



WEIGHTS, MEASURES & CONSUMER PROTECTION LAWS AND REGULATIONS AT COMMERCIAL OUTLETS

Requirements for Sales at Open Air Markets, Farmers' Markets, Roadside Stands and Other Commercial Outlets

Retail sales of fruits, vegetables and other items are regulated by the Missouri Department of Agriculture's Weights, Measures and Consumer Protection Division. Open air vendors are **NOT** exempt from these regulations because they sell relatively little compared to a supermarket or only sell for a few months of the year. The Division's laws and regulations apply to all sales and were established to ensure buyers receive sufficient and accurate information with which to compare quantity and price. As a vendor, complying with laws and regulations protects you from perceptions of short-changing or misrepresenting your product. The focus of this bulletin is on the sale of fresh produce at farmers' markets, roadside stands and other seasonal outlets.

Method of Sale

Units of sale for fruits and vegetables are found in Appendix A of this bulletin. Sometimes, these units are not the same as those used in wholesale markets or within specific markets, such as restaurants. However, legal weights and measures are required at all times. Produce may be sold by weight, measure or count, depending on the commodity. Selling something by "count" is pretty simple to understand, but selling by "weight" or "measure" involves legally defined weights and measures.

Direct Sales

Direct sales, such as farmers' markets, roadside stands or from a pickup truck, are those where the weight of the product is determined at the time of sale. Direct sales by weight or measure are also called bulk sales. For example, when a customer tells the seller he wants "2 pounds of potatoes," the seller places potatoes on the scale until it reads 2 pounds. Scales used in direct sales must be inspected and approved by the Missouri Department of Agriculture's Division of Weights, Measures and Consumer Protection. To be certified, the scale must be an approvable, legal for trade type device. Scales must be inspected and approved at least once each calendar year by a Weights, Measures and Consumer Protection official. There will be a fee charged for each approvable type scale tested – whether approved or rejected – for commercial use. No additional fee will be charged for a retest of a rejected or repaired device as long as the device was reinspected in the same calendar year.

Not All Scales Can Be Certified

It doesn't matter if it is an analog or digital scale. Scales stamped or labeled by the factory as "Not Legal for Use in Trade" (including baby, bathroom, restaurant portion, postal and kitchen utility scales) will not be approved because these devices were not manufactured to meet the standards necessary for commercial trade and certification. These devices will be rejected and tagged "Not Legal for Trade." There will be no fee charged since an inspection was not done. If the device is approved, an approval seal is placed on the scale indicating it is certified. It is illegal to sell by weight using an uncertified scale.

If purchasing a new or used scale, locate the scale's C of C number and/or make and model number, and call the Weights, Measures and Consumer Protection Division before you buy to be certain it can be certified. Certifiable used scales may be available at a reasonable cost as many grocery stores or other vendors replace older models of scales for electronic scanners and scales. You may contact the Missouri Department of Agriculture's Division of Weights, Measures and Consumer Protection at (573) 751-5639 if you have any questions. They can also provide suggestions on how to stay within the law if you don't use a scale.

NOTE: PRESUMPTIVE EVIDENCE – section 413.215 RSMo – “Whenever there shall exist a weight or measure or weighing or measuring device in or about any place in which or from which buying or selling is commonly carried on, there shall be a rebuttable presumption that such weight or measure, or weighing or measuring device, is regularly used for the business purposes of that place.”

Prepackaged Sales

Prepackaged sales occur when you weigh the product before sale and package the product with a quantity statement on the package. A 5-pound bag of potatoes or a 2-pound bag of green beans are examples of prepackaged produce sales. Scales used for prepackaging products do not have to meet the requirements set forth in Missouri's Weights, Measures and Consumer Protection laws and regulations. However, the package must contain at least the weight specified on the package. A Weights, Measures and Consumer Protection official's job is to check the weight of the package for accuracy, not the sale. As long as the contents of the package weigh at least what it is labeled, it is in compliance. All prepackaged products, that is, all packaged by weight, measure or count prior to sale, must have an individual label that:

1. gives the name of the product if it cannot be easily identified through the wrapper;
2. a quantity statement (weight, measure or count).

Net Weight

The weight statement must be net weight – the weight of the product excluding the weight of the wrapping material or container. The only wording preceding or following the weight can be net weight, or abbreviated net wt. You cannot say “approximate net weight,” “more than net-wt.,” or “at least net-weight.” An example of proper wording is: Net wt. 2 pounds. An inspector checking this prepackaged item for accuracy of net weight would randomly sample the packages. The net weight of the samples would have to average the stated net weight or more. For example, on a selection of 2-pound packages, the lot would be approved if the average weight of the selections was 2 pounds or over without any unreasonable variation established by the law. The lot would be rejected if the average of the weights was less than 2 pounds. Remember, fruits and vegetables will lose water weight after being harvested. If you package produce in advance, the weight of the bag of carrots packaged Tuesday won't be the same by Saturday's market. In this case, you need to determine how much weight is lost over the time period (under consistent storage conditions) and add that much extra weight when preparing the package to be sure the net weight is accurate when it is sold.

Label requirements are to your advantage. In addition to stating the net weight or count (quantity) of the product, the label provides an opportunity to identify the source of the product. The name of your business, address and perhaps a phone number can be printed on the label to let customers know how to reach you.

Selling By Measures

When selling by measure, a standard dry pint or dry quart container is actually measured by the cubic inches it contains, not the shape.

- 1 dry quart = 67.2 cubic inches
- 1 dry pint = 1/2 dry quart
- 1 bushel = 32 dry quarts (2,150.42 cubic inches)
- 1 peck = 8 dry quarts

An accurate measure would be when the container is filled and struck level across the top. The product should not be compressed, and it does not have to be rounded above the sides of the container unless necessary to achieve the legal volume. When purchasing containers, be certain they meet the legal definition of pints, quarts, pecks, etc. Just as water weight can be lost after harvest, volume can decrease as well. Also, some settling can occur in transit. The contents must be level with the top of the container at the time of sale. It is recommended for sellers to overfill containers slightly to allow for these two factors. Most items sold by measures at a farmers' market will be sold by dry measure (described above).

Cider and Other Liquids

Cider and other liquids are sold by liquid measure, which is slightly smaller since there is no possibility of air spaces in a liquid. For example, a dry quart is 67.2 cubic inches; a fluid quart is 57.75 cubic inches. If selling fluid, determine exactly how full the container must be to hold the full, accurate fluid measure.

Other Important Laws & Regulations

All bakery items must have stated net weight.

Berries and small fruits may be sold by weight or by dry measure in U.S. Standard 1/2 dry pint or 1 dry quart containers. Any larger size must be sold by the bushel or in units not less than 1 peck, or by weight.

Requirements for Shell Eggs Sold in Missouri

(Disclaimer: These are excerpts from the Missouri Egg Laws & Regulations publication).

Eggs are defined as eggs in the shell from chickens. A license is not required for those who sell only eggs produced by their own flocks, provided such eggs are not sold at an established place of business away from the premises of such producer. However, all persons engaged in buying, selling, trading or trafficking in, or processing eggs, except those listed in section 196.313 RSMo, shall be required to be licensed under sections 196.311 to 196.361 RSMo. Such persons shall file an annual application for such license on forms to be prescribed by the director, and shall obtain an annual license for each separate place of business from the director. The following types of licenses shall be issued:

- Retailer's License
 - A retailer's license is required of any person who sells eggs to a consumer. A holder of a Retailer's license shall not be permitted or authorized to buy eggs from persons other than licensed Dealers.
 - Any retailer desiring to buy eggs from persons other than licensed Dealer's shall obtain a Dealer's license in addition to a Retailer's license.

- Limited Retailer’s License
 - A limited retailer’s license is required of any person who exclusively sells their own produced eggs at farmers market(s) or roadside stands.
- Dealer's License
 - A dealer's license shall be required of any person who purchases eggs from producers thereof or another dealer, for the purpose of selling such eggs to another dealer, processor, or retailer. Any Dealer desiring to sell eggs to consumers shall obtain a Retailer's license in addition to a Dealer's license.

The license year shall be 12 months or any fraction thereof, for each separate place of business from the director, beginning July 1 and ending June 30. No license shall be transferable, but it may be moved from one place to another by the consent of the director. The annual license fees shall be:

- Retailer’s License **\$5.00**
- Limited Retailer’s License **\$5.00**
- Dealer's License fees shall be determined on the basis of cases (30 dozen per case) of eggs sold in the shell in any one week, as follows:
 - 1-25 cases per week **\$5.00**
 - 26-50 cases per week **\$12.50**
 - 51-100 cases per week **\$25.00**
 - More than 100 cases per week **\$50.00**

Eggs packaged in cartons must be identified on each carton with the name and address (city and state), or approved identification number (license number) under whose authority the eggs were packaged and the day, month and year when said eggs were graded (ex. July 1, 1996, or 182-6; July 2, 1996, or 183-6). Only eggs to be sold to any consumer by any person shall be of the quality standard designated grade and size established by USDA (ex. Grade A Large).

No person shall sell or represent eggs from any other species of fowl as chicken eggs or sell mixed eggs from more than one species of fowl, eggs from ducks, turkeys, geese, or any other species of fowl other than chickens without marking the container and sub containers of such eggs or otherwise indicating fully by sign or other inscriptions the species of fowl from which such eggs were produced.

Temperature for shell eggs shall be held at a maximum temperature of no greater than 45° F.

To obtain additional information regarding this bulletin, please contact the Missouri Department of Agriculture’s Division of Weights, Measures and Consumer Protection at (573) 751-5639 or visit their website at agriculture.mo.gov.

Appendix A:

The two tables below are copied directly from NIST Handbook 130 (2019) – section 2.3.2. Fresh Fruits and Vegetables.

Method of Retail Sale for Fresh Fruits and Vegetables					
Specific Commodity					
Commodity	Weight	Count	Head or Bunch	Dry Measure (any size)	Dry Measure (1 dry qt or larger)
Artichokes	X	X			
Asparagus	X		X		
Avocados		X			
Bananas	X	X			
Beans (green, yellow, etc.)	X				X
Brussels Sprouts (loose)	X				
Brussels Sprouts (on stalk)			X		
Cherries	X			X	X
Coconuts	X	X			
Corn on the Cob		X			X
Dates	X				
Eggplant	X	X			
Figs	X				
Grapes	X				
Melons (cut in pieces)	X				
Mushrooms (small)	X			X	X
Mushrooms (portobello, large)	X	X			
Okra	X				
Peas	X				X
Peppers (bell and other varieties)	X	X			X
Pineapples	X	X			
Rhubarb	X		X		
Tomatoes (except cherry/grape)	X	X			X

**Method of Retail Sale for Fresh Fruits and Vegetables
General Commodity Groups**

Commodity	Weight	Count	Head or Bunch	Dry Measure (any size)	Dry Measure (1 dry qt or larger)
Berries and Cherry/Grape Tomatoes	X			X	
Citrus Fruits (oranges, grapefruits, lemons, etc.)	X	X			X
Edible Bulbs (onions [spring or green], garlic, leeks, etc.)	X	X	X		X
Edible Tubers (Irish potatoes, sweet potatoes, ginger, horseradish, etc.)	X				X
Flower Vegetables (broccoli, cauliflower, Brussel sprouts, etc.)	X		X		
Gourd Vegetables (cucumbers, squash, melons, etc.)	X	X			X
Leaf Vegetables (lettuce, cabbage, celery, etc.)	X		X		
Leaf Vegetables (parsley, herbs, loose greens)	X		X	X	
Pitted Fruits (peaches, plums, prunes, etc.)	X	X			X
Pome Fruits (apples, pears, mangoes, etc.)	X	X			X
Root Vegetables (turnips, carrots, radishes, etc.)	X		X		