub>O<sub>5</sub>) guarantee] x 2} + {soluble potash (K<sub>2</sub>O) guarantee}

to

Amended formula: Combined Nutrient Index = {total nitrogen (N) guarantee} + {available phosphate (P<sub>2</sub>O<sub>5</sub>) guarantee} + {soluble potash (K<sub>2</sub>O) guarantee}

The amended formula more accurately reflects the value of fertilizer ingredients sold in the marketplace than the current formula, which was developed over forty years ago.

3. The proposed rule changes the standard in s. ATCP 40.14 (1) (c), Wis. Admin. Code, for the economic value (proposed combined nutrient index) formula, so that the guarantee percentage, which currently is listed in the rule as 98%, is reduced to 97%. This conforms to the department’s prior guarantee percentage in the rule, and is consistent with the percentage used by other states, such as Minnesota and Illinois.

This rule amends s. ATCP 40.14 (1) and (3), Wis. Admin. Code, relating to fertilizer content deficiencies. The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) regulates the manufacture and sale of fertilizer, pursuant to s. 94.64 Stats. DATCP regulates fertilizer to protect farmers and consumers against unfair and deceptive sales practices. Regulation is designed to prevent fraudulent sales of products, deceptive ingredient and performance claims, and latent safety hazards.

This rule updates standards for the nutrient content of fertilizer.

### *Impact on Small Business*

DATCP anticipates that this rule revision will have no negative economic impact on small business. There are approximately 700 persons licensed to manufacture or distribute fertilizers in Wisconsin. Affected businesses include farm centers and cooperatives, and manufacturers of nonagricultural and specialty fertilizers. Up to 30% of these license holders may be small businesses. Those businesses that manufacture or otherwise label fertilizers will benefit from this proposed rule because their fertilizer products are less likely to be considered “mislabelled” due to use of a formula that relies upon relative nutrient values based on costs from the 1970s.

The fertilizer industry serves about 30,000 Wisconsin farmers, many of whom are small businesses. This rule will benefit farmers by continuing to ensure accurately labeled fertilizer products.

Because this rule will not have a significant adverse impact on small business, it is not subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats.

### *Reporting, Bookkeeping and other Procedures*

The proposed rule creates no reporting, bookkeeping or other procedures for small businesses.

### *Professional Skills Required*

The proposed rule does not require any professional skills for small businesses.

### *Accommodation for Small Business*

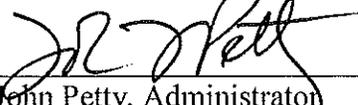
This rule does not make special accommodations for small business because no fertilizer business, large or small, is expected to need to change any manufacturing or labeling practices due to this rule.

*Conclusion*

This rule will generally benefit affected businesses, including “small businesses.” No negative effects are expected. This rule will not have a significant adverse effect on “small business,” and is not subject to the delayed “small business” effective date provided in s. 227.22(2)(e), Stats.

Dated this 2<sup>nd</sup> day of September, 2015.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By   
John Petty, Administrator  
Division of Agricultural Resource Management